

On Foreign Mergers and Acquisitions of Domestic Enterprises and the Review System of National Security

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Abstract: This paper chooses to analyze and study the argument of "foreign mergers and acquisitions of domestic enterprises and the review system of national security." In order to ensure the comprehensiveness of analysis and research, the following research framework is designed. First of all, it explains the different stages of the review system of national security, such as the business negotiation stage, the application stage, the general review stage, the special review stage, and the announcement stage, to understand the characteristics of the different stages of review of national security. Secondly, it analyzes the improvement of the review system of national security under the background of foreign mergers and acquisitions of domestic enterprises, and explores ways to effectively construct the review system of national security. Finally, it studies the suggestions for the development of domestic enterprises in the context of foreign mergers and acquisitions to strive to safeguard the interests of our country, and to ensure the healthy development of our enterprises and the long-term security and economic prosperity of our country in the context of increasingly frequent national trade activities.

1. Foreword

At this stage, the process of economic globalization is accelerating, making trade between countries more frequent, and in the course of trade, it exists foreign capital mergers and acquisitions of domestic enterprises. Under this development situation, in order to ensure the orderly, healthy, and stable development of domestic enterprises and the economy, it is necessary to build a security management and review system for foreign-invested countries and regulate mergers and acquisitions with the use of the system to maintain the healthy and stable development of the national economy and safeguard national defense security and ensure the basic living order of the people. It can be seen that the review of national security is important in the activities of foreign currency mergers and acquisitions of domestic enterprises. For our country, it pays more attention to security review, but this system is a new thing, and there may be some deficiencies that need to be improved to ensure the smooth conduct and the fairness of the review.

2. Analysis of the Main Stages of the Review System of National Security

2.1. Business Negotiation Stage

In the stage of business negotiation, the applicant should give priority to summing up the relevant procedural issues of mergers and acquisitions of enterprises before putting forward the business application, and then face up to the application to the business department that wants to carry out business negotiation activities after further analysis.

2.2. Application Stage

In the application stage, the party concerned needs to carry out business safety review requirements with the Ministry of Commerce in accordance with *the implementation standards* of

the commerce department, and inform the applicant in written form within 15 working days after the commercial department confirms that it meets the requirements after the review. And the party should communicate with foreign investors within five working days after the issuance of the notice, and carry out international joint meetings to implement security review^[1].

2.3. General Review Stage

The general review is mainly to seek the opinions of joint meetings and relevant departments in the form of several meter press.

2.4. Special Review Stage

The special review stage is that the relevant departments realize that the transaction of mergers and acquisitions may have adverse effects on their own country, and then contact the joint meeting to convey the written opinions to the relevant departments of the joint meeting, or to convey the written opinions to the State Council for further review.

2.5. Announcement Stage

After special review, the State Council, the review agencies and the joint meeting make it clear that mergers and acquisitions activities will not threaten national security, and then make an announcement by using the mode of written notice^[2].

3. Thoughts on Improving the Review System of National Security in the Context of Foreign Merger and Acquisition of Domestic Enterprises

3.1. To Construct Review System of National Security

At present, western countries in China have established security review system to protect their own interests in foreign mergers and acquisitions activities. Therefore, China can learn from the excellent experience of western countries to implement the construction of security system. First of all, the state must formulate a sound security review system, and arrange special personnel to manage and implement the merger in combination with the actual situation, risks and characteristics of foreign currency mergers and acquisitions. However, we need to realize that the construction of security system is not to restrict foreign mergers and acquisitions and increase the pressure of foreign mergers and acquisitions for subjects. It is only to maintain the security of our country. In addition, in order to ensure the perfection, fairness and justice of the security review system, China should constantly introduce advanced management concepts and technologies from western countries, analyze foreign administrative laws and regulations, foreign investment related laws, and improve the review system of national security of China, so as to strive to achieve fair competition, ensure the rational distribution of resources and better employment and maintain the security of the country, and promote the stable development of economy^[3].

3.2. To Construct Accountability System

In order to ensure the correctness and rationality of the relevant agencies and staff involved in the review of national security, it is necessary to establish a system of accountability, and clarify which acts violate the law, and what the price is to violate and touch the law. For the establishment of the accountability system, China can refer to the provisions on the responsibilities of the staff of the management department in the *Foreign Investment Law*. For example, for the staff who abuse their power, engage in malpractice for personal gain and neglect their duties, they need to be given corresponding administrative penalties in combination with the actual situation. For those who constitute a crime, the nature of the staff needs to be investigated in accordance with the law^[4]. Therefore, according to the situation of foreign currency mergers and acquisitions in China and the behaviors of the staff of the security review department, China must formulate a reasonable accountability system, identify institutions and staff who cannot perform their duties. In case of illegal behavior, they need to accept criminal punishment and administrative punishment^[5].

3.3. To Optimize and Perfect Foreign Investment Access System

Foreign mergers and acquisitions have a dual impact. From the perspective of positive impact, it is that foreign mergers and acquisitions have a positive impact on the economic development of the country where the merger and acquisition enterprise is located. From the perspective of negative impacts, it is the damage and adverse effects of foreign mergers and acquisitions on the party being acquired. Therefore, in general, foreign mergers and acquisitions have different impacts on different subjects. However, it cannot be resisted because foreign mergers and acquisitions activities may affect the economic development of the country. Therefore, we can carry out the optimization and improvement of foreign investment access system to identify that which industries are core industries and which sectors are restricted and prohibited, which will help to further protect national security and promote foreign mergers and acquisitions, and balance the relationship between foreign mergers and acquisitions with national security ^[6].

3.4. To Build and Improve the Supervision System

The establishment of a review system of national security can constrain the unreasonable conduct of foreign capital mergers and acquisitions and safeguard national security. But what needs to be clear is that the review system of national security does not only exist as a legal requirement, but it is in fact a well-connected and tightly linked sound system. In this system, the supervision link is an important link. Therefore, during the safety review, regardless of the parties to the merger or acquisition, or the merger and acquisition party that has an interest in the conduct of the merger, it is necessary to implement supervision of the safety review. During the supervision period, if the law enforcement agencies and staff members of one party find that they have objections to their behavior, they can appeal in a timely manner, forward their opinions to the joint meeting, or apply to the court for prosecution. At the same time, the construction of the supervision system must also be carried out within the joint meeting to strengthen the internal supervision capacity of the joint meeting and ensure the fairness of the decisions of the joint meeting.

4. Suggestions on the Development of Domestic Enterprises in the Context of Foreign Mergers and Acquisitions

4.1. To Take the Safety Review System as the Standard and Conduct in-depth Analysis and Judgment on the Merger and Acquisition Project

The review system of national security is the standard for mergers and acquisitions enterprises and the state to safeguard their own interests and ensure the security of mergers and acquisitions activities. It is to safeguard the development of national security. Therefore, after the review system of national security is established, enterprises should also play their own responsibilities. For example, in terms of *the Notice*, although it specifies the requirements for foreign mergers and acquisitions, enterprises should also analyze their own mergers and acquisitions projects in the compliance review from the perspective of overall situation and prudence, and further judge whether the safety of mergers and acquisitions projects will affect the safety of national security. In this way, we can ensure the fairness of foreign currency mergers and acquisitions activities, give full play to the authority of the system, understand the actual needs of mergers and acquisitions enterprises, and carry out foreign currency mergers and acquisitions related activities ^[7].

4.2. To Pay Close Attention to Trends on Foreign Capital Mergers and Acquisitions of the State

As for *the Notice*, which is a review system of national security, it is not a new thing in China. In fact, it comes with the continuous development of field investment policy. Therefore, enterprises should also pay close attention to the relevant foreign-funded mergers and acquisitions activities of the state on the basis of various standards of *the Notice*, such as *the Guidance Catalogue of Foreign-Funded Enterprises* to further judge and analyze the possible security risks, policy and legal risks of mergers and acquisitions projects, and understand what kind of investment projects

are prohibited and restricted by the state^[8].

5. Conclusion

To sum up, the review of national security in the context of foreign currency mergers and acquisitions needs the joint efforts of the state and enterprises to implement. For example, for the country, we should learn from the experience of the western countries in the construction of national security system of foreign mergers and acquisitions based on the actual situation of China, and build and improve the fair national security review system and the supervision system, so as to restrict the unreasonable behavior of foreign mergers and acquisitions and timely respond to the joint meeting to maintain the national security of mergers and acquisitions. In addition, it is also necessary to improve the foreign capital access system, make clear which is the core industry, and restrict and prohibit that which sectors of industries are, which is conducive to maintaining the national security of the system and ensuring the healthy development of foreign currency mergers and acquisitions activities. Secondly, enterprises should take the review system of national security as the standard, make in-depth analysis and judgment of mergers and acquisitions projects, pay close attention to the dynamic situation of foreign capital mergers and acquisitions of the state, further judge and analyze the possible security risks, policy and legal risks brought by mergers and acquisitions projects, identify the types of investment projects prohibited and restricted by the state, resolutely resist illegal mergers and acquisitions, and maintain the security of the country, and promote the development of a harmonious society.

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