Charles Russell Speechlys

China's New Outbound Investment Regulation: Key Changes and What They Mean for Investors

Introduction

On 1 June 2026, the State Council of the People's Republic of China published the Regulation on Outbound Investment (国务院关于对外投资的规定) (the "**Regulation**"), which takes effect on 1 July 2026 and is the first administrative regulation issued by the State Council to comprehensively govern outbound investment by PRC investors.

Prior to the Regulation, China's outbound investment framework was governed primarily through a series of separate departmental rules issued at ministerial level, each administered by a different authority. These rules addressed matters such as project approvals and filings, outbound investment filing procedures, foreign exchange registration and outbound remittances. The Regulation, which was issued by the State Council as an administrative regulation, does not supersede those existing rules. Instead, it sits above them in the regulatory hierarchy. Its significance lies in the way it brings together outbound investment approval and filing requirements with other areas of regulation that, under the previous framework, operated in parallel without a higher-level instrument expressly coordinating their application. The Regulation now confirms that as a whole, outbound investment activities shall be subject to applicable PRC laws and regulations where they involve matters such as foreign exchange, import and export activities, cross-border services, data flows, personnel movement, merger control, export control, cybersecurity, tax, or state-owned asset supervision.

Continuance and Reinforcement of Existing Requirements

Certain parts of the Regulation should not be read as an introduction of a new regime, but rather as a continuation and reinforcement of China's existing outbound investment regulatory framework, with its overarching logic elevated and consolidated.

The three-track ODI regulatory framework remains unchanged.

Previously, China's outbound direct investment ("**ODI**") framework operated through a set of parallel departmental rules, each administered by a separate authority: the National Development and Reform Commission ("**NDRC**") oversees project-level approval and filing; the Ministry of Commerce ("**MOFCOM**") administers overseas enterprise establishment approval, filing, and reporting; and the State Administration of Foreign Exchange ("**SAFE**") regulates foreign exchange registration, conversion, and cross-border fund flows. The legal basis for each of these tracks has historically resided in departmental rules of relatively low hierarchical standing. The Regulation consolidates and

elevates these arrangements by providing a unified, higher-ranking framework that sits above the existing agency-specific rules, bringing greater coherence and a common legal basis. The Regulation also authorises the NDRC and MOFCOM, together with other relevant authorities, to formulate, adjust, and implement outbound investment policies, as well as to identify encouraged, restricted, and prohibited outbound investments. The scope and implementation of these categories will depend on subsequent policies and implementing measures.

Technology import and export, and cross-border data transfer management are substantively unchanged but expressly integrated into the ODI framework.

Article 13 of the Regulation prohibits investors from transferring, whether through cross-border secondment of technical personnel, organising personnel to work abroad, providing technical guidance, or arranging training programmes, goods, technologies, services or related data that are prohibited from export, or restricted items for which the requisite authorisation has not been obtained. Nonetheless, the prohibition on exporting restricted or prohibited technologies has long been an express obligation under the Regulations on Technology Import and Export Administration (技术进出口管理条例) and relevant regulations. Likewise, the obligation to conduct security assessments for cross-border transfers of important data has been a standing requirement under the Cybersecurity Law (网络安全法), the Data Security Law (数据安全法) and the Regulations on Network Data Security Management (网络数据安全管理条例). These requirements are now reinforced under the Regulation and, for the first time, expressly linked to outbound investment procedures, whereas previously they were not formally linked to outbound investment procedures.

Key Changes Introduced

While the underlying ODI mechanism remains broadly familiar, the Regulation introduces a number of developments likely to be of practical relevance to investors. These developments reflect a shift towards a more coordinated, policy-driven and security-conscious regulatory framework.

- **Broader scope of coverage.** The Regulation expands both the categories of investors and the scope of regulated activities. Most notably, it extends the concept of "investors" to include PRC resident individuals, in addition to enterprises and other organisations, marking a shift from the prior regime, which was largely focused on corporate investors. At the same time, the definition of "outbound investment" is framed broadly and on a substance-over-form basis, capturing both direct and indirect arrangements through which PRC investors acquire ownership, control, management rights or other interests in overseas enterprises or assets, including through offshore structures, financing or guarantees. While individuals are now formally brought within scope at a framework level, the detailed regulatory regime governing outbound investment by PRC resident individuals remains to be clarified.

- **National security review for outbound investment.** The Regulation introduces a standalone, cross-departmental security review mechanism applicable to outbound investments that affect, or may affect, national security i.e. the NDRC and MOFCOM, together with other relevant authorities, are authorised to conduct such review. Notably, the scope of the review extends beyond the initial investment itself to cover the transfer and disposal of assets and interests associated with outbound investments. By expressly covering such transfers and disposals, the Regulation indicates that post-investment asset sales, equity transfers, offshore restructurings, exits, and changes of control may also fall within scope. The Regulation does not yet provide detail on the filing mechanism, including when a filing must be made or how the process will operate, nor does it set out specific review procedures or substantive assessment criteria. These issues are expected to be developed further through implementing rules and regulatory practice.

- **Strengthened enforcement framework.** Penalties under the Regulation are calibrated to the severity of the breach: investments in prohibited categories may result in confiscation of unlawful gains, orders to cease the investment and dispose of offshore shares or assets, and fines ranging from 5‰ to 10‰ of the total investment value; procedural violations (such as failure to complete approval or filing requirements) attract fines of 1‰ to 5‰, rising to the higher band where the investor declines to take corrective action. Persons bearing direct responsibility for decision-making, project execution or compliance oversight may also face personal fines of RMB20,000 to RMB100,000. The authorities may, at their discretion, refuse to accept new approval or filing applications from a violator for up to three years, or restrict the violator from conducting any outbound investment for a period of one to three years.

Transactional Risks and Practical Implications

While enforcement risk primarily falls on the PRC investor, an offshore acquirer faces more immediate risks if the underlying outbound transfer from China was not properly approved. In such cases, the transaction itself may be exposed to title uncertainty, including potential regulatory intervention requiring remediation or, in extreme cases, unwinding or disposal of the offshore asset. There are also ongoing operational constraints to consider, particularly where the asset involves China-origin technology or data, as PRC authorities may continue to assert jurisdiction over its use, development or onward transfer. These risks collectively affect not only deal certainty but also the asset's valuation and exit prospects, as unresolved PRC regulatory issues may potentially limit the transferability, refinancing options and overall marketability of PRC-related assets.

The Regulation therefore carries direct and practical significance for foreign businesses that invest alongside, transact with, or acquire PRC assets from, Chinese parties.

- **For PRC investors investing overseas.** PRC investors should factor additional time into transaction planning by assessing at an early stage whether the proposed investment may trigger national security review, having regard to the relevant industry as well as the technology and/or data involved. Furthermore, in addition to the conventional ODI filings, they should consider whether all relevant requirements relating to technology export controls, data transfers and related regulatory regimes have been fully addressed. It may also be prudent for parties to consider whether awaiting further implementing rules under the Regulation before commencing or closing relevant transactions.

- **For foreign investors acquiring PRC-related assets.** Foreign investors should determine at an early stage whether a target asset has a PRC nexus and, if so, whether its offshore migration was properly cleared. The analysis is no longer purely commercial, but jurisdictional, focusing on whether PRC authorities may retain regulatory oversight over the asset. Multinational companies should therefore conduct comprehensive PRC regulatory assessments, and allocate the relevant risks through closing conditions, indemnities, and post-closing contractual arrangements. Given that non-compliance by PRC investors can give rise to both deal-execution and longer-term post-closing risks, early risk identification and clear contractual allocation will be key to enhancing transaction certainty.
- **Heightened scrutiny for joint ventures and technology collaboration structures.** Joint ventures involving the contribution of PRC capital, technology and/or data may trigger both ODI filing and potential national security review requirements. More significantly, post-closing activities in a PRC-linked acquisition that include personnel secondment, technical support, training and technology integration may constitute regulated transfers under Article 13 where they involve the provision of controlled technology or data.
- **Application to Hong Kong, Macau and Taiwan.** The Regulation confirms that investments by Chinese investors into Hong Kong, Macau and Taiwan are treated as outbound investment. While this is consistent with existing practice under MOFCOM and NDRC rules, its elevation to State Council level reinforces that Hong Kong holding structures do not fall outside the regulatory perimeter. Transactions routed through Hong Kong — particularly those involving assets with a PRC nexus or national security sensitivity, may still attract scrutiny under the national security review and export control framework.

Looking ahead

The Regulation represents a further step in the evolution of China's outbound investment regime towards a more integrated, coordinated and increasingly national security-focused framework. Further clarity will depend on implementing rules and evolving regulatory practice, particularly in relation to security review procedures and individual investors.

Investors should engage PRC counsel at an early stage to assess whether the necessary clearances are likely to be obtained. They should also allocate regulatory risks clearly in transaction documentation (for example, through conditions precedent and termination provisions) and review existing structures to identify and address any prior compliance gaps. If you would like to discuss how the Regulation may affect your cross-border transactions or existing investment structures, please do not hesitate to contact the authors, Shirley Fu and Keira Wu.

Charles Russell Speechlys

How we can help

Whether pursuing domestic investments or cross-border transactions involving Chinese interests, our team provides expert, nuanced guidance to help you achieve your goals with clarity and confidence. Proficient in English and Chinese and deeply attuned to Chinese culture, business practices and legal frameworks, we support you at every stage.

Leveraging the collective knowledge and experience of our cross-practice and cross-office China team, we provide tailored advice to help you navigate the complex and ever-changing legal and regulatory landscape, ensuring practical solutions aligned with your personal and business objectives.

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If you have any queries, please contact:

Shirley Fu
Partner
Co-Head of China Desk
shirley.fu@crsblaw.com
Hong Kong: +852 2531 3488

Keira Wu
Registered Foreign Lawyer (People's Republic of China)
keira.wu@crsblaw.com
Hong Kong: +852 2531 3448

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