NDRC Finalizes New ODI Rules: A New Era Under Order No. 49

Author: LAN, Jie XU, He HE Yujie, LI Danqi

2026-10-28

Introduction

On October 22, 2026, the National Development and Reform Commission (NDRC) promulgated the Measures for the Administration of Outbound Investment (NDRC Order No. 49 of 2026, the "Final Measures"). The Final Measures will take effect on December 1, 2026, replacing the Measures for the Administration of Outbound Investment by Enterprises issued in 2017 (NDRC Order No. 11).

In our earlier article, "Upgrading China's ODI Regulation: The Shift Toward Full-Lifecycle Oversight", we reviewed the core changes introduced by the Measures for the Administration of Outbound Investment (Revised Draft for Comments) (the "Draft for Comments") compared with Order No. 11. The Draft for Comments left the basic framework of outbound investment regulation intact but introduced a number of notable institutional and regulatory changes, including:

- The concept of "classified, tiered, and full-lifecycle oversight": the focus of oversight shifts from the approval or record-filing sign-off on individual projects to classified, tiered, and full-lifecycle oversight covering resource commitment, operations, compliance, and exit.

- Individual outbound investment brought under the same regulatory framework: for the first time individual outbound investments are brought under the radar of NDRC ODI regulation, and are now subject to substantially the same framework

as that applies to enterprise investors.

● Upgraded regulation of outbound reinvestment: the USD 300 million threshold is removed, and all non-sensitive reinvestment, whatever its size, must be reported in advance.

● Other notable regulatory changes: including enhanced penalties, exemptions for financial investments, and codification of the "substance over form" principle.

I. Key Changes in the Final Measures

The Final Measures make only limited changes to the Draft for Comments, in three areas.

1. Certain Reporting Deadlines Relaxed

● Article 14: the outbound reinvestment report is now due 10 working days before implementation, rather than 20.

● Article 54: the deadline for the annual report on outbound investment information is extended from March 31 to June 30 each year.

2. A More Precise Definition of "Before Implementation"

Article 12: the definition now expressly covers contributions by overseas enterprises and other organizations controlled by the investor, consistent with Article 11's approach to determining the Chinese investment amount. Preliminary expenses for which approval or record-filing has been completed under Article 34 are expressly excluded, reducing ambiguity in how the provisions apply together.

3. Wording Changes

● Article 11: "project" is deleted from "approval and record-filing of outbound investment projects," consistent with the Draft for Comments' broader shift away from that term.

● Article 19: the "general template" for the approval application is changed to "standard form."

● Article 40: the reference to the Regulations on Open Government Information is replaced with the full title, the Regulations of the People's Republic of China

on Open Government Information.

II. Practical Questions Awaiting Clarification

Order No. 11, issued in December 2017 and effective from March 2018, has played an important role for nearly a decade. The Final Measures upgrade that regime, improving both the administration of outbound investment and the services provided to Chinese investors. A number of issues remain around how certain provisions will be interpreted and implemented and how the transition to the new rules will work, which will need to be addressed through future regulatory guidance and real-world practice, including:

1. Pre-Existing Individual Outbound Investments (Article 2; Circular 37)

The Final Measures expressly bring resident individuals within the scope of regulation. Previously, some domestic residents established offshore special purpose vehicles (SPVs) to make round-trip investments and completed foreign exchange registration under Circular 37. Some, however, have not completed such registration for various reasons.

It remains to be clarified how these legacy individual outbound investments made before the Final Measures take effect—whether registered under Circular 37 or not—will be treated, and how the Final Measures will interact with MOFCOM and SAFE rules. These questions await clarification through further regulatory guidance and practice.

2. Operational Procedures for Outbound Reinvestment Reports (Articles 13, 14, 33 and 45)

With the monetary threshold removed, outbound reinvestment reporting may become a most frequently triggered procedure. Several operational points remain unclear:

When the investment may be implemented: Article 14 of the Final Measures now requires the report to be submitted 10 working days before implementation, but does not specify under what circumstances the investor may proceed after submitting the report. Article 45 also allows investors to print a “submission completion certificate” themselves, but it is unclear whether this applies to outbound reinvestment reports. Both points bear directly on whether Chinese

investors can demonstrate to their counterparties that they have met the applicable legal requirements, and therefore on deal certainty and timetables.

Joint investments by multiple investors: Article 33 sets out how two or more investors jointly making an outbound investment should apply for approval or record-filing, but leaves two scenarios unaddressed:

If two or more investors jointly make an outbound reinvestment, should one party submit a single reportby analogy with Article 33, or should each investor report separately?

If some investors must complete approval or record-filing procedures while others must submit outbound reinvestment reports, must the two procedures be coordinated as a whole, or can they be handled separately under their respective rules?

3. Overseas Financial Market Investment: What "A Multiple of 10%" Means (Article 73)

Article 73 provides that overseas financial market investments made through channels such as the Qualified Domestic Institutional Investor (QDII) program, Hong Kong Stock Connect, and the Cross-boundary Wealth Management Connect are, in principle, exempt from the approval, record-filing, and reporting requirements of the Final Measures, subject to certain exceptions. Article 73(2) sets out one such exception: "following implementation of the investment, the percentage of equity interests or voting rights in the investee held by the investor, alone or together with persons acting in concert with it, reaches a multiple of 10%." This raises the following questions:

Is the approval or record-filing obligation triggered only when the post-investment shareholding or voting rights first reach or cross 10%, 20%, 30%, and so on? Would an increase between those thresholds—for example, from 11% to 19%—also trigger the obligation? Does the provision adopt a "threshold-crossing" approach similar to that recently adopted for disclosure of changes in shareholdings in listed companies? Under such an approach, the test would be whether the post-investment shareholding reaches or crosses a relevant multiple of 10% (including a small increase from 9.9% to 10.1%), rather than whether the stake acquired in that investment itself amounts to 10%.

4. Scope of Information in the Preliminary Work Report (Article 41)

For outbound investments with a Chinese investment amount of USD 100 million or more, or that bear on China's diplomatic relations with the relevant country, Article 41 requires investors to submit a Preliminary Work Report at least 10 working days before key preliminary work, such as signing an investment agreement. The NDRC will issue the standard form and list of attachments for the report.

At that stage, many transaction details, including its key terms, may not yet be final and may keep changing until binding agreements are signed. If a new report is required for every change, then signing could be affected. Therefore, we hope that, in preparing the standard form, the NDRC will take this into account, set reasonable information requirements, and specify which changes would require a new report, so that investors can plan reporting and signing accordingly.

Finally, it remains to be seen whether MOFCOM and SAFE, the other two key regulators under China's outbound investment regulatory framework, will make corresponding revisions to their rules, and how those rules will be coordinated with the Final Measures.

Conclusion

The Final Measures were promulgated on October 22, 2026, two months after the Draft for Comments was released for public comment on August 21, 2026. Overall, the Final Measures largely retain the framework of the Draft for Comments.

The Final Measures take effect on December 1, 2026. The practical application of certain provisions remains to be clarified through further regulatory interpretation and practice. As the Final Measures roll out and supporting rules are issued, we hope that Chinese investors will be able to invest overseas within a clearer, more stable, and more predictable regulatory environment, expand their businesses, and seize international opportunities.

本文作者

蓝 洁（LAN Jie）

合伙人 Partner

lanjie@haiwen-law.com

扫描二维码查阅律师简历
Scan QR Code for Attorney Profile

徐 禾（XU He）

资深顾问 Counsel

xuhe@haiwen-law.com

扫描二维码查阅律师简历
Scan QR Code for Attorney Profile

何宇捷（HE Yujie）

heyujie@haiwen-law.com

李丹琦（LI Danqi）

lidanqi@haiwen-law.com

This article is for informational purposes only and does not constitute legal advice or legal opinions of Haiwen & Partners on any specific facts or circumstances. Should you require legal advice, please contact the authors of this article. Any reproduction or citation of this article must attribute the source. Reproduction or use of any images or graphic materials in this article is strictly prohibited without our prior written consent. Should you have any questions or wish to further discuss the topics covered herein, please feel free to reach out to us.