

China's New National Security Law

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The **Chinese** government made headlines around the world on July 1 when the **Standing Committee of the National People's Congress** passed a sweeping new national security law. The scope of the law, China's most comprehensive piece of national security legislation to date, is broad. It covers issues of political security, military security, economic and financial security, social and cultural security, nuclear security, ecological security, and more. The final version of the law makes clear that the country's leadership sees its security interests as extending far beyond the physical borders of mainland China, reaching to the depths of the sea, into outer space, and perhaps most importantly, into cyberspace.

The 84 articles of the law are divided into seven chapters that (1) set out guiding principles; (2) define national security; (3) describe the functions and responsibilities of the National People's Congress and the various branches of government; (4) articulate the key elements of the national security regime (such as intelligence collection, risk assessment, conducting national security reviews, and responding to states of emergency); (5) outline mechanisms for allocating resources to national security work; (6) lay out obligations for citizens and corporations to assist the government in protecting national security; and (7) close with supplementary provisions.

Beyond setting out a broad, vague definition of national security and defining a scope of coverage that touches nearly every aspect of China's politics, economics, and society, the law's implications for national security reviews of investments are far-reaching. Consistent recent regulations and legislative trends, Article 59

maintains the need for national security review for “foreign investments that infringe upon, or may infringe upon, national security.” However, it then goes further, also mandating national security reviews for investments involving “key materials and technologies,” “internet or information technology products and services,” “construction projects that implicate national security,” and “other major projects and events.” How these apparently new national security review requirements will be implemented, and by which agencies, remains to be seen.

The Chinese government has hailed the national security law as an opportunity to replace an outmoded legal framework for handling security-related matters with one that is more in tune with 21st century challenges presented by globalization and information technology. These are surely challenges common to both the Chinese government and other governments around the world. Meanwhile, critics — including a particularly broad array of foreign governments, businesses, and human rights groups — see the legislation within the context of the broader consolidation of power that has characterized President Xi Jinping’s tenure.

In order to understand the import of the law, one must understand how it fits into the broader ecosystem of China’s unique legal system. A quick look at the text of the national security law shows that it is long on policy exhortations and short on details. This is not unusual in China, where national legislation is generally followed by a series of implementing rules issued by relevant government agencies under the purview of the executive State Council.

Given the wide scope of this law, we expect that a large number of government agencies regulating various sectors of the Chinese economy and polity will issue implementing measures in the months (or years) ahead. Clear, well-crafted rules could, in theory, create increased transparency to a realm that has thus far remained hidden from view, potentially constraining official discretion as called for by the Fourth Plenum of China’s Communist Party in 2014. However, recent trends and the far reaching nature of the new law suggest that it may instead serve as a legal basis for stronger restrictions on foreign business interests (as well as social and political interests) in the country, and for asserting China’s interests internationally.

Foreign companies are advised to closely monitor the process of drafting and issuing implementing rules by government agencies regulating sectors of interest to them, taking every opportunity to engage with policymakers wherever possible to ensure that their interests as responsible stakeholders in the country’s development are carefully considered. Furthermore, foreign governments negotiating trade and investment agreements — most notably, the United States, which is negotiating a bilateral investment treaty with China — should examine the impact that broad definitions of national security could have on the interpretation of security-related exceptions to agreements under negotiation.

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