

September 23, 2020

China Releases Revised Measures on Handling Complaints of Foreign-Invested Enterprises

By [Liza L.S. Mark](#) and [Jasmine Yang](#)

On August 25, 2020, the Ministry of Commerce of the People's Republic of China ("MOFCOM") revised and adopted the *Measures on Handling Complaints from Foreign-invested Enterprises ("FIEs")* (the "**Revised Measures**"). The Revised Measures will come into effect on October 1, 2020, replacing its previous version adopted in 2016. The Revised Measures will further refine the requirements under the Foreign Investment Law and its implementing regulations and improve the relevant systems for handling complaints of FIEs. The key changes are summarized as follows:

First, the Revised Measures will broaden the scope of complaints handled – now extended to cover administrative actions that are alleged to have infringed upon legitimate rights or interests, issues concerning the investment environment and suggestions for improving policies and measures for FIEs. In addition, chambers of commerce and associations can now also report issues concerning investment environment to complaint handling agencies. Note, however, that the Revised Measures do not cover resolution of civil or commercial disputes with other natural individuals or organizations.

Matters which FIEs may bring to the attention of complaint handling agencies fall into two areas: first, instances in which they allege that administrative actions have infringed upon their legitimate rights or interests; and second, issues concerning the investment environment and suggestions for improving policies and measures.

Second, to encourage the FIEs and foreign investors to utilize the complaint mechanism, the Revised Measures establish clear rules and guidance on how a complaint is submitted, accepted and handled, the time limits to handle a complaint and the process of appeal for any decisions (Chapter II and Chapter III).

At the central level, MOFCOM will establish a system of joint ministerial meetings for handling FIEs complaints. At the local level, governments at or above the county level are required to designate relevant departments or agencies to handle complaints within their own regions.

Third, to ensure all complaints are handled properly, the Revised Measures set out detailed provisions (Chapter IV) on archive management, case reporting, regular inspections, proposals for the protection of interests and rights related to increasing the effectiveness of such complaint handling. These rules set out clear guidelines and require MOFCOM and the local governments to conduct sufficient communications with the complainants and the complainees and work towards an appropriate solution of the complaint.

Fourth, the Revised Measures reemphasize the protection of the complainant's rights and interests. It provides that a complaint shall not affect a complainant's right to file administrative review and administrative litigation according to the law; agencies handling complaints are required to take effective measures to protect complainants' trade secrets, confidential business information and personal privacy; and any entity or individual shall not suppress or retaliate against complainants.

Implications

China's landmark Foreign Investment Law took effect on January 1, 2020, aiming to better protect foreign investors' interests and create a better investment environment for foreign investors in China. The Revised Measures are a part of that effort. The Revised Measures are more detailed than the 2016 version. Nevertheless, how these Revised Measures will be implemented remains to be seen.

If a FIE believes that the administrative actions by certain Chinese government agencies or civil servants have infringed its legitimate rights or interests (e.g., you are included in the Social Credit System blacklists baselessly, or the intellectual property application is illegally rejected), filing a complaint with MOFCOM would be another option for getting some relief. The Revised Measures set forth an easier administrative process to get relief than administrative litigation.

For more information, please see the following resources:

- [China Updates page](#)
- [China Releases Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies](#), September 10, 2020
- [China Releases Draft Data Security Law](#), September 8, 2020
- [China Releases Circular on Further Stabilizing Foreign Trade and Foreign Investment](#), August 24, 2020
- [China Releases Draft Measures for the Administration of Imported and Exported Food Safety](#), August 18, 2020
- [U.S. Listed Chinese Companies: Regulatory Scrutiny and Strategic Options](#), July 30, 2020
- [China Passes Controversial Hong Kong National Security Law](#), July 9, 2020
- [China's Relaxed Financial Sector May Aid Foreign Investors](#), June 18, 2020
- [Is There a Law in China Similar to the US Defense Production Act?](#), May 9, 2020
- [Coronavirus Brings Force Majeure Claims to LNG Contracts](#), March 4, 2020
- [The Rise of China](#), March 4, 2020
- [Coronavirus Fears Cast Cloud Over Dealmaking](#), February 27, 2020
- [Is Your China Chemical Plant in Danger of Being Shut Down](#), December 2019