

Ministry of Commerce and State Administration for Market Regulation of the People's Republic of China Announce Measures for Reporting Foreign Investment Information

China Business Solution Office
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On December 31, 2019, the Chinese Ministry of Commerce (MOFCOM) and the State Administration for Market Regulation (SAMR) formulated the "Measures for Reporting Foreign Investment Information" (Order No. 2, 2019, hereinafter "Measures"). The Measures became effective on January 1, 2020 and at the same time, MOFCOM abolished the "Interim Administrative Measures for the Record-Filing of the Incorporation and Change of Foreign-Invested Enterprises" (Order No.6, 2018).

Key Takeaways

- The current approval, filing and joint annual reporting system for FIEs is adjusted to investment information reporting system.
- Failure to submit investment information as required will face a fine and the penalty information will be publicly disclosed.

1. Background of the Regulations

As of January 1, 2020, the "People's Republic of China Foreign Investment Law" (hereinafter "FIL") and its regulations for implementation are formally in effect. The FIL is the new basic law for foreign investment which sets the standard for the management of foreign investment while also strengthening its promotion and protection. An important part of the law is the "Foreign Investment Information Reporting System" which replaces the current approval, filing and joint annual reporting systems for FIEs.

Traditionally, to establish a company or make important changes, FIEs were subject to a review for approval by MOFCOM if they were listed under the "Special Administrative Measures (Negative List) for Foreign Investment Access," or they needed to apply to MOFCOM for filing if they were not listed. This was based on the "three laws of foreign capital:" the "Law on Wholly Foreign-Owned Enterprises," the "Law on Chinese-Foreign Equity Joint Ventures," and the "Law on Sino-Foreign Contractual Joint Ventures," as well as MOFCOM's "Interim Administrative Measures for the Record-Filing of the Incorporation and Change of Foreign-Invested Enterprises". Also in accordance with the requirements of joint annual inspection reports of FIEs by various supervisory departments for commerce, taxation, quality inspection, statistics, and others, FIEs were required to submit a joint annual inspection report.

The FIL replaces the aforementioned three laws of foreign capital, thus the above approval, filing and joint annual reporting systems for FIEs have been abolished and replaced with "foreign investment information reporting" to MOFCOM and SAMR. The "Measures for Reporting Investment Information" will actualize the implementation of the foreign investment information reporting system.

2. Main Contents of the Regulations

The foreign investment information reporting system has been in effect since January 1, 2020.

The Measures specifically define with respect to the foreign investment information reporting system: (1) investment entities, (2) report types, (3) revisions to and public disclosure of reports, and (4) supervision and penalties.

1. Reports

Foreign investment information reporting will apply to **foreign investors** and **foreign-invested enterprises (FIES)**. Specifically, this includes the entities detailed below.

[Fig. 1] Reporting Entities

1. FIEs established by foreign investors in China, and former non-foreign-invested enterprises that were acquired by share purchases (includes entities in the financial sectors including banks, securities, and insurance)
2. Foreign investors in the form of non-corporate entities (includes foreign enterprises that are engaged in production and operational activities in China and representative offices established by foreign enterprises engaged in production and operational activities in China)
3. Investment firms established in China that were established by foreign investors, are venture capital investment firms, or are partner companies who operate primarily in investment.
4. Entities listed above where the investment was made by Chinese citizens living in Hong Kong, Macao, Taiwan, and overseas.

Note: FIEs established through investments within China (including multi-layer investments) register with their presiding Market Supervision Administration (MSA) and submit an annual report to the MSA. As relevant information from these reports are forwarded by the MSA to the presiding commerce authority, it is not necessary for such enterprises to separately submit another report.

2. Report Types

The report types for foreign investment information reporting include **the initial report**, **the report on changes**, **the annual report**, and **the deregistration report**. The initial report and reports on changes are reported through the Enterprise Registration System, and the annual report is reported through the National Enterprise Credit Information Publicity System. The relevant requirements are as follows:

[Fig. 2] Report Types and Requirements

Report Types		Reporting Period	Report System and Information	
			System	Information
By the Entity	Initial Report	FIEs established by foreign investors in China, and former non-foreign investment enterprises that were acquired by share purchases	Enterprise Registration System	Basic enterprise information, information on investors and beneficial owners, investment and trading information, etc.
	Reports on Changes*	Upon changes to information on an FIE given in the initial report		Changes to basic enterprise information, information on investors and beneficial owners, investment and trading information, etc.
	Annual	Between January 1 and June	National Enterprise	Basic enterprise

	Report	30 each year Note: FIEs established in the year will report the following year	Credit Information Publicity System	information, information on investors and beneficial owners, investment and trading information, enterprise management information, assets and liabilities, etc.
By Authorities	Deregistration Report	When the FIE is de-registered or converted to Chinese-invested enterprise	The report shall be forwarded by the presiding MSA to the presiding commerce authority, so the FIE is not required to submit it separately	

*The specific requirements for reports on changes are as follows:

1. Changes to be registered with the MSA	To be submitted upon enterprise registration(filing)
2. Changes that do not require MSA registration Note: Changes to be reported that do not need to be registered with the MSA include: change of the real owner of the FIE, changes in import duty reduction/exemption information for equipment, changes in special economic zone when there is no change in address, and changes of basic information of shareholders other than that of the founders of the FIE	Changes are to be submitted within 20 business days
3. Publicly listed FIEs and enterprises listed on the NEEQ (National Equities Exchange and Quotations)	Reports on changes in investors and their share ownership are only required when there is an accumulating change in the foreign-investor equity ratio of 5% or higher, or if there are changes in the absolute or relative share of ownership by foreign investors.

3. Revisions to and Public Disclosure of Reports

[Fig. 3] Revisions to and Public Disclosure of Reports

Revision of Information	When the foreign investor(s) or FIE discovers investment-related information that was unreported, misreported, or omitted	Supplemental reports or revisions are to be made immediately
	When a presiding commerce authority discovers information related to the foreign investor(s) or the FIE that was unreported, misreported, or omitted	The foreign investors or FIE in question shall be notified and required to submit supplemental reports or revisions within 20 business days
Public Disclosure of Information	If investment information reported by the foreign investor(s) or the FIEs shall be disclosed to the public based on the “Interim Regulation on Enterprise Information Disclosure,” or the foreign investor(s) or the FIEs agree to disclose the information to the public, the information will be disclosed to the public through the <u>National Enterprise Credit Information Publicity System</u> and the <u>Foreign Investment Information Reporting System</u> .	

Note: If a revision is made in relation to public disclosure, the information before and after the revision must simultaneously be publicly disclosed.

4. Supervision and Penalties

[Fig. 4] ① Supervision and Penalties		
Supervision	<ul style="list-style-type: none"> ➤ The presiding commerce authority may cooperate with the relevant authorities to conduct supervision and inspections such as sampling inspections, inspections of discovered issues, and inspections based on recommendations by relevant authorities or legal institutions. ➤ By law, the presiding commerce authority shall inspect relevant materials provided by the subject under inspection and may request the provision of relevant material, and the subject must cooperate with the inspection and provide information as required. 	
Penalties	Fines	<ul style="list-style-type: none"> ➤ If a foreign investor(s) or FIE <u>does not report the investment information as specified</u>, and if no supplementary reports or corrections are made after receiving notice from the presiding commerce authority, orders will be issued to instruct the foreign investor(s) or FIE to <u>make revisions within 20 business days</u>. If the requested revision is not made by the deadline, a <u>fine of RMB 100,000 or more up to RMB 500,000 will be imposed</u>.
	Public Disclosure	<ul style="list-style-type: none"> ➤ The presiding commerce authority shall <u>record in the Foreign Investment Information Reporting System</u> the status of foreign investors and FIEs which <u>do not fulfill their obligation to report information in accordance with the law</u> under supervision and/or inspection and the relevant penalty information will be <u>disclosed</u>. ➤ If a foreign investor(s) or FIE violates their obligations to report information and is <u>penalized</u> by the presiding commerce authority, the authority will <u>disclose</u> relevant information on the public platform of the Foreign Investment Information Reporting System and record the violation on the National Enterprise Credit Information Publicity System as stipulated by national regulations. <p>Note: If the foreign investors or FIEs rectify their violations and do not conduct additional violations of their obligations to report information for one year after rectification, they may make a request to the presiding commerce authority to remove the records of violation listed in the public notice platform of the foreign investment information reporting system. The record will be removed upon review and approval.</p>

3. Effect on Enterprises

The foreign investment information reporting system is a new system created based on the demands of the FIL. It simplifies, consolidates and improves upon the handling of foreign investment information that must be registered. The system establishes initial reports, reports on changes, and deregistration reports for foreign investment to operate in conjunction with registration procedures for establishment, changes, and deregistration with the presiding commerce authority. It also unifies the reporting period and channels for annual reports for the MSAs (Market Supervision Administrations). These factors greatly reduce the administrative burden relating to foreign investment. In order to ensure the smooth implementation of the Foreign Investment Information Report System, MOFCOM and SAMR have also published relevant notices, including a public notice on matters related to foreign investment information reporting (MOFCOM Bulletin

No. 62, 2019) and notice regarding the appropriate execution of operations for the annual reporting simplification reform (Guoshijianxin [2019], No. 238).

From now, if a foreign investment is on the foreign investment Negative List, there is no need to obtain approval by MOFCOM. Likewise, if it is not listed in the foreign investment Negative List, there is no need to file it to MOFCOM. FIEs are required to report only investment information when they register or perform other procedures with their MSA. Investment information reporting is not a prerequisite for other relevant procedures.

2020 is the first year of the implementation of the Foreign Investment information Reporting System and as such, many foreign enterprises do not fully understand the relevant procedures, and there will likely be many unclear points in the reporting process. In response to this, the commerce authorities in each region will publicize the contact details of persons to contact for specific guidance concerning the reporting for foreign investors and FIEs regarding the Enterprise Registration System and the National Enterprise Credit Information Publicity System.

We will continue to follow up on relevant information and provide details as they come.

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