

The State Council of the People's Republic of China Announces Regulations for Ensuring Timely Payments to Small and Medium-Sized Enterprises

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On July 15, 2020, the State Council of the People's Republic of China published Regulations for Ensuring Timely Payments to Small and Medium-sized Enterprises (SMEs) (State Council Ordinance No. 728, hereinafter referred to as the "Regulations"). These Regulations stipulate that government departments, public institutions, and large enterprises shall not demand unreasonable payment deadlines, methods, conditions, or contract liability towards SMEs, nor shall they violate contracts related to the payments of goods, projects, and services from SMEs by delaying payments. The Regulations will come into effect on September 1, 2020.

Key Takeaways

- **The regulations provide a policy basis for SMEs to resolve the issue of payment delinquency.**
- **Large enterprises shall not force SMEs to accept non-cash payments such as commercial bills.**
- **Large enterprises shall disclose information on late outstanding payments to SMEs to the public as well as in annual reports.**

1. Background of the Regulations

The problem of delinquency of payments to SMEs by government departments, public institutions, and large enterprises has existed for a long time. In order to remedy this problem, in the September 1, 2017 revision of the Law of the People's Republic of China on Promotion of Small and Medium Enterprises, Article 53 was added, stating that "government departments, public institutions, and large enterprises shall not violate contracts related to the payments of goods, projects, and services from SMEs by delaying payments." These Regulations build upon this by explicitly stipulating the terms of contract preparation, financial security, normalization of payment practices, credit supervision, and administrative security.

2. Main Contents of the Regulations

1) Definition and classification of SMEs

"SMEs" are defined in the Regulations as **medium-sized enterprises, small enterprises, and micro enterprises** as based on classification standards approved by the State Council and established under the laws of the People's Republic of China. **The criteria for the division of SMEs** generally refer to the "Statistical Criteria for the Classification of Large, Medium, Small, and Micro-enterprises (2017)" established by the National Bureau of Statistics, using indicators such as "**sales**", "**number of employees**", and "**total assets**" of enterprises. To classify an enterprise as large, medium, or small, it is necessary to meet the lower limit of all relevant indicators at the same time, and if these are not all satisfied, the enterprise's classification will be lowered by one level. Micro-enterprises are classified if any of the relevant indicators are met.

[Figure 1] Classification of Large, Medium, and Small and Micro-Enterprises						
Industry	Indicator	Units	Large	Medium	Small	Micro
Agriculture, Forestry, Animal Husbandry, and Fishing	Sales (Y)	10,000 RMB	$Y \geq 20000$	$500 \leq Y < 20000$	$50 \leq Y < 500$	$Y < 50$
	Number of employees (X)	People	$X \geq 1000$	$300 \leq X < 1000$	$20 \leq X < 300$	$X < 20$
Manufacturing and Processing	Sales (Y)	10,000 RMB	$Y \geq 40000$	$2000 \leq Y < 40000$	$300 \leq Y < 2000$	$Y < 300$
	Number of employees (X)	People	$X \geq 200$	$20 \leq X < 200$	$5 \leq X < 20$	$X < 5$
Construction	Sales (Y)	10,000 RMB	$Y \geq 80000$	$6000 \leq Y < 80000$	$300 \leq Y < 6000$	$Y < 300$
	Total Assets (Z)	10,000 RMB	$Z \geq 80000$	$5000 \leq Z < 80000$	$300 \leq Z < 5000$	$Z < 300$
Wholesaling	Sales (Y)	10,000 RMB	$Y \geq 40000$	$5000 \leq Y < 40000$	$1000 \leq Y < 5000$	$Y < 1000$
	Number of employees (X)	People	$X \geq 300$	$50 \leq X < 300$	$10 \leq X < 50$	$X < 10$
Retail	Sales (Y)	10,000 RMB	$Y \geq 20000$	$500 \leq Y < 20000$	$100 \leq Y < 500$	$Y < 100$
	Number of employees (X)	People	$X \geq 1000$	$300 \leq X < 1000$	$20 \leq X < 300$	$X < 20$
Transportation and Logistics	Sales (Y)	10,000 RMB	$Y \geq 30000$	$3000 \leq Y < 30000$	$200 \leq Y < 3000$	$Y < 200$
	Number of employees (X)	People	$X \geq 200$	$100 \leq X < 200$	$20 \leq X < 100$	$X < 20$
Storage	Sales (Y)	10,000 RMB	$Y \geq 30000$	$1000 \leq Y < 30000$	$100 \leq Y < 1000$	$Y < 100$
	Number of employees (X)	People	$X \geq 1000$	$300 \leq X < 1000$	$20 \leq X < 300$	$X < 20$
Postage	Sales (Y)	10,000 RMB	$Y \geq 30000$	$2000 \leq Y < 30000$	$100 \leq Y < 2000$	$Y < 100$
	Number of employees (X)	People	$X \geq 300$	$100 \leq X < 300$	$10 \leq X < 100$	$X < 10$
Lodging	Number of employees (X)	People	$X \geq 300$	$100 \leq X < 300$	$10 \leq X < 100$	$X < 10$

	Sales (Y)	10,000 RMB	$Y \geq 10000$	$2000 \leq Y < 10000$	$100 \leq Y < 2000$	$Y < 100$
Food and Beverage	Number of employees (X)	People	$X \geq 300$	$100 \leq X < 300$	$10 \leq X < 100$	$X < 10$
	Sales (Y)	10,000 RMB	$Y \geq 10000$	$2000 \leq Y < 10000$	$100 \leq Y < 2000$	$Y < 100$
Information Transmission	Number of employees (X)	People	$X \geq 2000$	$100 \leq X < 2000$	$10 \leq X < 100$	$X < 10$
	Sales (Y)	10,000 RMB	$Y \geq 100000$	$1000 \leq Y < 100000$	$100 \leq Y < 1000$	$Y < 100$
Software and Information Technology Services	Number of employees (X)	People	$X \geq 300$	$100 \leq X < 300$	$10 \leq X < 100$	$X < 10$
	Sales (Y)	10,000 RMB	$Y \geq 10000$	$1000 \leq Y < 10000$	$50 \leq Y < 1000$	$Y < 50$
Real Estate Development	Sales (Y)	10,000 RMB	$Y \geq 200000$	$1000 \leq Y < 200000$	$100 \leq Y < 1000$	$Y < 100$
	Total Assets (Z)	10,000 RMB	$Z \geq 10000$	$5000 \leq Z < 10000$	$2000 \leq Z < 5000$	$Z < 2000$
Property Management	Number of employees (X)	People	$X \geq 1000$	$300 \leq X < 1000$	$100 \leq X < 300$	$X < 100$
	Sales (Y)	10,000 RMB	$Y \geq 5000$	$1000 \leq Y < 5000$	$500 \leq Y < 1000$	$Y < 500$
Leasing and Commercial Services	Number of employees (X)	People	$X \geq 300$	$100 \leq X < 300$	$10 \leq X < 100$	$X < 10$
	Total Assets (Z)	10,000 RMB	$Z \geq 120000$	$8000 \leq Z < 120000$	$100 \leq Z < 8000$	$Z < 100$
Other	Number of employees (X)	People	$X \geq 300$	$100 \leq X < 300$	$10 \leq X < 100$	$X < 10$

SMEs and large enterprises are **determined by their size at the time when they enter into a contract**. SMEs must actively announce that they are classified as such when they **enter into a contract with a government department, public institution, or large enterprise**.

For enterprises with no known classification, the relevant departments of the State Council will build a platform to confirm the classification type of the enterprise and provide self-check services for SME classification. If there is a dispute concerning the size classification of SMEs, the party who takes the enterprise as SME may apply for certification by the department for the general management of SME promotion operations at the local county-level or higher people's government where the party is located.

2) Establishing regulations on contract preparation, financial security, and payment practices

To establish regulations on contract preparation, financial security, and payment practices, the Regulations require government departments, public institutions, and large enterprises to adhere to the following:

[Figure 2] Establishing regulations on contract preparation, financial security, and payment practices		
Ensuring that purchases with government funds are within budget	✓ When government departments or public institutions use government funds to order goods, construction, and/or services from SMEs, they must execute based on a strictly approved budget, and may not proceed without a budget or being in excess of budget.	
Prohibition of construction in advance for government investment projects	✓ Funds required for government investment projects must be secured in accordance with the relevant provisions of the national government, and having the construction side advance its own funds for construction is not permitted.	
Setting payment deadlines	Government departments, public institutions	✓ Payment must be made within 30 days after the provision of goods, construction work and services. ✓ If otherwise agreed in the contract, the payment period may be extended up to a maximum of 60 days .
	Large enterprises	✓ Reasonable payment deadlines are to be agreed upon based on industry standards and transaction customs, and payments must be made without delay.
	If the contract adopts payment methods based on progress, or periodic payments, the payment deadline is calculated from the date on which both parties agreed on the payment amount.	
Limit on inspection acceptance deadline	✓ If a government department, public institution, or large enterprise enters into a contract with an SME where the payment condition depends on issuing acceptance after inspecting the products, construction, or services, the payment deadline is calculated from the date of acceptance or inspection. ✓ Both parties of the contract shall set a clear and reasonable inspection or acceptance deadline in the contract and complete the inspection or acceptance within such time. If the government department, public institution, or large enterprise delays inspection or acceptance, the payment deadline is calculated from the final date of the agreed deadline for inspection or acceptance.	
Limit on payment method	✓ If a government department, public institution, and large enterprise makes a payment to SMEs using non-cash payment method such as a commercial bill, the contract must be clear and reasonable , and the SME shall not be forced to accept non-cash payment methods such as commercial bills. The payment deadline shall not be extended by changing the form of payment to using non-cash payment methods such as commercial bills.	
Prohibition of unreasonable settlement terms	✓ Government departments, public institutions, and large state-owned enterprises shall not forcibly require the audit results of the audit organization as the basis for payment. However, this does not include cases if a contract is otherwise agreed, or if there is a separate provision in relevant laws or administrative regulations.	
Limits on security	✓ Security deposits, with the exception of bid deposits, performance deposits,	

deposits	<p>construction quality assurance deposits, and salary deposits of rural migrants set in accordance with the law, shall not be collected for construction. The ratio of security deposits collected shall comply with the relevant national provisions.</p> <ul style="list-style-type: none"> ✓ Government departments, public institutions, and large enterprises shall not limit deposits to cash only. A Government department, public institution, or large enterprise must accept security deposits if an SME chooses to provide them from financial institutions. ✓ Government departments, public institutions, and large enterprises shall confirm and settle deposits collected from SMEs without delay upon the termination of the guarantee period in accordance with the contract terms.
Prohibition of excuses for delinquency	<ul style="list-style-type: none"> ✓ Government departments, public institutions, and large enterprises shall not refuse or delay payments to SMEs on excuses such as changes in legal representatives or principal managers, implementation of internal settlement processes, nor may they do so based on waiting for the approval of completion inspections or financial audits, etc. when not specified in the contract.
Support for claim confirmation	<ul style="list-style-type: none"> ✓ If an SME obtains a loan by using accounts receivable as a collateral, the government department, public institution, or large enterprise shall confirm the situation of claims and debts within 30 days from the date when the SME claims the payment of the receivables and provide financing support.
Support for interest on late payments	<ul style="list-style-type: none"> ✓ Government departments, public institutions, and large enterprises must pay interest if the payments to SMEs are delayed. ✓ If there is a contract regarding interest from late payments between both parties, the agreed interest rate shall not fall below the one-year market loan interest rate of the year at the conclusion of the contract. If there is no agreement, a late payment interest of 0.05% per day shall be paid.

3) Supervision, security and punishment for payment delinquency

The Regulation clarifies measures for the supervision, security, and punishment regarding information disclosure, complaints, and loss of trust for the issue of delinquency of payments by government departments, public institutions, and large enterprises.

[Figure 3] Supervision, security and punishment for payment delinquency		
Disclosure of payment delinquency	Government departments, public institutions	Information related to late outstanding payments such as the number of contracts and amounts in the previous financial year shall be published by March 31 annually on websites, newspapers, magazines, and the like, in a format that is easily recognizable to the public.
	Large enterprises	Information related to late payments due to SMEs such as the number of contracts and the amount is incorporated into the annual report and disclosed to the public through the corporate credit information disclosure system.
Complaints handled	<ul style="list-style-type: none"> ✓ The department for the general management of SME promotion in the people's government at the provincial level or higher shall establish a convenient and smooth channel that handles complaints on refusals or delays of 	

	payments to SMEs by government departments, public institutions, and large enterprises.	
Disciplinary action due to loss of trust	✓ If a government department, public institution, or large enterprise does not fulfill their obligations to pay SMEs without delay, and if the situation is severe, the complaint acceptance department will, in accordance with the legal provisions, provide the information on loss of trust to the national credit information sharing platform, disclose the relevant corporate information through the corporate credit information disclosure system, and take disciplinary action for loss of trust under the law.	
Expense limits	✓ Restrictions will be imposed as needed on public service consumption, office buildings, and expense management to government departments and public institutions that have refused or delayed payments to SMEs.	
Supervisory evaluation	Auditors	In accordance with the law, supervisory auditing is conducted on the status of payments to SMEs by government departments, public institutions, and large state-owned enterprises.
	People's government at or above the provincial level	An audit system and supervisory assessment system will be established where supervision and inspections will be conducted for on-time payments to SMEs.
	National government	Based on the law, evaluations on the development environment and business environment of SMEs shall include the evaluation of the status of on-time payments to SMEs.
Legal services	✓ The government recommends legal services organizations to provide legal services to SMEs that have payment disputes with government departments, public institutions, and large enterprises.	
Public supervision	✓ The news media shall promote the public interest on the policy of laws and regulations relating to on-time payments to SMEs and, under the law, shall strengthen public supervision of the actions of government departments, public institutions and large enterprises to refuse or delay payments to SMEs	
Disposition of responsible persons	Government departments, public institutions	If the Regulations are violated, the senior organization or the competent department will issue an order to reform. If the order to reform is refused, the principal person in charge and other persons directly responsible shall have actions taken against them for the violation in accordance with the law.
	Large state-owned enterprises	If requiring the audit results of the audit organizations as the basis for payment without contractual agreement or the basis of laws or administrative regulations, the competent department will issue an order to reform. If the order to reform is refused, the principal person in charge and other persons directly responsible shall have actions taken against them for the violation in accordance with the law.

3. Impact on Companies

These Regulations demonstrate that the Chinese government is keeping a close eye on the issue of delays in payments to SMEs. It is expected that the cash flow of SMEs will improve in the future, but SMEs are recommended to actively communicate with large enterprises and other trading partners in reference to the Regulations to improve the terms of future transactions. SMEs also need to fully understand relief measures such as local complaints, legal rights guaranteed by the law. If a large enterprise has many SME business partners, it is recommended that they understand the necessary measures based on the contents of the Regulations. For example, discussions on a flexible payment plan can be made with SMEs to help evaluate demand for new financing needs generated by the proposal and create a financing plan in advance.

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

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