

COFCOM supporting polices for FIEs during COVID-19

To cope with the crisis originated by the COVID-19 pandemic, the central government has taken strict control measures, including but not limited to traffic control, spring festival extension, and work and school resumption delay. These protective yet restrictive measures cause concerns among companies. To minimize the adverse impacts of the COVID-19 pandemic in China, the central government has introduced major supporting policies to both domestic and foreign invested enterprises (the “FIEs”). Along with general supporting policies, the committees of commerce at national level and at local levels (the “COFCOM”) have been focusing on FIEs and foreign invested activities and have adopted supporting rules to reassure and stimulate foreign investment in China. Please find below an overview of COFCOM supporting policies for FIEs during COVID-19, in order to bring more comfort to foreign investors in China.

1. Supporting Policies at National Level

On February 7, 2020, the General Office of the Ministry of Commerce promulgated the *Notice on Actively Responding to the Novel Coronavirus-infected Pneumonia and Strengthening the Services for Foreign-funded Enterprises and Investment Promotion (the “General Office Notice”)*. The General Office Notice specifies supporting measures in the following dimensions for FIEs:

- Positively assist FIEs in order to resume normal production and operation;
- Intensify services for foreign-funded projects;
- Innovate and optimize investment promotion methods;
- Provide targeted support in light of local conditions;
- Constantly optimize the business environment.

Furthermore, eleven days later, the Ministry of Commerce promulgated some additional specific incentives for FIEs during COVID-19 pandemic. On February 20, 2020, the Ministry of Commerce promulgated the *Notice on Effectively Stabilizing Foreign Trade and Foreign Investment and Promoting Consumption in Coping with the Epidemic of Novel Coronavirus-infected Pneumonia (the “Notice”)*.

Besides reiterating the above five dimensions, the Notice further provides below comforting measures for FIEs:

- The Council for the Promotion of International Trade (CCPIT) and chambers of commerce are advised in providing Force Majeure Certificates to prove that a FIE or a foreign-invested project failed to perform the contract on time due to the COVID-19 pandemic. The Force Majeure Certificate will be an important evidence for companies to prove their non-performance, partial performance or delay in performance in commercial transactions.

- For foreign-related economic and technical exhibitions that have been examined and approved or filed by the COFCOM, if the cancellation or delay has been decided due to the impact of the COVID-19 pandemic, the company may cancel or adjust the exhibition time on the COFCOM uniform platform.

Both the General Office Notice and the Notice underline that it is imperative to effectively implement laws and regulations including *the Foreign Investment Law* and its *Implementing Regulations*. COFCOM at all levels are also aimed at guiding FIEs to effectively make full use of various supporting policies and measures to deal with the COVID-19 pandemic. Under this policy regime, FIEs will be treated equally as domestic companies and will be assured under the compliant mechanism in case of any discrimination. Equal application of supporting policies will also be implemented to FIEs.

2. Supporting Policies at Local Levels

The General Office Notice and the Notice stress that in light of local conditions, efforts should be made by local COFCOMs to refine and elaborate special policies to support FIEs in dealing with the impact of the COVID-19 pandemic, putting more efforts on stabilizing foreign investment and timely reporting such different measures and practices to the Ministry of Commerce. Consequently, the Ministry of Commerce will decide to promote and share these measures and practices with other regions in China.

Up until today, DS has observed COFCOMs in Gansu, Hebei, and Zhejiang provinces, each taking its special policies for FIEs during COVID-19 pandemic.

- Gansu province: The local COFCOM shall push forward projects-in-progress, further comprehensive application of Gansu government affairs services, deal with relevant formalities for foreign investment projects on applicable online platform, utmost reduce the timeline for examination and approval on the premise of compliance, and coordinate related departments in land use, environmental assessments, construction permits, and water and electricity supply in order to intensify protection and safeguard foreign investment, and minimize the impact of the COVID-19 pandemic.
- Hebei province: The local COFCOM shall coordinate and solve difficulties and problems encountered in the resumption of production of FIEs, take the initiative to strengthen communication between FIEs and relevant departments, and help FIEs to solve difficulties in procurement of raw materials and transportation of goods to the maximum extent. Further, the local COFCOM shall actively meet requirements for prevention and control of the COVID-19 pandemic and assist world top 500 FIEs as well as other large FIEs in Hebei province and local authorities.
- Zhejiang province: The local COFCOM shall make its best endeavors to dynamically cope resumption of work with COVID-19 pandemic status, and strive for full resumption of work of FIEs and major foreign-funded projects by the end of February, with a work resumption rate of over 75%, except in high-risk areas. Further, the local COFCOM shall assist to solve the problem of labor shortage, make full use of the Internet, hold online job fairs, expand recruitment channels, coordinate and help FIEs to arrange their

employees from other places to resume work by means of direct buses and chartered buses.

Moreover, the local COFCOM shall coordinate implementation of various policies to reduce costs and burdens, actively promote implementation of tax reductions, rent reductions, and social security tax reductions and defer payments for FIEs, and do their best to help FIEs tide over difficulties. The local COFCOM is also required to simplify procedures for confirming resumption of production, adopt a list of epidemic prevention and control measures, implement management of “*record-filing system + negative list + commitment system*”, provide convenient services for resumption of production of FIEs and foreign invested projects, and refrain from restricting resumption of production by means of examination and approval.

Meanwhile, the local COFCOM will establish a green channel for approval of foreign-invested projects, speed up tax-free application process for equipment imported from foreign-funded projects, improve business environment for foreign investment, and deepen reform to encourage foreign investment by “*onsite visiting at most once*”. The local COFCOM shall promote service innovation for foreign-funded projects, and shall ensure a “*maximum time of 80 days*” from foreign project code assignment to completion of inspection and obtaining of approval, and further improve the facilitation of foreign investment.

3. Conclusion

Foreign investment has been an important incentive in China’s economy market. Since early 2020, *the Foreign Investment Law* and its implementing rules as well as many other laws, regulations and policies have been put in place to create a more stable, fair, transparent and predictable investment environment. Authorities at all levels are also sorting out all kinds of policies recently introduced to help stabilize employment, guide foreign-funded enterprises to use all kinds of policies to help relieve difficulties, such as fiscal, financial, tax, social security, employment and government procurement, so as to ensure that domestic and FIEs are treated equally and without discrimination, and minimize the impact of the COVID-19 pandemic.

DS has been closely following on policies with regard to foreign investment in China. For further information regarding tax, social security, employment, rent and etc., please check our latest publications and feel free to contact us in case you need any specific advice.

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