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MOFCOM amends and releases FIE complaint measures

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In recent years, foreign investment laws and regulations have undergone sweeping reform of which the complaint mechanism introduced under the new Foreign Investment Law and its implementing regulations for foreign invested enterprises (**FIEs**) is particularly noteworthy. Although the PRC Ministry of Commerce (**MOFCOM**) has already issued the Tentative Measures for Work on Complaints from Foreign Invested Enterprises (**Tentative Measures**) in 2006, with the support of the aforesaid higher-level laws, MOFCOM conducted a comprehensive and systematic overhaul of the Tentative Measures and reissued the Measures for Work on Complaints from Foreign Invested Enterprises (**Measures**) on 25 August 2020. The Measures will take effect from 1 October 2020. Compared to the Tentative Measures, the Measures have been improved by broadening the scope of complainants/complaint matters, improving the complaint working mechanism, clarifying the complaint working rules and enhancing the protection of rights and interest. Set forth below is a brief summary of some of the highlights in the Measures.

Item	Tentative Measures	Measures	Brief Comments
Complainant	FIEs and their investors	FIEs, foreign investors, chambers of commerce, industrial associations	Foreign investors are no longer limited to those of FIEs
Respondent	Administrative organs	Administrative organs (including organisations legally authorised and charged with the responsibility to manage public affairs) and their staff	Scope of respondents expanded to include those staff who are responsible for detailed implementation
Complaint matters	Infringement of lawful rights, reporting of problems, and putting forward suggestions, opinions or requests	Infringement of lawful rights, reporting of problems in the investment environment and proposing improvements on policies and measures	Complaint matters further clarified
Complaint handling agency	National Complaint Centre for FIE, local complaint handling agencies	Ministerial Joint Conference System and Office, National Complaint Centre for FIE, local complaint handling agencies	Establishing permanent ministerial joint conference system is conducive to resolving national foreign investment issues across different ministries
Complaint materials	Materials not specified, to be written in Chinese	Materials specified, can be written in foreign language and submitted with Chinese translation	Increased transparency on complaint materials and flexibility on language requirement to better suit the needs of foreign investors
Entrusted complaint	Not specified	Can entrust an agent to lodge complaints	Entrusted complaints offer convenience to foreign investors

Complaint handling	Issuance of opinion, coordinate with relevant departments, transfer to relevant departments for handling, other appropriate means	Facilitating the reaching of a mutual understanding between the complainant and the respondent (including settlement agreement), coordinating with the respondent, proposing policy improvement suggestion to relevant departments, and other appropriate means	Conferring binding legal effect on the result of conciliation through settlement agreement facilitates its due execution and observance. Whether or not a settlement agreement can be reached is subject to the wishes of the parties involved
Termination of complaint	Termination of the handling of a complaint does not require the complainant's consent	Termination of the handling of a complaint requires the complainant's consent (other than termination attributable to the complainant's conduct). Complaints not concluded within 1 year from inception ought to be reported to the government of the same level	Requirement for consent of the complainant to terminate a complaint may to a certain extent avoid the evasion of responsibility on the handling of complaint processing work, and reporting of long-outstanding complaint to the government can facilitate the resolution of some of the complicated problems
Appeal of complaint	Not specified	Complainant dissatisfied with non-acceptance of the complaint or the handling result may lodge an appeal to the higher-level complaint handling agency	The appeal system may help to resolve certain problems which could not be settled because of local political constraints or protectionism
Protection of the complainant's rights	Complaint handling agencies shall keep confidential the trade secrets of the complainant, except for special circumstances prescribed by law	The launching of a complaint shall not prejudice the right to seek for administrative review, administrative and other legal proceedings; complaint handling agencies shall keep in confidence the trade secrets, confidential business information and personal privacy of the complainant; complainant shall not be suppressed or retaliated	Providing more robust protection to safeguard the complainant's right to complain
Management of complaint handling	No specific stipulation	Complaints to be archived; complaint handling work to be reported to higher-level complaint handling agencies every other month, common and non-compliance issues to be reported to ministerial joint conference office through National Complaint Centre for FIE, annual FIE rights and interests protection proposal to be submitted	A nationwide system of feedback and summary is conducive to overseeing the work of complaint handling agencies at all levels, gaining a fuller picture of the issues in practice and facilitating the resolution of different complaints

While enhancing the protection of the rights and interests of the complainants, the Measures also clarify their obligations. For instance, the complaint process may terminate if the complainant, after being contacted by the complaint handling agency, fails to participate in the complaint process for 30 consecutive days without justifiable reasons.

Vitality of the law depends on its effective implementation while attraction of foreign investment depends on a sound investment environment. The Measures undoubtedly provide a way to enhance both.

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