



Chinese Government Assistance Available to Foreign Companies During the COVID-19 Epidemic

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Foreign investment; cross-border transactions

Just as China's new Foreign Investment Law and its implementation rules (**New FIE Law**) took effect in January—for the first time promising a level playing field for foreign enterprises—COVID-19 struck in the city of Wuhan.¹ Economic activity across China was adversely affected, and the Chinese government soon responded with tax cuts, financial aid, low interest loans, and other kinds of support. All foreign investments (**FIEs**) should determine what government programs may be available to assist them.

At the level of central government, the Ministry of Commerce (**MOFCOM**) published a notice (**MOFCOM Notice**) in early February called: MOFCOM Notice Regarding Proactively Providing Services to Foreign Invested Enterprises and Promoting Foreign Investment during the Response to the Novel Coronavirus Epidemic.² As may be deduced from its title, the purpose of the MOFCOM Notice is to help FIEs continue conducting business during the epidemic.

Local governments have also published a wide variety of rules (together with the MOFCOM Notice, the "**Foreign Enterprise Supporting Rules**") that address problems currently faced by FIEs. The city of Shanghai was one of the first local authorities to issue a government directive (**Shanghai Directive**) whose purpose is to stabilize the local economy.³ It applies to both FIEs and domestic companies, and a major purpose is to support the resumption of normal business operations during the epidemic. The Foreign Enterprise Supporting Rules often explicitly state that foreign enterprises will be treated the same as domestic enterprises.

¹ Lyon Dong and Charles Stone, "New Implementing Regulations Partially Clarify China's Foreign Investment Law," *V&T Client Alert*, February 11, 2019, <http://www.vtlaw.cn/ueditor/php/upload/file/20200211/1581404529619692.pdf>.

² Shangwubu Bangongting Guanyu Jiji Yingdui Xinguanfeiyan Yiqing Jiaqiang Waizi Qiye Fuwu He Zhaoshang Yinzi Gongzuo De Tongzhi (商务部办公厅关于积极应对新冠肺炎疫情加强外资企业服务和招商引资工作的通知) [MOFCOM Notice Regarding Proactively Providing Services to Foreign Invested Enterprises and Promoting Foreign Investment during the Response to the Novel Coronavirus Epidemic] (promulgated by the Ministry of Commerce, effective February 10, 2020), <http://wzs.mofcom.gov.cn/article/n/202002/20200202934738.shtml>.

³ Shanghai Shi Quanli Fangkong Yiqing Zhichi Fuwu Qiye Pingwen Jiankang Fazhan Ruogan Zhengce Cuoshi De Tongzhi (Hu Fu Gui [2020] No. 3) (上海市全力防控疫情支持服务企业平稳健康发展若干政策措施的通知 (沪府规) [2020] 3号) [Shanghai Municipal Notice regarding Many Governmental Policy Measures for Completely Supporting the Stable and Healthy Development of Enterprises During the Prevention and Control of the Epidemic] (promulgated by Shanghai Municipality, effective February 7, 2020), <http://www.shanghai.gov.cn/nw2/nw2314/nw32419/nw48516/nw48580/u21aw1424000.html>.

This is in keeping with China's New FIE Law which says that FIEs will now receive national treatment.

FIEs in the healthcare and pharmaceutical industries receive additional support in the Foreign Investment Supporting Rules because these industries can help the government address the epidemic. Most of the Foreign Investment Supporting Rules are temporary, but some will remain in effect after the epidemic ends.

This V&T Alert examines some of the more important national and local Foreign Investment Supporting Rules.

MOFCOM Notice

The MOFCOM Notice outlines five areas in which assistance will be provided to FIEs during the epidemic: 1) the government will actively provide assistance so that businesses can resume operations; 2) government procedures will be streamlined; 3) electronic communications will be used to facilitate foreign investment; 4) subsidies will be provided to enterprises that demonstrate a need; and 5) collaboration between government departments will be increased:

1. Actively provide assistance: The government should proactively provide government assistance so that FIEs may restore normal business operations. Particular attention should be paid to enterprises that manufacture medical supplies like face masks, protective garments, and sanitation supplies that are useful in the fight against COVID-19. Approvals will be granted on an expedited basis to FIEs in this area so they may resume full production as soon as possible.
2. Streamline government procedures: The government should promote collaboration between different government departments, respond promptly to the inquiries of FIEs, and in general streamline government procedures.
3. Use electronic communications: Paper application documents and face-to-face meetings would not be required to promote foreign investment in China, and during a quarantine it might not even be possible. Electronic communications should be used as much as possible to promote foreign investment, and official government websites should provide all of the information that FIEs need.
4. Use targeted subsidies: FIEs adversely affected by COVID-19 that submit detailed applications to their supervising authority can be eligible for cash grants, tax breaks, and other government assistance. Subsidies will be awarded on a case-by-case basis.
5. Increase governmental coordination: China's central government and its local counterparts are required to fully implement the New FIE Law so that foreign investors

have access to a more stable and transparent investment environment. Close collaboration and information sharing will be required between different government departments.

Shanghai Directive

The Shanghai Directive contains 28 provisions that: 1) support efforts to contain the epidemic; 2) waive rent payments; 3) provide monetary support; 4) reduce the cost of labor; 5) support the resumption of work and manufacturing; and 6) provide government services more efficiently.

1. Support efforts to contain the epidemic: Tax cuts will be provided to enterprises that purchase equipment used to manufacture or import medical supplies, especially those related to efforts to contain COVID-19 (**Important Enterprises**). Enterprises involved in vaccine research and development may also be eligible. Cash grants may be made to increase manufacturing capacity and import medical supplies. The local government also guarantees that it will purchase all products manufactured at its request, even if the amount produced exceeds the amount specified in the order.
2. Waive rent payments: If the state owns premises located in Shanghai that are leased by an enterprise affected by the epidemic, many larger enterprises, and all small- and medium-sized enterprises, may apply for a two-month rent waiver. Depending on the success of COVID-19 containment efforts, an extension may be available. The government has also urged landlords to waive payments due under commercial leases until the epidemic has subsided. Wanda Group has announced that it will waive up to RMB four billion in rent at its shopping malls.⁴
3. Provide monetary support: China lowered its one-year loan prime rate (**LPR**) by 10 basis points on February 20, from 4.15% to 4.05%, and the five-year LPR was lowered by 5 basis points, from 4.8% to 4.75%.⁵ Important Enterprises in Shanghai may be eligible for loans at interest rates below 1.6%. And the local government will increase its guarantees of financing related to government policies by at least RMB three billion, while lowering loan interest rates to 0.5% per annum.
4. Reduce the cost of labor: The local Shanghai government will: (a) provide expanded unemployment insurance; (b) delay mandatory social security premium increases; (c) decrease mandatory medical insurance premiums by 0.5%; (d) postpone the deadline for

⁴ *Wanda Group News Room*, “Xinwen Lianbo Dianzan Wanda Kangji Yiqing Dandang Jucuo” 新闻联播点赞万达抗击疫情担当举措 [Network News Praises Wanda Group for Fighting the Epidemic and for the Actions it Took], February 8, 2020, http://www.wanda.cn/2020/2020_0208/41275.html.

⁵ Winni Zhou and Se Young Lee, “China Cuts Benchmark Lending Rate to Prop-Up Virus-Hit Economy,” *Thomson Reuters*, February 20, 2020, <https://www.reuters.com/article/china-economy-lpr/china-cuts-benchmark-lending-rate-to-prop-up-virus-hit-economy-idUSB9N2A702V>.



making social security payments; (e) provide subsidies for employee training; and (f) encourage flexible working hours.

5. Support the resumption of work and manufacturing: A wide range of private financing arrangements is now available to enterprises in Shanghai, and the government will reimburse half of the interest paid by Important Enterprises. Chinese health authorities will also review on an expedited basis medicines, medical appliances, and other pharmaceutical products used in the fight against COVID-19. Registration fees for medicines and medical appliances will also be waived.
6. More efficiently provide government services: A streamlined customs channel has been established for imported goods used to fight COVID-19. Customs duties and value-added tax will be waived. The Shanghai government has also urged the China Export and Credit Insurance Corporation to issue import advance payment insurance, especially for Important Enterprises.⁶

A spokesperson for Shanghai Municipality said during a press briefing that the Shanghai Directive applies equally to FIEs and their domestic counterparts, and that the directive will remain in force for three months after the epidemic has passed.

Shandong Directive

The Shandong provincial government published a directive (**Shandong Directive**) on February 11, 2020 to support FIEs and to promote foreign investment.⁷ The central Chinese government has praised the Shandong Directive and has endorsed the use of such directives in other provinces.⁸ The 19 provisions of the Shandong Directive address: 1) the restoration of normal FIE business operations; 2) employment matters; 3) financial assistance; 4) tax and insurance payments; 5) logistical support; 6) free legal assistance; and 7) the promotion of foreign investments:

1. The restoration of normal FIE business operations: The local government will help FIEs resume normal business operations by assisting in the purchase of medical supplies. The

⁶ Shanghai Municipal Notice, article 4.

⁷ Guanyu Jiakuai Waishang Touzi Qiye Fugong Fuchan Tuijin Waishang De Ruogan Cuoshi (Lu Zheng Ban Zi [2020] No. 17) (关于加快外商投资企业复工复产推进外商投资的若干措施的通知 (鲁政办字 [2020] 17 号), [Notice regarding Governmental Policy Measures for the Expeditious Resumption of Work and Manufacturing and the Promotion of Foreign Investment] (promulgated by the Shandong Provincial Government, effective February 11, 2020), <http://www.gov.cn/xinwen/2020-02/17/5480092/files/4b36234c2ab64b389424522bfcdbfb8d.pdf>.

⁸ MOFCOM, Shangwubu Fawen Tuiguang Shandongsheng Jiakuai Waishang Touzi Qiye Fugong Fuchan Tuijin Waishang Touzi Ruogan Cuoshi (商务部发文推广山东省加快外商投资企业复工复产推进外商投资若干措施) [A Circular on Endorsing Shandong's Directive of Stabilizing Foreign Investment to Resume Work and Production], February 14, 2020, *Official Website of the Central Chinese Government*, http://www.gov.cn/xinwen/2020-02/17/content_5480092.htm.



government will also provide support to foreign-invested fast food chains that are unable to resume business operations for logistical reasons.

2. Employment matters: FIEs are encouraged to charter buses to transport employees located in other provinces back to Shandong so that the likelihood of them contracting COVID-19 on regular public transport is reduced. A special highway exit will be set up for such chartered buses, and highway tolls will be waived. The government will also launch an online employee recruitment system and work with third-party agencies to help ease labor shortages.
3. Financial assistance: Interest-free loans are available to FIEs severely affected by COVID-19. State-owned banks are required to extend the repayment dates for loans that are already due. Financial institutions have also been instructed to lower interest rates, waive overdue interest payments, and adjust terms and repayment methods.
4. Taxes and insurance: Local tax authorities may temporarily waive the land use and property taxes of FIEs severely affected by COVID-19. Taxes may be deferred for up to three months if a FIE cannot pay taxes when due, and employee social security and medical insurance payments may be deferred up to six months.
5. Logistical support: Logistics are problematic during a quarantine. Thirty days of free storage are available to FIEs that have commodities stranded in ports or warehouses because of the epidemic. Vehicles transporting urgently needed supplies will also be given priority on highways in Shandong Province.
6. Free legal assistance: Free legal assistance provided by the local government is available to FIEs during the epidemic, and FIEs will not be listed on government “black lists” if a breach of contract or failure to comply with a law is due to the COVID-19 epidemic. The local government will also issue documentation to support FIE claims of force majeure if needed to resolve international contract disputes.
7. The promotion of foreign investments: One-on-one communications with government officials are encouraged so that FIE inquiries may be addressed in a timely fashion. Government approval formalities have been streamlined, and the local government will promote foreign investment on its official website. Electronic communications are also encouraged for business deals.

V&T’s Observations

V&T notes the following about the Foreign Investment Supporting Rules:

1. Compliance is key to foreign investments in China: The primary purpose of the Foreign Investment Supporting Rules is to provide support to FIEs during the COVID-19 epidemic.



FIEs should scrupulously comply with these rules, especially those related to health, safety, and the environment. It is advisable to seek legal advice regarding what can and cannot be done during this sensitive period.

2. Further clarification is urgently needed: The Foreign Investment Supporting Rules were published in haste and lack many details needed for implementation and enforcement. For example, the rules do not say how FIEs should apply for government subsidies. Nor do the rules define when a FIE is considered to be severely affected by COVID-19.
3. Developments should be monitored continuously: Many special directives, rules, and regulations that address the needs of FIEs during the COVID-19 epidemic will continue to be published. We will keep you informed of new developments.



Contact

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