

## Interpretation on Provisions on the Unreliable Entity List

The Ministry of Commerce of the People's Republic of China promulgated the "Provisions on the Unreliable Entity List" ("Provisions")<sup>1</sup> on September 19, 2020 through its official website and shall be effective as of this day. Since the promulgation of the Provision, it has attracted great attention from the domestic and foreign media and the public. Now, let us take a look on the specific provisions and corresponding measures.

### I. The purpose of the Provisions

1. Article 2 of the Provisions states that China will take relevant measures against foreign entities that violate normal market trading principles, interrupt normal transactions with Chinese enterprises, other organizations or individuals, or take discriminatory measures against Chinese enterprises, other organizations or individuals, seriously damaging the legitimate rights and interests of Chinese enterprises, other organizations or individuals.
2. The main purpose of the Provisions is to protect the legitimate rights and interests of Chinese enterprises, other organizations and individuals, correct the illegal acts of certain foreign entities, safeguard China's sovereignty, security, and development interests, and uphold a fair and free international economic and trade order.
3. Article 3 of the Provisions also clearly reaffirms the Chinese government's firm position of upholding multilateralism and will not change.

### II. What are the criteria for listing foreign entities as unreliable entities? And What are the consequences of being on such list?

1. **Acting in accordance with the law**  
According to Article 4 of the Provisions, China shall establish relevant working mechanisms to organize and implement the list of unreliable entities.
2. **Considering relevant factors in accordance with the law**  
Article 7 of the Provisions provides for specific provisions, when deciding whether or not to include relevant foreign entities in the list, relevant factors such as the degree of harm to China's national sovereignty, security and development interests should be taken into consideration comprehensively.
3. **Performing corresponding procedures in accordance with the law**  
According to Article 5, 6 and 8 of the Provisions, the working mechanism may, on the basis of its functions and powers or according to the suggestion and reports

<sup>1</sup> <http://english.mofcom.gov.cn/article/policyrelease/questions/202009/20200903002580.shtml>

of the concerned parties, decide whether to investigate the conduct of the foreign entities concerned. If a decision on investigation is made, a public announcement shall be publicized. Based on the investigation findings, the working mechanism shall determine to be on the list or not. Where the facts concerning the illegal acts of the foreign entities are clear, the working mechanism may take statutory factors into account comprehensively and decide whether to include the foreign entities in the list of unreliable entities. If a decision is made to include, it shall make a public announcement.

4. **Taking corresponding measures according to the law**

According to Article 9 of the Provisions, in the announcement of listing in the unreliable entities, it may remind the risk of dealing with such foreign entity. And relevant parties will be alerted to enhance vigilance and guard against risks from this. The working mechanism may, in light of the actual situation, take one or more of the measures stipulated in Article 10 of the Provisions, including restricting on trading, investment, personnel and the entry by means of transportation, as well as entry qualifications, work and residence permits, or take other necessary measures.

5. **Giving a correction time limit according to the law**

According to Article 11 of the Provisions, in a decision to include a particular entity in the list of unreliable entities, the time limit for the entity to correct its behaviors may be specified according to the actual situation. And no action will be taken against the entity during this period. However, if it fails to make correction within the time limit, corresponding measures shall be taken in accordance with Article 10 of the Provisions.

**The head of the Treaty and Law Department of the Ministry of Commerce pointed out,**

1. The scope of application of the Provisions is strictly limited, only for a very small number of illegal foreign entities and will not be arbitrarily expanded.
2. The procedures of being in the list are transparent and standardized. The initiation of investigation procedure, the decisions on listing and the adoption of hanging measures against relevant foreign entities shall be announced in accordance with the Provisions. Meanwhile, foreign entities have the right to state and defend during the investigation. And these system designs can not only ensure the orderly operation of the unreliable entities list system, but also protect the legitimate rights and interests of foreign entities.

**III. Is the Unreliable Entity List “only in but not out” ? If it requires to be out of the list, what are the conditions and the procedures?**



The working mechanism will implement dynamic management of the unreliable entities list in accordance with Articles 12 and 13 of the Provisions and it specifically includes,

1. Depending on the actual situation, it can be removed from the list. For example, the working mechanism may decide to remove the entity from the list, if, according to articles 7 and 8 of the Provisions, there is a significant change in the facts on which the relevant foreign entity is included in the list of unreliable entities.
2. In accordance with the statutory circumstances, it shall be removed from the list. Within the period of correction specified in the announcement of the listing of the foreign entity concerned, if the entity corrects its conduct and takes measures to eliminate the consequences of its conduct, the working mechanism shall decide to remove it from the list.
3. Procedural rights are guaranteed, and foreign entities have the right to apply for removal. The decision to remove from the list can be made by the working mechanism in accordance with its authority, and the relevant foreign entity also has the right to apply to the working mechanism to remove it from the list. This gives the relevant foreign entity the right to apply for removal from the list, which is conducive to the protection of its legitimate rights and interests.

#### **IV. The Provisions has raised some concerns about whether China will stop welcoming foreign investment and turn to protectionism?**

The Foreign Investment Law and its implementation provisions, and the Provisions on Optimizing the Business Environment all came into effect on January 1, 2020, which fully conveys a clear signal of China's unswerving expansion of opening up. The Provisions is designed to effectively maintain a business environment. And Chinese government has always insisted on opening wider to the outside world, further liberalizing market access, welcoming and protecting foreign investment, continually optimizing the business environment, introducing practical measures to promote sustained economic recovery, which has effectively boosted world confidence.

#### **Rewin's Insight**

We believe that Chinese government's position of firmly protecting the legitimate rights and interests of various market entities will not change. If foreign entities do not commit illegal acts, there is no need to worry about this. This time, the Provisions issued by the Chinese government is to aim at providing a more stable, fair and predictable business environment for those foreign businesses who abide by the laws and regulations in China and eliminating the interference of illegal activities. China will, as always, welcome foreign investors to invest and do business in China, so that

vast foreign investors are willing to come, stay and develop well, and China will always be a hot place for foreign investment.