

# 许昌对外开放工作领导小组办公室文件

许开放办〔2021〕14号

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## 关于印发《许昌市外商投资企业投诉工作 办事指南》的通知

各县(市、区)人民政府,市城乡一体化示范区、经济技术开发区、东城区管委会,市直相关部门:

现将《许昌市外商投资企业投诉工作办事指南》印发给你们,请认真贯彻执行。

许昌市对外开放工作领导小组办公室



2021年12月19日

# 许昌市外商投资企业投诉工作 办事指南

## 第一章 许昌市商务局外商投资企业投诉工作职责

许昌市商务局是许昌市政府组成部门，挂许昌市人民政府外商（台商）投诉权益保护中心牌子，具有“依法监督外商投资企业执行有关法律法规、规章等情况并协调解决有关问题”职能，可受理外商投资企业、外国投资者认为行政机关及其工作人员的行政行为侵犯其合法权益，投资环境方面存在的问题，建议完善有关政策措施的行为。具体处理外商投资企业投诉事项如下：

在我市注册备案的外商投资企业及其投资者（以下统称投诉人），认为其合法权益受到行政机关（包括法律、法规授权的具有管理公共事务职能的组织）及其工作人员（以下统称被投诉人）的行政行为侵犯其合法权益，提请投诉受理机构进行协调解决，或反映情况、提出建议、意见或请求，由投诉受理机构依法进行协调处理的行为。

外商投资企业、外国投资者可通过信函、传真和电子邮件进行投诉。

投诉咨询电话/传真：0374-2913658

投诉工作邮箱：xckfbgs@163.com

纸件投诉邮寄地址：许昌市魏都区魏文路与龙兴路交叉口投资大厦 A 座 708-2（邮编 461100）

## 第二章 受理条件与要求

## 一、有关定义

### （一）投诉。

一是外商投资企业、外国投资者认为行政机关及其工作人员的行政行为侵犯其合法权益，向投诉工作机构申请协调解决的行为。

二是投诉人向投诉工作机构反映投资环境方面存在的问题，建议完善有关政策措施的行为。

### （二）投诉人。

许昌市境内的外商投资企业、外国投资者。

### （三）被投诉人。

许昌市政府有关部门及其工作人员；

各县（市、区）人民政府，市城乡一体化示范区、经济技术开发区、东城区管委会及其工作人员；

市商务局认为可以由其处理的事项中所涉及的行政机关及其工作人员。

## 二、投诉材料要求

投诉人提出投诉事项，应当提交书面投诉材料。投诉材料可以现场提交，也可以通过信函、传真、电子邮件、在线申请等方式提交。投诉材料应包括：

（一）投诉人的姓名或者名称、通讯地址、邮编、有关联系人和联系方式，主体资格证明材料，提出投诉的日期；

（二）被投诉人的姓名或者名称、通讯地址、邮编、有关联系人和联系方式；

（三）明确的投诉事项和投诉请求；



（四）有关事实、证据和理由，如有相关法律法规依据可以一并提供；

（五）是否存在《外商投资企业投诉工作办法》第十四条第（八）、（九）项所列情形的说明。

投诉人反映投资环境方面存在的问题，投诉材料应当包括前款第（一）项规定的信息、投资环境方面存在的相关问题以及具体政策措施建议。

投诉材料应当用中文书写。有关证据和材料原件以外文书写的，应当提交准确、完整的中文翻译件。

投诉人可以委托他人进行投诉。投诉人委托他人进行投诉的，除上述规定的材料以外，还应当提交投诉人的身份证明、出具的授权委托书和受委托人的身份证明。授权委托书应当载明委托事项、权限和期限。

### 三、不予受理条件

（一）投诉主体不属于外商投资企业的；

（二）申请协调解决与其他自然人、法人或者其他组织之间民商事纠纷等不属于本指南规定的外商投资企业投诉事项范围的；

（三）经投诉工作机构依据本指南第三章第二条的规定通知补正后，投诉材料仍不符合要求的；

（四）外商投资企业伪造、变造证据或者明显缺乏事实依据的；

（五）没有新的证据或者法律依据，向同一投诉工作机构重复投诉的；

（六）同一投诉事项已经由上级投诉工作机构受理或者处理终结的；

（七）同一投诉事项已经由信访等部门受理或者处理终结的；

（八）同一投诉事项已经进入或者完成行政复议、行政诉讼等程序的。

#### 四、受理时限

投诉工作机构接到完整齐备的投诉材料，应当在7个工作日内作出是否受理的决定。符合投诉受理条件的，应当予以受理并向外商投资企业发出投诉受理通知书。不符合投诉受理条件的，投诉工作机构应当于7个工作日内向外商投资企业发出不予受理通知书并说明不予受理的理由。不属于本投诉工作机构的投诉事项处理范围的，投诉工作机构可以告知外商投资企业向有关投诉工作机构提出投诉。

### 第三章 处理方式与期限

#### 一、处理要求

##### （一）工作要求

投诉工作机构在受理投诉后，将与投诉人和被投诉人进行联系沟通，了解情况，依法协调处理，推动投诉事项的妥善解决。根据投诉事项具体情况，投诉工作机构可以组织召开会议，邀请投诉人和被投诉人共同参加，陈述意见，探讨投诉事项的解决方案。

##### （二）投诉人义务

投诉工作机制进行投诉处理时，可以要求外商投资企业进一步说明情况、提供材料或者提供其他必要的协助，外商投资企业应当予以协助；投诉工作机制可以向被投诉人了解情况，被投诉人应当予以配合。

## 二、处理方式

根据投诉事项不同情况，投诉工作机制可以采取下列方式进行处理：

（一）推动外商投资企业和被投诉人达成谅解（包括达成和解协议）；

（二）与被投诉人进行协调；

（三）向县级以上人民政府及其有关部门提交完善相关政策措施的建议；

（四）投诉工作机制认为适当的其他方式。

外商投资企业和被投诉人签署和解协议的，应当写明达成和解的事项和结果。依法订立的和解协议对外商投资企业和被投诉人具有约束力。被投诉人不履行生效和解协议的，依据《中华人民共和国外商投资法实施条例》第四十一条规定处理。

## 三、处理期限

投诉工作机制应当在受理投诉之日起 60 个工作日内办结受理的投诉事项。涉及部门多、情况复杂的投诉事项，可以适当延长处理期限。

## 四、终结事由

有下列情况之一的，投诉处理终结：

（一）按照第三章第二条规定处理完毕，外商投资企业同意终结的；

（二）投诉事项与事实不符的，或者外商投资企业拒绝提供材料导致无法查明有关事实的；

（三）外商投资企业的有关诉求没有法律依据的；

（四）外商投资企业书面撤回投诉的；

（五）外商投资企业不再符合投诉主体资格的；

（六）经投诉工作机构联系，外商投资企业连续 30 日无正当理由不参加投诉处理工作的。

投诉处理终结后，投诉工作机构在 3 个工作日内将投诉处理结果书面通知投诉人。

#### **第四章附则**

（一）投诉工作机构及其工作人员在处理外商投资企业投诉过程中滥用职权、玩忽职守、徇私舞弊的，或者泄露、非法向他人提供投诉处理过程中知悉的商业秘密、保密商务信息和个人隐私的，依据《中华人民共和国外商投资法》第三十九条规定处理。

（二）外商投资企业通过外商投资投诉工作机制反映或者申请协调解决问题，任何单位和个人不得压制或者打击报复。

（三）香港特别行政区、澳门特别行政区、台湾地区投资者以及定居在国外的中国公民所投资企业对我市各级行政机关及其工作人员的投诉，参照本办法办理。

# **Complaints Handling Guidelines of Xuchang City for Foreign-invested Enterprises**

## **Chapter I Responsibilities for Complaints Handling of Foreign-Invested Enterprises of Xuchang Municipal Bureau of Commerce**

The Xuchang Municipal Government Center for Complaints of Foreign-invested Enterprises is seated at the Xuchang Municipal Bureau of Commerce, a department of Xuchang Municipal Government. It has responsibilities of implementation of relevant rules and laws, as well as the problems solving for Foreign-Invested Enterprises. It is responsible for accepting applications made, to the Center for coordination to resolve matters, by foreign-invested enterprises or foreign investors that allege that administrative actions of administrative agencies and their staff members have infringed upon the legitimate rights and interests of such foreign-invested enterprises or foreign investors; reporting to the Center problems



in the investment environment and suggesting improvements of relevant policies and measures.

The acts whereby foreign-invested enterprises and foreign investors that has been registered and recorded in Xuchang, (hereinafter collectively referred to as the complainants) apply to the complaint handling body for coordination and settlement when they consider that the administrative authorities (including the organizations administrating public affairs authorized by the laws and regulations) and staff of such authorities (hereinafter collectively referred to as "the respondents") have infringed their legitimate rights and interests.

Foreign-invested enterprises and foreign investors may, according to the relevant provisions of the Rules, make complaints by letter, fax, or E-mail.

Tel (Complaint & Inquiry)/ Fax: 0374-2913658

E-mail (handling complaints): xckfbgs@163.com

Mailing address (for paper complaints): 708-2Room,  
7th Floor, Building A, Touzi Dasha, Weidu District,

Xuchang 461100

## **Chapter II Acceptance Conditions and Requirements**

### **I. Relevant definitions**

#### **1.Complaint.**

First, it means any applications made, to the Agency Handling Complaints for coordination to resolve matters, by foreign-invested enterprises or foreign investors that allege that administrative actions of administrative agencies and their staff members have infringed upon the legitimate rights and interests of these foreign-invested enterprises or foreign investors.

Second, the Complainant reports to the Agency Handling Complaints problems in the investment environment and advise the agency to improve relevant policies and measures.

#### **2. Complaint**

Foreign-invested enterprises and foreign investors within the territory of Xuchang.

#### **3.Respondents**

Relevant departments under The Xuchang Municipal Government and their staff members; the people's governments of counties and districts directly under the Xuchang Municipal Government and their staff members; administrative organs and their functionaries involved in the matters that have a significant impact on the national or international level and could be handled by the Xuchang Municipal Bureau of Commerce as it deems fit.

## II. Requirements for complaint materials

A complainant that makes a complaint shall submit written materials for the matters complained about. Complaint materials may be submitted on site or by letter, facsimile, e-mail, online application, etc. The complaint materials shall include:

- (I) The name, postal address, post code, contact person and contact information of the complainant, the proof of the subject qualification, and the date when the complaint is filed;
- (II) The name, postal address, post code, contact person and contact information of the respondent;

(III) Clear issue complained about and claims of complaint;

(IV) The relevant facts, evidences and reasons, as well as the relevant legal basis if any;

(V) Statement on whether there is any of the circumstances specified in Items (VIII) and (IX) of Article 14 in Measures on Handling Complaints from Foreign-invested Enterprises .

Where the complaint falls within in Item (II), Paragraph 1, Article 2 hereof, the complaint materials shall include the information set out in Item (I) of the preceding paragraph, relevant problems in the investment environment and specific suggestions on policies and measures.

The complaint materials shall be written in Chinese. Where the relevant evidence and original copy are written in a foreign language, the accurate and complete Chinese translation shall be submitted.

A complainant may entrust others to file a complaint, under which the identity certificate of the complainant, the power of attorney and the

identity certificate of the entrusted person shall be submitted, in addition to the materials as prescribed in Article 11 hereof, to the complaint handling body. The power of attorney shall specify the entrusted matters, authority and term.

The complaint handling body will not accept a complaint if:

- (I) the subject of the complaint is not a foreign-invested enterprise or foreign investor;
- (II) the complainant applies for coordination and settlement in civil and commercial disputes with other natural persons, legal persons or other organizations, or the complaint does not fall within the scope of matters to be handled as provided for in these Measures;
- (III) the complaint materials still fail to meet the requirements hereof after they are corrected or supplemented upon notice by the complaint handling body according to the provisions of Chapter 3 Article 2 hereof;
- (IV) the complainant forges or alters the evidence or obviously lacks the factual basis;

(V) the complainant makes repeated complaints to the same complaint handling body without any new evidence or legal basis;

(VI) the same issue complained about has been accepted by the superior of the complaint handling body or the handling has already been completed by such superior;

(VII) the same issue complained about has been accepted by the department in charge of handling petitions in form of letters and visits or any other authority, or the handling has already been completed by such authority;

(VIII) The same issue complained about has entered into the procedures of administrative reconsideration or administrative litigation, etc., or for which such procedures have been completed.

The complaint handling body shall, within 7 working days after receipt of the complete complaint materials, decide whether to accept the complaint or not. If the complaint meets conditions, it shall be accepted and a written notice of complaint acceptance shall be sent to the complainant. If the



complaint does not meet conditions, the complaint handling body shall, within 7 working days, give the notice of dismissal to the complainant, with the reasons therefor stated. If complaint does not fall within the scope of matters to be handled by the complaint handling body, the center can notify the complainant to file the complaint with the relevant complaint handling body instead.

### **Chapter III Handling of Complaints**

#### **I. Requirements**

(I) After accepting a complaint, the complaint handling body shall fully communicate with the complainant and the respondent, understand the situation, coordinate and handle the complaint according to law, and promote the appropriate settlement of the issue complained about.

(II) When handling a complaint, the complaint handling body may require the complainant to make further explanations, provide materials or provide other necessary assistance; and the complainant shall offer assistance. The complaint handling body may inquire the respondent for the relevant

information; and the respondent shall offer cooperation.

## II. Ways of Complaints Handling

According to the different circumstances of the issue complained about, the complaint handling body may adopt the following methods:

(I) facilitating the complainant and the respondent in reaching an understanding (including a settlement agreement);

(II) coordinating with the respondent;

(III) submitting suggestions on improving relevant policies and measures to a People's Government at or above the county level and relevant departments thereof; and

(IV) any other way of settlement that the complaint handling body deems appropriate.

Where a settlement agreement is signed between the complainant and the respondent, it shall specify the issues and results of the settlement. The settlement agreement entered into in accordance with law is binding upon the complainant and the respondent. If the respondent fails to perform the

effective settlement agreement, it shall be dealt with in accordance with Article 41 of the "Implementation Regulations for the Foreign Investment Law of the People's Republic of China".

### III. Deadline of Complaints Handling

The complaint handling body shall, within 60 working days after acceptance of a complaint, complete the handling of the complaint. Where a complaint involves multiple departments and is complex, the handling period may be extended appropriately.

### IV. Termination of Complaints Handling

The complaint handling is deemed terminated under any of the following circumstances:

- (I) where the complaint handling body coordinates and handles the complaint in accordance with Article 18 hereof, and the complainant agrees to terminate the complaint;
- (II) where the issue complained about is against the facts, or the complainant refuses to provide the materials, which results in the impossibility to find out the relevant facts;

(III) where the relevant claims of the complainant have no legal basis;

(IV) where the complainant withdraws the complaint in writing;

(V) where the complainant is no longer qualified as the subject of complaint; and

(VI) where the complainant does not participate in the complaint handling work without justifiable reasons for 30 consecutive days despite contacts from the complaint handling body.

After the complaint handling is terminated, the complaint handling body shall inform the complainant in writing of the result within 3 working days.

#### **Chapter IV Supplementary Provisions**

I. Where the complaint handling body and the staff thereof abuses their power, neglects their duties, play favouritism and commit irregularities, or divulge or illegally provide to others trade secrets, confidential business information or personal privacy learned in the process of handling complaints, they shall be punished in accordance

with Article 39 of the "Foreign Investment Law of the People's Republic of China".

II. No entity or individual may suppress or retaliate against any complainant who reflects issues or applies for coordination and resolution of problems through the complaint handling mechanism for foreign investment.

III. These Measures apply to complaints lodged by investors from Hong Kong Special Administrative Region, Macao Special Administrative Region, Taiwan Region and enterprises invested by Chinese citizens permanently residing in a foreign country.