



***EU-China Trade Project (II)***

中国-欧盟世贸项目(二期)



A project funded by the  
EUROPEAN COMMISSION  
欧盟资助项目

# Oral Interviews and Written Questionnaires – Preparation and Response

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**Support to China's Sustainable Trade and Investment System**

支持中国可持续贸易和投资体系

# PREPARING FOR QUESTIONNAIRES

Check They:

- ① State the Legal Basis of the Request
- ② State the Purpose of the Request
- ③ Specify what Information is Required
- ④ Fix the Time Limit For a Response
- ⑤ Indicate Penalties Applicable

All Five Things Must Appear On the Face of the Questionnaire Before There Arises Any Legal Requirement To Answer.

# SANCTIONS: FINES FOR NOT ANSWERING QUESTIONNAIRE (FULLY and CORRECTLY)

- Fines of Up to 1% of Annual Turnover Can Be Imposed For Failure To Supply The Information Within Time Limit.
- Fines of Up to 5% of Average Daily Turnover Can Be Imposed For Every Day's Delay in Supplying Complete and Correct Information.

# Issues Considered By Questionnaire Respondent

- Are the Answers Subject to Strong and Reliable Confidentiality and Secrecy Rules and Procedures in Agency Asking the Questions?
- Can Answers Be Used For Other Purposes? Or Disclosed to Other Agencies?
- Will Answers Create Criminal Liability For Executives – Any Conflict Between Executives and the Company's Interests?
- Effects in Other Jurisdictions – Can Company Be Forced to Disclose Answers in Other Countries?

# Issues Considered By Questionnaire Respondent

- Are There Financial Disclosure Requirements for a Company Listed on an Exchange Where Shares are Publicly Traded – Do I Need to Disclose Any Answers?
- Is There Risk of Civil Litigation – Will Answers Be Disclosed to Prejudice Existing or Possible New Litigation?
- Are Communications With In-House Counsel on Answers to Questions Subject to Legal Professional Privilege?
- Will a Parent Company Be Implicated By Answers?

# Questionnaires

- Does the Questionnaire State The Legal Basis and Purpose of the Questionnaire?
- Is it Impossible or Very Difficult to Provide Answers Within Time Limit? – Explain Early and Seek Flexibility From Agency
- If Answer is in Electronic Form Seek Advice As to Providing Answer in Electronic Form
- Can the Answers Be Limited to Certain Business(es) Only?
- Explain Issues and Perhaps Seek Option to Answer Orally - E.g. Sign Record of Answers Given Orally

# Questionnaires

- If Question Unclear Seek Clarification Early
- Ensure the Person with the Best Knowledge Of the Information Regarding the Question is Person Who Provides Answer
- Answer the Question – Nothing More or Less
- If Answer Might Lead to Misunderstanding, Ensure a Short Explanation is Given

# ORAL INTERVIEWS

- Requires Consent of Interviewee – Can Be in The Interest of a Company to Consent to Interview
- If Possible Criminal Liability of Interviewee Then Particular Care Needs to Be Taken (e.g. Personal Lawyer to Advise on Criminal Matters in National Jurisdiction)
- Ask For Questions Known to Be Asked to Be Provided In Writing Before Consent is Given



# ORAL INTERVIEWS

- Make It Clear That Consent is Withdrawn and Questions Will No Longer Be Answered If Answer Might:
  - Incriminate or
  - Suggest Admission of Breach of the Competition Rules
- Prepare The Interviewee So Answers:
  - Are Clear and Correct
  - Avoid Misunderstandings
  - Are Consistent With Previous Statements

# ORAL INTERVIEWS

- Ensure Lawyer is Present To Advise on:
  - Whether Questions Are Within Subject Matter of the Investigation
  - Are Unlikely to Incriminate the Interviewee or the Company
  - Formal Requirements Have Been Satisfied That the Commission At Beginning of Interview (1) Recalls Its Voluntary Nature, and (2) States the Legal Basis and Purpose of the Interview, and (3) that it Intends to Make a Recording
- Ensure The Record of Interview Is Made Available For Approval By the Interviewee
- Ensure Any Correction is Made Within The Time Limit Given

THANK YOU

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