

COVID-19 crisis inspires global tightening of Foreign Investment Screening

China

Overview of current legal regime

The last decade has seen a progressive relaxation of the regulatory regime governing foreign investment into China. In particular, the enactment of the Foreign Investment Law (FIL) (《外商投资法》) and the Implementation Regulations of the Foreign Investment Law (《外商投资法实施条例》), both of which came into effect on January 1, 2020, herald a new era of foreign investment into China.

Following the enactment of the FIL, the foreign investment approval system administered by the Ministry of Commerce (MOFCOM) under the old regime, has largely been replaced by the Negative List (see below) regime under the FIL and the filing regime jointly operated by the State Administration for Market Regulation and MOFCOM.

Under the FIL, foreign investment, by way of greenfield investment, mergers and acquisitions, or as otherwise prescribed under the FIL, may enjoy the same regulatory treatment as that applicable to domestic investors (i.e. the national treatment), unless they fall within the scope of the Special Administrative Measures for the Market Entry of Foreign Investment (Negative List) (the **Negative List**). Foreign investment into the pilot free trade zones in China is subject to a separate Negative List.

Foreign investors may not invest in any prohibited industries set out in the Negative List. Any foreign investment in the restricted industries set out in the Negative List shall be required to comply with certain restrictive measures, for example, foreign shareholding restrictions and/or qualification requirements on senior management personnel. It is noteworthy that China has expedited regulatory relaxation in the financial services sector in particular (e.g. banking, insurance and asset management).

Regulatory restrictions and controls on foreign investment in a large number of industries have now been lifted under the FIL regime. Accordingly, the regulatory procedures applicable to foreign direct investment and cross-border mergers and acquisitions have become a lot simpler. The changes introduced

by the Negative List demonstrate China's continuous effort in opening up its market to foreign investment and its attempt to leverage foreign investment to upgrade its own industrial capabilities.

Measures taken against current pandemic

The outbreak of the coronavirus disease does not stop China from moving forward to open up to foreign investment. Instead, with the situation on coronavirus becoming more under control and businesses in China starting to resume operation gradually, China's governments, at both central and local levels, have taken various measures to mitigate the negative impact of the pandemic on foreign-invested enterprises (FIEs) and to restore foreign investor's confidence in the Chinese market.

By way of an example, the General Office of MOFCOM issued the Notice on Positively Handling COVID-19 Epidemic, Optimizing Foreign-invested Company Services and Strengthening Foreign Investments (《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》) on February 10, 2020 requiring the local counterparts of MOFCOM to continue to pave the way for foreign investment such as supporting FIEs to reopen the plants. In addition, various policies with different focuses have been issued by governments at different levels to help the businesses in China to overcome the hardships. These policies deal with issues arising from manufacture, trade, financial support, loan, tax and customs, in the context of COVID-19.

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