Coronavirus — Impact on Foreign Investment in China

19 March 2020

On March 11, 2020, the Chinese government announced that the novel coronavirus epidemic had peaked within the country, with the number of new cases falling significantly. By March 16, for the first time since the coronavirus was first identified last year, there were more reported cases outside of China than inside. Although the situation appears to have improved markedly, the Chinese government is still caught between efforts to contain the coronavirus and the urgent need to restart the economy, which last year already saw the slowest rate of expansion in almost three decades. A Reuters poll found the coronavirus likely halved China's economic growth in the first quarter of 2020 compared with the previous three months. Foreign investment has not been spared from the coronavirus' impact. China's Ministry of Commerce ("MOFCOM") data shows foreign direct investment ("FDI") into China tumbled 8.6% year-on-year in the first two months of 2020. In February alone, FDI plunged 25.6%.

Government review processes and previously announced regulatory steps have been delayed because many regulators, including the China Banking and Insurance Regulatory Commission, are still not fully staffed. While the delay in regulatory approval processes may continue in the short term, we expect the Chinese government will make further efforts to boost foreign investment and tackle the sharp economic downturn. In particular, the coronavirus will likely encourage the Chinese government to expedite opening up of the healthcare and health insurance sector to foreign investors. Since February 2020, China's central and local governments have issued a series of policies to support foreign-invested enterprises ("FIEs") in resuming normal operations and restore the confidence of foreign investors. For example, MOFCOM has issued two circulars outlining a variety of measures for local governments in improving government service for FIEs and stabilizing foreign investment during the coronavirus epidemic. These included assisting FIEs in resolving labor shortages and other employment issues they may face as a result of the outbreak and formulating other supportive policies for FIEs according to local conditions. In addition, the following measures already have been announced:

- **Relaxation on foreign access**. In recent years, the Chinese government has been issuing a record number of policies to open up its market to foreign investors. Under the phase one China-US trade agreement signed on January 15, 2020, China also committed to removing foreign ownership caps in various financial services sectors and providing greater access to the Chinese market for U.S. companies. For example, the foreign ownership cap on Chinese life insurers was removed on January 1, 2020. On March 13, 2020, the China Securities Regulatory Commission announced that the current 51% foreign ownership cap on Chinese securities companies will be removed on April 1, 2020. On the same day, a senior MOFCOM official disclosed that the negative list for foreign investment (the "Negative List"), which specifies the industries in which foreign investment is prohibited or restricted, will be further shortened.

- **Simplified regulatory process**. The Chinese government also has been simplifying the approval or filing requirements on foreign investment since 2016. Under a recently introduced mechanism, approval from or filing with MOFCOM is no longer required for the establishment of FIEs in China. Unless otherwise required by the Negative List or industry-specific regulations, foreign investors may now apply directly to the State Administration for Market Regulation and its local counterpart, the business registration authority in China, for registration of FIEs.

- **National treatment**. The new PRC Foreign Investment Law and its implementing rules (the "FIL") became effective on January 1, 2020 and replaced the existing laws that had governed FIEs since the early 1980s. Among other improvements for foreign investors, the FIL emphasizes national treatment of foreign investment in areas not on the Negative List and better protection of the rights and interests of foreign investors. Although the FIL provides only a general and high-level framework, it is expected to be supplemented by additional implementing rules.

While it remains to be seen how these various measures will be implemented in practice by the Chinese government, foreign investors are expected to benefit from the continued opening up of the Chinese market and could consider expanding their presence in China.

We will continue to monitor developments in this area. If you have any questions, please do not hesitate to reach out to your regular Debevoise contacts.

Debevoise & Plimpton LLP, as all other international firms in China, is not admitted to practice PRC law. This update is based on our review of the relevant laws and on our general experience dealing with similar matters. We would be pleased to arrange for assistance from licensed Chinese counsel should you require a formal opinion on any of the matters referred to herein.

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Please do not hesitate to contact us with any questions.

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