COVID-19: PRESSURE POINTS: CHINA IMPLEMENTS COMPREHENSIVE MEASURES TO MITIGATE THE IMPACT OF COVID-19 ON FOREIGN INVESTMENT (CHINA)

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Legal Briefings – By **Nanda Lau, Karen Ip and Weili Zhong**

COVID-19 has caused significant disruptions to the operations of many foreign-invested enterprises in China. In response to this, various government authorities have issued a series of relief policies and measures to minimise the impact of COVID-19 and stabilise foreign investments. In the bulletin, we summarise some of the key measures.

1. RESUMPTION OF PRODUCTION AND OPERATIONS OF FOREIGN-INVESTED ENTERPRISES

To help foreign-invested enterprises to resume normal production and operations, the Chinese government is providing various support and assistance, including coordinating and resolving problems in the supply of raw materials and transportation of goods; encouraging all local authorities to introduce policies to encourage lessors to reduce or exempt property rents; and deferring tax payments for small and medium enterprises. In particular, the government has been coordinating relevant departments to support enterprises involved in e-commerce or commercial supply of necessities such as masks and medical supplies.

2. IMPROVING BUSINESS ENVIRONMENT

To stabilise and promote foreign investment, the Chinese government is striving to optimise the business environment for foreign-invested enterprises, including by implementing the new China Foreign Investment Law (and related regulations and policies) and providing guidance to enterprises on how to make full use of the various relief measures. To ensure that domestic and foreign-invested enterprises are treated equally, all relief policies apply equally to foreign-invested enterprises.

3. INVESTMENT PROMOTION

The Chinese government is taking an innovative approach to investment promotion and encourages the use of technologies and digital tools such as online negotiation, video conferencing and online contract signing.

To streamline approval and registration process, the government is also implementing online filing, recording and processing, and is simplifying the regulatory procedures for foreign-invested projects, including by easing supporting documentation requirements.

The government has also indicated that it will further expand the scope of “encouraged” foreign investment projects. Foreign investors invested in the encouraged projects are entitled to various preferential treatments in taxation, land use, etc.. The government has promised to further shorten the negative list for foreign investments. Foreign investment restrictions will also be relaxed in the advanced technology, medical treatment and epidemic prevention fields and key projects in the central, western and northeast regions.

4. SERVICE GUARANTEES FOR LARGE FOREIGN-INVESTED PROJECTS

For large scale foreign-invested projects which are under construction, “point-to-point” services will be provided by the government to cooyrdinate and resolve issues relating to land use, labour supply, water, electricity and logistics, to guarantee completion as planned. Online government services will also be optimised to improve communications between enterprises and government authorities.

For foreign-invested projects in the manufacturing or high-tech service industries with a total investment of more than USD1 billion, the provincial-level branch of the National Development and Reform Commission (**NDRC**) will ensure that coordinated services will be provided by the relevant national authorities where required.

5. FOREIGN TRADE

The government will provide guidance to enterprises on paperless applications for import and export licenses. Legal support will also be enhanced to help enterprises reduce their risks, such as through providing support to trade promotion commissions and chambers of commerce and providing epidemic force majeure proof to foreign trade companies or overseas companies.

On 5 March 2020, the Ministry of Commerce (**MOFCOM**) announced that it will enhance its policy support to stabilise foreign trade, including in the following four areas:

- Financial support – MOFCOM will expand the availability of foreign trade credit to meet trade financing needs, support enterprises to perform contracts, and promote recovery of the industrial and supply chains by making funds available to support foreign trade operators.

- Insurance support – MOFCOM will expand the coverage of short-term export credit insurance and promote a reasonable reduction in the premium rate.

- Fiscal and taxation support – MOFCOM will improve its policies on export tax refunds, lowering costs of enterprises and alleviating their tax burden.

- Trade promotion – MOFCOM will strengthen communication and coordination with trade partners, enhance cooperation among WTO members and lift unnecessary trade restrictions to maintain the stable and healthy development of global supply chains.

The General Administration of Customs has also released a number of measures including: simplifying registration and record-filing procedures for enterprises; speeding up inspections and the release of imported production equipment and raw materials; and adopting simplified and quicker investigation and decision-making processes to support foreign trade companies resuming business.

6. TAXATION AND LOANS

On 10 March 2020, the State Council resolved to adopt new measures to cope with the impact of COVID-19 and stabilise foreign investment and foreign trade, including proposals to:

- refund taxes on all export products other than for “high-energy-consuming, high-pollution and resource-dependent” products;

- implement a policy of allowing deferred repayment of principal and interest on loans, and allowing those micro, small and medium-sized foreign trade enterprises with good prospects that have been severely affected by the epidemic to negotiate further extensions; and ensure that domestic and foreign-invested enterprises enjoy equal benefits such as tax and fee reductions under the relief policies.

It is noted that since 1 January 2020, pursuant to the State Taxation Administration's recent policies,

Key enterprises manufacturing supplies critical for COVID-19 prevention can apply to the relevant tax authorities monthly for a full refund of VAT incremental tax credits.

Taxpayer's income from transportation of critical COVID-19 prevention supplies is exempt from VAT.

Taxpayer's income from providing public transportation services, services required for daily life and express delivery services for daily necessities is exempt from VAT.

The costs of equipment newly purchased for capacity expansion by enterprises that manufacture critical supplies for COVID-19 prevention can be counted, on a lump-sum basis, as costs and expenses for the current period and are deductible before the calculation of enterprise income tax.

NDRC also indicated that it will optimise the process for confirming tax exemptions for imported equipment for encouraged foreign-invested projects, and will allow reports to be directly submitted to the provincial Development and Reform Commissions to streamline the process during the epidemic.

7. FOREIGN EXCHANGE

The State Administration of Foreign Exchange (**SAFE**) has established a green channel for foreign exchange. When an enterprise handles settlement and payment of capital account items related to epidemic prevention and control, it is not required to submit documents in advance. Where needed for prevention and control of the epidemic, the limitation on foreign debts borrowing can be removed. Enterprises can apply online for foreign debt via SAFE's online handling system to facilitate cross-border financing.

Since 24 March 2020, SAFE and the People's Bank of China have also raised the upper limit of risk weighted outstanding cross-border financing from 2 to 2.5 times of the net assets for foreign-invested enterprises, which practically means an increased foreign debt quota for foreign-invested enterprises.

8. SOCIAL SECURITY AND EMPLOYMENT

In accordance with the measures issued by the Ministry of Human Resources and Social Security, the Ministry of Finance, the State Administration of Taxation, from February 2020, Hubei Province may exempt the requirement for enterprises to contribute to the basic pension insurance, the unemployment insurance and the work-related injury insurance for up to five months; other provinces may exempt the contributions of micro, small and medium-sized enterprises to these three social insurances for up to five months, and may reduce by half the contributions of large enterprises for up to three months. Contributions of enterprises to employees' medical insurance may be halved from February 2020 for up to five months. Local authorities have published local rules to implement these measures. For example, Beijing exempts the contributions of micro, small and medium-sized enterprises to these three social insurances from February to June; and reduces by half the contributions of large enterprises from February to April.

As part of the State Council's measures to stabilise employment, micro, small and medium-sized enterprises who do not lay off employees (or reduce their layoffs) could be refunded up to 100% of the previous year's unemployment insurance premiums paid by them and their employees. Micro, small and medium-sized enterprises who recruit college graduates under labour contracts exceeding one year will be provided with one-off employment subsidies.

Foreign-invested enterprises should make recruitment and layoff plans by estimating the impact of COVID-19 on their operations, and taking into consideration of the benefits of exemption and reduction of social security contribution and employment subsidies.

As the situation in China continues to ease and various measures have been put in place to stimulate the recovery of the economy, we are hopeful that the impact of COVID-19 on foreign investment in China would be for a limited period of time. In the long run, we believe China's comprehensive competitive advantages in attracting foreign investment, such as its huge domestic market, will remain unchanged. It is expected that the central and local governments will continue to release further relief and stimulus measures for various industries. Companies should monitor these developments closely for any that may be relevant to them.

More on COVID-19

KEY CONTACTS

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