Call for Contributions: The impact of COVID-19 on the future regulation of foreign investment in developing states

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The Potchefstroom Electronic Law Journal (PER/PELJ) invites contributions from authors with regard to the impact of the COVID-19 on the future regulation of foreign investment in developing states.

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Once it is over, the COVID-19 pandemic will have immeasurable damage on the global economy. The pandemic was predominantly characterised by the shutting down of countries, with the result that the majority of non-essential businesses were forced to suspend their activities for periods of time. In the end, both host states and their economies will suffer losses. As key players in the economies of host states, investors worldwide are also caught in this fray and will no doubt incur major losses as a result of the shutdowns. In almost all cases, it can be assumed that host states exercised their right to regulate their territories by imposing the shutdowns in order to save lives. In the main,

these interventions were necessary. It can be said that the link between the COVID-19 pandemic and foreign direct investment is that as has occurred already, it puts host states in a position to take drastic, almost unilateral albeit justifiable regulatory measures that are potentially detrimental to the investment community.

From a foreign direct investment perspective, both investors and host states face untold losses. No state or investor saw the pandemic coming. Therefore, irrespective of how host states responded to the pandemic, and that the investment community suffered losses, one thing is for sure: both host states and the investor community must regroup and focus on ways in which they can work together to regain their momentum. In the case of host states, they will no doubt require additional funds from the investor community among others, as their own already stressed resources are likely to have been depleted in the fight against COVID-19. This is almost a given in the case of developing states. For the investor community, focus will no doubt be on the recoupment of losses, with an eye on future growth opportunities.

The post-pandemic reconstruction efforts will create opportunities for the investment community to recover from the pandemic as they work with host states. It may well be, and it is advisable that some host states will create more opportunities for their investment communities to recoup their losses. From a sustainability point of view, it is also possible that some of the long term solutions that may make host states resilient to future natural disasters will be underpinned by private investment. Host states and the investor community are tied to each other by means of various regulatory instruments such as domestic laws, bilateral and multilateral investment treaties, and investment contracts. The pandemic no doubt tests whether these ties are satisfactory, robust, and resilient. The answer to this question will differ from host state to host state, and from one region of the world to another, as the regulatory instruments and regimes are not the same.

However, the need for new investment will come at a time when the regulatory environment for foreign direct investment globally is facing major challenges and reforms. At the core of these reforms are the dynamics relating to the protection of investments and investors on one hand, and those relating to the right of host states to regulate the entry and implementation of

foreign investment. Of equal importance is the ongoing discourse on the forum to which investor-state disputes shall be referred, be it litigation before the courts of host states, litigation before sub-regional courts, local arbitration, international arbitration, state-state arbitration, mediation etc. There is as yet no single solution to these challenges.

Issues that come to the fore include whether current foreign investments are adequately protected to the satisfaction of both investors and host states, and therefore whether new investments can be facilitated based on the existing regulatory frameworks or whether changes should be made thereto in view of dynamics which are pre-existing or were exposed by the COVID-19 pandemic. Put differently, will it be business as usual for the facilitation and admission of new foreign direct investment in developing states? Must certain changes be made to the regulatory frameworks in order for them to continue to attract and adequately protect foreign investment?

Based on the above, contributions shall focus on any issue relating to the following:

- Any challenges in the foreign direct investment regulatory frameworks of developing states (in particular but not limited to African states), relating to any aspect of the full investment life cycle from facilitating through to investor-state dispute resolution, which may impede or limit the ability of a host state to attract foreign direct investment;
- Any potential improvements that can be made to an aspect of the full life cycle of foreign direct investment frameworks of developing states in order to make a host state attractive to foreign investment;
- Potential impediments or constraints that some developing states may face in their quest to raise additional foreign investment;
- Potential actions that may be taken to protect foreign investment in the event of future major natural disasters, including forms of investment insurance;
- Whether the foreign direct investment regulatory frameworks of African regional economic communities such as the East African Community (EAC), Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC) are suitable to deal with major natural disasters;

- How the African Continental Free Trade Agreement (AfCFTA) investment protocol may be structured so as to make the entire continent attractive to foreign investment in a sustainable manner.

This special issue will be edited by a team led by Dr Tinyiko Ngobeni, a member of the PER/PELJ editorial board. We would appreciate it if we could receive your contributions as soon as possible but not later than **30 September 2020**. You can email your contributions to: tinyiko.ngobeni@nwu.ac.za More information about the Journal can be accessed here on the call.

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