Journal of Economy and Finance

№ 1(41) 2016

ISSN 1813-3983

ECONOMIC RESEARCH INSTITUTE

The Republic of Kazakhstan

Мазмұны

№1 (41) 2016 ISSN 1813-3983

Тоқсан сайынғы экономикалық журнал 2004 жылғы маусым айынан бастап шығады
ISSN 1813-3983

Құрылтайшы:

Қазақстан Республикасы Ұлттық экономика министрлігінің «Экономикалық зерттеулер институты» АҚ
Бұқаралық ақпарат құралдарын есепке алу туралы куәлік 05.04.2004 жылғы №4859-Ж
Бас редактор – Иргалиев Ә.А.
Ғылым редакторы – Кошербаева А.Б.

Журнал жазылым бойынша таралады.
Жазылу индексі – 75224

Редакцияның мекен-жайы:
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010001, Астана қаласы, Сол жағалау,
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ERI
ЭФИ. ISSN 1813-3983
Журналдың онлайн нұсқасы http://economy.kz вебсайтында жарияланады

ӘЛЕМДІК ЭКОНОМИКА ЖӘНЕ ИНТЕГРАЦИЯЛЫҚ ПРОЦЕССТЕР

ИНВЕСТИЦИЯЛЫҚ САЯСАТ

ҚАЗАҚСТАННЫҢ ӨҢІРЛІК ЖӘНЕ САЛАЛЫҚ ЭКОНОМИКАСЫ

Содержание

№1 (41) 2016
ISSN 1813-3983

Ежеквартальный экономический журнал
издается с июня 2004 г.
ISSN 1813-3983
Учредитель:
АО «Институт экономических исследований»
Министерства национальной экономики
Республики Казахстан
Свидетельство о постановке на учет средства
массовой информации №4859-Ж от 05.04.2004 г.

Журнал распространяется по подписке
Подписной индекс – 75224

Адрес редакции:
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www.economy.kz
ERI
ЭФИ. ISSN 1813-3983
Журнал публикуется в онлайн версии
на вебсайте http://economy.kz

УДК 330.322
JEL F 21

LIYING ZHANG, CHENG LIN

CHINA'S LEGAL PROTECTION OF OVERSEAS INVESTMENT IN COUNTRIES ALONG "ONE BELT AND ONE ROAD"

There are many investment risks within host countries along "One Belt and One Road" (OBOR) for China. This paper outlines China's evaluation of investment risks, interprets the myriad aspects of China's legal protection of its overseas investment, and finally points out the rooms for improvement in the question under discussion

Keywords: *One Belt and One Road; Investment Risk; Overseas Investment Insurance; Investment Treaty*

Part I. Introduction

1. China's Evaluation of Investment Risks within Host Countries along OBOR

1.1. Country Risk Analysis Reports from Sinosure

Undoubtedly, "One Belt and One Road" Initiative (OBOR) has been the most important strategy in current Chinese foreign affairs. President Xi Jinpin firstly proposed this plan in his visit to Kazakhstan in September, 2013. On March 28, 2015, China issued *Vision and proposed actions outlined on jointly building Silk Road Economic Belt and 21st-Century Maritime Silk Road*, which means that China is ready to conduct cooperation with countries along the Belt and the Road, and therefore, more and more Chinese investment will be flowing into those countries.

There are 63 countries and regions along OBOR, which includes 11 in Southeast Asia (Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Vietnam, Laos, Burma, Cambodia, Timor-Leste), 8 in South Asia (Nepal, Bhutan, India, Pakistan, Bangladesh, Sri Lanka, Maldives, Afghanistan), 6 in Central Asia (Mongolia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan), 16 in West Asia (Iran, Iraq, Turkey, Georgia, Syria, Jordan, Israel, Saudi Arabia, Bahrain, Qatar, Yemen, Oman, The United Arab Emirates, Kuwait, Lebanon, Egypt), 16 in Central and Eastern Europe (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech, Estonia, Hungary, Latvia, Lithuania, Macedonia, Montenegro, Romania, Poland, Serbia, Slovakia, Slovenia) and 6 CIS countries (Russia, Belarus, Ukraine, Moldova, Azerbaijan, Armenia). These OBOR countries are playing an essential role in expanding Chinese foreign trade and investment. By the end of 2014, according to *China Statistical Yearbook 2014*, countries along OBOR accounted for 20.85% of China's total foreign trade, 46.24% of foreign contracted projects and 39.23% of foreign labor service.[10]

China has been aware of the potential investment risks in those host countries. China Export & Credit Insurance Corporation (Sinosure) is the only state-owned and policy oriented insurance company in China. Since 2006, Sinosure annually releases *Country Risk Analysis Reports* of certain selected countries, which it considers that Chinese investors should pay extra attention to. In the year of 2014, it releases relevant reports of each of 63 countries along OBOR. Each report is based on the following four fundamental aspects: political conditions, economic situations, business infrastructures and legal environment. Through a comprehensive analysis, the reports give a risk rating from 1-9, and higher rating means higher risks. Besides, the reports make evaluative precautions and prospect of investment risk in the future. The outlooks can be negative, wait-and-see, stable or positive. The investment risk ratings of the 63 countries are summarized in *Table 1*.[11]

[10] See National Bureau of Statistics of China, *China Statistical Yearbook 2014*, http://www.stats.gov.cn/tjsj/ndsj/2014/indexeh.htm, accessed on July 28, 2015.
[11] See Sinosure, *The Handbook of Country Risk 2014*, China Financial and Economic Publishing House, 2014.

Among those countries, low risk rating (1-3) countries account for only 6%, while high risk rating (6-9) countries make up 56%. Moreover, there are 10 “negative” outlook countries and 6 “wait and see” ones, together accounting for nearly 30% of the total, which means that in those countries, the risk will rise or remain unpredictable. It’s obvious that, overall, the investment risk within the host countries along OBOR is relatively high.

Table 1 - Sinosure’s Investment Risk Ratings and Outlooks of Countries along OBOR

Nation	Rating	Outlook	Nation	Rating	Outlook	Nation	Rating	Outlook
Indonesia	6	S	Kyrgyzstan	8	S	Egypt	7	S
Malaysia	5	N	Uzbekistan	6	S	Albania	7	W
Philippines	7	N	Tajikistan	7	S	Bosnia and Herzegovina	6	S
Singapore	3	S	Afghanistan	9	S	Bulgaria	5	S
Thailand	5	S	Iran	5	P	Croatia	5	W
Brunei	4	S	Iraq	7	N	Czech	4	P
Vietnam	8	S	Georgia	7	P	Estonia	6	P
Laos	7	S	Armenia	7	P	Hungary	5	N
Burma	7	S	Azerbaijan	7	S	Latvia	6	W
Cambodia	7	P	Turkey	5	S	Lithuania	5	W
Timor-Leste	8	W	Syria	9	N	Macedonia	5	S
Nepal	6	S	Jordan	5	S	Montenegro	6	S
Bhutan	7	S	Israel	5	W	Romania	5	S
India	6	S	Saudi Arabia	4	S	Poland	4	P
Pakistan	7	S	Bahrain	4	S	Serbia	7	S
Bangladesh	7	P	Qatar	3	S	Slovakia	4	S
Sri Lanka	5	P	Yemen	9	N	Slovenia	3	W
Maldives	6	N	Oman	5	W	Russia	5	S
Mongolia	6	S	UAE	3	S	Belarus	6	S
Kazakhstan	5	S	Kuwait	5	N	Ukraine	7	N
Turkmenistan	5	S	Lebanon	8	N	Moldova	7	S

(“P”=Positive, “S”=Stable, “W”=Wait and See, “N”=Negative)

1.2. Legal Environment for Investment of Host Countries along OBOR

Legal environment usually includes three central components: (i) contractual and semi-contractual arrangements (e.g., contracts, licenses, concessions); (ii) unilateral promissory statements or specific representations made by the host states; and (iii) the host state's regulatory measures at the time when the investment is made. [12]Sinosure's *Country Risk Analysis Report* makes more detailed assessment on the legal environment of every host country along OBOR, through the aspects of the investment treatment, tax system, currency control, and expropriation and nationalization (*Table 2*).

Table 2 - Sinosure's Assessment on Investment Environment of Countries along OBOR

Nations	National Treatment	A Sound Tax System	Currency Control	Likely to Suffer Expropriation and Nationalization
Yes	16(25.4%)	35(55.6%)	18(28.6%)	7(11.1%)
No, but is improving	31(49.2%)	8(12.7%)	-	-
NO	16(25.4%)	20(31.7%)	45(71.4%)	26(41.3%)
Not Sure	-	-	-	30(47.6%)

1.2.1. National Treatment of Foreign Investment

Countries along OBOR offer different degrees of national treatment to foreign investment according to each country's own conditions, particularly when it comes to the stage of market access (pre-establishment national treatment). According to Sinosure's assessment (*Table 2*), 74.6% countries offer national treatment or adopt an encouraging attitude towards foreign investment. However, within those countries, foreign investment still cannot share the full extent of equal status with domestic investment. For example, in India, the government sets strict restrictions in some sensitive areas. Foreign direct investment (FDI) into India can hold up to 26% capital of infrastructure companies in securities market, 49% in asset reconstruction companies (ARC) and commodity exchanges, and 74% in private sector banking, mining and airports.[13] In Armenia, except for the cases when natural persons transport goods across the customs border, the declarant shall only be a person of Armenia.[14]

1.2.2. Tax System

Although 68.3% countries along OBOR have established or have been establishing a sound tax system, situations in the rest of 31.7% countries are far from satisfactory. Some countries have a quite complicated tax system. For example, Ukraine's nation-wide taxes include corporate profit tax (CPT), value added tax (VAT), personal income tax (IT), state duty, land tax, excise duty, customs duty, tax for the use of natural resources, tax on car owners and other minor taxes. Besides, its local taxes consist of municipal tax, advertising tax, local symbols use tax and other minor taxes.[15] In

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[12] See Moshe Hirsch, *Between Fair and Equitable Treatment and Stabilization Clause: Stable Legal Environment and Regulatory Change in International Investment Law*, Journal of World Investment & Trade, Vol. 12, Issue 6 (December 2011), p. 784.

[13] See Ministry of Overseas India Affairs, *Foreign Direct Investment*, http://moia.gov.in/services.aspx?id1=199&idp=199&mainid=196, accessed on August 1, 2015.

[14] See Customs Code of the Republic of Armenia, Article 131(2).

[15] See KM Partners, *General Overview of Taxes, Levied in Ukraine*, http://www.internationaltaxreview.com/pdfs/taxdata/ukraine.pdf, accessed on August 1, 2015.

Nepal, compliance of tax return filing is worrying. During the year of 2011, there were 22.3% non filers of VAT and 50.6% of IT. Even worse, tax fraud can be found almost everywhere in Nepal, and there is no supportive environment of legal enforcement.[16] In Bangladesh, the degree of tax evasion is high, and the administrative capacity remains very limited.[17]

1.2.3. Currency Control

Countries usually control currency through banning or restricting currency exchanges. There is no currency control in 71.4% countries along OBOR, but in the rest 28.6% countries, prohibition or restriction still exists. Vietnam's currency exchange regulation provides that all transactions, payments, listings, advertisements, quotations, fixing of prices, and recording of prices in contracts, agreements, and other similar forms by residents and non-residents must not be effected in foreign currency, except for those cases which have been permitted by the State Bank of Vietnam (SBV).[18] In Uzbekistan, although the currency control has been abolished, certain administrative difficulties in converting Soum to foreign currency for remittance abroad diminish in practice the effect of currency liberalization. Uzbek legal entities may not hold bank accounts outside Uzbekistan without permission from the central bank. All settlements within Uzbekistan must be made in Soum, except for payments made by nonresidents for certain services in hard currency and some other limited instances established by the Cabinet of Ministers and Uzbek currency law.[19] Exchange Control Act of Sri Lanka provides that other than an authorized dealer, no person shall buy, borrow or accept any gold or foreign currency from, or sell or lend any gold or foreign currency to, or exchange any foreign currency with, any person other than an authorized dealer in Sri Lanka.[20]

1.2.4. Expropriation and Nationalization

There is no apparent risk of expropriation and nationalization in 41.3% countries along OBOR, yet in other 58.7% countries, such risk remains high or unpredictable. Actually, some countries above did exert expropriation and nationalization upon foreign investment. Government of Sri Lanka tends to take over underperforming enterprises according to its latest nationalization law, but the law lacks clearly defined criteria for what constituted "an underperforming company." In March 2013, Sri Lanka considered nationalizing the Sri Lankan subsidiary of the state-run Indian Oil Corporation (IOC), Lanka IOC. [21]Meanwhile, some government expropriates simply for political purposes. In November 2014, an appeals court in the town of Rivne in western Ukraine has upheld the ruling to seize 1,400 kilometers (about 875 miles) of two transit oil products pipelines owned by a company under control of Russia's Transneft.[22] In March 2015, Ukrainian Supreme Court ruled to uphold the nationalization of an aluminum plant from Russian industry giant

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[16] See T.M.Sharma & Rammani Duwadi, *Tax Compliance and Enforcement Trends in Nepal*, http://www.imf.org/external/np/seminars/eng/2013/asiatax/pdfs/nepal.pdf, accessed on August 1, 2015.
[17] See Ahsan H. Mansur, PRI & Mohammad Yunus, BIDS, *An Evaluation of the Tax System in Bangladesh*, http://www.theigc.org/wp-content/uploads/2014/08/bangladesh-gw2011-allpresentations.pdf, accessed on August 2, 2015.
[18] See IFLR, *Updating Vietnam's Foreign Exchange Controls*, http://www.iflr.com/Article/3210344/Updating-Vietnams-foreign-exchange-controls.html, accessed on August 2, 2015.
[19] See Baker&Mckenzie, *Doing Business in Uzbekistan,* http://www.bakermckenzie.com/files/Uploads/Documents/Supporting%20Your%20Business/Global%20Markets%20QRGs/DBI%20Uzbekistan/qr_uzbekistan_dbguide_04currencyregulations_2009.pdf, accessed on August 2, 2015.
[20] See Exchange Control Act of Sri Lanka, Article 5(1)(a).
[21] See IHS, *Sri Lanka's nationalisation law leaves foreign firms vulnerable to politically-motivated expropriations if international pressure rises*, https://www.ihs.com/country-industry-forecasting.html?ID=1065989237, Accessed on August 2,2015.
[22] See RT, *Ukraine court upholds nationalization of Russian pipeline*, http://www.rt.com/business/209147-ukraine-nationalize-russian-pipeline/, accessed on August 2, 2015.

RusAl.[23] And some government makes expropriation on former government. After “Tulip Revolution”, the interim government of Kyrgyzstan took over some hotels and banks of the former government and its business partners, thus resulting in many arbitration claims. By now, Centerra Gold Inc is still negotiating with Kyrgyzstan on rewriting their contract,[24] and Stans Energy Corp has sent a letter to Prime Minister Djoomart K. Otorbaev of Kyrgyzstan requesting payment of USD $118,206,056.80 as the arbitration award.[25]

1.2.5.Other Factors of Legal Environment

Breach of Contract. Some country’s governments change their contracts at will, or only protect local enterprises which have a close relationship with the government or the royal family. Sinosure’s *Handbook of Country Risk in Tajikistan 2014* points out that, except for contracts relating to Tajikistan government or family of President Rakhmon, Tajikistan government is poor at performing contracts. Foreign investors in Tajikistan are faced with the risk of revoking contracts by the government. In July 2013, Dushanbe threatened to end discussions with an international consortium led by Kazakhstan's Kazzinc to develop Tajikistan's largest silver deposit.[26]

War, terrorism and civil disturbance. Situations are severe in some countries and regions along OBOR, namely in West Asia and North Africa. Civil War of Libya in 2011 caused 75 Chinese enterprises, including giant state-owned companies such as China Railway Construction Corporation (CRCC) and China Gezhouba Group Corporation (CGGC), suffering a loss of 18.8 billion USD in total. Worse still, Islamic State of Iraq and al Shams (ISIS) invades Syria, Afghanistan and Iraq. ISIS aims at building a religious totalitarian state, which makes it impossible for foreign investment.[27]

To sum up, countries along OBOR welcome foreign investment, but all of the factors discussed above of legal environment of those countries indicate that, along OBOR, investment risks do exist, and it is significant for capital exporting countries to protect their overseas investment.

Part II. Main Issues

2. China’s Current Legal Protection of its Overseas Investment along OBOR

2.1. Multilateral Overseas Investment Insurance

Multilateral Investment Guarantee Agency (MIGA) provides investment insurance on political risks, namely non-commercial risks. It contains five types of coverage: (1) currency inconvertibility and transfer restriction; (2) expropriation; (3) War, terrorism, and civil disturbance; (4) Breach of contract; (5) Non-honoring of financial obligations. [28]China acceded Convention Establishing the Multilateral Investment Guarantee Agency in April 1988, becoming the one of the founding members of MIGA. Sinosure also made agreements with MIGA on cooperation to provide

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[23] See The Moscow Times, *Ukraine Supreme Court Upholds Nationalization of RusAl Aluminum Plant*, http://www.themoscowtimes.com/business/article/ukraine-supreme-court-upholds-nationalization-of-rusal-aluminum-plant/517382.html, accessed on August 2, 2015.

[24] See 4-Traders, *Centerra Gold : Comments On Kyrgyz Government Public Statements*, http://www.4-traders.com/CENTERRA-GOLD-INC-1409419/news/Centerra-Gold--Comments-On-Kyrgyz-Government-Public-Statements-20166068/, accessed on August 2, 2015.

[25] See Marketwatch, *Stans Energy Requests Payment of Arbitration Award from Kyrgyz Government*, http://www.marketwatch.com/story/stans-energy-requests-payment-of-arbitration-award-from-kyrgyz-government-2014-07-14-12232264, accessed on August 2, 2015.

[26] See BNE, *Tajikistan threatens to scrap giant silver mine tender*, http://www.bne.eu/content/story/tajikistan-threatens-scrap-giant-silver-mine-tender, accessed on August 2, 2015.

[27] See Graeme Wood, *What ISIS Really Wants*, http://www.theatlantic.com/features/archive/2015/02/what-isis-really-wants/384980/, accessed on August 2, 2015.

[28] See MIGA, *Guarantees Overview*, http://www.miga.org/investmentguarantees/index.cfm, Accessed on July 19,2015.

investment insurance to Chinese overseas investment in June 2002 and November 2006. However, it seems that Chinese overseas investors fail to make full use of MIGA's service to insure their investment. By August 2015, there are only 2 MIGA's projects whose investor country is China, which are Triumph Power Generating Company Limited in Kenya (Fiscal Year:2013, Project ID:9993) and Ghorasal 3rd Unit Repowering in Bangladesh (Fiscal Year:2015, Project ID: 11867). Meanwhile, MIGA has underwritten 844 projects since its establishment. [29]Moreover, the gross exposure of two Chinese projects mentioned above are respectively 300 million USD and 102.5 million USD, while during the fiscal year of 2010-2014, MIGA totally raises its gross exposure to 12.4 billion USD.[30]

2.2. Domestic Overseas Investment Insurance

There is as yet no overseas investment insurance law in China. Nowadays, China provides insurance to its overseas investors via Sinosure, which was found in December 2001. Similar to MIGA, Sinosure provides five types of coverage, which are expropriation, restriction on transfer and conversion, war damage, inability to operate due to war, and breach of undertaking. [31]The extent of coverage from Sinosure is divided into three occasions: (1) no more than 95% under basic political risks; (2) no more than 90% under breach of contract; and (3) no more than 95% under basic disruption of business. [32]It is widely acknowledged that Sinosure has contributed a lot to China's protection of its overseas investment. Before the Civil War of Libya, Sinosure had underwritten for almost 550 million USD in West Asia and North Africa. After the war, Sinosure started a "Green Channel of Coverage", making compensation to CRCC and CGGC for RMB 162 million and RMB 48.5 million.[33] However, China still has a long way to go in perfecting its domestic way of overseas investment insurance. The main pressing problems include:

2.2.1. Outdated types of coverage

Sinosure's five types of coverage were designed on the basis of the political risks in 1960s-1970s, and nowadays, the high risk of war has changed into high risk of terrorism in peaceful environment. The outdated types of coverage lead to the result that Chinese investors suffering from terrorism cannot claim for coverage according to Sinosure's policy, while the American investors are able to be compensated because the US's Overseas Private Investment Corporation (OPIC) provides coverage including war, civil strife, coups and other acts of politically-motivated violence including terrorism.[34] Since terrorism is breeding in some regions along OBOR, Sinosure's coverage policy needs to be modified.

2.2.2. High premium and broad extent of coverage

Sinosure's insurance premium is 1.5% of the insured amount in average. Compared to 0.5% of Japan's Ministry of International Trade and Industry (MITI) and 0.3%-1.5% of MIGA, Sinosure's high premium rate may keep some Chinese private enterprises from purchasing

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[29]SeeMIGA,*Projects*,http://www.miga.org/projects/advsearchresults.cfm?srch=s&ictry=47c&icountrycode=CN&dispset=10&sortorder=asc, accessed on August 2, 2015.
[30] See MIGA, *Annual Report 2014*, http://www.miga.org/documents/Annual_Report_14.pdf, accessed on August 2, 2015.
[31] See Sinosure, *A Brief Introduction of Investment Insurance*, http://www.sinosure.com.cn/sinosure/english/products_introduction01.htm, accessed on August 3, 2015.
[32] See Sinosure, *A Brief Introduction of Investment Insurance (in Chinese)*, http://www.sinosure.com.cn/sinosure/ywjs/tz/zlbx/hwtzbxjj/index.html, accessed on August 3, 2015.
[33] See Yu Meng, *Sinosure: Compensation for nearly 200 million RMB on construction projects in Libya (in Chinese)*, International Business Daily, March 19, 2011, http://epaper.comnews.cn/news-38474.html, accessed on August 3, 2015.
[34] See OPIC, *What We Offer*, https://www.opic.gov/what-we-offer/political-risk-insurance, Accessed on July 19,2015.

insurance, because it will plummet the loan discount from the bank and add to the financing cost of those enterprises. Despite the high premium, what is good to Chinese overseas investors is that Sinosure's extent of coverage (90%-95%) is quite broad. OPIC can insure up to 90 percent of an eligible investment and requires that the investor bear at least 10 percent of the risk of loss.[35] Making the investors bear a certain percentage of loss will help to urge the investors to be more cautious and thereby relieve the fiscal burden of the insurance agency. China is now encouraging domestic enterprises to "go abroad"("zou chu qu" in Chinese), therefore Sinosure adopts a relatively broad extent of coverage.

2.2.3. Small proportion among all of Sinosure's business

Sinosure isn't a company exclusively operating business concerning investment insurance. Actually, it commences business in three areas: (1) short-term export credit insurance; (2) medium- and long-term export credit insurance and (3) investment insurance.[36] In the fiscal year of 2014, Sinosure's total insured amount reaches 445.6 billion USD, which consists of 344.8 billion in short-term export credit insurance, 27.3 billion in medium- and long-term export credit insurance, and 35.8 billion in investment insurance.[37] Investment insurance only accounts for 9% of Sinosure's total insured amount, while export credit insurance together takes almost 91%.

2.2.4. Lack of law regulating overseas investment

China hasn't enacted a law which specially protects overseas investment. Current regulations we have are only some management rules and ordinances made by Ministry of Finance (MOF), Ministry of Commerce (MOC), or National Development and Reform Commission (NDRC), such as MOF's Interim Measures for the Administration of Overseas Investment in Financial Management (1996) and NDRC's Interim Administrative Measures for the Approval of Overseas Investment Projects (2004). The lack of an overseas investment insurance law means that Chinese investors could only rely upon the government's policies and the guidance provided by Sinosure to purchase insurance, resulting in random, unstable, opaque and unpredictable insurance scenarios and procedures.

2.3. Protection via Bilateral Investment Treaties

Bilateral investment treaties (BIT) and multilateral investment treaties (MIT) are other ways to protect overseas investment. China has concluded bilateral investment treaties with 55 of the 63 countries along OBOR.[38] Those BITs are out-dated because they only pay attention to encouraging and protecting investments, while the China-US BIT which is in negotiation concerns mainly about market access and pre-establishment national treatment. The content of those 55 BITs can be demonstrated in *Table 3*. Aiming at restraining host countries to conclude nationalization and expropriation, Nationalization and Expropriation clause is adopted by all of those 55 BITs.[39]

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[35] See OPIC, *Extent of Coverage*, https://www.opic.gov/what-we-offer/political-risk-insurance/extent-of-coverage, accessed on July 19,2015.

[36] See Sinosure, *Products&Services*, http://www.sinosure.com.cn/sinosure/english/products_short.htm, accessed on August 4, 2015.

[37] See Sinosure, *Sinosure's Insured Amount 2014 Peaks a Historical High (in Chinese)*, http://www.sinosure.com.cn/sinosure/xwzx/xbdt/167729.html, accessed on August 4, 2015.

[38] The rest of 8 countries without an investment treaty with China are: Afghanistan, Bhutan, Montenegro, Maldives, Nepal, Serbia, Slovakia and Iraq.

[39] E.g., Article 4 of Agreement between the Government of the Arab Republic of Egypt and the Government of the People's Republic of China concerning the Encouragement and Reciprocal Protection of Investments:

"Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as 'expropriation') against investments of investors of the other Contracting Party in its territory, unless the following

Clauses of FET and MFN, Compensation for Damages and Losses,[40] and Subrogation are also widely adopted in those 55 BITs. However, only 7 countries adopt National Treatment clause in their BITs with China.[41] As for ISDS clause, which is the most important concerning protection of investors, only 20 countries adopt a complete ISDS clause which can be applied to any investment dispute arising out of their BITs with China, and the other 35 countries stipulate that ISDS clause can only be applied to disputes involving the amount of compensation resulting from expropriation.[42] That means if Chinese investors have disputes other than expropriation ones, it's hard for them to get compensated, because the ISDS clause cannot be relied on.

Table 3 - Major Content of BITs between Countries along OBOR and China

Nations	National Treatment	FET and MFN Treatment	Compensation for Damages and Losses	Nationalization and Expropriation	Subrogation of the Insurance Agency	ISDS System
Yes	7(13%)	55(100%)	50(91%)	55(100%)	52(95%)	20(40%)
Only applies to expropriation	-	-	-	-	-	35(60%)
NO	48(87%)	-	5(9%)	-	3(5%)	-

("FET"=Fair and Equitable Treatment, "MFN"= Most Favored Nation Treatment,
"ISDS"= Investor-State Dispute Settlement)

2.4. Protection via Multilateral Investment Treaties

China acceded to The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) in 1988 and Convention on the Settlement of Investment Disputes between States and Nationals of Other States (The Washington Convention) in 1993. The latter convention rules ISDS system, and the former helps investors to get their awards enforced smoothly. Most countries along OBOR have acceded to those two conventions (See *Table 4*), while there are still 12 countries which are not parties of The Washington Convention[43] and 7

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conditions are met:(a) for the public interests;(b) under domestic legal procedure;(c) without discrimination;(d) against compensation."

[40] E.g., Article 4(3) of Agreement between the Government of The People's Republic of China and the Government of the Republic of Albania Concerning the Encouragement and Reciprocal Protection of Investments:

"Investors of one Contracting State who suffer losses in respect of their investments in the territory of the other Contracting State owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded by the latter Contracting State, if it takes relevant measures, treatment no less favorable than that accorded to investors of a third State."

[41] They are Qatar, Slovenia, Bosnia and Herzegovina, Czech, Latvia, Iran and India.

[42] E.g., Article 9 of Agreement between the Government of the Republic of Indonesia and the Government of the People's Republic of China on the Promotion and Protection of Investments:

"1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall be settled amicably.

2. In the event that such a dispute cannot be settled within six months. either party to the dispute may, in accordance with the laws and regulations of the Contracting Party in whose territory the investment was made, submit the dispute to the competent court of that Contracting Party.

3. If a dispute involving the amount of compensation resulting from expropriation cannot be settled as specified in paragraph 1 of this Article within six months, it may be submitted to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedures specified in paragraph 2 of this Article."

[43] They are The United Arab Emirates, Oman, Poland, Bhutan, Laos, Maldives, Tajikistan, Iraq, Iran and India.

See ICSID, *Annual Report 2013*, pp.9-13, countries which are not parties of The New York Convention.[44] In those countries, it is hard for Chinese investors to settle the investment disputes or get the arbitration awards enforced.

Table 4 - Multilateral Investment Treaties and Countries along OBOR

Nation	Parties of The Washington Convention	Parties of The New York Convention	Having a BIT with China
Yes	49(77.8%)	56(88.9%)	54(85.7%)
Signed, but not yet ratified	2(3.2%)	-	1(1.6%)
No	12(19.0%)	7(11.1%)	8(12.7%)

3. Promises and Proposals for China's Future Protection of its Investment along OBOR

3.1. In terms of the Domestic Level

China needs to enact an overseas investment insurance law. The US, Japan and Germany all have their overseas investment laws as firm legal basis, such as the Foreign Assistance Act of the US and the Export Insurance Law of Japan. Among them, the US adopts a "bilateral mode", namely investors can purchase insurance only for investment in countries which have BITs with the US, because those BITs contain the subrogation clause. Japan insists on a "unilateral mode", permitting investors to purchase insurance in countries without a BIT with Japan. "Unilateral mode" is more welcomed by investors than "bilateral mode", thus in China's future overseas investment insurance law, this mode must be taken into primary consideration. Moreover, the future law needs to clarify the approving authority and the operating body of overseas investment insurance. The approving authority can be the Ministry of Finance, the Ministry of Commerce, the National Development and Reform Commission, and China Insurance Regulatory Commission (CIRC), so that it will make the decision of policy insurance more stable. The operating body can be Sinosure. The future law must also stipulate in details the rights and obligaitons of the parties, the procedure of the insurance business and the transparency of the compensations.

China has to strengthen the function of Sinosure. Many countries over the world establish companies which solely run overseas investment insurance business. The US established OPIC, a government company, as the policy insurance agency, and Japan regards Ministry of International Trade and Industry as the insurance agency, while Germany combines Ministry of Finance with HermsKerditversicherungs A.G and TreuarbeitA.G., two state-owned companies, as the insurance agency. No matter how different they are, those agencies take overseas investment insurance as their only business. Sinosure can run several kinds of business at the same time, but it should place more emphasis on the business of overseas investment insurance. Furthermore, it needs to cut its insurance premium and modify its coverage types, adding especially the risk of terrorism into the definition of political risk.

In Terms of the International Level

Chinese overseas investors can make full use of MIGA. Chinese government should increase the advertising of MIGA, encouraging more Chinese investors to purchase insurance from MIGA. Sinosure can cooperate with MIGA in the affairs concerning information sharing and mutual assistance of finance. China can also propose to establish a regional investment insurance agency

https://icsid.worldbank.org/apps/ICSIDWEB/resources/Documents/2013%20AR-%20ENG.pdf, Accessed on July 19,2015.

[44] They are Timor-Leste, Czech, Maldives, Sri Lanka, Turkmenistan, Yemen and Iraq.

See UNCITRAL, *Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)*, http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html, Accessed on July 19,2015.

which aims at protecting mutual investments among countries along OBOR, just like the Asian Infrastructure Investment Bank (AIIB).

China should conclude BITs with all of those countries along OBOR which don't have a BIT with China right now. ISDS clause must be adopted widely in China's BITs with countries along OBOR, thus requiring China to modify those relevant clauses through negotiation with those countries. China can also establish a regional center to settle disputes of investment within countries along OBOR. There are some regional centers in the world, such as Cairo Regional Centre for International Commercial Arbitration, Istanbul Regional Centre for International Commercial Arbitration and Kuala Lumpur Regional Centre for International Commercial Arbitration. China has already set up a regional centre of arbitration, namely China International Economic and Trade Arbitration Commission (CIETAC), but according to Arbitration Law of China, CIETAC can only settle disputes over contracts and disputes over property rights and interests between citizens, legal persons and other organizations as equal subjects of law may be submitted to arbitration.[45] Chinese legislature can modify the arbitration law, permitting CIETAC to settle investment disputes, so that CIETAC can be chosen by Chinese investors in case they have disputes with the host countries.

Part III. Conclusion

OBOR initiative encourages Chinese investors to make overseas investment within countries along it. China has been aware of the obvious and potential investment risks and made relevant assessments. Yet the current legal protection is far from satisfactory for overseas investment along OBOR. China needs to pay attention to both domestic and multilateral ways of protection. Meanwhile, it is noteworthy that China is accepting a "new style" BIT which is represented by the China-US BIT in negotiation. A "new style" BIT contains areas of market access, pre-establishment national treatment, essential security, prudential measures in finance, labor, environment, and transparency. None of those areas are adopted by current BITs between China and countries along OBOR. China is now testing the acceptability of those areas through operating four Pilot Free Trade Zones (Shanghai, Guangdong, Tianjin, Fujian) in the east of China. Once China is ready to adopt those areas and sign the BIT with the US, it may modify its BITs with other countries. If that comes true, it can be assumed that the mutual investment along OBOR will obtain more convenience and protection, and of course, more challenges.

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China University of Political Science and Law (CUPL), Материал поступил в редакцию 18.01.2016

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ПРАВОВАЯ ЗАЩИТА КИТАЯ ЗАГРАНИЧНЫХ ИНВЕСТИЦИЙ В СТРАНАХ ВДОЛЬ " ОДИН ПОЯС И ОДНА ДОРОГА " Университет политологии и права Китая, Китай

Резюме

Есть много инвестиционных рисков в принимающих странах, расположенных вдоль " один ремень и одна дорога " (Обор) для Китая . В настоящем документе излагается оценка Китая инвестиционных рисков , интерпретирует мириады аспекты правовой защиты Китая своих зарубежных инвестиций , и, наконец, указывает номера для улучшения обсуждаемого вопроса