Factors Influencing Chinese Investment under the "Belt and Road": Legal Advantages of Foreign Investment in Slovakia

Zuzana Budiská *
Chi Wang *
DOI: https://doi.org/10.24040/sap.2020.7.1.75-82

Abstract:

BUDINSKA, Zuzana – WANG, Chi: *Factors Influencing Chinese Investment under the "Belt and Road" : Legal Advantages of Foreign Investment in Slovakia.* Since China launched the „Belt and Road Initiative" in 2013, China's investment has faced many challenges. This article will focus on analyzing the legal issues in China's outbound investment under the „Belt and Road Initiative". Chinese enterprises' foreign investment PPP projects Risk analysis, the "Belt and Road" dispute settlement mechanism, and BITs dispute research clauses are important to understand current issues for Chinese investors. In order to provide some ideas for Slovak and Chinese economic and trade cooperation, this article also analyzes advantages of laws, regulations and policies of Slovakia for foreign investment.

Key words:

"Belt and Road", PPP project, BITs, Slovakia, China

Introduction

Since the launch of the "Belt and Road" initiative, many factors have faced challenges in the implementation of the initiative. This article will review the risk response mechanism for ppp projects in Chinese investment abroad, the" Belt and Road "dispute settlement mechanism, BITs dispute settlement, and foreign investment in Slovakia. An analysis of several aspects of the legal policy of the country was conducted to find relevant legal issues since the development of the "Belt and Road" initiative and the advantages of Slovak legal policy.

Historical background

The Silk Road was an ancient land-based commercial and trade route that began in ancient China and connected Asia, Africa, and Europe.1 The original role was to transport silk, porcelain, and other commodities produced in ancient China. It later became an economic and political affair between the East and the West. And cultural exchanges.

* Mgr. Zuzana Budiská, Nanjing Normal University, Law School, PhD. Student. Matej Bel University, Faculty of Political Science and International Relations, PhD. Student.

* M.A. Chi Wang, Matej Bel University, Faculty of Political Science and International Relations, PhD. Student.

In 1877, German geographer Richthofen, Ferdinand von wrote in his book China that „from 114 BC to 127 AD, China and Central Asia, China and India, using the silk trade as a medium, The term 'western traffic road' was named 'Silk Road'"[1], and the term was quickly accepted by academics and the general public, and was officially used.

The Silk Road is mainly divided into land silk road and maritime silk road in terms of transportation methods. The Silk Road on the Land refers to the Western Han Dynasty (202-8 B.C.) that Emperor Wu of the Han Dynasty sent Zhang Huan to open the Western Region. Starting from the capital Changan (now Xi'an), it passed through Liangzhou, Jiuquan, Guazhou, Dunhuang and Central Asian countries , Afghanistan, Iran, Iraq, Syria, etc. and reached the Mediterranean Sea, ending in Rome, with a total length of 6,440 kilometers. This road is considered to be the intersection of ancient Eastern and Western civilizations that connected Eurasia, and silk is the most representative cargo.[2] The Maritime Silk Road refers to the maritime passage where ancient China conducted economic and cultural exchanges with the rest of the world. The earliest development also began during the Qin and Han dynasties. Starting from the coastal cities of Guangzhou, Quanzhou, Ningbo, and Yangzhou, the „Maritime Silk Road" for maritime trade from the South Ocean to the Arabian Sea, and even as far as the east coast of Africa.[3]

With the development of the times, the Silk Road became a collective name for all the political, economic, and cultural communication channels between ancient China and the West. In addition to the „Overland Silk Road" and „Maritime Silk Road", there are also „Prairie Silk Roads" that go north to the Mongolian Plateau and then west to the north foot of the Tianshan Mountains to enter Central Asia.

The world is undergoing complex and profound changes. The deep-seated effects of the international financial crisis continue to manifest. The world economy is slowly recovering and development is diverging. International investment and trade patterns and multilateral investment and trade rules are undergoing profound adjustments. The development problems facing countries are still serious. The joint construction of the "Belt and Road" conforms to the trend of world multipolarization, economic globalization, cultural diversification, and social informatization. Adhering to the spirit of open regional cooperation, we are committed to maintaining a global free trade system and an open world economy. The joint construction of the "Belt and Road" aims to promote the orderly and free flow of economic factors, the efficient allocation of resources, and the deep integration of markets, promote the coordination of economic policies among countries along the route, and carry out larger, higher and deeper regional cooperation to jointly create openness.[4] Inclusive, balanced and inclusive regi-

1 GAN, Fuxi: *Ancient Glass Research Along the Silk Road*. Shanghai Institute of Optics and Fine Mechanics, Chinese Academy of Sciences (Ancient Glass Research along the Silk Road, World Scientific ed.). p. 41.

2 VON RICHTHOFEN, *Ferdinand:* „Über die zentralasiatischen Seidenstrassen bis zum 2. Jh. n. Chr"*[On the Central Asian Silk Roads until the 2nd century A.D.] Verhandlungen der Gesellschaft für Erdkunde zu Berlin (in German). 4: pp. 96–122.*

3 XINRU, Liu: *The Silk Road in World History,* New York: Oxford University Press, p. 11.

4 „Maritime Silk Road". *SEAArch*.

onal economic cooperation framework. Jointly building the "Belt and Road" accords with the fundamental interests of the international community, highlights the common ideals and beautiful pursuits of human society, is an active exploration of new models of international cooperation and global governance, and will add new positive energy to the peaceful development of the world.

Co-construction of the "Belt and Road" is committed to the interconnection of Asia, Europe, Africa and the continent, the establishment and strengthening of interconnection and interconnection partnerships among the countries along the route, the establishment of a comprehensive, multi-layered, and complex interconnection network to achieve diversified, autonomous, and Balanced and sustainable development. The "Belt and Road" interconnection project will promote the docking and coupling of the development strategies of the countries along the route, explore the potential of the market in the region, promote investment and consumption, create demand and employment, and enhance people's cultural exchanges and mutual learning of civilizations among the countries along the route. The people meet each other, trust and respect each other, and share a harmonious, peaceful and affluent life[5].

In September and October 2013, Chinese President Xi Jinping proposed major initiatives to jointly build the „Silk Road Economic Belt" and „21st Century Maritime Silk Road" during his visits to Central and Southeast Asian countries.[6] .

China has proposed two major strategies in line with Eurasian economic integration:

1. Strategic conception of the Silk Road Economic Belt;
2. Strategic conception of the 21st Century Maritime Silk Road Economic Belt.

Together they are called the „Belt and Road" strategy.

The Silk Road Economic Belt strategy covers economic integration in Southeast Asia, economic integration in Northeast Asia, and finally merges into Europe, forming a general trend of economic integration in Eurasia. The 21st Century Maritime Silk Road Economic Belt Strategy forms a closed loop at sea and land from the strategy of connecting the three continents of Europe, Asia, and Africa by sea and the Silk Road Economic Belt strategy.

Risk Management and Control Mechanism of Chinese investors' PPP Projects under the "Belt and Road"

PPP (Public Private Partnerships). This government-private partnership is legally in the form of a franchise. [7] In 2015, China has become the second largest investor in the world, with total foreign investment of US $ 145.6 billion.[8] There are two main types of cooperation models for PPP projects. The first type is contract-type PPP, including franchise agreements, BOT (Build Operate Transfer), BOO (Build Own Ope-

5 „Chronology of China's Belt and Road Initiative". *China's State Council*.

6 Correct understanding of the Belt and Road, people.com. cn, Retrieved 26 February, 2018.

7 SUN, Nanshen: Foreign investment PPP project under the "Belt and Road": risk management mechanism, Law and Modernization, phase 3, Nanjing Normal University Press Co., Ltd., 15, June, 2018, p.32.

8 "China Outbound Investment Development Report", 2016, http://coi.mofcom.gov.cn/article/y/gnxw/201703/20170302539619.shtml,

rate), and so on. The second type is corporate PPP. The government and investment company jointly form a PPP project company (SPC, Special Purpose Company). The main risks of foreign investment PPP projects are divided into commercial risks and non-commercial risks. Business risks include risks caused by one party in investment transactions (credit risk, default risk, tort risk, etc.), and experience and environmental risks also need to be paid attention to (such as: natural risk, foreign exchange risk, market risk, etc.)

China Export Credit Insurance Corporation can provide insurance products such as exchange restriction insurance, levy insurance, war riot insurance, and government default insurance for Chinese companies‘ foreign investment PPP projects.[9] For example, in 2011, Libya sent war, and China Credit Insurance Company paid a total of USD 134 million in compensation. The second is that investment insurance can be sought through the Multilateral Investment Guarantee Convention (MIGA). As of 2015, MIGA has signed nearly 1,300 risk guarantee contracts with international investors. Supported approximately 800 international investment projects.[10]

When PPP projects violate the law, international arbitration is a way to resolve disputes. Bilateral Investment Treaty (BITs) and Convention on the Settlement of Investment Disputes Between States and Nationals of Other States are the basis for resolving Chinese companies‘ overseas investment disputes. International investment arbitration is the main way to provide relief for investors‘ political risk losses. Investors and host countries generally agree on the International Dispute Resolution Center established by the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States to resolve disputes between investors and host countries.

Therefore, Chinese companies should use international investment arbitration rules to protect their rights when conducting overseas investment interviews with risks and disputes.

Issues in dispute resolution in BITs

BITs are international investment fields that provide two parties with substantial restrictions and protection in international investment activities in the form of bilateral investment agreements.

Not only is China one of the most important host countries in the world, but it has also become the world‘s most important foreign investment country. According to the number of BITs signed by China and foreign countries announced by the Ministry of Commerce of China, since the 1980s, the Chinese government has signed bilateral investment agreements with 104 countries around the world.[11]

---

9 SUN, Nanshen: Foreign investment PPP project under the “Belt and Road”: risk management mechanism, Law and Modernization, phase 3, Nanjing Normal University Press Co. Ltd., 15, June, 2018, p. 36.

10 YIN, Yiwen: “China‘s Direct Investment in the Middle East under the Belt and Road Initiative: Strategic Significance, Political Risks and Countermeasures”, phase 4, Internationl Trade, 2017.

11 “List of China‘s Signed Bilateral Investment Agreements”, http://tfs.mofcom.gov.cn/article/Nocategory/201111/20111107819474.shtml, Retrieved 10, March, 2018.

BITs contain very important dispute settlement clauses because they have the right to bring international arbitration and protect their legitimate rights and interests for certain types of investment disputes between investors and the host country.

According to relevant statistics of the International Center for Settlement of Investment Disputes (ICSID), 658 cases have been handled and accepted by ICSID, and 417 arbitral tribunals have rendered decisions. Understanding and improving BITs between contracting states is of great significance to China‘s investment in the “Belt and Road” countries. Based on the laws of different countries based on existing BITs political risks and other factors have improved the dispute settlement clause.

Laws and regulations on foreign trade and investment of Slovakia

What protection policies does Slovakia have for Chinese companies‘ investment cooperation?

China and Slovakia signed a bilateral investment protection agreement. In December 1991, it signed the Agreement on Investment Protection between the People‘s Republic of China and the Czechoslovak Federal Republic with the former Czech Republic.[12] In December 2005, China and Slovakia signed an investment. Additional Protocol to the Protection Agreement. China and Slovakia signed a Double Taxation Agreement In June 1987, the Agreement between the People‘s Republic of China and the Czechoslovak Republic on the Avoidance of Double Taxation was signed with the former Czech Republic. Other Agreements Signed by China and Slovakia in February 1994, the two sides signed the „Government Economic and Trade Agreement“ and in 2004 it was amended to the „Government Economic Cooperation Agreement.“ Other economic and trade agreements signed by China and Slovakia include: Animal Quarantine and Animal Health Agreement (February 2001); Cooperation Agreement on Plant Quarantine and Plant Protection (February 2001); Cooperation Agreement on Information and Communication (December 2005). In addition, the two countries have signed cooperation agreements and agreements on customs affairs cooperation agreements, technical standardization, measurement and quality control cooperation agreements. Other related protection policies in 1994, a joint committee of intergovernmental economic cooperation between China and Slovakia (the “Association”) was established. The Board provided a platform for bilateral consultations to resolve problems arising in the process of investment and trade, and played an active role in promoting bilateral investment and trade facilitation

Slovakia local laws and regulations on the protection of intellectual property The Slovak government attaches great importance to the protection of intellectual property rights and is a signatory to many multilateral and bilateral intellectual property protection agreements. Slovak law protects patents, trademarks, registered designs, copyrights and trade secrets. The main laws protecting intellectual property rights are the Law on Inventions, Industrial Design and Rationalization, adopted on November 27, 1990, the Act No. 55/1977, adopted in 1997, and Act No. 577/2001 and Act. No.14/2004 Amendment Act. Technology inventions that have innovative steps and can be used for industrial applications can be patented. To be protected, patents must

12 Ibidem.

be registered with the Slovak Industrial Property Office (www.upv.sk) or the European Patent Office. The patent protection period is 20 years. Registration is required at the Slovak Industrial Property Office, the International Bureau of the World Intellectual Property Organization or the European Internal Market Coordination Bureau. The trademark protection period is 10 years and can be extended. Registration is required at the Slovak Industrial Property Office or the European Internal Market Coordination Bureau. The protection period is 5 years and can be extended, but the maximum period is no more than 25 years. The Slovak Copyright Act protects the author‘s creative literary, artistic and scientific works. Copyright does not require registration. Copyright is protected during the lifetime of the author and 70 years after his death. Trade secrets refer to potentially valuable trade, manufacturing, and technical information that is generally not available to businesses in their industries. If no corporate authorized trade secret is disclosed, the company may require the public information to compensate for the loss. There are no specific time limits for trade secrets. As long as the trade secret exists, it is protected. Relevant penalties for intellectual property infringement In the event of intellectual property infringement, the intellectual property owner has the right to claim compensation from the infringer. In addition to matters authorized by the Slovak Industrial Property Office by law, disputes over intellectual property rights are determined by the court or relevant arbitration agency. Persons without a permanent residence in Slovakia and without a headquarters enjoy the same rights as Slovak citizens and perform the same obligations.

What are the main ways to resolve business disputes in Slovakia and which country laws apply?

According to the local laws of Slovakia, commercial disputes can be resolved through consultation, mediation, litigation, arbitration and other means. If the lawsuit is passed, the parties may agree in advance on the applicable law in the contract, including the permanent residence of the parties, the place where the dispute occurred, the location of the contract or other third country law; if the contract has no dispute resolution and the law applicable provisions and the parties cannot agree afterwards, The law of the place where the court is located may be applied. The parties may also request international arbitration or off-site arbitration upon negotiation.

What are the main laws related to investment cooperation?

Slovakia Commercial Code (Commercial Code No. 513/1991) and its amendments. The types, procedures and requirements for companies registered in Slovakia are specified.[13] The Investment Incentive Act (Act 561/2007 Coll.) is Slovakia‘s leading investment guidance and preferential policy framework, detailing incentives for domestic and international investors. The Government Draft Act of 29. 10. 2007 on Investment Aid and Amendments to Certain Acts provides areas for investment incentives in Slovakia, the proportion of state funding, funding methods, application methods and procedures.[14] Income Tax Law (No. 595/2003 on Income Tax). Corporate and personal income tax and payment methods are stipulated. Labor Law (Act

13 http://www.sario.sk, Restrieved September, 2018.

14 http://www.sario.sk, Restrieved September, 2018.

No. 311/2001 Coll) and its amendments. It stipulates employment relationships, work and rest time, wages and average income, labor protection, corporate social security policies, and damages.

Conclusion

Through this article, we can discover the legal risks and dispute settlement approaches faced by Chinese companies investing in the "Belt and Road" countries. Slovakia, as an European country with a developed rule of law, has foreign investment laws and policies that are very conducive to Chinese companies' investment in Slovakia. Studying the bilateral investment protection agreement signed between China and Slovakia will help Chinese investors reduce investment risks and abide by local laws while maintaining their legitimate rights and interests. Therefore, Slovakia, as one of the first European countries to sign the „Belt and Road" cooperation memorandum with China, advantageous legal environment and favorable conditions of Slovakia are good advantages for Chinese investors to invest in Slovakia.

Bibliography:

– GAN Fuxi: Ancient Glass Research Along the Silk Road. Shanghai Institute of Optics and Fine Mechanics, Chinese Academy of Sciences (Ancient Glass Research along the Silk Road, World Scientific ed.) ISBN 978-981-283-356-3.
– SUN, Nanshen: Foreign investment PPP project under the "Belt and Road" risk management mechanism, Law and Modernization, phase 3, Nanjing Normal University Press Co., Ltd., 15, June, 2018, p.32–36.
– VON RICHTHOFEN, Ferdinand: „Über die zentralasiatischen Seidenstrassen bis zum 2. Jh. n. Chr"[On the Central Asian Silk Roads until the 2nd century A.D.]. *Verhandlungen der Gesellschaft für Erdkunde zu Berlin* (in German). No. 4, pp. 96–122.
– YIN, Yiwen: "China's Direct Investment in the Middle East under the Belt and Road Initiative: Strategic Significance, Political Risks and Countermeasures"，phase4, Internationl Trade, 2017.
– XINRU, Liu, The Silk Road in World History. New York: Oxford University Press.
– „Xi in call for building of new ‚maritime silk road'". *China Daily*. Archived from the original on 2 March 2017. Retrieved 16 April 2015.
– „Maritime Silk Road". SEAArch. Archived from the original on 2014-01-05.
– "List of China's Signed Bilateral Investment Agreements", http://tfs.mofcom.gov.cn/article/Nocategory/201111/20111107819474.shtml, Retrieved 10, March, 2018.
– „Chronology of China's Belt and Road Initiative". China's State Council. Retrieved 23 September 2018.
– "China Outbound Investment Development Report", 2016, http://coi.mofcom.gov.cn/article/y/gnxw/201703/20170302539619.shtml, Retrieved 25, April, 2018.
– Correct understanding of the Belt and Road, people.com. cn, Retrieved 26 February, 2018.

Summary: Factors Influencing Chinese Investment under the "Belt and Road"：Legal Advantages of Foreign Investment in Slovakia.

This article mainly studies the trade and investment issues between China and Slovakia under the "Belt and Road" initiative. This article first introduces the historical background of the "Belt and Road" initiative and the bilateral relationship between China and Slovakia. Secondly, it analyzes Risk Management and Control Mechanism of Chinese investors' PPP Projects under the "Belt and Road". Then it analyzed issues in dispute resolution in BITs. Finally this article introduced laws and regulations on foreign trade and investment of Slovakia.

It can be concluded from the research in this article that China's investment in the "Belt and Road" countries still has high risks. China should reduce the risk of overseas investment through Bilateral Investment Treaty (BITs) and the establishment of Risk Management and Control Mechanism. Slovakia is a European country along the "Belt and Road". Slovakia has favorable laws and policies for foreign investment in Slovakia. Understanding the laws and policies of Slovakia is an important factor in attracting Chinese investment.

Mgr. Zuzana Budiská
Nanjing Normal University
Law School
No.1 Wenyuan Rd. Xingmin Building
Nanjing
China
e-mail: zuzanabudiska@qq.com
University of Matej Bel
Faculty of Political Science and International Relations
Kuzmányho 1
974 01 Banská Bystrica
Slovak Republic
e-mail: zuzana.budiska@umb.sk

M.A. Chi Wang
University of Matej Bel
Faculty of Political Science and International Relations
Kuzmányho 1
974 01 Banská Bystrica
Slovak Republic
e-mail: chi.wang@umb.sk