

# International Law Research on China's Outward Foreign Direct Investment Under the Belt and Road Initiative

Yuan Wang<sup>1</sup>

<sup>1</sup> Institute for International Studies, Wuhan University

Correspondence: Yuan Wang, Institute for International Studies, Wuhan University.

Doi:10.56397/LE.2022.09.07

## Abstract

Taking the Belt and Road Initiative as the background, this paper explores the general situation and concentration of China's direct investment in countries along the Belt and Road. At the same time, under the "One Belt and One Road" Initiative, China's overseas investment is facing many risks, the current legal security system is difficult to adapt to the "One Belt and One Road" investment requirements, this paper further analyzes the "One Belt and One Road" Initiative, China's foreign investment will face international law issues and related countermeasures.

**Keywords:** Belt and Road Initiative, overseas investment, international law

## 1. Overview of China's Outward FDI Under the Belt and Road Initiative

Since China first proposed the Belt and Road Initiative in 2013, China has reached a new level of opening-up, and its direct investment in countries and regions along the Belt and Road has been expanding.

### 1.1 A General Overview of China's Outward FDI Along the Belt and Road Initiative

By analyzing the flows of China's investment in countries along the Belt and Road from 2013 to 2020 in Figure 1, it can be seen that the flows of China's direct investment in countries along the Belt and Road shows an overall increasing trend. However, the growth rate of China's investment in "One Belt and One Road" countries is unstable. In terms of the proportion of total outward investment, China's direct investment in countries along the "Belt and Road" accounted for 11.7% of total outward investment flows in 2013 to 14.7% in 2020, with a relatively small increase, and the proportion of total outward investment was still relatively low.

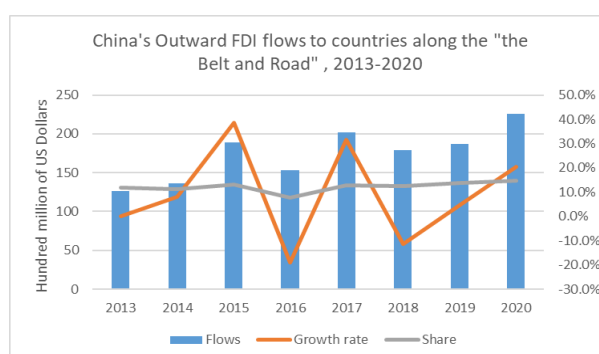


Figure 1. China's Outward FDI flows to countries along the "the Belt and Road" from 2013 to 2020

Data source: Calculated from the flows statistics in the Statistical Bulletin of China's Outward Foreign Direct Investment (2013-2020)

### 1.2 Analysis of the Concentration of China's OFDI Along the Belt and Road Initiative

From 2013 to 2020, China's investment in countries along the Belt and Road was relatively concentrated. According to Table 2, most of the top 10 countries are located in Southeast Asia, followed by Russia in Europe, the United Arab Emirates in West Asia and Pakistan in South Asia. By analyzing the geographical characteristics of the ten countries along the route, it is found that they are all close to China, with a high degree of openness and a close political connection with China.

Table 1. Top ten investment stocks of China in countries Along the Belt and Road from 2013 to 2020

		2013	2014	2015	2016	2017	2018	2019	2020
Top 10 countries		Singapore	Singapore	Singapore	Singapore	Singapore	Singapore	Singapore	Singapore
		Russia	Russia	Russia	Russia	Russia	Russia	Indonesia	Indonesia
		Kazakhstan	Kazakhstan	Indonesia	Indonesia	Indonesia	Indonesia	Russia	Russia
		Indonesia	Indonesia	Kazakhstan	Laos	Kazakhstan	Malaysia	Laos	Malaysia
		myanmar	Laos	Laos	Kazakhstan	Laos	Laos	Malaysia	Laos
		Mongolia	myanmar	The united Arab emirates	Vietnam	Pakistan	Kazakhstan	The united Arab emirates	The united Arab emirates
		Iran	Mongolia	myanmar	The united Arab emirates	myanmar	The united Arab emirates	Kazakhstan	The united Arab emirates
		In Cambodia,	Pakistan	Pakistan	Pakistan	In Cambodia,	In Cambodia,	Thailand	Vietnam
		Laos	Iran	India	myanmar	The united Arab emirates	Thailand	Vietnam	In Cambodia,
		Thailand	India	Mongolia	Thailand	Thailand	Vietnam	In Cambodia,	Pakistan
Amou nt	Top 10 countries	518.12	664.76	844.95	906.88	1106.15	1251.13	1323.59	1502.22
	B&R Countries	707.46	902.83	1111.30	1243.90	1494.56	1667.83	1726.29	2007.90
	Share	73.2%	73.6%	76.0%	72.9%	74.0%	75.0%	76.7%	74.8%

Data source: Calculated from the stock statistics in the statistical bulletin of China's Outward Foreign Direct Investment (2010-2020)

## 2. International Law in the Belt and Road Initiative

In terms of the international environment for outward investment, the above analysis shows that China's outward investment under the Belt and Road Initiative is deepening. However, in the process of investment along the "Belt and Road", it will also face a variety of high-risk environment and investment barriers.

Most of the regions along the Belt and Road are developing countries. On the one hand, they need to introduce foreign investment, especially investment in infrastructure construction. As most of the Asian and African countries along the Belt and Road are relatively backward in infrastructure construction, weak in comprehensive strength and relatively poor, it is difficult to solve the funding problem of infrastructure construction along the Belt and Road. Therefore, we need to give full play to the role of the AIIB in providing financial support. The main business of the AIIB is to make loans and investment in selected investment projects, which are aimed at assisting countries in the Asia-Pacific region in infrastructure construction. Infrastructure construction projects in the Asia-Pacific region invested by AIIB can be included in the Belt and Road investment category (Zhao Zhao, 2015). In addition, other international financial facilities can also be supported. For example, in April 2015, the

Silk Road Fund started its first project in the “the Belt and Road” investment, the Pakistan karot hydropower station, which will also provide investment and financing support for infrastructure construction, resource development and other projects related to connectivity in countries along the “the Belt and Road”.

On the other hand, due to the unstable political situation and unsound legal system, Chinese investors often have to bear greater legal and political risks (Xing Gang, 2017). For example, Central Asia and the Middle East, where investments are made along the route, are exposed to various high risks, such as being vulnerable to regime change and even international sanctions in some countries. In order to prevent these risks, we must first fully understand and assess the possibility of various legal risks. It is necessary to establish a risk assessment mechanism for overseas investment of the “Belt and Road” Initiative, regularly publish overseas investment risk reports, grade various types of legal risks in different countries and regions, and carry out different degrees of risk management. Second, the relevant clauses of the “Belt and Road” investment contract should be improved, the risks such as unrest and political changes of the host country should be written into the force majeure clause in the investment contract, and the specific requirements of exemption from liability of the force majeure clause should be explicitly invoked, so as to enhance the predictability and stability of the application of the force majeure clause (Gong Bohua, He Li & Chen Li, 2019). Third, we should actively use the insurance mechanism for overseas investment. China should establish a bilateral insurance mechanism for overseas investment, and make full use of the role of the Seoul Convention and the Washington Convention in guaranteeing our overseas investment (Wu Zhi, 2002). Fourth, we need to work together to establish an overseas investment dispute settlement mechanism. The establishment of the investment dispute settlement mechanism under the Belt and Road Initiative should respect the will of other countries, and on this basis ensure diversified dispute settlement methods, and promote the reform of the international ISDS mechanism to safeguard the legitimate rights and interests of Chinese enterprises investing overseas (Wang Xiangxiu, 2020).

In addition, the problem of overseas investment barriers faced in traditional overseas investment is also an important problem that restricts domestic enterprises' overseas investment (Zhao Yuxue, 2018). We should change from passively conducting investment barrier investigation to actively conducting routine analysis and investigation on the laws of the host country, forming investment barrier reports and conducting daily and early prevention, which will help Chinese investors predict and reduce risks in advance. In the process of concluding bilateral investment treaties with foreign countries, we should try our best to refine the rules, improve the relevant treaty provisions, and reduce the opportunity for the host country to set up investment barriers by using the treaty gaps (Wang Yan, 2018). In the past, due to lack of experience, China's relevant treaties on investment lack of supplementary explanations on special issues, often leave room for investment barriers and set up investment barriers that are not conducive to Chinese enterprises. Therefore, now we should pay attention to the more detailed expression of the rules, more strict terminology, and try to avoid the ambiguity setting.

In general, under the Belt and Road Initiative, China's overseas investment is developing more rapidly, and in the future, Chinese enterprises and financial institutions will continue to maintain the trend of “going out”. In this process, Chinese investors are bound to face a series of risks due to the imperfect overseas investment guarantee mechanism and the complex and changeable investment environment of countries along the Belt and Road. Therefore, we need to think and study from the perspective of international law, in order to face the complex environment and traditional investment barriers and other problems, in order to speed up the pace of China's “going out”.

## References

- Zhao Zhao. (2015). The AIIB is an important pillar of the “the Belt and Road” strategy. *International Finance*, (05), pp. 23-25.
- Xing Gang. (2017). Research on legal issues of unilateral change of government contract in PPP projects under the background of “the Belt and Road” construction. *Oriental Law*, (6), p. 10.
- Gong Bohua, He Li, Chen Li. (2019). The international law of investment in the “the Belt and Road”. *Shanghai Law Research* (Volume 4 of 2019), pp. 21-90. [publisher unknown].
- Wu Zhi. (2002). Legal thinking on establishing China's overseas investment insurance system. *Modern Law*, 24(5), p. 4.
- Wang Xiangxiu. (2020). On the construction of investment dispute settlement mechanism under the “the Belt and Road” initiative. *Northeast Asia Forum*, 29(4), p. 13.
- Zhao Yuxue. (2018). *Research on the improvement of the legal guarantee of China's foreign investment under the “the Belt and Road” initiative (Master's thesis)*. East China University of Political Science and Law.
- Wang Yan. (2018). China's policy on the discourse construction of the “the Belt and Road” free trade agreement. *Law*, (2), p. 13.

**Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).