



# China's Foreign Investment Law and Its Relevance to the Sino-Foreign Energy Cooperation in the BRI Context

P r o f e s s o r   o f   L a w  
D e a n ,   S c h o o l   o f   I n t e r n a t i o n a l   L a w  
C h i n a   U n i v e r s i t y   o f   P o l i t i c a l  
S c i e n c e   a n d   L a w

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# **INTRODUCTION**

# INVESTMENT OPPORTUNITY AND ENERGY-SECURITY



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# ENERGY SECURITY

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In 2018, China's oil consumption was as high as 648 million tons, of which only 189 million tons were produced in our own oil fields, and the other 4.619 tons were imported from abroad.

# ENERGY SECURITY

The composition of the country of origin of oil imports. The first large number is Angola, accounting for 19.2%. The second largest is Saudi Arabia, accounting for 17.1%. The third large amount came from Iraq, accounting for 14.1%. The fourth largest is Russia, accounting for 9.5%. The fifth is Oman, accounting for 8.8%.

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# ENERGY SECURITY

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No matter whether it imports oil from Africa or from the Middle East, oil tanks must pass through the Straits of Malacca, which is in the hand of Singapore, a pro-US country.



# Importance of Energy Cooperation in BRI



The significance of the port of Gwadar, Pakistan, and the Kyau Kpyu port of Myanmar





# Importance of Energy Cooperation in BRI



Significance of Sino-Kazakhstan oil pipeline, Central Asian oil and gas pipeline, Sino-Russian oil and gas pipeline

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# Importance of Energy Cooperation in BRI

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Turkmenistan, a permanent neutral country, rich in oil and gas resources, with 12 billion tons of proven oil reserves. Its proven natural gas storage accounts for 10% of the world's total.

Kazakhstan, where the Sino-Kazakhstan oil and gas pipeline goes, has 4.8 billion to 5.9 billion tons of proven oil reserves and 3.5 trillion cubic meters of proven natural gas reserves.

# Domestic Exploitation of Oil and Gas



"Intensifying oil and gas exploration and development efforts, mainly to reduce China's dependence on foreign oil supply, and to ensure national energy security

# —— Opportunity for Investment in Energy —— and Energy-related Infrastructures

The energy investment in 2015 was RMB3.2564 trillion yuan,  
a 7.16-fold increase over 2000

Pump of gigantic investment into energy exploration and  
exploitation at home and abroad.

Foreign investment on energy needed

# Channels for Foreign Energy Investment

Establishment of foreign-invested energy company in China for the China market

Establishment of consortium with Chinese energy firms targeting BRI countries

# — **Calling for Foreign Investment-friendly Climate**

A high-standard and investment-friendly law is needed



# **The Foreign Investment Law and Its Preliminary Interpretation**



# Introduction of the Foreign Investment Law

The Foreign Investment Law of the People's Republic of China was adopted by the National People's Congress on March 15, 2019 and will come into effect on 1 January 2020.

## Introduction of the Foreign Investment Law

As a unified code governing foreign investment, the law constitutes the basic law for foreign investment in China.

# Introduction of the Foreign Investment Law

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The Foreign Investment Law focuses on the promotion, protection and management of foreign investment.

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# PURPOSE

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01

To maintain a policy of high-level investment liberalization and facilitation

02

To establish and improves a mechanism for foreign investment promotion

03

To create a stable, transparent, predictable and fair market environment.

# TOOLS



01

By maintaining a system of pre-establishment national treatment plus a negative list management for foreign investment

02


By restating protection of foreign investors



## General Provisions



Surprisingly, ensuring workers the right to association  
(trade union) in FIEs





## General Provisions

Intriguingly, identifying two departments responsible for foreign investment promotion, protection and management

Leaving a leeway for a unified law for investment



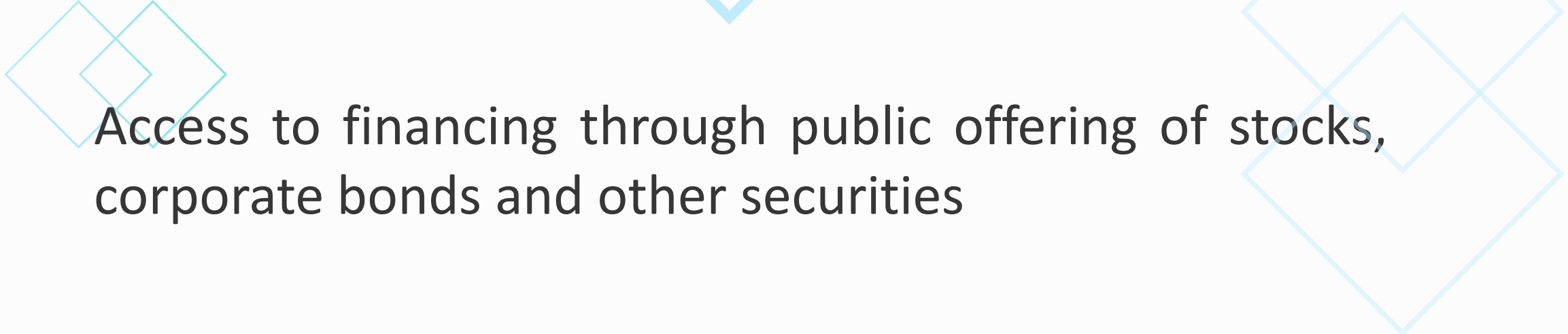
# Foreign Investment Promotion



# Investment Promotion

- Underlying national treatment:
  - Equal access to the State support policies
    - Access to make comments on foreign investment-related rule-making + transparency of normative documents
  - Equal access to the standard-setting work
    - Equal access to government procurement through fair competition

# FOREIGN INVESTMENT



Access to financing through public offering of stocks, corporate bonds and other securities

# Investment Promotion

- Establish a system serving foreign investment and a cooperative network
- Establish special economic zones with preferential policies for foreign investment, when needed
  - Provide incentives to guide foreign investment

# Investment Promotion



Disciplines on government in rule-making on foreign investment promotion



Disciplines on government in streamlining administrative procedures



# Foreign Investment Protection



# Investment Protection

Non-expropriation: The State shall not expropriate foreign investors' investment in general, and if under special circumstances an expropriate or requisition is necessary as per the requirement of public interests, it should be taken according to statutory procedures with a timely, fair and reasonable compensation. This is a continuation of the basic position taken by the Three FIE Laws.



# Investment Protection

Free Cross-border Fund Flow: The contribution, profit, investment returns, compensation and indemnity made or obtained by foreign investors can be remitted outside or inside China in RMB or foreign currency freely according to law.

# Investment Protection



Intellectual Property Protection: The State protects intellectual property rights of foreign investors and FIEs and the government shall not force technology transfers.

# Investment Protection

Governmental

Official's

Confidentiality

Obligations: Governmental departments and their officials shall keep confidential the trade secrets of FIEs they learn about in the course of performing their duties.

# Investment Protection

Restrictions on the government's power: The governments at all levels shall not formulate any rules that may impair FIEs' legitimate rights and interests or increase their obligations, set any market access or exit conditions or otherwise intervene their ordinary operation. The new law also stipulates that local governments shall fulfill their policy promises and all types of legal contracts with FIEs, otherwise, FIEs shall be compensated for their losses.

FIEs complaints mechanism. The State shall establish a complaint mechanism for FIEs and timely handle problems encountered by FIEs or their investors.

# Foreign Investment Management



# Investment Management

Organizational governance: The Company Law or the Partnership Enterprise Law shall apply with respect to an FIE's organization. This will put an end to the confusion caused by the discrepancies between the Three FIE Laws and the Company Law.

# Investment Management

Information report system:

The State shall establish a foreign investment information report system. Foreign investors or FIEs shall submit investment information to the competent department for commerce through the enterprise registration system and the enterprise credit information publicity system. The content and scope of information subject to the reporting obligations shall be determined under the principle of necessity.

# Investment Management

National security review system: The State shall establish a security review system for foreign investment, under which a security review shall be conducted for any foreign investment affecting or having the possibility to affect the state security.



# Investment Management

In addition to the above, FIEs shall also be subject to the laws and regulations relating to anti-trust, taxation, accounting, foreign exchange, employee protection, social insurance contribution, etc.. These laws and regulations are in general applied equally to FIEs and pure domestic enterprises.



# **Initial Assessment of the Implications of the Law for Energy Investment**

# Implications



It is certain that with unified provisions for the entry, promotion, protection, and management of foreign investment, the law will provide stronger protection and a better business environment for foreign energy investors.

# Implications

Conducive to expanding joint ventures in the upstream of oil and gas industries

Article 19 of the Foreign Investment Law stipulates that the people's governments at all levels and their relevant departments shall further improve the level of foreign investment services in accordance with the principle of convenience, efficiency and transparency.

# Implications



Under a document of the State Council released on February 27 2019, no approval is needed for the overall development plan of external cooperation projects in the oil and gas (including CBM).

# Implications

Shift from the examination and approval system to the mere case filing is in line with the common aspirations of both Chinese and foreign parties, and is of great significance for attracting energy investment and improving the efficiency of cooperation.

# Implications

Further relaxation of requirements on market access for oil sales

The 2018 edition of the "Special Management Measures for Foreign Investment Access (Negative List)" clarifies that since July 28, 2018, the restriction has been removed while previously entities having more than 30 gas stations shall be controlled by Chinese parties. As of the end of 2017, there were about 100,000 gas stations nationwide.

# Implications

Among them, PetroChina has about 22,000 gas stations, accounting for 21.38%; Sinopec has about 31,000 gas stations, accounting for 31.61%; other social gas stations are 45,500.



# Implications

Shell plans to expand its current gas stations in China from 1,300 to 3,500 in 2025; BP plans to add 1,000 from the existing 740 gas stations in the next five years.

Foreign capital is expected to continue shifting to the upstream of the industrial chain and helping promote the opening-up of the entire oil and gas industry. With a variety of choices to be provided, the oil sales business of state-owned oil companies will face more intense market competition.

# Implications



The right to shale oil and gas mining open to foreign investment

The 2018 edition of the Special Management Measures for Foreign Investment Access (Negative List) limits the oil and gas industry to exploration and development.

# Implications

The list stipulates that the exploration and development of oil and natural gas (excluding coalbed methane, shale oil, oil sands, shale gas, etc.) is limited to joint ventures and cooperation. Other business outside capital the list is fully open to foreign.

# Implications

Article 16 of the “Measures for the Administration of Mining Rights Transfer”, establishes the right of foreign investment in exploration and mining of mineral resources, as well as exploration and mining in nationally planned mining areas of great value to the national economy, while subject to examination and approval.

# Implications



Likely, in 2019 edition, shale oil, oil sands, and shale gas ore rights will be fully open to foreign investors and become a key area for opening up to the upstream sector.

# Implications



The breadth of external cooperation is further expanded

At present, the main legal basis for China's oil and gas external cooperation is the Regulations on Cooperation and Exploitation of Onshore Petroleum Resources and the Regulations on Cooperation and Exploitation of Offshore Oil Resources (the “Regulations”).

# Implications

At the centre is the operation mode: “the state-owned enterprise is responsible for franchising state-owned resources”.

As a basic law, the Foreign Investment Law implements the principle of national treatment for foreign investors in a more open manner.

The Regulations need to be changed.

# Implications

The Regulations established a system of compulsory transfer of assets and big data ownership. Has to be changed to be in line with provisions of the Foreign Investment Law concerning forced technology transfer intellectual property rights protection, and the reporting obligations of foreign parties.

Thus helping ensure the stability and continuity of oil and gas external cooperation contracts.



# Implications

The principle of fairness and openness established by the Foreign Investment Law, as well as the promotion and protection of foreign capital, will certainly attract foreign investment into the oil and gas industry.

# Implications

At present, the product sharing contract applicable to China's oil and gas external cooperation attaches more emphasis to control and participation than the mining tax contract.

The "Regulations" focuses on management and control. Over the years, domestic and foreign cooperation oil and gas contracts facilitate the control of the implementation by the Chinese party while pose constraints to the foreign party.

# Implications

With the unfolding of the Foreign Investment law and the actual needs of the country to increase oil and gas production, the oil and gas cooperation is expected to be adjusted from Chinese control to win-win situation.

# Implications



The Foreign Investment Law highlights the will to carry out reform and opening up, and demonstrates the positive opening of China in the new era, which will provide stronger legal guarantees for promoting a new round of high-level opening in energy cooperation as well.



**THE END  
THANK YOU!**