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Chinese FDIs under the One Belt One Road Initiative: Kazakh law aspects and perspectives

Kazakhstan: the "buckle" in One Belt One Road (OBOR)

Kazakhstan has high ambitions in OBOR as it is geographically an ideal junction between China and the West and its interest in OBOR is indisputable – with Kazakh government already being involved in Nuryly Zhol (Path of Light), a \$9 billion domestic economic stimulus plan to develop and modernize roads, railways, etc.

Kazakhstan's economy has been suffering from oil prices decline since late 2013 and Kazakhstan's future economic growth, therefore, depends on the development of infrastructure and regional trade. The country aims to become the largest business and transit hub of the Central Asia region, a bridge between Europe and Asia. It considers China's One Belt, One Road (OBOR) initiative as a mean to this end.

A Chinese investor planning an energy project in Kazakhstan, as in any other emerging nation, will face an unsettled legal and regulatory environment, the continuity of existing laws and enforceability of contracts. Uncertainty regarding enforceability of international arbitration clauses in disputes with quasi-sovereign entities and/or state bodies because of the recently adopted Arbitration Law, in particular, poses particular risks to foreign investors.

Major Chinese energy FDIs made in Kazakhstan so far, therefore, can be distinguished by specific approaches which the Chinese investors take in terms of obtaining additional legal protections in one form or another, which otherwise are not provided for in the general law. For instance, just to make Kazakhstan - China Oil Pipeline and Central Asia - China Gas Pipeline projects bankable, unprecedented international treaties between the Republic of Kazakhstan and the PRC have been signed and ratified by the Parliament of Kazakhstan, that created specific legal frameworks for these particular two projects, that prevail over any conflicting Kazakhstan legislation. An international treaty is, therefore, proved to be one of the possible ways for Chinese FDIs in energy sector to obtain specific covenants from the Kazakh Government, that are not available under Kazakh law. We believe, however, that such unique foreign investment model could prove problematic and not acceptable for Kazakhstan if expanded for implementation of all energy investments under the OBOR initiative.

Kazakhstan's climbed the World Bank's Ease of Doing Business index and is now ranked 35th. and the Bank ranks it as one of the 20 most attractive countries in the world for investors. With the intention of promoting industrialization and diversification of Kazakhstan's economy, the law in Kazakhstan provides a system of benefits and preferences (e.g. tax and customs duties exemptions) which supports direct investments in certain areas, that include, among others, manufacture of refined petroleum products, as well as generation, transmission and distribution of electric power. In 2015 the PPP Law has also been adopted and public-private partnerships can now be used to implement projects under the PPP Law framework in any sector of the economy, including oil&gas, electric power, though declared priorities are education, healthcare, transport, power industry and housing and public utilities.

Chinese energy FDIs under the OBOR initiative, therefore, may and shall be implemented under the general legislation framework, that is already very investor friendly.

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Shaimerden Chikanayev is a partner in GRATA's banking and finance group. Shaimerden received his LLM from Duke University School of Law (USA), his specialist degree (JD equivalent) in law from the Eurasian National University Faculty of Law (Kazakhstan), and completed a non-degree course of studies for foreign diplomats at the China Foreign Affairs University (PRC). He has been admitted to practice in Kazakhstan since 2003 and passed exams at the Ministry of Justice of Kazakhstan to be a notary and an advocate. Shaimerden Chikanayev has over 10 years of experience in the Kazakh legal services market as well as experience in matters dealing with the former Soviet Union and Mongolia. Prior to joining GRATA International, he worked as an associate in the Almaty office of international law firm Dewey & Leboeuf and as an associate of the Office of the General Counsel in the London office of the European Bank for Reconstruction and Development. Shaimerden focuses his practice on infrastructure and PPP (public-private partnership) projects, a wide range of finance and M&A transactions, including project finance and capital markets, workouts and restructurings in many industries.

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