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China's Belt and Road initiative in Kazakhstan and opportunities for Islamic finance

Kazakhstan has high ambitions in China's Belt and Road initiative (BRI) as it is geographically an ideal junction between China and the west. There may, however, be some roadblocks for the BRI's projects in Kazakhstan. It is therefore important to examine past experiences in order to be able to predict what legal challenges may await Chinese investors when they engage in business with Kazakhstan.

In June 2005, when PetroKazakhstan, a Canadian oil company that has all its business focused on Kazakhstan, announced that it had been approached for a possible takeover by, among others, China National Petroleum Corporation (CNPC), the government of Kazakhstan announced that it would demand the right to acquire PetroKazakhstan prior to any merger or acquisition, because, evidently, it was an issue of energy security for Kazakhstan. Kazakh laws at that time did not require CNPC to seek any prior consent from the government of Kazakhstan to proceed with the transaction and, therefore, CNPC initially tried to ignore the position of the Kazakh government and entered its bid to acquire 100% of the shares of PetroKazakhstan in August 2005. Kazakh authorities immediately took action, devising controversial amendments to relevant legislation with the parliament of Kazakhstan approving the changes in record time and the legislative amendments taking legal effect by the 17th October 2005, just one day before PetroKazakhstan's shareholders were scheduled to vote in Canada on the deal with CNPC.

The amendments gave the government of Kazakhstan pre-emption rights (aka 'Droit du seigneur') in sales of foreign-held stakes of a parent company of a Kazakh entity and allowed the government to intervene in all similar deals in the future. As result, CNPC, which before this was keen to reject all offers of the government of Kazakhstan, had to agree to sign an MoU with the state-owned KazMunaiGas (KMG) and sell back 33% of the shares of PetroKazakhstan to KMG, a transaction which was completed on the 5th July 2006. The PetroKazakhstan case study proves, therefore, that Kazakhstan is ready to take on drastic measures if national security is at stake and if there are risks that the country's sovereignty could be eroded.

The BRI provides a unique opportunity for Kazakhstan to attract Chinese money and technology and become one of the largest transit hubs in Eurasia. There is no doubt, therefore, that Kazakhstan has a chance to become the best country within the BRI for Chinese companies to invest in and the door for China to the Eurasian Economic Union, a single market of 183 million people.

Worries over rising debt burdens on Chinese banks, however, are lately driving calls in Central Asia to get other sources of finance for the BRI's projects in the region. It is well known that the global Islamic finance market size is estimated to exceed US\$2 trillion in 2018. Hence, Chinese companies involved in the BRI should explore Islamic finance to finance their projects in Kazakhstan and other Central Asia countries along that route.

This article was first published in Islamic Finance news Volume 15 Issue 33 dated the 15th August 2018.

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