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Kazakhstan and the Belt and Road

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Kazakhstan has high ambitions in the China's Belt and Road initiative, as it is geographically an ideal junction between China and the West and its interest in the Belt and Road is indisputable, with the Kazakh government already involved in Nurly Zhol (the Path of Light), a US$9 billion domestic economic stimulus plan to develop and modernize roads, railways, etc.

Kazakhstan is important for the energy security of China. Its oil, gas, coal and uranium reserves are among the 10 largest in the world, and it has a strategic geographical location to control oil and gas flows from Central Asia to the East and the West. Its geographical proximity, the safety of transportation routes and the absence of any hostile rivals in the region are the main advantages of Kazakh energy for China. That is why, even years before President Xi Jinping's official declaration of the Silk Road Economic Belt initiative in 2013 in Astana, China had already begun to invest heavily in oil & gas infrastructure in Kazakhstan.

POTENTIAL PROBLEMS

There may be some roadblocks for Chinese foreign direct investment (FDI) in Kazakhstan. A Chinese investor planning an investment project in Kazakhstan, as in any other emerging nation, may have to face an unsettled legal and regulatory environment, and uncertainty about 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 investments made in Kazakhstan so far, therefore, can be distinguished by specific approaches that 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 the China Oil Pipeline and the Central Asia China Gas Pipeline projects bankable, unprecedented international treaties between Kazakhstan and the PRC have been signed and ratified by the Kazakh parliament, which created specific legal frameworks for these particular two projects and which prevail over any conflicting Kazakhstan legislation.

The author believes, however, that such a unique foreign investment model could prove problematic and not acceptable for Kazakhstan if expanded for implementation of all future investments under the Belt and Road initiative.

Kazakhstan's multi-vector energy policy. China already controls up to 30% of the oil industry of Kazakhstan. Since 2000, Kazakhstan has moved from being fully dependent on Russia for oil and gas exports towards more diversification, but now there are concerns that Kazakhstan has become dangerously dependent on China. To address this, Kazakhstan has developed legal tools to be able to prevent further expansion of Chinese, Russian or any other country's control in its energy sector, if needed, including the state's priority right to purchase/permission to transfer so-called "strategic assets" and the state's priority right to purchase/permission to transfer in the area of subsoil use. This may be an obstacle for some energy projects initiated by China under the Belt and Road initiative.

FOCUS ON KAZAKHSTAN

Kazakhstan has climbed the World Bank's Ease of Doing Business index and is now ranked 35th. The World Bank also ranks it as one of the 20 most attractive countries in the world for investors. With the intention of promoting industrialization and diversification of its economy, the law in Kazakhstan provides a system of benefits and preferences – for example, tax and customs duties exemptions and even compensation by the government of up to 30% of the costs relating to construction, assembly and acquisition of equipment – that supports direct investments in certain areas, including transportation infrastructure, agriculture, manufacture of refined petroleum products, as well as the generation of electric power.

In 2013, feed-in tariffs and guaranteed off-take have been introduced to facilitate development of renewable energy projects, and in 2015 the PPP Law was adopted, which provides a good legal framework for public-private partnership (PPP) projects in any sector of economy.

Chinese FDI under the Belt and Road initiative, therefore, must be implemented in Kazakhstan under the general legislation framework, which is already very investor-friendly.

SEIZING OPPORTUNITIES

Kazakhstan needs to think of alternates for growth by diversifying and innovating itself instead of relying solely on natural resources. The Belt and Road initiative provides a unique opportunity for Kazakhstan to attract Chinese money and technologies, become one of the largest transit hubs in Eurasia, and to venture into exports of organic foods to China.

Kazakhstan has a good legal system for attracting FDI and with its massive privatization programme, the nation aims to reduce the presence of the state in the economy to 15% by 2021. Therefore, Kazakhstan has a chance to become the best country within the Belt and Road initiative for Chinese companies to invest in, and the door for China to the Eurasian Economic Union, a single market of 183 million people.

Байршил

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