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旧大陆 新金主

中国在西欧的投资面貌焕然一新

Old world, smart money

Chinese investment's new face in Western Europe



更公开、更透明？
反垄断执法的进展

Open and transparent?
Antitrust enforcement

小心用推特：
社交媒体与信息披露

Watch what you tweet:
Social media and disclosure

金色前程：
如何在中亚打出一片天

Golden opportunities: How
to survive in Central Asia

One Window to Central Asia



Kazakhstan
Uzbekistan
Kyrgyzstan
Tajikistan
Mongolia
Turkmenistan
UAE
Georgia

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In this issue of *China Business Law Journal*: Interview with specialists from Colibri law firm on legal issues in trade and investments between China and Central Asia



金色前程

Golden opportunities

中亚国家为中国庞大的经济引擎提供了不可或缺的燃料，但在维系这段宝贵合作关系的道路上，中国仍需砥砺前行。李俊辰为您报道

Central Asia provides much needed fuel for China's economic engine, but holding on to this valuable regional relationship remains the challenge, writes Richard Li

历史上，中国商人通过丝绸之路远赴欧洲和阿拉伯买卖珍贵丝绸和异域奇珍，他们曾无数次途经中亚地区。

时过境迁。今天，热切寻求自然资源的中国将投资目光紧紧锁定中亚地区。中亚不再只是中国商人的途经之地，而是成为了中国投资的目的地。

不过，中亚地区的许多发展中国家对外来投资并非来者不拒，而是日益重视择其所需。某些国家出台的新法规令投资者头疼不已，而另一些国家则为投资者提供了获取丰厚利润的“快车道”。

Central Asia was historically a through road for Chinese merchants on the silk route to trade their precious silks and exotic cargoes in Europe and Arabia. Times change. Now Chinese business interests are firmly fixed on the region as a terminus for investment in much sought after natural resources, rather than a conduit to some other destination.

But many of the region's developing nations, far from welcoming just any investment, are increasingly picking and choosing. New legislation in some countries is creating investment headaches, while elsewhere the laws are fast tracks to profit.

而在韩国等竞争对手的帮助下,中亚国家正逐步掌握如何对本国原材料进行加工生产。中国公司应该对此保持警觉,重新审视自身的投资策略。

中国并不满足于其在争取西陲邻国市场上所做的努力,而是进一步致力于构筑地区间的联系纽带,比如中国与哈萨克斯坦、吉尔吉斯斯坦、塔吉克斯坦、乌兹别克斯坦和俄罗斯等国联手建立的上海合作组织。蒙古目前是该组织的观察员国。在于北京召开的上海合作组织 2012 年峰会上,中国承诺向该组织成员国提供 100 亿美元贷款,为其他成员国的发展提供资金支持。

中国还呼吁各成员国努力建设铁路、公路、航空、电信、电网等基础设施,从而加强该地区各国之间的互联互通。

在交通运输网络的建设方面,哈萨克斯坦一直在积极参与连接中国、哈萨克、俄罗斯和欧洲的“西欧-中国西部”国际公路走廊的建设工程。吉尔吉斯斯坦和乌兹别克斯坦也正与中国商讨“中国-吉尔吉斯-乌兹别克”铁路的开工建设事宜。

中国和中亚国家也一直在紧锣密鼓地建设石油、天然气输送管道等自然资源联通设施。“由哈萨克向中国输送碳氢化合物[例如石油、天然气等]的管道已经投入使用。”Linkage & Mind 律师事务所阿拉木图办公室管理合伙人 Madina Syptayeva 介绍说。

吉尔吉斯和中国“计划在‘哈萨克-吉尔吉斯-中国’石油输送管道建设、‘土库曼-吉尔吉斯-中国’天然气输送管道建设、投资建设新水电站等拟议项目上继续开展合作”,Kalikova & Associates 律师事务所驻比什凯克(吉尔吉斯首都)管理合伙人 Ulan Tilenbaev 介绍说。

在商业联系方面,中亚地区的电信市场正吸引中国投资者前去一展身手。举例来说,吉尔吉斯政府在其发布的《2013-2017 可持续发展战略》中,将电信产业列为招商引资的重点产业。

在塔吉克斯坦,“主要的中国电信设备供应商在塔吉克市场已经相当成功,并且还很有可能会追加投资。”Colibri 律师事务所合伙人 Denis Bagrov 介绍说。Bagrov 的工作包括处理塔吉克业务。

在乌兹别克斯坦,这个国家的经济“需要高端技术和产业方面的投入”,ASHUR 律师事务所塔什干办公室合伙人 Anvar Ikramov

[乌兹别克的]需要高端技术和产业方面的投入

[Uzbekistan's economy] needs high-end technological and industrial input



Anvar Ikramov
ASHUR 律师事务所
合伙人
塔什干
Partner
ASHUR Law Firm
Tashkent

Competitors like Korea are also teaching countries how to become end processors of their own raw materials, a wake-up call for Chinese companies and their investment strategies.

China has not been complacent with efforts to woo its Central Asian neighbours, and has built bridges like the Shanghai Cooperation Organisation (SCO) with Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and Russia. Mongolia is an observer state. During SCO's 2012 annual summit held in Beijing, China promised US\$10 billion to support the development of SCO member states.

China also urged all SCO members to strengthen regional connection by building infrastructure like railways, roads, aviation, telecommunications and power grids.

Regarding transportation networks, Kazakhstan has been actively participating in construction of the Western Europe-Western China transcontinental road corridor, which will connect China, Kazakhstan, Russia and Europe. Kyrgyzstan and Uzbekistan have been in discussions with China to start building the China-Kyrgyzstan-Uzbekistan railway.

China and Central Asian countries have also been busy building natural resources links, for example gas and oil pipelines. “Pipelines delivering hydrocarbons from Kazakhstan to China have been put in service,” says Madina Syptayeva, the managing partner at Linkage & Mind in Almaty.

Kyrgyzstan and China “plan to continue co-operation in such future projects as the Kazakhstan-Kyrgyzstan-China oil pipeline, the Turkmenistan-Kyrgyzstan-China gas pipeline and investments to build new hydroelectric power plants,” adds Ulan Tilenbaev, the managing partner at Kalikova & Associates in the Kyrgyz capital, Bishkek.

In terms of business connections, the telecoms market in Central Asia is luring Chinese investors. In Kyrgyzstan, for example, telecoms is recognised as a priority area for foreign investment by The Sustainable Development Strategy for 2013-2017 issued by the government.

In Tajikistan, “the major Chinese telecoms equipment suppliers are already quite successful in the market, with great potential to increase their investments”, observes Denis Bagrov, a partner at Colibri Law Firm, with Tajik projects as part of his work.

In Uzbekistan, the country's economy “needs high-end technological and industrial input”, says Anvar Ikramov, a partner at ASHUR Law Firm in Tashkent. “China is the closest country that can provide such input into most [strategic] spheres of the economy.” He says the Uzbek government is actively seeking foreign direct investment in such spheres as telecoms and electronics.

From a legal perspective, China-Central Asia links are evident in some international treaties; China has already signed double taxation avoidance treaties with Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan and Uzbekistan.

But the relationships are far from that simple. “Chinese investors should strengthen their assessment of the legal environment and legislative trends in each country,” warns Xiao Zhande, a senior partner at Beijing Rainmaker Law Firm. “In Central Asian countries, legislation changes frequently, law enforcement needs to be more transparent and efficient, and corruption exists in judiciaries and administrative authorities – investors in Central Asia need to consider all these factors.”

China also faces growing competition from other countries. “Besides China, countries including Korea, Japan and those in Central and Eastern Europe have also been actively penetrat-

介绍说。“有能力为乌兹别克经济的[战略性]领域作出这类投入的国家中，中国是与乌兹别克距离最近的。”他介绍说，乌兹别克政府正在为电信及电子设备等行业积极寻求外商直接投资。

从法律的角度看，中国与中亚之间的联系还体现在一些国际条约上。例如，中国与哈萨克、吉尔吉斯、蒙古、塔吉克、土库曼和乌兹别克等国都订立有避免双重征税条约。

不过，中国-中亚关系远非上文所说的那么简单。“中国投资者应该加强对各个国家法律环境的评估及立法趋势的判断。”北京市雨仁律师事务所高级合伙人肖占德提醒道。“中亚国家的立法变动比较频繁，执法的透明度和效率有待提高，司法和行政中存在腐败问题。在中亚国家的投资需要考虑这些因素。”

中国所面对的来自其他国家的竞争压力也日益增加。“现在除了中国以外，韩国、日本、中东欧等国家也在中亚地区积极渗透，拿到了一些重要的项目。”肖占德说。

进一步保护国内自然资源等战略性行业的趋势在一些中亚国家悄然抬头。一些国家仍处于过渡时期，政治和法律层面都存在很多不确定因素。在下文中，我们对中亚各国投资环境的逐一剖析相信会对您投资中亚有所裨益。

哈萨克斯坦

中哈霍尔果斯国际边境合作中心的建成使用，反映出中哈两国增强双边经济联系的热情。作为中亚地区首个此类中心，中哈合作中心将发展成为一个提供贸易和投资机遇的自由港。

“根据中心的特别规定，中哈两国公民在无需取得签证的情况下，可以在合作中心区域内逗留长达30天。”信安国际律师事务所阿拉木图办公室合伙人 Marla Valdez 介绍说。Valdez 负责管理该所在中亚的业务。

“哈萨克在发展的同时，也通过颁布法令加强政府对矿产资源领域的控制。”Valdez 说。其中一项法律是《地下资源及其使用法》(Law on Subsurface and Subsurface Use)。Valdez 介绍说，在石油、天然气及采矿行业，境外及本地公司的收购交易必须先获得哈萨克政府放弃政府优先权的决定，并得到相关职能部门的批准。“在这类交易不违背哈萨克国家安全法的情况下，相关职能部门才可能批准这类并购交易。”Valdez 补充说。

哈萨克斯坦目前对自然资源领域的严格控制很可能在不久的将来有所松动。“在资源领域，哈萨克正研究取消对外国投资者的限制。虽然具体的法规还没有出台，但该国已经明确了将取消限制。”肖占德说。

除了对自然资源的控制，合规在哈萨克斯坦似乎也是一个需要谨慎处理的问题。“哈萨克的一些法律规定非常严格，商业上的不合规行为很容易被划入刑事犯罪。”Valdez 说。她相信，“使商业活动脱离哈萨克的刑法管辖”是有待改善的一个方面。不过值得庆幸的是，哈萨克政府看来已经意识到了这一点。“在过去几年中，哈萨克斯坦一直在修订刑法和商业法；[商业]违法行为将通过罚款方式处理，而不是作为涉嫌刑事犯罪处理。”Valdez 说。

劳资关系也是一个棘手问题。“哈萨克政府近期密切关注劳务市场的情况，尤其是在外国公司工作的员工的处境。”Linkage & Mind 律师事务所阿拉木图办公室高级律师 Yerzhan Manasov 表示。

中亚国家的立法变动比较频繁… 司法和行政中存在腐败问题

*In Central Asian countries,
legislation changes frequently ... and
corruption exists in judiciaries*



肖占德
Xiao Zhande
北京市雨仁律师事务所
高级合伙人
Senior Partner
Beijing Rainmaker
Law Firm

ing into the Central Asian market. They've got some important projects," Xiao says.

Within the region, some nations are showing a tendency to protect more heavily strategic industries like natural resources. Some are also undergoing transitions fraught with political and legal uncertainty. Looking at each respectively will be helpful to your business connection with this region.

Kazakhstan

The bilateral passion for strengthening economic ties is embodied in the construction of the China-Kazakhstan Horgos International Border Co-operation Centre, the first of its kind in Central Asia. The centre is to be developed into a port with free trade and investment opportunities. "A special legal regime has been set up to allow citizens of the two countries to stay within the boundaries of the centre for up to 30 days without needing to obtain a visa," says Marla Valdez, a partner at SNR Denton in Almaty who manages the firm's Central Asia practice.

"As Kazakhstan has developed, it has also passed legislation to strengthen the government's control over its mineral resources sector," Valdez says. One example is The Law on Subsurface and Subsurface Use. Valdez says that prior to any acquisition in the oil and gas or mining sectors, foreign and local companies must obtain the state's waiver of its priority right and the competent authority's consent. "The competent authority's consent can be granted, provided such transfer will not entail violation of Kazakhstan's law on national security," she adds.

The tight grip on control is likely to ease in the near future. "Regarding the natural resources sector, Kazakhstan is now studying the cancellation of restrictions on foreign investment. Specific regulations haven't yet been issued, but the country has made it clear that the limits will be cancelled," Xiao says.

Compliance, however, seems to be a touchy issue in Kazakhstan. "Kazakhstan has had very strict legislation that can easily turn a commercial non-compliance issue into a criminal offence," Valdez says. She believes "the delinking of commercial activities from Kazakhstan's criminal code" is an area that needs improvement. The good news is the government appears to be aware of this. "In the past few years, Kazakhstan has been amending its criminal laws and its business laws so that violations are

[哈萨克]通过颁布法令加强政府对矿产资源领域的控制

[Kazakhstan] has passed legislation to strengthen the government's control over its mineral resources sector



Marla Valdez
信安国际律师事务所
合伙人
阿拉木图
Partner
SNR Denton
Almaty

“中国公司常常咨询劳资关系方面的法规，尤其是对员工的民族歧视问题，例如从事性质类似的工作，哈萨克员工获得的报酬和外籍员工相去甚远。” Manasov 表示。

除了自然资源之外，另一个值得关注的产业或许是航天工业。哈萨克和俄罗斯在哈萨克境内拜科努尔发射中心项目上的合作关系前景不明，俄罗斯可能会停止向该项目投入技术和资金。但与此同时，哈萨克又坚定表示了进一步发展拜科努尔中心及其航天工业的决心。如此一来，机会之门或许会向航天行业的其他主要国家敞开。

蒙古

霍金路伟国际律师事务所乌兰巴托办公室合伙人 Michael Aldrich 去年曾在对蒙古营商的快捷与便利表示赞赏（见《商法》第 3 辑第 8 期第 12 页）。不过，在去年的议会选举之后，蒙古的营商环境于近期发生了转变。“蒙古针对外商投资的法规和政策发生了巨大转变，变得更复杂，而且不像以往那么明确，变得跟其他亚洲新兴市场差不多。” Aldrich 说。“总体而言，蒙古政界对外资价值的质疑情绪日益高涨，由此导致一系列法律、法规出台，对外商在蒙古开展商业活动制造了更多行政上的阻碍。”

蒙古尤其加强了对自然资源领域的控制。2012 年 5 月，蒙古议会通过了《战略性关键行业外商投资法》（Law on Foreign Investment in Business Entities Operating in Sectors of Strategic Importance）。新法令将矿产资源、银行及金融业、媒体及电信行业列为战略性关键行业。这些行业的交易如果涉及国家安全问题（例如，外国投资者计划收购战略性行业公司三分之一或以上的股份），外国收购方有可能面临政府审查。

“这项法律有很多模棱两可、含糊不清之处，这大大增加了 [战略性行业的] 外国公司所面临的风险。” Colibri 律师事务所乌兰巴托办公室合伙人 Artem Klimenko 说。Aldrich 表达了相同的看法：“这项法律的一些条款模糊不清。遗憾的是，最近提出的执行规定也没能澄清这些含糊之处。”

早前某中国国有企业有意收购蒙古一座大型煤矿的多数股权，

dealt with through penalties and fines, and not through possible criminal violations,” Valdez says.

Employment is another thorny issue. “Recently the government of Kazakhstan has closely followed the employment market situation, especially the position of employees of foreign companies,” observes Yerzhan Manasov, a senior associate at Linkage & Mind in Almaty.

“Chinese companies are frequently interested in regulation of employment relationships, in particular with respect to ethnic discrimination of employees, which for instance can be expressed as a significant difference of salary between an expat and Kazakh employee for similar work,” Manasov says.

Besides natural resources, another field that might be worth attention is the space industry. Kazakhstan's co-operation with Russia over the Baikonur launch site in the Kazakh steppe has been reported to rely on a continuous injection of expertise and investment from Russia, which has caused uncertainty. Meanwhile, Kazakhstan has voiced its strong will to further develop Baikonur and its space industry. The door might be opened to other key countries in this industry.

Mongolia

Michael Aldrich, a partner at Hogan Lovells in Ulaanbaatar, last year praised the speed and ease of doing business in Mongolia (*China Business Law Journal* volume 3 issue 8, page 12). However, after last year's general election, “There has been a sea change in foreign investment law and policy in Mongolia, where there is now more complexity and less clarity in a way that is similar to other emerging markets in Asia,” Aldrich says. “Generally, there is a growing sentiment among Mongolian politicians questioning the value of foreign investment, and this has produced laws and regulations that create more administrative obstacles to conducting business here.”

Mongolia has particularly tightened its control over natural resources. In May 2012, the Mongolian parliament passed the Law on Foreign Investment in Business Entities Operating in Sectors of Strategic Importance. This new law defines minerals, banking and finance, as well as media and telecoms, as sectors of strategic importance. A foreign buyer in these sectors can trigger

蒙古针对外商投资的法规和政策发生了巨大转变

There has been a sea change in foreign investment law and policy in Mongolia



Michael Aldrich
霍金路伟国际律师事务所
合伙人
乌兰巴托
Partner
Hogan Lovells
Ulaanbaatar

有消息来源称，新法正是针对这一事件而出台的。但 Klimentko 表示：“‘资源国家主义’似乎并不只是针对中国投资者，蒙古一些决策者正持续不懈地争取与澳大利亚矿业巨头力拓集团重新磋商双方签订的 Oyu Tolgoi [蒙古一座大型铜金矿] 投资协议。”

Klimentko 也提醒投资者留意蒙古总统办公室于 2012 年 12 月发布的《矿产资源法》修订草案。“如果目前的版本获得采纳，这部法律引入的矿业经营机制将带有更浓厚的国家主义色彩，对投资者将更加不利。”他说。不利的因素可能包括对外资持股的限制，以及政府在许可证转让时的优先权。

尽管蒙古目前存在着“资源国家主义”浪潮，Klimentko 仍然认为投资者有理由保持“谨慎的乐观态度”。他介绍说，蒙古总统查希亚额勒贝格道尔吉最近表示蒙古理应尊重 Oyu Tolgoi 投资协议，反映出政府与力拓集团就双方争议问题的谈判取得了进展。“此外，预计存在争议的外国投资法也会在不久之后修订。《矿产资源法》修订草案目前正处在广泛研讨的过程中，商界人士也参与其中，该法的正式颁布时间被推迟。”Klimentko 介绍说。

乌兹别克斯坦

Colibri 律师事务所驻乌兹别克首都塔什干的合伙人 Umid Aripdjanov 介绍说，乌兹别克总体上提供四种投资机制：(一) 个别化机制：投资者可与乌兹别克政府针对特定项目签订投资协议 (IA)、产品分成协议 (PSA) 或合资计划；(二) 优惠机制：建立了 Navoi 和 Angren 两大自由经济区；(三) 特惠机制：外商直接投资 (FDI) 鼓励计划；(四) 一般性投资法：如税法、外汇法等。

“计划在重点行业兴建生产设施的大型投资项目，可以通过与乌兹别克政府签订具体的 IA 协议受到保护，这类协议通常包含个别税务优惠和其他优惠以及优先权，”Aripdjanov 表示。

不过，“IA 协议在签订时常带‘附加条件’。”ASHUR 律所的 Ikramov 说。他提醒投资者在订立这类协议之前，“仔细、全面地检查 [协议规定的] 投资者义务”。

Aripdjanov 表示，中国投资者遭遇的障碍主要包括“将乌兹别克货币兑换成可自由兑换货币的问题，以及在商业活动开展之初的税务负担”。但他相信要化解这些问题并不困难，可供采取的策略包括“在双方商定大型项目的 IA 协议和 / 或合资计划时，投资者可向乌兹别克政府争取豁免权”，或者“将业务设立在……Navoi 或 Angren 自由经济区”。

中国公司面临的挑战还来自第三方国家。“对中国公司而言，韩国企业可能成为一大拦路虎。”Ikramov 说。韩国商人正积极投资于原材料加工和制造项目；相比之下，中国公司的投资常常是围绕向中国出口的原材料。“如果这种情况继续下去，或许终有一天，乌兹别克政府会更愿意让原材料留在韩国人的工厂中加工，而不愿意将原材料出口。”Ikramov 表示。“[中国公司] 唯一的应对策略可能就是仿效韩国人的做法，投资于制成品的生产。”

上述观点颇为中肯。除此以外，似乎还有其他领域有待中国投资者进一步发掘。“我们认为，中国公司低估了乌兹别克高新技术行业和轻工业的增长潜力。”Aripdjanov 说。他表示 Navoi 和 Angren 两个自由经济区提供“大量优惠的政策法规”，这点在外汇管制和海关政策方面体现得尤为明显。“这些优惠措施能使外商在

若…获得采纳，这部法律引入的矿业经营机制将带有更浓厚的国家主义色彩，对投资者更加不利

If adopted ... the law would introduce a more nationalistic and less investor-friendly mining regime



Artem Klimentko

Colibri 律师事务所
合伙人
乌兰巴托
Partner
Colibri Law Firm
Ulaanbaatar

government approval procedures if the transaction causes national security concerns – for example, if the foreign investor intends to acquire one-third or more of the shares of a strategic company.

“The law is ambiguous and uncertain in many aspects and as such significantly raises risks for foreign corporations [in strategic sectors],” says Artem Klimentko, a partner at Colibri Law Firm in Ulaanbaatar. Aldrich agrees. “There are vague terms in the law which unfortunately have not been clarified by the proposed implementation regulations.”

Some sources say the law was a response to a proposed acquisition by a Chinese state-owned company of a majority stake in a large Mongolian coal mine, but Klimentko says, “it seems that ‘resource nationalism’ is not only aimed at Chinese investors, as evidenced by continuing efforts of a group of policy makers to renegotiate the Oyu Tolgoi [a large copper and gold mine in Mongolia] investment agreement signed with Australian giant Rio Tinto.”

Klimentko also gives a word of warning about revisions to Mongolia’s Minerals Law, published by the Office of President in December 2012. “If adopted in its current edition, the law would introduce a more nationalistic and less investor-friendly mining regime,” he says, including foreign ownership restriction and pre-emptive right of the state upon transfer of licences.

Despite the current wave of resource nationalism, Klimentko still sees grounds for “cautious optimism”, citing Mongolian President Tsakhia Elbegdorj’s recent statement that the country should respect the Oyu Tolgoi agreement, indicating progress in talks between the government and Rio Tinto over controversial issues. “It is also expected that the controversial foreign investment law will be revised soon, and the new draft minerals law is being discussed widely, with participation of the business community, while its adoption is postponed,” Klimentko says.

Uzbekistan

Umid Aripdjanov, a partner at Colibri Law Firm in the Uzbek capital, Tashkent, says the country generally offers four investment regimes: (1) individualised regime: a specific investment agreement (IA) with the government, production sharing agreement (PSA) or joint venture (JV) arrangement; (2) beneficial

很大程度上避免本地企业所面临的实际操作中的阻碍。”他说。

吉尔吉斯斯坦

吉尔吉斯正在“根据自由创业、自由定价制度、自由竞争和国家调控等关键原则，促进经济体制朝着与国际趋同的方向发展。”Tilenbaev说。“就投资优惠措施而言，吉尔吉斯为外国和本地投资者提供平等的投资权利，允许货币自由兑换，允许将资本调回本国，并在法律中提供了多项保护投资的保证。”Colibri律师事务所比什凯克办公室合伙人Azim Usmanov介绍说。

吉尔吉斯改善本国投资环境的努力从未中断。Kalikova律所的Tilenbaev介绍说，根据吉尔吉斯《2013及2014-2015年度社会经济发展规划》，吉尔吉斯政府会将政府对商业活动的干预减少到最低程度，例如减少公司需要取得的许可证、减少审查机关数量、恢复本国投资环境的吸引力以及鼓励重点领域的投资。该国政府还于2012年7月向40多个国家的公民推出了免签证出入境机制。

但是矿产资源领域的投资前景却没有那么振奋人心。“吉尔吉斯以前允许将矿产资源运出境外进行加工。”肖占德说。“但是目前一些项目不允许投资者将一些重要的矿种运至国外加工。将来这些要求还可能上升为法律规定。”

吉尔吉斯在立法方面存在不稳定和不明确的特点，Tilenbaev认为这可能成为外国公司的绊脚石。不过，他补充说这个问题也是可以化解的。根据吉尔吉斯的投资法律，“在吉尔吉斯的投资法、税法或海关法规被修订的情况下，外国投资者以投资活动开始后的10年为限（或者若适用，以外国投资者签订的投资协议规定的期限为准），有权自由选择[这段时期的法规中]对其最有利的投资条件。”Tilenbaev介绍说。

塔吉克斯坦

“我们认为，塔吉克斯坦过去发生的所有变化都不会对外国

中国公司低估了乌兹别克高新技术行业和轻工业的增长潜力

Chinese companies underestimate the growth potential in high-tech or light industries in Uzbekistan



Umid Aripdjanov
Colibri律师事务所
合伙人
塔什干
Partner
Colibri Law Firm
Tashkent

regime: the two free economic zones, Navoi and Angren; (3) preferential regime: the foreign direct investment (FDI) encouragement programme; and (4) general investment: tax, foreign exchange laws, etc.

“A large-scale investment project that aims at establishing the production facilities in prioritised industries may be protected by a specific IA with the Uzbekistan government outlining individual tax and other benefits and preferences,” Aripdjanov says.

However, “usually IAs are concluded with ‘strings attached’”, says ASHUR’s Ikramov. He reminds investors “to thoroughly examine obligations of Investors” before entering into such agreements.

Aripdjanov says major roadblocks for Chinese investors include “convertibility of national currency into freely convertible currency and tax burden at the start of business”. But he’s confident that these issues can be easily alleviated through such strategies as “negotiating an exemption with the Uzbekistan government in relevant IAs and/or a JV arrangement for a large-scale project”, or “placing the business in ... Navoi or Angren”.

Challenges are also coming from a third country. “A big stumbling block for the Chinese is Korean business,” Ikramov says. While Koreans are actively investing in processing and manufacturing projects, Chinese usually invest in raw materials exported to China. “If this situation continues, it might turn out that the government may become unwilling to export raw material, and rather may want to process raw material in factories built by Koreans,” Ikramov says. “The only strategy may be to do just like what Koreans are doing – investing into end-product production.”

Apart from that observation, there seems to be other areas where China should be digging deeper. “In our view, Chinese companies underestimate the growth potential in high-tech or light industries in Uzbekistan,” Aripdjanov says. He says there is “a good deal of benefits” granted by the Navoi and Angren zones, especially regarding foreign exchange controls and customs. “These benefits significantly mitigate practical hurdles experienced by domestic companies,” he adds.

Kyrgyzstan

Kyrgyzstan is “promoting a convergent system of economy based upon such key principles as free entrepreneurship, a free pricing system, free competition, and state regulation,” says Tilenbaev, of Kalikova & Associates. “In terms of investment benefits, Kyrgyz Republic offers equal investment rights for local and foreign investors, free currency conversion, capital repatriation and other various statutory investment protection guarantees,” says Azim Usmanov, a partner at Colibri Law Firm in Bishkek.

The country’s effort in improving its investment climate is ongoing. According to Kyrgyzstan’s Projection of Socio-Economic Development for 2013 and 2014-2015, Tilenbaev says the Kyrgyz government will minimise government intervention in business affairs, for example by reducing the number of permit and inspection bodies, to restore the investment attractiveness of the country and encourage investment in priority sectors. The government also introduced, in July 2012, a visa-free regime for citizens of more than 40 countries.

But prospects in the mineral resources sector are not so exciting. “Kyrgyzstan previously allowed mineral resources to be transported abroad for processing,” Xiao of Beijing Rainmaker

[吉尔吉斯和中国]计划在…建设新水电厂等项目上继续开展合作

[Kyrgyzstan and China] plan to continue co-operation ... to build new hydroelectric power plants



Ulan Tilenbaev
Kalikova & Associates 律所
管理合伙人
比什凯克
Managing Partner
Kalikova & Associates
Bishkek

投资者造成障碍，因为所有这些改变都是为了降低外国投资者在塔吉克营商的复杂程度。” Colibri 律所的 Bagrov 表示。

近期，塔吉克斯坦在国际舞台上取得了至少两项重大进展。3月2日，塔吉克成为世贸组织成员国。去年8月，塔吉克加入了《承认及执行外国仲裁裁决公约》（又称《纽约公约》），该公约已于2012年11月对塔吉克生效。

在国内，塔吉克于今年初颁布了《公共部门与私营企业合作法》（Law on Public Private Partnership），为能源和基础设施建设等关键行业的投资者提供了一条富有吸引力的投资途径。这一发展亦对中国投资者有利。“中国投资者在塔吉克斯坦的水泥生产、发电厂建设、路桥整修等项目中表现得尤为积极。” Bagrov 介绍说。

土库曼斯坦

“由于土库曼的经济主要依赖于碳氢化合物 [例如：煤炭、石油和天然气]，大部分提供某种优惠规定的土库曼法律在多数情况下都适用于碳氢化合物产业的经营者。” Colibri 律师事务所负责协调该所土库曼业务的合伙人 Otabek Suleimanov 表示。自然资源开发项目通常可以通过签订产品分成协议来进行。

不过，Suleimanov 表示，“不了解当地市场的实际情况和土库曼法律体系尚在发展初期的现状”可能会给中国投资者造成很大的麻烦。“与在其他独联体国家不同，外国公司在土库曼注册其分支机构的过程非常复杂，并且需要由多个部门组成的委员会审批通过。”

在土库曼，中国公司需要打交道的对象主要是土库曼的国有企业。麻烦的是，在土库曼的法律体系不断发展的同时，“土库曼国企业的交易代表对许多由西方引入的法律概念并不熟悉，甚至根本不知道，这使交易双方的磋商过程更加复杂，” Suleimanov 说。

另一个令人头疼的问题是，土库曼并非《纽约公约》的缔约国。“这就意味着，外国仲裁裁决在土库曼斯坦并不能获得正式执行。” Suleimanov 说。“遗憾的是，除了设法对土库曼公司在土库曼境外的资产提请仲裁之外，目前并没有太多办法可缓解这个难题或将其影响降至最低。” ■

Law Firm says, “but now some projects require investors not to transport important minerals abroad for processing. In future such requirements may be upgraded into legal regulations.”

Instability and uncertainty with Kyrgyz legislation are identified by Tilenbaev as stumbling blocks for international business. However, he adds the trouble can still be alleviated. According to Kyrgyz investment law, “a foreign investor [is] granted the freedom to choose within 10 years from the beginning of the investment activity – or within the term provided [by] investment agreement, if a foreign investor enters into such – conditions most favourable for such investor, should investment, tax, customs legislation of Kyrgyzstan be amended,” Tilenbaev says.

Tajikistan

“We see no stumbling blocks in all developments made in Tajikistan in the past as they are all aimed to simplify business operations in the country for the foreign investors,” says Colibri’s Bagrov. Tajikistan achieved at least two important developments in the international arena recently. On 2 March, the country became a member of the World Trade Organisation. And in August last year, the country acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), and the convention for Tajikistan already entered into force in November 2012.

Internally, the country adopted the Law on Public Private Partnership at the beginning of this year, providing an attractive option for investment in key sectors such as energy and infrastructure. All this is viewed favourably by Chinese investors. “Chinese investors are particularly active in cement production projects in Tajikistan, as well as in construction of power plants, road and bridge rehabilitation,” says Bagrov.

Turkmenistan

“As the Turkmen economy is mostly dependent on hydrocarbons, most of the laws that in one way or another provide benefits are in most cases applicable to hydrocarbon players,” notes Otabek Suleimanov, a partner at Colibri Law Firm who coordinates the firm’s Turkmen practice. A project on developing natural resources is normally carried out through a production sharing agreement.

However, Suleimanov says “unawareness of local market realities and the embryonic state of laws in Turkmenistan” can cause the biggest trouble for Chinese investors. “Unlike in other CIS [Commonwealth of Independent States] countries, the process of registering branches of foreign companies in Turkmenistan is very complicated and requires approval from an inter-ministerial committee.”

State companies of Turkmenistan are the major parties Chinese companies need to deal with. Unfortunately, as the Turkmen law is evolving, “many Western legal concepts are not popular, or even known, to representatives of Turkmen state companies, which further complicates the process of negotiations,” Suleimanov says.

Another headache is that Turkmenistan is not a party of the New York Convention. “It means that foreign arbitration awards are not formally enforceable in Turkmenistan,” Suleimanov says. “Unfortunately there are not many ways to minimise or alleviate this challenge, other than seeking for property of Turkmen companies outside of Turkmenistan.” ■