Analysis of Legal Risk Prevention in Cross-Border Investment and Trade under the Belt and Road Initiative

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Abstract. Since the Belt and Road Initiative was proposed in 2013, investment and trade cooperation under its framework has promoted the common development of countries along the routes. However, due to the significant differences in political systems and legal frameworks among these countries, complex legal risks have also been implicitly involved. In light of this, this paper will explore the construction of a dual-pronged governance approach that equally emphasizes “law” and “policy” from two dimensions: transnational legal coordination and contract dispute resolution. This aims to provide legal safeguards for the high-quality development of investment and trade along the Belt and Road. This paper analyzes and explores legal risks in cross-border investment and trade through three methodologies: case studies, comparative analysis, and legal text analysis. Research indicates that risks arising from cross-border investment and trade primarily fall into three categories: contractual risks, policy risks, and geopolitical risks. This paper proposes that the method of "law and policy governance" should be adopted, and the dynamics of the host country's society and policy should be paid attention to while compliance construction, so as to avoid the rigid use of legal provisions to solve problems. It not only provides a new perspective for the legal guarantee of cross-border investment and trade under the background of the "Belt and Road Initiative", but also offers specific guidance for countries along the routes in their investment and trade practices.

Keywords: The Belt and Road Initiative, cross-border investment and trade, risk prevention, legal guarantee.

1. Introduction

In 2013, China proposed the international economic cooperation initiative of building the "Silk Road Economic Belt" and the "21st Century Maritime Silk Road". Since its proposal, this initiative has attracted much attention. Among them, investment and trade cooperation are a key part of the Belt and Road Initiative. It aims to benefit the people of the countries along the routes and promote the building of a community with a shared future for mankind. However, in the process of foreign investment and trade, due to the large number of countries along the route and significant political and cultural differences, a series of legal risks have inevitably emerged. At present, the theoretical circle generally holds that traditional international law has limitations in addressing complex risks. Therefore, in preventing cross-border trade risks, it is not only necessary to emphasize the legal aspect but also the policy aspect [1]. Furthermore, the practical circle holds that in the process of foreign investment and trade, China should respect the changes in local culture and political situation and avoid getting involved in local party struggles. Adopt diversified investment dispute resolution methods and establish multilateral investment dispute resolution mechanisms, such as promoting the establishment of multilateral and bilateral civil and commercial judicial assistance agreements, conducting joint arbitration or setting up new cross-border arbitration institutions, and carrying out joint mediation, etc. [2]. For Chinese enterprises, cross-border compliance is the foundation and guarantee of international market competition. The core lies in strengthening their own compliance management while maintaining stable exchanges and cooperation. Based on this, this paper proposes a two-end governance of law and policy from the perspective of transnational legal coordination and

contract dispute resolution, expecting to provide a legal guarantee for the high-quality development of cross-border investment and trade under the Belt and Road Initiative.

2. Literature Review

Cross-border investment and trade legal risks can be classified into several major categories, among which political and legal policy risks, as well as contract and intellectual property risks, are particularly prominent. There are significant differences in the legal systems among the countries along the Belt and Road Initiative, and in some countries, laws change frequently and transparency is relatively low. The existing research has problems such as unbalanced regional coverage and insufficient depth of risk exploration. Based on this, the theoretical and practical circles have respectively put forward their own views. The theoretical circle has proposed improving the construction of the foreign-related legal system to reduce trade risks. As the current international law does not explicitly emphasize the legal provisions concerning cross-border trade, there are differences or conflicts between international law and some trade regulations in domestic rule of law. Therefore, the theoretical circle has proposed the systematization of foreign-related rule of law, revealing the transformation law of political risks manifested through legal forms. It emphasizes that at present, domestic rule of law and foreign-related rule of law need to be coordinated. Through the optimization of legislative levels and the localization transformation of international law, a closed loop of risk prevention systems should be formed, thereby reducing the legal and political risks faced by enterprises in cross-border trade [3]. In addition, the model constructed through case analysis provides the theoretical circle with a quantitative analysis tool for risk early warning [4].

Practical circles believe that cross-border investment and trade should carry out systematic due diligence and legal assessment before trade. Without adequate due diligence, it is easy to fall into intellectual property rights infringement risks or other disputes. For example, the appearance of the product design, packaging may infringe rights of trademark and patent appearance. Some cross-border traders lack a global strategic layout awareness and fail to register in advance, resulting in their rights and interests being infringed upon by others. There are differences in intellectual property laws and policies of different countries and regions, which may easily lead to trade disputes and legal risks [5]. Therefore, some scholars believe that enterprises should have a more forward-looking perspective, continuously improve their risk management strategies before engaging in cross-border investment and trade, such as hiring professional legal advisors, conducting legal due diligence in the early stage, seizing market opportunities while operating in compliance, and taking the prevention of legal risks as the core of their corporate strategy.

3. The Risks in the Process of Cross-Border Investment and Trade

3.1. Contract Risk

In the border investment, the supply chain contract risks led by the difference in culture and management may generate cooperation-break, operational standstill, which may result in great financial loss and long-term damage reputation.

In 2011, the case of China Oil and Foodstuffs Corporation (COFCO) purchase Australia Tully Candy industry, although at first the purchase is successful, there are some problems in the supply contracts with local sugar cane growers. The price mechanism in new contract is not clear. When the global price of sugar decreases and a local natural disaster occur, COFCO wants to renegotiate and even wants to unilaterally terminate of the contract, which leads to a great dissatisfaction of local growers, resulting in great financial loss and damage in its reputation. This indicates that if the contract terms are not properly implemented and enforced, it will pose significant risks. In contrast, in 2005, when Huawei

Signed the cooperation agreement with British Telecom, there were clear written provisions regarding the liability for infringement of intellectual property rights and the methods for resolving

disputes. Although there are some queries in social, but because of the contract clause and responsibilities are clear, the cooperation is stable. In conclusion, cross-border investment and trade must clarify rights and obligations through contracts, performance contracts can not only reduce business risks and law arguments but also can enhance enterprise competitiveness and sustainable development capability in the complicated international environment [6,7].

3.2. Policy Risk

In cross-border investment and trade, policy risks always have great instability, the risk of national security review but the host country triggered by geopolitical factors can directly lead to the forced termination of the transaction, resulting in the loss of initial investment and damage to the strategic layout.

Take China Communications Construction Group as an example, in 2017 the company use 11.17 billion dollars to purchase Acecon, a large construction company from Canada, with the purpose to expand north America market and enhance global engineering contracting capability. However, the trade was rejected by Canadian government after it is submitted for approval, on the grounds of national security, which become to the classic policy intervention case. According to the data of the research on policy risks of Chinese enterprises' foreign direct investment, the case has been included in national cross-border investment database of problem transaction items, which reflects the actual risks of the host country intervening in cross-border mergers and acquisitions through policies and review mechanisms [8].

This case illustrates that although an investment case is feasible in business and has reasonable financial structure, it may still be locked due to the security review system, political stance or diplomatic pressure of the host country. Before these kinds of investment, the enterprises should evaluate the policy environment and review mechanism of the target country. Besides, the contract design can include "major policies change clauses" or exit mechanism in order to reduce the financial risks brought by policy-adjustment, providing warnings and references for Chinese enterprises to "go global".

3.3. Geopolitical Risk

Geopolitical risks can also provide potential risks for investment and trade. On a macro level, it needs to evaluate the willingness and ability of the host country under external pressure, on a micro level, active communication should be used to build mutual trust, thereby reducing the space for political manipulation of public opinion.

Take the Mexican high-speed rail project as an example. In 2024, the Mexican Ministry of Communication and Transportation suddenly issued a statement, announcing the cancellation of the high-speed rail contract result that had been jointly reached with the Chinese Railway Construction Corporation. The reason given was to ensure rationality and transparency, and to decide to cancel the tender result. According to the contract Mexican side should pay a penalty of 270 million RMB, but in the end, they were willing to pay 1.8 million. When the Chinese engineers spent a lot of time and effort optimizing the technical details and proposing more adaptable solutions tailored to Mexico's geology for the second bidding, it was still canceled by Mexican side, and the project was put on hold indefinitely. The key reason of this case was the influence of internal political fighting in Mexico, which is 'Asia-Pacific Rebalance Strategy'. Through these cases Chinese investors should pay attention to the changes in the local political situation in their foreign investment and trade, closely monitor the international political situation, and for enterprises, they should maintain communication with the central government and local governments, closely monitor policy changes and avoid financial loss and project stagnation.

4. Suggestions for Avoiding Legal Risks in Cross-Border Investment and Trade

4.1. At the Level of the Enterprise

Before a Chinese entity can establish an existence abroad, it must consider the legal, political and economic environment of the host country in order to reduce and minimise the chances of trade friction [9]. For example, in underdeveloped areas, the legal system and the court system may be underdeveloped, bringing uncertainty and risk to the contractual obligations and property rights of entities. The lack of personnel, such as skilled labour, and potentially complex labour relations increase uncertainty. The entity should therefore deem it necessary to hire qualified lawyers and form a legal team as they attempt to expand internationally.

In addition, investors should be aware of the local political situation and try their best to avoid any entanglement with local politics or political parties. As far as the company is concerned, on the one hand, it is important to communicate openly and effectively with the central government and local governments. On the other hand, they must also actively participate in public activities to help companies adapt to policy changes and seek government support when necessary.

Moreover, enterprises should also carry out appropriate legal investigations and risk assessments. At each stage of the investment process, legal due diligence must be carried out and then risk assessment must be carried out at statutory, legal, judicial interpretation, and political and regulatory levels. Only through advanced political and legal risk assessment and comprehensive assessment can enterprises identify potential and operational obstacles, and ultimately provide guidance on broader risks, so as to determine strategic options. On this basis, enterprises can take effective measures to manage the risk of financial losses and reputational damage that they may suffer due to the operations of enterprises and organisations in more complex international markets [10].

The design of the contract is also a key defence to avoid legal risks. For long-term contracts, enterprises should consider negotiating a stabilisation clause with the other party to prevent the legislation of the host country from having a negative impact on the project within a fixed period of years. In addition to these terms, all contracts shall stipulate that all parties must comply with applicable laws and regulations. In the same clause, the contract shall stipulate that if an illegal act occurs, the at-fault party shall be fully responsible for any remedial measures or responsibilities caused by the illegal act.

Finally, the internal compliance manual should serve as an additional defence for enterprises. The internal compliance manual of the enterprise should contain rules on market access, trade restrictions and sanctions, data privacy and network security, etc. In addition to providing guidance, enterprises should also regularly conduct compliance training for overseas employees to limit the inconsistency in compliance practices.

For Chinese enterprises, cross-border compliance is not only a legal issue, but also a strategic issue for competitive purposes. If enterprises seek to meet global standards, it will need to constantly improve their governance and management levels and understand the changes in global compliance standards.

In the event of controversy, enterprises will need a quick, efficient and cost-effective solution. Priority should be given to negotiation and mediation, and enterprises should flexibly use other alternatives (such as arbitration) as needed. In terms of dispute prevention, the "prevention first" mentality should be considered more preferable to focusing on remedial measures only after disputes occur; this will reduce the possibility of trade disputes.

4.2. At the Policy Level

In terms of policy, the government can establish a "Belt and Road" legal service platform to better manage the problems arising from the differences in national laws and political systems. By collating, translating and interpreting the laws and regulations of participating countries, the platform can provide enterprises with an in-depth understanding of the legal pattern of foreign land, so as to better alleviate conflicts. The platform may also provide extraphert cases and summaries.

Finally, the Government can further strengthen bilateral and multilateral legal coordination. For example, updating the protection of investment in bilateral treaties and participation in regional or global standard-setting processes can improve mutual recognition of rules, reduce regulatory disparities, and create a more stable political perspective for investors.

In addition, the government can provide more institutional support. For example, the government can provide more protection for Chinese companies by expanding political risk insurance or expanding the business of Chinese export credit insurance companies. The creation of a legal risk compensation fund will also strengthen this protection. In general, the effectiveness of the government's support for Chinese companies will create a complete legal risk prevention system, cover before investment, supervise during investment, and compensate after the incident, so as to create a safer environment for Chinese companies to succeed under the Belt and Road Initiative and go global.

4.3. Industry Level

At the industry level, the formation of the Belt and Road Economic and Trade Alliance will improve risk management on a collective basis. All "Belt and Road" countries can provide information that may be of great significance, such as market opportunities, changes in the legal and regulatory environment, the development of political instability, cultural information, etc. Countries can also recognise each other's legal, contractual and political risks. This not only helps the company to avoid risks, but also serves as a unified platform for policy advocacy and the establishment of a unified cross-border legal system and legal system (i.e. the law and practice in the "Belt and Road" national legal system, which is conducive to the formalisation of international law around the "Belt and Road" project).

Financial institutions such as the Asian Infrastructure Investment Bank (AIIB) and Silk Road Fund Limited can also become a mechanism for risk management. Before the company launches an international project, the national risk assessment should evaluate the political situation, legal environment, labour and environmental standards, community relations, etc. in the host country. In addition, the company should formulate or implement emergency plans for the potential risks of policy changes or contract disputes.

Due to the ambiguity of the law, due diligence is the first line of Defence when the company enters the host country. Due diligence requires a credit investigation of the host country, its legal mechanism and culture. The contract should be as detailed and clear as possible. The company must maintain consistent communication with partners. They must specify the following: control (and/or role), integration method and schedule, payment terms and conditions (including payment method and currency), breach of contract and liability, termination conditions, and real misappropriation of intellectual property rights. It is also suggested that international arbitration be designated as the preferred method for resolving contract disputes, and then clarifying which laws will be applied to avoid host country litigation.

5. Conclusion

The core risks of cross-border investment and trade under the Belt and Road Initiative mainly lie in political policies and contract fulfillment. Traditional international law is unable to solve highly complex problems, mainly due to the differences in legal systems, cultural traditions and public concepts among various countries. Therefore, Chinese enterprises should adopt a "dual-governance approach of law and policy", paying attention to the dynamics of the host country's society and policies while building compliance. Investors should focus on local and international political situations and policy changes. The enterprises themselves should actively communicate with local governments to avoid disputes regarding political policies and contract performance. Avoid using legal provisions strictly to resolve disputes in cross-border trade. At the same time, cross-border investment and trade should attach importance to written contracts and contract performance, clarify

obligations, thereby reducing business risks and legal disputes, and be conducive to the international development and competitiveness of enterprises.

It should be pointed out that the current research still has deficiencies. For instance, the research on the systems of some countries along the route is limited, and the discussion on environmental protection and social responsibility risks is also relatively scarce. Therefore, it is currently impossible to list precise precautions for investors, mainly due to the limited space and materials. In the future, it is expected that more scholars and practitioners will conduct more in-depth research and investigations on the legal risks of cross-border investment and trade, and that more entities will pay attention to the significant role that cross-border investment risk governance plays in international economic and trade and global governance issues. It is a core concern for all countries in their international development and expansion of trade channels.

Author Contribution

All the authors contributed equally and their names were listed in alphabetical order.

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