

Study on the Improvement of China's Overseas Investment Insurance System

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Abstract: China's overseas investment insurance system started from the policy demand and international practice after the reform and opening up, and its development has gone through an evolutionary process from early legislative exploration to systematic construction. In the 1980s, along with the expansion of the scale of outbound investment, China initially regulated the investment behavior through the Measures for the Administration of Foreign Exchange of Overseas Investment and other laws and regulations, and attempted to underwrite the political risk relying on the People's Insurance Company of China (PICC), but it was limited by a single type of insurance, insufficient coverage and the absence of law. The establishment of China Export and Credit Insurance Corporation in 2001 marked the formalization of the institutional framework to for enterprises by underwriting commercial and political risks provide protection. However, the current system still faces multiple challenges: the lag in domestic legislation has led to a poor interface with international mechanisms such as MIGA, the design of insurance products fails to cover new types of risks (e.g., riots, indirect expropriation), and the lack of services for small and medium-sized enterprises (SMEs) and the inefficiency of claiming for compensation have been highlighted. Based on this, it is necessary to formulate the Overseas Investment Insurance Law to clarify the subrogation rules, expand digital and customized insurance types, and build a regional risk-sharing mechanism in cooperation with MIGA and ADB, so as to for going abroad provide resilience support Initiative and globalization strategy.the Belt and Road

Keywords: Overseas Investment, Insurance System, MIGA.

1. Introduction

Overseas investment insurance system first originated in the United States, after World War II, the world economy suffered a heavy blow, in order to rebuild the post-war economic order, the United States launched the "Marshall Plan" to assist in the reconstruction of the European economy. At the same time, the U.S. government in order to promote the smooth implementation of , to attract more entrepreneurs to invest in Europe, the U.S. Congress passed the "Economic Cooperation Act" in 1948, to provide protection for the political risks suffered by investors in Europe, which is the prototype of overseas investment insurance system. With the development of the Overseas Investment Insurance System in the United States, countries realized the importance of the Overseas Investment Insurance System, and the Overseas Investment Insurance System gradually expanded from developed countries to developing countries.the "Marshall Plan"

2. The Emergence of China's Overseas Investment Insurance System

The establishment of China's overseas investment insurance system has benefited from the reform and opening-up policy, the Third Plenary Session of the Eleventh Central Committee was held in Beijing in December 1978, which put forward the policy of , and China's outward investment has developed rapidly after the 1980s. China's rapid development of foreign investment at the same time, but also faces many challenges, such as the host country's political and economic risks, etc., in order to ensure the smooth progress of foreign investment, China actively explore overseas investment insurance system. At the domestic law level, the Ministry of Foreign Trade and Economic Cooperation formulated the

Approval Procedures and Specific Management Measures for Opening Non-Trade Joint Ventures Abroad (for Trial Implementation) in 1985, the Administration of Foreign Exchange promulgated the Measures for Foreign Exchange Management of Overseas Investment and its Implementing Rules in 1989 and 1990, and the State Planning Commission promulgated the Opinions on Strengthening the Management of Overseas Investment Projects in 1991. Opinions on Strengthening the Management of Overseas Investment Projects" issued by the State Planning Commission in 1991, these laws and regulations only regulate a certain aspect of overseas investment, and do not address the issue of protection of overseas investment. "reforming internally and opening up to the outside world"[1] In 1988, the People's Insurance Company of China (PICC) conducted an early exploration of the overseas investment insurance system. At the beginning, the People's Insurance Company of China (PICC) mainly covered simple political risks, and the covered projects were concentrated in developing countries such as Africa and Southeast Asia. PICC's coverage was limited, its business was dependent on the traditional property insurance framework, it lacked independent legal support and subrogation mechanisms, and its insurance only served large state-owned enterprises and did not benefit small and medium-sized enterprises (SMEs) and private enterprises. In 1994, the Export-Import Bank of China (Exim Bank) was established, and its functions included the provision of export credits and credit insurance. In 1996, the Exim Bank provided war risk insurance for PetroChina's oil projects in Sudan. In 1996, China Exim Bank underwrote war and expropriation risks for PetroChina's oil project in Sudan, which provided local experience in risk assessment and dispute handling. However, China Exim Bank's underwriting business lacks specialized legislation, and subrogation claims rely on bilateral agreements, making implementation inefficient.

China Exim Bank's underwriting business also fails to provide insurance support to private enterprises.

At the level of international law, initially China provided protection for outward investment mainly through bilateral investment agreements (BITs), but the protection provided by BITs was limited due to the fact that fewer countries signed BITs with China in the early 1980s. In 1985, China acceded to the Convention Establishing the Multilateral Investment Guarantee Agency, MIGA. The objective of MIGA is to encourage productive investment among Member States, especially to developing Member States. Multilateral Investment Guarantee Agency (MIGA) in 1985, the objective of MIGA is to encourage productive investment among Member States, especially to developing Member States, and the operations of MIGA to achieve its objectives include investment guarantees and investment-related advice. [2] MIGA not only has the obligation to promote investment, but also provides guarantees for investment in developing countries. MIGA provides a platform for our country to cooperate with the host government and investors. MIGA provides guarantees for our overseas investment, which reduces the uncertainty of our enterprises' overseas investment. At the same time, MIGA's dispute settlement mechanism helps our enterprises to deal with overseas investment disputes and reduces the risk of our overseas investment. So far, China's overseas investment insurance system has sprouted.

The Asian financial crisis, which struck in 1997, had a profound impact on the global economy, especially on Southeast Asian countries. China's overseas investment has been affected by market contraction, exchange rate fluctuations and policy risks, but at the same time, the Asian financial and financial crisis has also promoted the improvement of China's risk prevention mechanism. After the Asian financial crisis, China has accelerated the pace of financial system reform, and China has taken a series of measures in building a financial safety net and strengthening financial supervision, which has created a good policy and institutional environment for the establishment of China's overseas investment insurance system and promoted the research and exploration of the relevant departments on the overseas investment insurance system.

In 2001, China formally joined the World Trade Organization (WTO), the scale of overseas investment has been growing rapidly, the risks faced by enterprises overseas are diversified, and the original insurance model can not meet the risk response needs of overseas investment. In order to adapt to the international investment environment after China's accession to the WTO, there is an urgent need to improve China's overseas investment insurance system. In May 2001, the State Council approved the formation of China Export and Credit Insurance Corporation (CECIC), and on December 18 of the same year, CECIC was officially listed for operation. CICC is positioned as a wholly state-owned policy insurance company, directly under the management of the central government. With the mission of , CECIC promotes the development of foreign economy and trade by providing insurance and other services for foreign trade and foreign investment cooperation. CECIC's main products and services include: medium- and long-term export credit insurance, overseas investment insurance and other export credit insurance services. The official operation of ECIC lays the foundation for China's overseas investment insurance system, on which China's overseas investment insurance

system is continuously improved and developed."fulfilling policy functions and serving the high level of opening up"

3. Development of China's Overseas Investment Insurance System

3.1. Developments and Issues in Bilateral Investment Treaties

China has been actively contributing to the signing of bilateral investment treaties (BITs), and up to now, it has signed a total of 129 BITs, of which 104 are in force. [3] In the early 1980s, the BITs signed by China were mainly to protect the interests of the host country, with simple and conservative contents. At this time, the domestic has not yet established the overseas investment insurance system, the subrogation provisions in the BITs are virtually null and void. 1992 after the end of the southern patrol speech, China established the socialist market economic system, China signed the BITs to introduce the BITs have introduced the BITs have entered into force. thethe"most-favored-nationmost-favored-nation"and fair and equitable treatmentfair and equitable treatmentAfter China's accession to the WTO in 2001, China gradually changed from a "big country for attracting investment power" "to an . After China's accession to the WTO in 2001, China gradually transformed from , and BITs were upgraded to a higher standard, and after the formal establishment of the China Credit Insurance Corporation (CICC) in 2002, China began to try to connect BITs with the insurance system, and BITs gradually took into account both investor protection and host country's right of regulation. For example, the signed between China and Canada in 2012 a " to ""a "big country for attracting investmentsbig country for investingChina-Canada BIT explicitly incorporated the investor-state dispute settlement (ISDS) mechanism and provided institutional support for subrogation procedures after insurance claims.

3.2. MIGA Practices and Issues

China is a founding member of MIGA, and the background of China's joining MIGA to the in the early stage of reform and opening up is closely related strategy, aiming at guaranteeing the safety of foreign investment in China through international mechanisms, and at the same time for its own enterprises "bringing in" providing risk protection . MIGA provides four types of political risk insurance for Chinese enterprises investing in developing countries: currency exchange insurance, expropriation insurance, war and civil unrest insurance, and default insurance. "going out"[4] China's enterprises in Africa, Latin America and other regions of the energy and infrastructure projects, often through the MIGA insurance to hedge the host country policy change risk.

China has not established a specialized overseas investment insurance law that connects with MIGA, and the default insurance and indirect expropriation insurance underwritten by MIGA have not yet been fully covered by China's domestic insurance products, and CITIC Insurance is still focusing on traditional political risks, which fails to form a complementary relationship with MIGA. And the realization of MIGA's subrogation right faces double obstacles. MIGA's subrogation right is based on the Seoul Convention, but China's domestic law has not clarified its priority application status. When the host country refuses to recognize the subrogation right of MIGA, my country I need

to resolve through diplomatic channels, resulting in inefficiency.

3.3. Practices and Problems of Chinese Newspapers

CITIC Insurance covers commercial risks (buyer's bankruptcy or insolvency, buyer's default on payment, buyer's refusal to take delivery of the goods), political risks (changes in importing country's policies, wars and civil strife, third-country restrictions), and other specific risks (breach of contract insurance, indirect expropriation, etc.). Investment projects insured by ECIC are limited to the following projects that are in line with China's national policy, economic and strategic interests: (1) overseas direct investment, including equity investment, shareholders' payment and shareholders' guarantee; (2) loans from financial institutions; (3) other approved forms of investment, which can be insured regardless of whether or not they have been completed (and are not limited to new investments). Qualified investors capable of taking out insurance are limited to (1) financial institutions and enterprises registered in the People's Republic of China (except Hong Kong, Macao and Taiwan), except those controlled by Hong Kong, Macao, Taiwan, or foreign enterprises, institutions, or citizens; (2) foreign enterprises and financial institutions registered and established in Hong Kong, Macao, Taiwan, and outside the People's Republic of China, and if more than 95% of the shares are controlled by an enterprise or institution in the People's Republic of China, may be insured by such domestic holding enterprise or institution; (3) other approved enterprises, institutions, associations and natural persons. There is no requirement for a qualified host country CITIC to sign a bilateral investment guarantee agreement as a prerequisite.

CITIC provides core protection for China's overseas investments by underwriting commercial and political risks, but there are many problems in its development. CITIC has not explicitly included new types of risks such as , and the definition of indirect expropriation is vague, leading to disputes over claims. In addition, CITIC Insurance's business is concentrated on large state-owned enterprises, while SMEs have low coverage due to strict quota approval and high premium costs, especially "riot risk" and "terrorism risk" small and micro enterprises in high-risk areas along the are difficult to be insured. China ECIC Belt and Road 's "integrated audit and insurance" model (overlapping approval and operation functions) is prone to conflicts of interest and affects the independence of underwriting. Enterprises need to submit a large number of documents (e.g., court judgments, execution applications) when making claims, and the process can take as long as half a year to a year, which puts pressure on the enterprise's capital chain. Some cases are rejected due to insufficient evidence (e.g. suspicion of connected transactions), which limits the protection of enterprises' rights and interests.

4. Improvement Measures

4.1. Structuring the Dual Guarantees of International Treaties and Domestic Law

Promote the linkage between BITs and domestic laws. Early BITs were limited in effectiveness due to the lack of support from the domestic overseas investment insurance system, and the development of BITs will lead to the upgrading of the domestic overseas insurance system to a

higher standard. Realize the in-depth integration of the two, so as to build double insurance for overseas investment.

Accelerating the construction of domestic legislation, formulating the Overseas Investment Insurance Law, clarifying the path of transformation of MIGA subrogation rights in domestic law, and enhancing the synergy of rules between domestic law and MIGA. At the same time, we should make use of the FTZ to develop special products complementary to MIGA, such as infrastructure insurance for countries along the . The most important thing is to enhance China's international rules discourse, by increasing the share of MIGA, leading the regional risk-sharing fund (such as the Asian Infrastructure Investment Bank cooperation), and promoting the reform of MIGA to adapt to the characteristics of China's investment. "Belt and Road"[5].

4.2. Promoting the Development of China Newspaper to a High Standard

4.2.1. Improvement of Insurance Types

Incorporating emerging political risk categories and adding insurance for to cover "riot risk" and "terrorism risk" losses due to political unrest in countries along the. For example, in response to the frequent social conflicts in Southeast Asian countries, can be designed Belt and Road"social stability insurance" to compensate enterprises for losses due to work stoppages caused by strikes and demonstrations. should be clarifiedThe definition of, so as to include in the scope of protection behaviors that indirectly harm the rights and interests of investors, such as the upgrading of environmental protection policies and tax adjustments in host countries, so as to reduce the investment risks caused by policy changes. "indirect expropriation"

4.2.2. Optimizing SME Services

In terms of policy, the relevant departments can institutionalize policies to support SMEs to "go global". China Credit Union can in underwriting simplify the approval process and launch a universal premium subsidy policy. The use of big data real-time early warning of host country political and economic risks, targeted for small and medium-sized enterprises to provide risk prevention recommendations. In addition, China Credit Report should simplify the claim procedures, so that it is no longer difficult for small and medium-sized enterprises to claim compensation, and promote the ability of small and medium-sized enterprises to prevent risks and healthy development.

4.2.3. Strengthening Joint Underwriting with Multilateral Institutions

China CITIC can join hands with MIGA to launch a "hybrid insurance product" to provide for investment projects in non-MIGA member countries (e.g., Central Asian countries)"CITIC Insurance + MIGA" double protection , so as to diversify the underwriting pressure. Under the framework of , cooperate with the Asian Investment Bank (ADB) to provide special support for political risk protection for infrastructure projects along the routes. Establish a regional risk-sharing mechanism. the Belt and Road Initiative[6]

5. Conclusion

As an important tool for China's participation in global economic governance, the improvement of overseas investment insurance system is not only related to the enterprise's risk prevention and control ability, but also the

embodiment of national strategic soft power. At present, although CITIC Insurance has achieved remarkable results through the innovation of insurance types and optimization of services, structural contradictions such as lack of legislation and insufficient synergy of mechanisms still need to be broken through. In the future, CITIC should base on the new development pattern of , accelerate the legislative process of the Overseas Investment Insurance Law, promote the insurance design to "double cycle"transformation of , and deepen the interlocking of rules and regulations with MIGA and other multilateral organizations. Only through institutional empowerment, technological empowerment and international cooperation empowerment can we build with "precision and flexibility"an overseas investment protection system , and build a solid protection system for high-level opening up to the outside world and the construction of for high-quality development. It is only by "Chinese characteristics" and "global compatibility" the "Belt and Road" building an overseas investment protection system with "Chinese characteristics" and "global compatibility" that

we can build a risk barrier for high-level opening-up and high-quality development of "Belt and Road".

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