

Challenges Faced by Chinese State-owned Enterprises in Preventing and Controlling Corruption in Overseas Investments under the " Belt and Road" Initiative

Hai Tian^{1,a*} and Yuanbo Li^{2,b}

¹Law School of Northwest University, Xi'an, Shaanxi, China

²Law School of Northwest University, Xi'an, Shaanxi, China

^aEmail: thwilliam@126.com, ^bEmail:1051371953@qq.com

*Corresponding author

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Abstract: Under the "Belt and Road" initiative, Chinese state-owned enterprises face challenges in preventing and controlling overseas investment corruption. The existing rules are slightly inadequate in preventing and controlling overseas investment corruption and cannot meet China's ever-increasing scale of foreign investment. This requires research on China's overseas investment corruption prevention and control system, discovering problems and proposing corresponding solutions, and achieving the goal of state-owned enterprise overseas investment corruption prevention and control through the establishment of internal and external rules of state-owned enterprises.

Introduction

In June 2013, Zhang Liubin, former deputy chief economist of China Railway 15th Bureau Group Co Ltd, deputy general manager of International Engineering Company, and manager of Saudi Engineering Company, was suspended after executing 200 Saudi school construction projects. The reason is that Zhang Liubin abused his power and caused damage to state assets, and their positions were subsequently suspended. Due to Zhang Liubin's refusal to confess the criminal facts and his main criminal facts occurred abroad, the case was once in trouble. Eventually, the judicial department's investigation lasted nearly two years before the case was resolved, and Zhang Liubin's bribery and embezzlement crimes were verified. This is of great value for the study of the prevention and control of corruption in overseas investment of Chinese state-owned enterprises.

In the context of the "Belt and Road" construction, the scale of China's state-owned enterprises' outbound investment and their international competitiveness have increased dramatically. The continuous economic growth has also brought many risks, and the loss of state-owned assets caused by corruption risks is particularly prominent. Since the 18th National Congress of the Party, the Party Central Committee with General Secretary Xi Jinping at the core has attached great importance to the progress of anti-corruption work. Since 2012, the number of public officials who have been disciplined and disciplined by the country has reached one million. Domestic anti-corruption efforts are unprecedented.

But in contrast, since China signed the United Nations Convention against Corruption in 2003, the anti-corruption work of overseas state-owned enterprises has been difficult and once in trouble. Why is the domestic anti-corruption prospects good, but, the overseas anti-corruption work described in the Zhang Liubin case is difficult to carry out, which is related to the absence of relevant measures to prevent and control corruption risks of state-owned enterprises' foreign investment. Therefore, this article raises questions based on the above cases and overseas anti-corruption situation: how to prevent and control the risk of corruption of Chinese state-owned enterprises' overseas investment under the " Belt and Road "initiative?

Status Quo of Rules for Preventing and Controlling Corruption of Overseas Investment by Chinese State-owned Enterprises under the "Belt and Road" Initiative

International rules. The United Nations Convention against Corruption has eight chapters and entered into force on February 12, 2006. It is an international legal document designed to combat transnational and cross-regional corruption crimes. It involves legislation, law enforcement, justice, and National policies and other aspects provide legal support for governments around the world to implement convictions, punishments, accountability, prevention, and international legal cooperation for various corrupt practices. It has established five major anti-corruption mechanisms: prevention, criminal conviction and law enforcement, international cooperation, asset recovery, and compliance monitoring. The convention is an international policy document on China's defense against overseas corruption, and provides a platform for China to use the international convention to conduct in-depth cooperation with countries along the "Belt and Road" to combat corruption.^[1]

Domestic rules. There is no special legislation on the corruption of overseas investment in state-owned enterprises, and it mainly relies on the relevant domestic laws and regulations to regulate the corruption of overseas investment.

Article 163 of the Criminal Law of the People's Republic of China provides for the crime of accepting bribes by non-state workers: "The staff of a company, enterprise or other unit make use of the convenience of their position to claim the property of others or illegally accept the property of others. Whoever seeks benefits for others, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount involved is huge, the offender shall be sentenced to fixed-term imprisonment of more than five years and may also be sentenced to confiscation of property. " Paragraph 1 of Article 164 of the Criminal Law of the People's Republic of China provides for the crime of bribery of non-state workers: "Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any functionary of a company, enterprise or other unit, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined. " The second paragraph provides for the crime of bribing foreign public officials and officials of public international organizations: "whoever gives property to foreign public officials or officials of public international organizations in order to seek improper commercial interests shall be punished in accordance with the provisions of the preceding paragraph." The law only provides penalties for corruption in overseas investment compared with the crime of bribing non-state functionaries, and does not involve the regulation and supervision of corruption.

Article 7 of the "Anti-Unfair Competition Law of the People's Republic of China" stipulates that business operators must not use property or other means to bribe units or individuals who use their power or influence to influence transactions in order to seek trading opportunities or competitive advantages. Article 33 of the "Foreign Trade Law" stipulates: "In foreign trade business activities, it is not allowed to carry out unfair competition acts such as selling goods at unreasonably low prices, colluding with bids, issuing false advertisements, or conducting commercial bribery. These two laws only include legal regulations on unfair competition acts by bribery, but in reality bribery often manifests itself in personal profit and waste of public resources caused by improper corporate governance.

Challenges Faced by Chinese State-owned Enterprises in Preventing and Controlling Corruption in Overseas Investments under the "Belt and Road" Initiative

Domestic regulations are not sufficient to regulate the risk of corruption in overseas investment. Establishing and improving the laws and regulations related to the prevention and control of overseas investment corruption is the basis for restraining this risk. From the successful experience of China's domestic anti-corruption work, we can see that under the situation of "zero tolerance" of corruption by the Party Central Committee, and based on the original Disciplinary Inspection

Commission, through the establishment and formulation of the Supervision Committee and Supervision Law, China's domestic anti-corruption work has achieved good results. In the process of overseas investment by state-owned enterprises, if a complete prevention, conviction, law enforcement, international cooperation, asset recovery and compliance monitoring mechanism is established for this behavior, it will greatly improve overseas corruption. The current situation, regulate the investment behavior of state-owned enterprises, avoid the improper loss of state-owned assets and improve the utilization rate of state-owned assets.

China's laws and regulations on corruption of overseas investments are currently based on the Criminal Law of the People's Republic of China, the Anti-Unfair Competition Law of the People's Republic of China, and the Foreign Trade Law. There are serious absences of preventive measures, international cooperation, asset recovery and compliance monitoring mechanisms, which only involve the conviction and punishment of corruption, and most of the situations covered by regulations are corruption acts for the purpose of unfair competition, This means that some actions that actually endanger national interests are not punished in accordance with them. Regarding the long-term lack of special legal regulations for the corruption of state-owned enterprises' overseas investment, part of the reason is that China's rapid economic development and the rapid expansion of overseas investment by state-owned enterprises under the "Belt and Road" initiative have led to legislation lagging behind economic development. This phenomenon is regulated by modifying the form of existing laws. Another part of the reason is that there is no consensus that state-owned enterprises' corruption in overseas investment will seriously lead to the loss of state-owned assets. Taking the case of Zhang Liubin as an example, when undertaking the construction of a Saudi project, he took advantage of his position and used forgery of engineering subcontracts and corrupted public funds of more than 40 million yuan. Eventually, Saudi Arabia charged hundreds of millions of dollars in intermediary fees to intermediaries, resulting in a great loss of state-owned assets. This fully illustrates the importance and necessity of preventing and regulating the corruption of state-owned enterprises' overseas investment.

Legal conflicts between China and countries along the "Belt and Road". The investment behavior of Chinese state-owned enterprises in the countries along the "Belt and Road" is facing the problem of application of laws, which will lead to conflicts in the application of laws due to different values of laws in different countries. When cross-border legal conflicts arise, related to national sovereignty issues, it will make it difficult to resolve related legal issues. It's easy for corrupt people to find gaps in the law to escape sanctions. Taking the case of Zhang Liubin as an example, it is precisely because the place where the criminal act took place and the place of action occurred in Saudi Arabia, and the suspects fled with huge sums of money, which made it difficult for China and some countries to solve the case in the case of conflict of laws. In general, when a state public official attempts to escape from legal sanctions by fleeing, the judicial organs will initially grasp the facts of the crime based on their criminal behavior, and arrest the criminal suspect after having sufficient evidence. However, when criminal acts occur abroad, the judicial organs cannot grasp the main criminal facts and evidence in the first place, and post-investigation investigations generally need to resolve legal issues related to extradition. However, in the case of corruption of overseas investment by state-owned enterprises, they are not only facing extradition. Issues also include conflicts of laws such as investigating and collecting evidence, service and enforcement, which greatly increases the difficulty of resolving overseas corruption cases.

Zhang Liubin's case was finally solved after two years because different countries have different requirements for evidence. When the Chinese judiciary finds the clues of Zhang Liubin's corruption, the application for judicial assistance in overseas evidence collection may be rejected because the conflict of laws does not meet the standards of overseas countries. Moreover, there are objective differences in the degree of rule of law in various countries. When conducting investigation and evidence collection of relevant criminal facts, not only can not obtain relevant permits, but also the lack of evidence to prove the lack of assistance from relevant authorities.

Lack of internal regulatory measures for Chinese State-owned enterprise overseas investments. Internal supervision can promote the uniformity and cooperation of enterprises. It is the

fundamental basis for enterprises to carry out legal compliance management and orderly development. If a sound internal supervision measure for overseas investment is established in a state-owned enterprise, it can not only prevent corruption but also Standardize the investment process, improve the utilization efficiency of state-owned assets, and effectively prevent risks. However, due to the lack of an internal supervision system for state-owned enterprises' overseas investments, loopholes in their investment workflows have emerged, which are mainly reflected in corruption committed by investment decision-making, investment delivery, bidding and bidding, and abuse of authority by project operation nodes. In terms of investment decision-making, it mainly manifests itself in receiving commercial bribes from "middlemen" when selecting investment partners. In terms of investment delivery, it mainly manifests in the due diligence of third-party companies that perform accounting and property investigations on seller companies. For commercial bribery of sellers and third-party companies, there are bidders' commercial bribery in overseas bidding and procurement activities to help them gain a competitive advantage. The main aspect of project operation is that project operators take bribes and use their powers. It will interfere with procurement, construction, supervision and completion acceptance, and seek improper benefits.

In Zhang Liubin's case, he used the convenience of being a manager of a branch to arrange for relatives to hold key positions in the project's operating project and handle major fund payments, which resulted loss of several hundred million yuan. In the course of project operation, the relevant person in charge used the loophole in the lack of the company's internal supervision system to eventually cause damage to state-owned assets. This shows that internal corporate corruption supervision measures are of great significance for the prevention and control of overseas investment corruption, and the role of internal supervision can effectively prevent them before they occur, and minimize the losses caused by risks.

Measures to Prevent and Control Overseas Investment Corruption of Chinese State-Owned Enterprises under the “Belt and Road” Initiative

Develop special overseas anti-corruption laws based on existing laws. China currently does not have a special overseas anti-corruption law, but in order to meet the current real needs, we can only rely on the improvement of the Criminal Law of the People's Republic of China, the Anti-Unfair Competition Law of the People's Republic of China and the Foreign Trade Law It is possible to regulate the corruption of overseas investment. It is mainly to amend Articles 163 and 164 of the Criminal Law of the People's Republic of China to clarify the scope of corruption in overseas investment and increase the statutory penalty for crimes related to this act, and to increase The cohesion clauses include relevant content on preventive measures, international cooperation, asset recovery and compliance monitoring mechanisms. Articles 7 and 33 of the "Anti-Unfair Competition Law of the People's Republic of China" and "Foreign Trade Law" specify the relevant provisions on unfair competition in overseas investment.

Formulate a special overseas anti-corruption law, which can refer to the provisions on conviction, punishment, accountability, prevention, and international legal cooperation of corruption in the United Nations Convention against Corruption. According to the current situation of China's rapidly expanding overseas investment, various types of business Bribery to prevent the loss of state assets. Drawing on the successful experience of the US Anti-Corruption Overseas Law, China 's state-owned enterprises are forbidden to bribe foreign governments, and direct or indirect corruption is regulated by the anti-corruption law, and its civil and criminal punishment measures are improved. Provide legal guidance for overseas investment business.

Mutual legal assistance cooperation with countries along the “Belt and Road”. When investigating corruption in overseas investments, investigation and evidence collection issues involving different sovereign states require extensive judicial assistance to be resolved, including extradition of criminal suspects and related investigation and evidence collection. For the extradition of criminal suspects, China's "Extradition Law" is in line with international standards and extradition clauses are

concluded with countries along the "Belt and Road" to improve international legal cooperation clauses on corruption of overseas investment by state-owned enterprises. When designing an extradition treaty, we should seek common ground while shelving differences, and under the guidance of the principle of universality, ensure that China effectively implements sanctions and jurisdiction over corruption crimes in overseas investment, so that the treaty concluded by the two parties is practically feasible. When there is a conflict over the requirements of the extradition treaty, corrupt criminals can also be actively mobilized to take the initiative to fight for leniency to ensure the timely recovery of state-owned assets.

Since overseas investigation and evidence collection involves the sovereignty of a country, it is difficult to apply relevant domestic regulations abroad. This requires the establishment of treaties and mutual aid measures for investigation and evidence collection of corruption with countries along the "Belt and Road" to achieve their goals. However, when a country that has not reached a treaty conducts investigation and evidence collection and its national regulations cannot be applied, it is necessary to collect the case evidence in accordance with the investigation measures and methods of the evidence collection country, and strictly observe the evidence collection procedures of the country where the evidence is collected. The contradiction in the issue of evidence collection shall be fed back to the domestic judicial or administrative organs and resolved through diplomacy to ensure the completion of overseas investigation and evidence collection.

Establish and improve internal self-supervision measures of state-owned enterprises. Strict internal self-supervision measures should be established at investment decision-making, property rights transactions, bidding and bidding and project operation nodes. Regarding the prevention and control of corruption in overseas enterprises, neither the construction of overseas anti-corruption laws nor the punishment of corrupt elements have the characteristics of high efficiency and low cost of self-regulation within the enterprise. First of all, in the bidding and tendering process, all stages of state-owned enterprises' bidding and tendering process monitoring should be implemented in accordance with the provisions of national tendering and bidding laws to achieve openness and transparency; in the investment delivery process, a financial accounting system should be established to carry out relevant policies for the investment country and legal due diligence to prevent third party commercial bribery; in the operation of the project, establish an anonymous reporting system for company employees, and review large property expenditures to ensure that they comply with property management regulations; in the investment decision-making process, invest in advance to assess corruption in the country to prevent corruption, due to information asymmetry. Secondly, we must strengthen the incentive and punishment mechanism inside the enterprise, increase anonymous reporting rewards for corruption and internal punishment of corrupt elements; disclosure of relevant information of the enterprise goes into every aspect of investment to curb the breeding of corruption problems. Governance of corruption at the source. Finally, strengthen the self-discipline education of state-owned enterprises, and implement the internal inspection system of state-owned enterprises. Party building in state-owned enterprises should emphasize party discipline, increase the punishment of party members and cadres for violation of political and political disciplines, and prevent ethical and moral corruption of public officials in overseas enterprises. The internal inspection system of state-owned enterprises should not only be implemented in domestic enterprises, but also strengthen inspections of overseas enterprises, and timely report the phenomenon of corruption to the Discipline Inspection Commission and the Supervision Committee to achieve a seamless connection to the supervision of public officials.

Conclusion

As the scale of China's outbound investment expands year by year, the corruption of overseas investment by state-owned enterprises should also be regulated. Under the call of General Secretary Xi Jinping to strengthen China's international cooperation against corruption and build the "Belt and Road" into a "road of integrity", China The research on the corruption prevention and control of

state-owned enterprises' overseas investment has achieved good results, which provides a lot of experience for future overseas anti-corruption legislation. But at the same time, China's overseas corruption prevention and control still has problems such as inadequate domestic legislation, the existence of conflicts of laws, and the lack of internal corporate supervision measures. Therefore, it is necessary to develop a special overseas anti-corruption law based on the improvement of existing laws, and "Countries along the "Belt and Road" have carried out judicial assistance cooperation and established and improved internal self-regulation measures for state-owned enterprises to prevent and control corruption of state-owned enterprises' overseas investment.

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