The Perfection of Subrogation System in Overseas Investment Insurance System

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Abstract
The Multinational Investment Guarantee Agency (MIGA) was established in 1988 and is the institution with the shortest establishment time in the World Bank Group. China signed and ratified the Multilateral Investment Guarantee Agency Convention in April 1988 and became one of the founding members of MIGA. MIGA's mission is to promote foreign direct investment (FDI) into developing countries to help support economic growth, reduce poverty, and improve people's lives. Among them, the most important thing is to guard against political risks to protect investment. This article focuses on the study of MIGA's subrogation rights. In connection with the analysis of the international situation, China's foreign investment has shown a good development trend. The main aspects of investment are more diversified; the investment area is more extensive; the scale of investment is larger. Our country should combine plan overseas investment more scientifically and rationally, so as to achieve a mutually beneficial and win-win situation with many countries and regions.

Keywords
Overseas Investment, MIGA, Subrogation

1. The introduce of the subrogation right of overseas investment insurance system

The Multinational Investment Guarantee Agency (MIGA) was established in 1988 and is the institution with the shortest establishment time in the World Bank Group. China signed and ratified the Multilateral Investment Guarantee Agency Convention in April 1988 and became one of the founding members of MIGA. MIGA’s mission is to promote foreign direct investment (FDI) into developing countries to help support economic growth, reduce poverty, and improve people's lives. It does this by providing political risk insurance (guarantees) to the private sector.

The right of subrogation of overseas investment insurance refers to the right of overseas investors to take out insurance from overseas investment insurance institutions (Huang Linlin, 2017). After the investors encounter political risks in the host country, the overseas investment insurance institutions pay the insurance premium to the overseas investors according to the insurance contract, and the overseas investment insurance institutions obtain the right of the investors to claim against the host country government by subrogation. Therefore, the subject of subrogation in overseas investment insurance refers to a specific state institution or a specialized insurance company invested by the state; the subject of subrogation is mainly the host government, not the ordinary civil subject. The legal relationship between the overseas investment insurance institution as the insuror and the host country as the object of subrogation is the most important legal relationship in the whole process of subrogation. At the same time, the operation of subrogation has also entered the international field.

The subrogation right of overseas investment insurance is mainly based on the investment protection agreements in international law, multilateral investment treaties, national personal jurisdiction and diplomatic protection in
domestic law.

2. The problems of subrogation in overseas investment insurance in China

MIGA’s advantages in promoting overseas investment. MIGA has strong risk guarantee capabilities. MIGA has a wider coverage and longer coverage period. MIGA’s promotion and consulting business is conducive.

At present, China has no overseas investment insurance law and no real overseas investment insurance system. However, China has signed bilateral investment protection agreements with 104 countries, most of which have provisions on subrogation. The problems existing in China’s current law are as follows:

2.1 Lack of systematic and specialized legal system

Up to now, there is almost no relevant legislation directly regulating the overseas investment insurance system in China, and there are few clear provisions on the subrogation right of overseas investment insurance. There is no overseas investment law or overseas investment insurance law in China, and the draft foreign investment law is only in the process of soliciting opinions. At present, only the notice on the establishment of risk protection mechanism for key overseas investment projects and the notice on further strengthening financial insurance support for key overseas investment projects are closely related to overseas investment insurance. The investment guide issued by China export and credit insurance corporation gives a simple explanation on the types of insurance covered by overseas investment insurance, but lacks the provisions on subrogation. Generally speaking, they are more general, but they are lack of detailed operation rules.

2.2 The imperfection of bilateral investment protection agreement

There are some problems in the law of subrogation of overseas investment insurance in China, such as the imperfection of bilateral investment protection agreement, which is mainly reflected in the lack of quantity and quality of the agreement. One belt, one road, was signed by the two countries. But China has not signed any treaty with the countries along the border. The development of overseas investment has led to disputes between China and some countries. It eventually leads to economic losses. In addition, the specific way of subrogation in the bilateral investment agreements between China and foreign countries is not perfect, and the provisions on what is political risk are also not perfect, so it is difficult to meet the needs of the current stage.

2.3 Insufficient utilization of ICSID and MIGA systems

In the aspect of risk insurance, MIGA is the largest investment insurance entity in the world, which makes up for the deficiency of insurance underwriting capacity and scope in various countries. MIGA not only provides an international guarantee mechanism for the political risks of investment to developing countries, but also provides favorable conditions for the nonpolitical settlement of disputes between investors. However, China has not made effective use of MIGA system in overseas investment, rarely cooperated with MIGA organization, and could not seek MIGA organization to solve problems. When China acceded to the Washington Convention, it only agreed to submit the dispute on the amount of compensation to the ICSID jurisdiction makes it clear that ICSID jurisdiction is applicable to the exclusion of investment disputes other than compensation. However, there are still some deficiencies in the use of ICSID in China, mainly reflected in the failure to seek solutions in accordance with ICSID convention when facing compensation problems.

3. Suggestions on perfecting the system of subrogation right of overseas investment insurance in China

3.1 Establishing the system of overseas investment insurance law

At present, there is no "overseas investment insurance law" in China. In order to protect overseas investment more effectively, we should formulate a special overseas investment insurance law as soon as possible, build an overseas investment insurance law system, expand the scope of its underwriting, improve the investment insurance system, and clarify the restrictions of qualified host countries according to the actual situation. At the present stage, China's overseas investment is mainly concentrated in economically underdeveloped areas (Gao Ling, 1997).

Therefore, in practice, China export credit insurance company should make a detailed and clear investigation on the political conditions, economic conditions and social security degree of the host country before underwriting.
This is conducive to the effective subrogation to the host country according to the agreement after compensation. In the case of subrogation, the domestic legislation should make clear the specific order of subrogation of China export credit insurance company, as well as the specific responsibility of the damaged enterprise, and the specific distribution of responsibility.

3.2 In the investment protection agreement between China and foreign countries, the exercise procedure should be specified

The bilateral investment protection agreements signed between China and other countries are a guarantee for Chinese investors to make overseas investment. In the protection agreement, it is also necessary to make clear provisions on the functions and legal issues existing in the right of subrogation, as well as the subject, scope, mode, procedure of subrogation and the settlement of disputes, so as to protect the right of domestic and overseas investment insurance institutions to subrogate to the host country after compensation. In addition, we also need to make detailed provisions on the agency, procedure and method of subrogation.

3.3 Clarify the legal status, rights and obligations of underwriting institutions

First of all, we need to clarify the nature of overseas underwriting institutions. The insurer of overseas investment insurance is the underwriting institution, which is not a general commercial insurance institution, but a policy institution. At present, only China export credit insurance company is qualified to operate overseas investment insurance business. Therefore, China can try to liberalize the operation license of overseas investment insurance qualification, authorize other policy institutions to set up overseas investment underwriting institutions, and improve work efficiency. Secondly, it is necessary to clarify the business model of overseas investment underwriting institutions, which can be organically integrated with the market economy, and set up the board of directors and the operation and management department.

In order to adapt to the strategic needs of China's insurance development going abroad, we should effectively improve the decision-making system of underwriting institutions and clarify their rights and obligations. Thirdly, it is necessary to clarify the approval and operation rights of underwriting institutions, implement the integrated operation mechanism of overseas approval institutions and underwriting business operation institutions, and combine the approval institutions with underwriting institutions, so as to use the unified management system to clarify the rights and obligations of underwriting institutions. Finally, it is necessary to clarify the right of claim of the insurer, so as to clarify its legal status, so that the special form of property insurance has a clear right of subrogation. At the same time, for the countries that want to refuse to accept the right of claim, we can turn them into unqualified host countries, reduce cooperation and promote the development of our country overseas investment has developed.

3.4 Actively use MIGA and ICSID

Compared with the bilateral model, the multilateral international investment protection mechanism has its own characteristics and advantages. Combined with the principle that treaties must be observed in international law, the countries participating in the investment protection must fulfill their protection obligations according to the treaties of the participating countries, so as to make the binding force of legal treaties stronger. When China ratified and acceded to the Washington Convention, it limited the scope of arbitration of the dispute settlement center, resulting in theoretical differences and practical obstacles. Therefore, we need to use ICSID to protect the interests of China's overseas investment, provide favorable conditions for the interests of overseas investment, and reduce the risk of passive arbitration Risk hidden danger, so as to safeguard China's economic interests. Although MIGA requires that the qualified host country can only be a developing member country, once the investment guarantee activities are carried out, it will be the same as designating or recognizing the subrogation right of the investment guarantee institution. For the developing countries that have not signed a bilateral investment agreement with China but are members of MIGA, it is also a good choice for overseas investment enterprises to insure with MIGA. At the same time, we can also actively explore a new mode of multilateral investment underwriting, and learn from MIGA investment mode to guarantee projects with long cycle and large investment amount. China can also make full use of multilateral investment guarantee institutions to carry out BOT investment and develop the construction of facilities in China.

4. Conclusion

The status quo and trend of China's foreign investment. China's foreign investment has shown a good momentum
of development. It is manifested in: 1. The subject of investment is more diversified; 2. The area of investment is more extensive. From this point of view, China's foreign investment has extremely unusual significance and influence: 1. Conducive to establishing China's image as a major country and enhancing the international competitiveness of domestic enterprises. 2. Conducive to acquiring abundant foreign natural resources. 3. Conducive to expanding the share of overseas markets.

China's current financial resources are relatively rich, and many investment projects have relatively low costs. We should make full use of these advantages to invest in the “infrastructure” that MIGA strongly supports. At the same time, MIGA strongly sponsors “South-South Cooperation”, and we may wish to continue to invest in many poor developing countries, especially in Africa. Use the investment information provided by MIGA to timely adjust investment strategies and clarify investment projects and specific regions. One of MIGA's main businesses is promotion and consulting services. We can use this business to increase the bargaining chip of "low risk and high efficiency" for overseas direct investment. MIGA's official website has a political risk insurance center and a foreign direct investment promotion center. We must grasp these latest investment consultations and understand whether the investment area has a good investment environment, etc., to reduce blindness. Encourage domestic insurance institutions to strengthen cooperation with MIGA, learn from its advanced management experience and system design, and establish my country's overseas investment insurance system as soon as possible. My country's current overseas investment legislation is relatively lacking, and there is no good overseas investment insurance system. MIGA's scientific mechanism happens to show us that its provisions on guarantee qualifications, coverage, and supplementary guarantees are worth learning.

In order to effectively solve the problems existing in the law of subrogation in China's overseas investment insurance, and improve China's overseas investment insurance system, we can build the overseas investment insurance law system, clarify the subrogation exercise procedure, clarify the rights and obligations and legal status of the insurer, and actively use MIGA and ICSID System and other strategies to improve the system of subrogation, to promote the smooth implementation of overseas investment insurance subrogation.

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