

# Comparison of Foreign Investment Legal Systems between China and the Philippines

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**Abstract:** Based on a Comparative Study of the Legal Systems of Foreign Investment in China and the Philippines, This Paper Discusses the Characteristics of Bilateral Legal System in Foreign Investment, as Well as the Coordination Points and Countermeasures of Bilateral Legal System in Foreign Investment. in Order to Promote the Legal System in the Field of Foreign Investment Cooperation between China and the Philippines.

## 1. Introduction

According to the China Philippines Comprehensive Economic Cooperation Framework Agreement, One of the Main Contents of the China Philippines Free Trade Area is to Expand Cooperation in the Field of Investment. the Free Trade Area of the Philippines (Afta), Which Began in 1992, Not Only Eliminated the Barriers to Foreign Investment, But Also Established the Philippine Investment Bank, Mainly Implementing Investment Liberalization[1]. Therefore, We Will Explore the Respective Characteristics of the Legal System of Bilateral Foreign Investment and Explore the Common Points and Countermeasures for the Mutual Coordination of the Two Countries' Foreign Legal System. Please Improve and Develop the Foreign Investment Law in Line with Wto Rules under the China Philippines Comprehensive Economic Cooperation Framework Agreement. Now the Environment is Particularly Necessary.

## 2. On the Legal Environment of Foreign Investment in China

The Law on the Introduction of Foreign Investment Has Gradually Shifted from the Focus of Direct Investment to the Consideration of Indirect Investment. Generally Speaking, There Are Two Main Ways to Use Foreign Capital. Direct Investment and Indirect Investment. At Present, China's Restrictions on Foreign Investment Are Mainly Aimed At Overseas Direct Investment, Mainly Including Tentative Provisions on the Establishment of Overseas Investment Companies[2]. in Addition, China's Cooperation in the Development of Coastal Oil Resources, Rules and “Provisions on China's Cooperative Sexual Exploitation of Land Oil Resources” Have Also Produced Many Local Rules. Since 1988, the Law on Indirect Investment Has Attracted More and More Attention, Mainly Including the Administrative Measures on International Commercial Financing and Borrowing of Domestic Institutions Issued by Foreign Exchange Companies. the Rules for the Administration of Overseas Issuance of Domestic Institutional Bonds Issued by the People's Republic of China is a Special Committee of “Overseas Stock Promotion and Listing” Issued by the State Council.

Foreign investment laws and policies lack uniformity and stability. For a long time, China's current relevant laws have adopted a multi department, multi-channel, multi-level and unilateral legislative approach. Moreover, there is a lack of uniformity of law between the central and local authorities and local autonomous groups[3]. The relevant provisions of the central government are too strict, and the priority policies are formulated at different levels, causing regional differences in attracting investment in different places, leading to different treatment. The relevant laws of the central government departments have not been adjusted, and there have been legal disputes. The relevant laws and regulations of local autonomous groups go beyond the scope of power and abuse

power. In other words, the provisions of “local policies” go beyond the provisions of the law and compete to give priority to foreign investors. In addition, the investment promotion rules of local autonomous groups are “policies with a high degree of policy”, and often adopt “red head documents” which can not bring foreign investors a sense of security.

The transparency of foreign investment laws and policies is gradually increasing, but law enforcement needs to be strengthened. The openness of laws and policies is one of the goals of governing by law and pursuing transparency of WTO[4]. In China, private internal documents, administrative orders, internal notices and approvals issued through management channels are very common. In order to make up for the shortcomings of the principle of law, the judicial organs have made many judicial interpretations. Moreover, in order to protect their legitimate rights and interests, foreign businessmen cannot use the law correctly [5]. Fortunately, in recent years, the Chinese government has been actively promoting administrative work with the openness of laws and government. Foreign investment laws and policies have become more widely open and transparency has gradually increased. However, the improper behaviors of administrative organs such as non-compliance, power based law, media based law and low efficiency are still serious, and the relevant laws and regulations cannot be correctly and fairly implemented [6].

Table 1 International Dispute Settlement Model Adopted by the Philippines

Types of disputes	Dispute settlement model
Intergovernmental	UNCITRAL and UNCITRAL Model
	Dispute settlement mechanism in Philippines Japan economic cooperation agreement
	Dispute settlement mechanism in China ASEAN Free Trade Agreement
Between government and private	International Center for settlement of Investment Disputes
	New York Convention

There are certain restrictions on foreign investment. China's overseas investment projects are divided into four categories. Among them, in the field of national security and social welfare, foreign investment is prohibited and strictly restricted. Moreover, there are certain restrictions on overseas investment services[7]. According to relevant regulations, under the same conditions, foreign investors must purchase the required raw materials and equipment for the first time in China. Although there is no clear necessary condition for foreign exchange balance, it still needs to be solved by foreign exchange balance itself. Regarding approval procedures and service fees, there are differences in treatment of foreign enterprises [8].

### 3. An Analysis of the Legal Environment of Foreign Investment in Major Countries of the Philippines

Six ancient Philippine countries (Indonesia, Malaysia, Philippines, Thailand, Singapore, Brunei) have basically established relatively complete foreign legal systems. In the new Philippine period, the foreign investment laws of four countries (Vietnam, Laos, Myanmar, Cambodia) were in their infancy, and did not form a unified and stable foreign legal system. In the Philippines, there is a close relationship with China's investment[9]. Therefore, when discussing the status of the legal environment for foreign investment in the Philippines, this article discusses all the elements. However, for the close relationship between China and the Philippines and a relatively complete legal system for foreign investment (such as Indonesia, Malaysia, Thailand, Vietnam, etc.), please select the main countries.

First of all, foreign investors can set up complete enterprises without restricting investment in equipment. Second, preferential tax system for foreign investment. For example, the production equipment and necessary parts, raw materials and consumables related to the production equipment of the newly established predecessor enterprises generally enjoy the corresponding import tax preference. For fixed assets such as machinery and equipment, priority to purchase value tax and luxury goods can enjoy priority to develop industries, foreign export priority policies, and second-hand capital promotion enterprises established in line with industrial or remote development can enjoy priority to income tax. Third, restrict foreign investment in finance, construction, circulation,

audiovisual, legal, accounting and transportation. For construction projects that cannot be independently implemented by Indonesian enterprises, foreign enterprises can participate as subcontractors or in the name of consulting companies; because of the projects invested by the government, foreign enterprises must establish cooperation projects with Indonesian companies to participate in them; when establishing partnership, foreign law firms must be able to enter the Indonesian market. Fourth, there are barriers to foreign investment. For example, in the areas of infrastructure and health services such as ports, power plants and railways, foreign investment should not exceed 95%, and in the areas of air transport and telecommunications, foreign investment should not exceed 49%. Alcohol and alcohol production of alcohol, parts of chemical weapons and explosives, uranium and radioactive mining, casino and game development, treatment of forests, mahogany, specific environmentally harmful chemicals (harmful pesticides, toxic production processes, etc.), rare species, rights to natural forest management. Fifthly, there are obstacles in forest harvesting and other areas in terms of overseas investment and export. For example, Article 7 of the overseas investment regulations promulgated in 1994 stipulates that after 15 years of commitment and business activities, foreign enterprises must sell some of them to Indonesian nationals. You can transfer stocks directly to the stock market or to the stock market.

Table 2 Comparison of Philippine Business Environment

	Business environment in the Philippines	Business environment in China
Start-up enterprise	161	254
Apply for construction permit	124	265
Access to electricity	16	75
Registered property	108	231

Analysis of Malaysia's foreign legal environment first of all, Malaysia faces the export industry and high-tech industry to absorb foreign investment, improve agricultural varieties, tourism and hotel services, environmental protection, scientific and technological research and development. In terms of technical training and development of power transmission industry, preferential policies shall be given to foreign enterprises. Malaysia provides tax incentives related to the retaliated industries. Malaysia's foreign tax incentives include "pioneer state", foreign tax subsidies and basic subsidies. Third, ensure that overseas investment follows the national industrial development policy. The relevant laws in Malaysia are business acquisition and real estate purchase in Malaysia. In order to limit the industrial investment of foreign investors in Malaysia, the national industrial development policy refers to overseas investment. Fourth, foreign investment in finance, insurance, securities, engineering, basic telecommunications and legal services is limited. If Malaysia no longer approves foreign banks to set up branches in China, foreign capital can participate in 30% of local banks; foreigners can not exceed 49% and 30% of securities and credit cooperatives respectively. Ensure that basic telecommunication service enterprises have market access and state access, but the number of foreign shares is limited to 30%. Fifth, there are barriers to foreign investment. For example, the investment projects of the Malaysian government are basically closed to foreign enterprises. Foreigners can engage in tobacco production in spirit. Malaysia has a lot of restrictions on foreign investors. The situation is wide and prudent. In addition, Malaysia's relevant laws stipulate that second-hand companies are totally prohibited in specific industries and must have more than 2 Malaysian shareholders.

First, we should further relax the control of foreign investment. In March 2003, Vietnam said that "rules for the implementation of Vietnam's foreign investment law" announced that foreign investment projects with an export rate of 80%, incentives and special incentives for foreign investment projects in the industrial zone, and investments in the investment registration license system need to be manufactured to reach \$500, and no license is required for approval. According to the supplementary order of credit institution law implemented on October 1, 2004, foreign commercial banks can set up joint venture banks (the proportion of foreign investment is less than 50%), branches of foreign banks, representative offices and all foreign banks in Vietnam. In addition, the trade balance and foreign exchange management conditions for foreign investors were cancelled. Second, implement policies to promote foreign investment. Since 2004, investors in the

high-tech park have enjoyed various preferential policies such as land, corporate income tax and personal income tax. Third, the preferential tax system for foreign investment activities should be implemented. According to Vietnam's 2004 income tax law (Revised), the income tax rate of domestic and foreign legal persons is 28%, and the preferential tax rate of 20%, 15% and 10% is still applicable. In addition, industrial parks, export processing zones and economic circles, especially enterprises that encourage investment projects, can enjoy tax relief. On January 1, 2004, Vietnamese foreign residents and foreigners' investment income in Vietnam can be exempted from tax when transferred overseas. Fourth, we should divide foreign investment into restricted and prohibited areas. Restricted areas include: production and processing of agricultural and livestock products; production of vegetable oil and sugar; tree processing; including import business, domestic marketing business, fishing for Qianhai products and development of foreign investment projects. The prohibited areas are foreign investment projects that are harmful to national security, national defense and public interests, Vietnam's historical buildings, culture, traditions and habits, Vietnam's natural and ecological environment, including the overseas investment projects of harmful wastes imported from abroad, and the use of toxic chemicals and foreign countries banned according to international treaties Foreign manufacturing of the project. Fifth, restrictions on the access of overseas investment in banking, securities, construction, circulation, communications, shipping, etc. For example, according to regulations, foreign bank branches (except for the United States) can absorb deposits from customers without credit relationship from October 2003, but not more than 50% of their legal capital; provide cross-border construction services, and do not allow overseas construction enterprises to set up branches in Vietnam. Sixth, there are many obstacles to overseas investment. For example, in the field of automobile industry, Vietnam, all products are exported outside the invested projects. New foreign invested automobile assembly and production are no longer approved to set up projects, but domestic enterprises in Vietnam will not be subject to this restriction. Seventh, the local foreign investment policy changes too frequently, leading to the lack of possibility for investors to predict.

#### **4. Competition Points of Foreign Investment Legal Environment between China and the Philippines**

Please formulate foreign laws and policies as principles of sovereignty and autonomy. The principle of sovereignty is the most important principle in international law. It is the right of all countries to choose an independent political, social and economic system and enjoy permanent sovereignty over natural resources. This is reflected in Article 6 of the rules for the implementation of the foreign enterprise law of China and other foreign investment laws. "The application for the establishment of a foreign-invested enterprise that damages China's sovereignty and social welfare and endangers China's national security shall not be approved." Indonesia's foreign investment law requires a national development plan submitted by foreign investors to Indonesia. The economic development of regions and regions, types of enterprises and the importance of foreign investment amount are determined by the government "financial enterprise management law of the Philippines". The proportion of laws stipulated in the current constitution and ownership regulations of Filipinos of enterprises is not approved by the conflicting parties. China has been pursuing autonomy in formulating laws and policies on overseas investment. The general market agreement of the Philippines does not limit the autonomy of that member state when they pursue their own policies. Instead, protection and equal treatment of foreign investment are provided in accordance with the decrees of Member States.

Please follow the principles of economic reciprocity and international implementation. International economic interests and principles of international practice are common features of Philippine foreign investment legal system, and China is no exception. For example, the principle of mutual economic interests, Article 3 of China's "foreign enterprise law" stipulates that "the Chinese national economic development made contribution by the establishment of foreign enterprises" shall clearly point out that article 4 stipulates the principle of international practice that "the interests or other legal rights of foreign investors are protected in accordance with Chinese law",

and Article 5 of China's "foreign funded enterprise law" stipulates that "national root" According to the necessity of social public interest, under special circumstances, foreign enterprises with capital supply are nationalized and not collected. ". Foreign enterprises may proceed in accordance with legal procedures. Expropriation and compensation are the same in Philippine law.

Compared with the laws and regulations related to overseas investment, the laws and regulations related to overseas investment are less. China and the Philippines are almost all developing countries. They lack capital and market, and their international competitiveness is not strong. In order to develop their own economies, China and the Philippines have promulgated laws and regulations to attract foreign investment. However, when domestic enterprises encourage overseas investment, they can only rely on low-level laws and policies that cannot be lax in attracting overseas investment.

Restrictions on the scope of application of the state's foreign investment principles. China is a developing country, like most of the Philippines. Considering its own development and interests, it generally does not apply to national disposal before opening to foreign investors, but only provides national disposal to foreign investors after opening. There are differences in national treatment conditions in developed countries.

Foreign investment restrictions and barriers have different levels. This can be seen from the above analysis of the legal environment for foreign investment in China and major Philippine countries.

Encourage foreign industries to overlap. For example, China supports the development of export-oriented industries and encourages overseas investment in high-tech and environmental protection industries. The Philippines also sees these areas as a focus of support and encouragement.

## **5. Conclusion**

This is the common goal of China and the Philippines to maintain the stability and sustainability of foreign legal systems and strive to create a unified, stable, transparent and predictable environment for foreign investment. In addition, in order to establish China's free trade area in the Philippines and cooperate extensively in the field of mutual investment, China and the Philippines need to complete the formulation of foreign investment law in accordance with WTO rules under the framework agreement of China Philippines comprehensive economic cooperation. The system requires the common development and progress of FTA member countries. First, under the framework agreement on comprehensive economic cooperation between China and the Philippines, the two countries should improve the existing foreign investment laws around the WTO rules. The need to improve transparency rules and an unlimited number of rules was stressed. Second, China and the Philippines should adhere to the principle of national affairs, amend the corresponding foreign investment law as soon as possible, and improve the complaint mechanism against foreign enterprises. In addition, please ensure that the legal system of the previous fund meets the WTO rules and the establishment of the free trade area. Third, when signing the "China Philippines investment agreement", it is necessary to have the flexibility of different treatment for different foreign investment projects in different countries in a specific stage, the autonomy of external adjustment based on the nature of overseas investment projects, macroeconomics, and the policy choice of allowing adjustment. However, in view of long-term demand, a free trade area where foreign investors enjoy national treatment at the stage of entry, opening and operation can take a slow attitude and gradually establish a multilateral investment framework. Moreover, countries cannot force new regulations to restrict overseas investment. (this is known as "maintaining the status quo" and is an obligation to reduce existing restrictions on foreign investment). Fourth, when signing the China Philippines investment agreement, we should follow the principle of reducing differences in foreign investment laws and policies, and establish a complementary relationship between mutual investment and foreign investment. In order to effectively reduce the competition caused by the overlapping of foreign laws and policies, China Philippines free trade area has a population of 170 million and aims to export to domestic demand. Fifth, in order to attract foreign direct investment, the rules of selective origin and the incentive mechanism of internal and external

tariff amount are well used.

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