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## Columbia FDI Perspectives

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### **Outward FDI under China's Belt and Road Initiative: Between regulation and adaption**\*

by

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In 2013, President Xi Jinping launched his signature foreign policy, the [Belt and Road Initiative](#) (BRI), to foster international connectivity and cooperation through infrastructure investments. Many question the BRI's real meaning, scope and global effects. Some lament its unclear nature, for there is still no authoritative list of BRI investment projects and no clear regulatory framework for FDI in this area. Other have considered the Initiative as destabilizing for the international liberal order and good governance standards and fear China's weaponizing investment is challenging the currently open but mostly fragmented FDI regime.

Has the BRI created a new regulatory framework for China's outward FDI? What are its characteristics, and is it challenging the current international economic order? To ascertain whether critics of the BRI are correct, one must look at China's BRI policy papers, outward FDI guidelines, recent bilateral investment treaties (BITs), free trade agreements (FTAs), and practice.

The [official five objectives of the BRI](#) are: enhancing policy coordination; improving infrastructure connectivity through six international corridors; reinforcing trade and investment cooperation, especially in the industrial sector; moving forward with financial integration; and supporting people-to-people collaboration. Following China's "Going out Policy" and the BRI, the country's outward FDI surpassed FDI inflows for the first time in 2015, reaching its peak in 2016. Although an overarching law governing overseas commercial and assistance activity is lacking, the government has issued hundreds of directives and regulations since 2013 regulating outward FDI to fit Chinese development and industrial policies and encouraging China's state-owned enterprises (SOEs) and private companies to respect local customs, honor social responsibilities and uphold environmental and labor protections. The [Guidelines for Enterprise Compliance Management of Overseas Operations \(2018\)](#), for example, encourage Chinese investors abroad (including BRI investors) to comply with domestic rules and self-disciplinary regulations, Chinese and host country laws and international treaties. The China State Council's [Opinions on Further Guiding and Regulating Outbound Investment \(2017\)](#) delineates how outbound investment should align with the BRI. From the perspective of China's inward and outward investment regimes, the classification of projects into "encouraged," "restricted" and "prohibited" categories provides some coherence to China's policies toward FDI in the BRI area.<sup>1</sup> Both documents do not contradict the essence and use a similar language

of the OECD's [Policy Framework for Investment](#) and the [OECD Guidelines for Multinational Enterprises](#).

If Chinese regulations and guidelines on outward FDI are increasingly in line with international standards and best practices, one major issue is the Chinese central government's lack of control over its economic actors abroad and the voluntary nature of most of the guidelines.<sup>2</sup> Chinese SOEs and policy banks at the forefront of the BRI appear to be more aware of, and adaptive to, host country regulations and laws than the guidelines of their home country government.<sup>3</sup> Moreover, given the structural differences of BRI countries, Chinese outward FDI has different objectives. The legal framework varies from memoranda of understanding and partnerships with BRI countries in support of the Initiative to legally binding BITs and FTAs. China's BITs with the global north increasingly include more comprehensive investor-state dispute-settlement provisions, national treatment and more expansive sets of disciplines; meanwhile, most BITs with the global south have not changed since the 1990s, and their supplementation with BRI memoranda of understanding and partnerships might suggest a government-led interventionist approach to investment protection in some sectors.<sup>4</sup>

The BRI may be unclear, and China—like most other countries—does not have detailed regulations for outbound investment. However, the Initiative is already impacting FDI regulations, [rerouting economic and shifting funds between sectors and countries](#) and filling the imaginary of development with new ideas that prioritize development rights and infrastructure. While it is likely that China will increasingly use several legal instruments to protect its investment abroad and does not seem to challenge the international economic order, a homogenous regulatory pattern for BRI investment is unlikely. China is pragmatic and adaptive in dealing with BRI host countries' disparate interests and legal systems. Given its “sovereignty first” policy, China has so far abstained from seeking to transform the legal and governance system of host countries. In this sense, host countries have an opportunity to shape the Initiative. Those with weak legal institutions or lacking experience in certain BRI sectors, such as infrastructure, should share their knowledge through the creation of common platforms or rely on initiatives such as the [Blue Dot Network](#).

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<sup>1</sup> Although the new China FDI Law replaces the Foreign Investment Guidance Catalogues (that divided FDI into encouraged, restricted and prohibited) with a negative list, the latter is the mirror image of the Foreign Investment Guidance Catalogue. See, [Foreign Investment Law of the People's Republic of China \(2020\)](#).

<sup>2</sup> William J. Norris, *Chinese Economic Statecraft: Commercial Actors, Grand Strategy, and State Control* (Ithaca: Cornell University Press, 2016).

<sup>3</sup> [Xiaoxue Weng and Lila Buckley, eds., \*Chinese Businesses in Africa. Perspectives on Corporate Social Responsibility and the Role of Chinese Government Policies\* \(London: IIED, 2016\), p. 13.](#)

<sup>4</sup> Julien Chaisse and Jędrzej Górski, *The Belt and Road Initiative: Law, Economics and Politics* (Leiden: Brill, 2018), chaps. 9–12.

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