· Article ·
doi: 10.13679/j.advps.2016.3.00192

Advances in Polar Science
September 2016 Vol. 27 No. 3: 192-199

Chinese investment in Greenland

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Received 12 May 2016; accepted 2 September 2016

Abstract In 2009 Greenland moved to a more extensive degree of self-government in relation to the Kingdom of Denmark (the Realm), and most policy areas related to business activities and investment are now under the control of Greenland. Under the Self-Government Act, Greenland has issued legislation within several business sectors and other business-related policy areas, including the mineral resources sector. Today, Greenland is highly dependent on fishing and fish exports; however, the government is quite ambi-tious in its desire to develop new business sectors and attract foreign investment, including investment from China, especially to develop its mineral resources. China is now the second largest economy in the world, and outbound investments by Chinese companies present unprecedented opportunities for both the Chinese companies and their global partners. However, Chinese outbound investment faces many hurdles, both at home and elsewhere. It is highly advisable for Chinese companies to evaluate the regulatory, political, environmental, labor, and financial conditions and under-stand what remedies may mitigate the risks they identify before investing in Green land. This paper investigates and analyzes the hurdles faced by Chinese investors in both Greenland and the Danish Realm. The paper focuses on but is not limited to investments in the mining industry.

Keywords **Arctic, Greenland, mineral resources, Chinese investment, investment incentives and barriers, investment in the Arctic**

Citation: Mortensen B O G, Su J J, Mouyal L W. Chinese investment in Greenland. Adv Polar Sci, 2016, 27: 192-199, doi: 10.13679/j.advps.2016.3.00192

1 China as an important partner for Greenland

Greenland is a part of the Kingdom of Denmark (the Realm), together with Denmark proper and the Faroe Islands, but enjoys extensive geographically determined autonomy (self-government) including institutions such as the Greenland Parliament (Inatsisartut) and the government of Greenland (Naalakkersuisut). A number of policy areas have been assumed since the introduction of the Self-Government Act. In terms of public international law (jus gentium), Greenland is not considered an independent state, but "merely" part of the Realm, which constitutes a unitary sovereign state.

With an area of more than two million square kilometers, and a population of less than 56000[1], Greenland is a sparsely populated, urbanized country, with 85% of the population located in 18 towns scattered around the rocky and mountainous coastline. Infrastructure between these towns such as roads, railroads, and power transmission lines is non-existent, with the exception of roads in certain areas of southern Greenland.

The Gross Domestic Product (GDP) of Greenland is approximately 11.2 billion Danish kroner (DKK) (approximately 1.5 billion euros), and the economy is extremely dependent on the fishing industry, which represents 90% of commodity exports (primarily prawns and halibut)[2]. Greenland receives a yearly block grant from Denmark of 3.642 billion DKK (approximately 490 million euros; primo 2017) and also receives significant amounts from the European Union (EU), Greenland being one of the overseas countries and territories associated with the EU.

Given the overall decrease in population as a result of more people leaving than arriving and the increasingly ageing population, with the consequent increase in social welfare

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expenditure expected to negatively to affect the economy in the near future[3], there is a great need for new sources of income and sustainable long-term solutions, such as income from mineral resources (hard minerals, oil, and gas), which Greenland has in abundance. However, these resources have not yet been developed. In a strategy paper issued by the government of Greenland, it was stated that one of the government's long-term goals is to focus on maintaining a high level of exploration activity for oil and gas to increase the possibility of making commercial discoveries[4]. With regard to minerals, the government aims to maintain the development of mineral exploration licenses and increase the level of knowledge regarding attractive geological areas in Greenland so that this can be used for marketing to international mining companies.

Mining is not the only area in which investments are needed in Greenland. A number of other investment areas exist that are of relevance to private investors. These include energy intensive industries based on potentially available hydro power, infrastructure and related industries, tourism, and the fishing industry.

China, among others, plays an important role in mining development and is often considered one of the most important potential partners for Greenland if it is to develop its natural resources. One reason for this is that China needs to import natural resources, including minerals, to sustain its economic growth. China became the second largest economy in the world in around 2012, and has until recently continued to grow at a rapid rate[5]. In 2013, China was the largest energy producer in the world, producing 18.9% of the world's energy, while at the same time it was the largest energy consumer in the world, consuming 22.4% of world energy production[6].

Further, China is often seen as one of the few countries with the capacity to provide the necessary investment[7]. In 2014, Chinese overseas investment reached 102.8 billion USD, and China completed overseas projects worth more than 142 billion USD and sent more than 500000 workers to participate in projects in more than 150 countries. More than 20% of Chinese overseas investment is in the minerals sector. Therefore, the significant mining potential offered by Greenland is likely to attract Chinese interest.

Greenland is not unfamiliar with China. Following Japan, China is Greenland's second most important export market (for fish and prawns). To date, Greenland has treated China as a potentially important partner for the development of its mining industry, and has encouraged significant Chinese investment in mining in Greenland. For example, every year since 2011, the Greenland government has sent a delegation headed by the Minister for Finance and Mineral Resources[8] to participate in China Mining Congress & Expo. In 2012, at Greenland's invitation, the Chinese Minister of Land and Resources and the Director of the State Oceanic Administration visited Greenland. In 2014, the Greenland government sent a delegation to participate in the Mines and Money Hong Kong conference and exhibition, which is considered one of the major platforms for attracting mining investment.

However, Chinese companies are yet to make significant investments in active mines in Greenland, although some initial investments have been made. For example, one of the world's largest mining companies, Jiangxi Union Mining, is involved in a project in Carlsberg Fjorden in eastern Greenland. The holder of the exclusive exploration license, China Nordic Mining, is partly owned by Jiangxi Union Mining, and has been prospecting for copper for several years. This exploration has identified promising deposits of zinc and copper in the area[9].

In November 2014, the first and only large-scale mining project, the ISUA iron ore project, was sold to a Chinese company, General Nice (HK) Development Ltd[10]. The previous owner, London Mining Plc, which owned the licensee company, London Mining Greenland A/S[11], suspended its payments in 2014 ('A/S' is the Danish and Greenlandic form for company which is the equivalent of a limited company). A uranium project in Kvanefjeld in the southern part of Greenland has attracted Chinese interest. China Nonferrous Metal Industry's Foreign Engineering and Construction Co., Ltd. (NFC) is a state-owned international engineering company. In March 2014, NFC signed an agreement with the Australian exploration company Greenland Minerals and Energy Ltd. (GME) with the intention of establishing a mine to extract rare earth elements (REEs) and uranium. REEs are widely used in modern technology, including computers, rechargeable batteries, and cell phones. China is the world's predominant producer of REEs. The deposit in Kvanefjeld is claimed to be the world's second largest deposit of REEs and the sixth-largest deposit of uranium. NFC has also signed an agreement with the Australian company Ironbark Zinc Ltd in relation to the development of a major zinc and nickel project at Citronen Fjord in the northern part of Greenland. More recently, in autumn 2016, the Shanghai-listed REE company Shenghe Resources acquired a 12.5% interest in GME's Kvanefjeld project.

2 Chinese interest in the Arctic and Greenland

The Danish media have from time to time discussed whether China has a special interest in Greenland, while Chinese interest in the Arctic seems clear. China has a natural strategic interest in the Arctic, including access to shipping routes (the Northeast Passage) and natural resources (fish and minerals) to supply Chinese demand. Therefore, it would not be surprising if China were to act as a "strategic buyer" in the Arctic region to gain control over the supply chain. This includes strategic investments in REE mining to maintain its global position in that market[11-13].

Politically, in 2013 China was granted observer status on the Arctic Council. However, China is only one of 12 non-Arctic observers. In terms of science, China also has a presence in the Arctic through the Polar Research Institute

of China, which has been active on Svalbard (Yellow River Station) since 2004, and the China-Nordic Arctic Research Center, which was established in Shanghai in 2013.

The question of whether China has a special interest in Greenland has been raised. Concerns about Chinese investment are occasionally expressed in the Danish media. Central to these concerns are the prospect of having 3000 Chinese workers "intruding into the fragile Arctic environment", the fear of social dumping and the potential impact on the society, cultural traditions, and lives of the people of Greenland. The reason for expressing these concerns about investment in Greenland and not in Denmark is primarily rooted in the Arctic context, i.e. the fragile climate and the protection of the indigenous people's rights, two issues that have, for a long time, been given high priority in Denmark's foreign policy considerations. Unfortunately, a handful of journalists and politicians have sometimes succeeded in having their loudly expressed concerns published widely, which consequently has sometimes led to misperceptions by outsiders. Moreover, the unclear political signals regarding the relationship between Denmark and Greenland have had a negative impact on the assessment of political risk in relation to investing in Greenland. These unclear signals have generated political concerns. However, in general, Danish politicians have been strong proponents of Chinese investment, making several attempts to reach out to Chinese investors, albeit in a relatively subdued manner. For example, in March 2016 the Danish Prime Minister, Lars Løkke Rasmussen, met the Chinese President, Xi Jinping, while attending a nuclear safety meeting in Washington D.C. He was the only European head of state to be granted a bilateral meeting with the Chinese President at this summit[14-15]. Conversely, several researchers have played down China's general interest in the Arctic region in general and Greenland in particular. Some have concluded that "In the near to medium term, it is hard to envision China being genuinely assertive in the Arctic. The Arctic is not destined to become a priority of China's foreign policy"[16]. In any case, several other non-Arctic states have shown significant interest in the Arctic, including EU countries such as Germany and France, while South Korea and Japan have also declared their interest in the Arctic region. Japan has released a white paper on the Arctic[17], while on the other side of the globe, Mexico has expressed interest in becoming an Arctic Council observer. Thus, it seems that many countries can be considered as having a special interest in the Arctic, not least its commercial potential in relation to the extraction of natural resources, as well as a more general desire to participate in governing the region.

In summary, it is clear that when companies look to new markets abroad, they face a variety of risks, which they have to consider before deciding whether to invest. Political risk is part of this equation. In the context of investment in Greenland, mixed political signals naturally enhance the political risk. Some failed projects in the past demonstrate the importance of using local advisors, including lobbies, to minimize these risks. As the following section will show, legal risk is well managed in connection with investments in Greenland. Thus, uncertainties are centered on the political risk rather than on the legal framework.

3 Chinese laws regulating outbound investment

China now is second largest economy in the world, and outbound investments by Chinese companies represent opportunities for both the Chinese companies and their global partners. Although Chinese state-owned companies such as ChemChina and China Minmetals began to set up large trading centers outside China at the end of the 1970s, most Western countries are unfamiliar with Chinese investment[18].

Similarly, Chinese companies were unfamiliar with Western markets, and many of the early Chinese outbound investments failed. In 1991, the China State Planning Commission (now the National Development and Reform Commission (NDRC)) submitted a proposal in the form of *Guidelines for Chinese Outbound Investment Administration* to the China State Council, which stated that "Most Chinese companies are not capable of undertaking outbound investment" and that Chinese outbound investment "should focus on products, technologies and resources which are lacking in China". In 1999, the Chinese government initiated the "Go Out" policy to encourage Chinese investments abroad. This policy was based on the principle that the government should act as an administrator to control the quality of the investment, and was the most important government policy on Chinese outbound investment until 2004. The Go Out policy is now supplemented by the "One Belt, One Road" policy.

In July 2004, the China State Council published their *Decision of the State Council on Reform of the Investment System*[19] which states that the government shall no longer act as the administrator in relation to the substance of an investment, and the company itself should make the outbound investment decision. Since then, China has established an approval system relating to the formal administration of outbound investments through a number of authorities including the NDRC, the Ministry of Commerce (MOFCOM), the Foreign Exchange Control for all Chinese companies, the State-owned Assets Supervision and Administration Commission for companies with state ownership involvement, the China Securities Regulatory Commission and stock exchange for listed companies, the China Banking Regulatory Commission for banking businesses, and the China Insurance Regulatory Commission for insurance businesses.

Since then, the Chinese government has shown an increasing tendency to grant approval for, limit restrictions on, and generally encourage outbound investment. Several approvals are often required, but in practice once approvals from the NDRC and MOFCOM are obtained, approvals from the other relevant Chinese authorities are likely to follow. Currently, the approval system is based on the *Measures for*

the Administration of Approval and Record-filing on Overseas Investment Projects (NDRC Measures) issued in April 2014[20] and an amendment to these measures published in December of the same year, and the Measures on the Administration of Overseas Investment (MOFCOM Measures) issued in September 2014[21]. The basic principle underlying both measures appears consistent, i.e. moving from an approval-based system to a filing-based system.

Under the NDRC's 2014 measures, NDRC approval is required for outbound investments exceeding 2 billion USD. Such investment also needs further approval by the China State Council. The same applies to outbound investments in "sensitive" countries, regions, or sectors. All other outbound investments only need to be filed with the NDRC or its provincial bureaus to receive a confirmatory letter. Further, an outbound investment through an offshore entity controlled by a Chinese company no longer requires either approval or filing, unless the investment involves the PRC parent providing finance or a guarantee to the offshore entity.

Under the MOFCOM's 2014 measures, MOFCOM approval is only required for outbound investments in sensitive countries, regions, or sectors; all other transactions (regardless of the investment amount) only need to be filed with the MOFCOM or its provincial bureaus. Further, the MOFCOM no longer requires an applicant to submit an approval or filing confirmation issued by the relevant PRC authorities as part of the MOFCOM application. This means that Chinese companies are able to proceed with the NDRC and MOFCOM approval processes in parallel, while the NDRC's approval is a pre-condition for MOFCOM filing.

Both the NDRC and MOFCOM have five business days to determine whether they will accept an application. After accepting an application, the NDRC must either approve or reject the application within a further 20 business days, while MOFCOM has 15 business days to reach a decision. Although the approval procedures and requirements have been simplified, the documents that are required for approval or filing still constitute a heavy workload for Chinese companies. Normally, Chinese companies need to provide at least a board or shareholder resolution on investment and financial reports and company reports for both the investment target and the Chinese investors themselves. In most cases, these financial reports need to comply with the International Financial Reporting Standards. Further, supporting letters from financial institutions and a signed Memorandum of Understanding or Share Purchase Agreement with preconditional Chinese approval is required. A detailed project description including a market and risk analysis must also be enclosed. Finally, all documents need to be in Chinese, necessitating a lot of translation work.

Both the NDRC and MOFCOM measures require approval for outbound investment in sensitive countries, regions, or sectors. The definition of "sensitive" countries and regions is similar in both measures: "countries that have not established diplomatic relations with China, relevant countries subject to sanctions by the United Nations, and relevant countries and regions in chaos caused by war." However, although the wording "relevant countries and regions in chaos caused by war" was included in the draft version of the MOFCOM measures it was removed from the published version, thereby giving the NDRC authority for the approval of investments in unstable regions outside China. Regarding "sensitive" sectors, the NRDC measures defines these as "basic telecommunications operations, the development and use of cross-border water resources, large-scale land development, electricity lines and power grids, news media and other industries", while the MOFCOM measures define them as "industries exporting products and technologies which China has restricted from export, or industries which affect the interests of one or more countries (regions)". Although the Arctic is known as a sensitive region and hydropower investment is about developing water resources, the Arctic is not considered a "sensitive" region under either definition, nor is potential Chinese investment in the Greenland hydropower sector considered an investment in a "sensitive" sector. Chinese outbound investments have often obtained approval from the Chinese government even though they relate to "sensitive" sectors. For instance, in 2013 a Chinese telecommunication company invested in the Danish telecommunication market to deliver work to TDC, the largest Danish telecommunication company, and in the same year a Chinese construction company invested in the Hålogaland Bridge project in Norway.

A special issue is the "Road Pass", which is covered under clause 10.1 of the NDRC measures. A Road Pass is mandatory for outbound investments above 300 million USD. The NDRC requires Chinese companies to obtain a confirmation letter (a Road Pass) from the NDRC before undertaking any "substantive work", which includes the submission of any binding offer or any formal bidding document or the execution of any legally binding agreement. The Road Pass is designed to prevent multiple Chinese companies from competing for the same contract. The consequence of not obtaining a Road Pass is that Chinese banks cannot finance the project. In contrast, the consequence of lack of approval under the NDRC and MOFCOM measures is that the project must cease, and a penalty can be issued. Examples exist where a Chinese company without a Road Pass has been allowed to undertake an offshore project. In 2012, in a German project involving Putzmeister, the Chinese company that obtained the Road Pass was unsuccessful, while another Chinese company without a Road Pass won the contract to participate in the project. In 2013, in a project in the U.S. involving RDA Microelectronics, a Chinese company without a Road Pass won the contract. Neither of these companies was able to seek finance in China.

In April 2016, the NDRC issued a new draft rule aimed at further relaxing the outbound investment approval system. In this draft, the NDRC removed the restriction on the investment amount and the Road Pass clause. Once finalized, the new measures will provide greater flexibility for Chinese outbound investments.

In contrast, outbound investment by individuals is still highly restricted. In 2007, the China Central Bank issued a set of Qualified Domestic Institutional Investor (QDII) rules. However, foreign currency is not readily tradable in China, and the quota for each individual is 50000 USD per calendar year. In May 2014, the Shanghai Free Trade Zone allowed individuals to open free trade bank accounts (FT accounts) within the zone, although these FT accounts cannot operate because of a lack of administrative regulation by the authorities. In April 2016, there were rumors that an updated version of the QDII rules (QDII2) will soon be released, enabling individuals to invest abroad without a quota, which is a welcome move by the Chinese government.

4 Danish laws regulating foreign investment in Greenland

Greenland has no special regulation prohibiting foreign investments. However, two factors give the government huge control over investments in Greenland.

Firstly, all land including the subsoil belongs to Greenland under the Self-Government Act (i.e. not the Realm)[22]. No private land ownership rights exist. However, land allotments (the right to use land) can be acquired as a result of a planning decision. Normally, such grants are issued by the municipality according to Articles 37 to 39 of the Greenland Act on Planning (Greenland Parliament Act no. 17 of 17 November 2010 on spatial planning and land use), but permits to use the land in accordance with laws pertaining to aspects such as major installations and national planning directives are given by the government of Greenland.

Secondly, mineral resources in the subsoil belong exclusively to Greenland under the Self-Government Act, cf. Article 2(1) in the Mineral Resource Act, where it is explicitly stated that a licence under the Mineral Resource Act exempts the licensee from meeting the requirements regarding land allotment, cf. Article 87(2) in the Mineral Resource Act.

Uranium is a special case. In Greenland, uranium is often found in deposits of, for instance, REEs. In the 1990s, there was a policy of zero tolerance in relation to uranium extraction in Greenland, which was part of the standard conditions for exploration licensing. However, the zero-tolerance policy ended on 24 October, 2013[23]. The export of uranium requires Greenland and/or the Realm to ratify a number of internationally treaties, some of which only apply to Denmark, and to create an agency to handle the related obligations.

5 Regulatory hurdles for Chinese investors in Greenland

Under Greenlandic and Danish law regulating foreign investments, Chinese companies are generally treated in a similar fashion to foreign investors from European countries, with the exception of two major issues: immigration rules (especially work permits) and Government Procurement Act (GPA) clauses.

Applications for residence and work permits by foreign nationals who wish to work in Greenland are processed by the Danish Agency for International Recruitment and Integration and the government of Greenland (Naalakkersuisut). Although Greenland is a part of the Danish Kingdom, it is a separate area when it comes to travel and residence. This means that a permit to reside in Denmark does not include the right to reside in Greenland. Likewise, a permit to reside in Greenland does not include the right to reside in Denmark. The right to travel, reside, and work in Greenland depends, among other things, on the applicant's citizenship because although Denmark is a part of the EU and Schengen, Greenland is not.

Chinese investment in Greenland invariably includes the use of Chinese workers, who must obtain residence permits. The relevant authorities in Denmark make rulings on permits to live and work in Greenland in accordance with the Greenlandic Foreigners Act (see Decree No 150 of 23 February 2001 on the application of the Immigration Act in Greenland). These rulings are made in Denmark because the Foreigners Act is a matter for the Kingdom of Denmark. Migration policy has not yet been taken over by the Greenland under the Self-Government Act. Immigration policy has not yet been transferred to the government of Greenland, even though this can be done, cf. List II, No. 6, of the Schedule to the Act on Greenland Self-Government; cf. Section 2 of the Act.

The conditions for obtaining a residence permit for Greenland are laid down in the Danish Immigration Act, which came into force in Greenland by Decree No. 150 of 23 February, 2001 with the application of the Immigration Act in Greenland. As a consequence, the implementation of the law on large-scale building and construction projects depended on the Danish Parliament amending the Danish Immigration Act.

The employment of foreign workers, especially Chinese workers, has raised concerns that Greenlandic society might experience the phenomenon of "social dumping". These concerns have been addressed in various ways through legislation and the terms of mining licenses[24].

The other issue is the GPA under the WTO scheme[25]. This applies to public procurement projects, such as infrastructure, hydropower plants, and geographic research, and any project financed by the Greenland government. Within the WTO, government procurement is regulated by the GPA, which relies on the principle of nondiscrimination against other parties to the GPA. Only those countries that have signed the GPA are bound by it. The GPA sets out rules on, e.g. publishing tender notices, the technical specifications to be used, and the criteria for selecting qualified companies[26].

China has not signed the GPA, but Greenland is covered by it. A party to the GPA is obliged to treat citizens of other parties in the same way it would treat its own nationals. In this regard, the agreement forbids discrimination against subsidiaries located in GPA countries, including subsidiaries of non-GPA states[27]. Therefore, a subsidiary of a Chinese company located in, e.g. Hong Kong would have the status

of a GPA party even though the ultimate parent company is a Chinese company.

However, the GPA also states that the origin of the goods matters. Thus, while a Danish company cannot be subject to discrimination because of the origin of the ultimate parent company, it is lawful to discriminate against companies offering goods originating from a non-GPA country[27].

The EU has implemented the provisions of the GPA in several EU acts relating to the origin of goods, including the 2014/25/EU Utilities Directive (formerly Directive 2004/17/EC). The Utilities Directive places an obligation on contracting entities to ensure equal treatment for tenderers from EU member states and tenderers from GPA states, including in relation to goods originating from those states. However, when it comes to goods originating from a non-GPA country, a contracting authority is permitted to reject bids from a tenderer, e.g. a Chinese company where the proportion of the products originating in China exceeds 50% of the total value of the products constituting the tender (Article 85(2) of the Utilities Directive; Article 58 in the former 2004/17/EC).

As a rule of preference, Article 85 of the Utilities Directive obligates a contracting authority to prefer bids from tenderers from the EU and GPA states over a bid from, e.g. a Chinese company if:

(1) the proportion of products originating in China exceeds 50% of the total value of the Chinese company's bid;

(2) the price difference between the Chinese company's bid and the bids of the other parties does not exceed 3%.

Thus, the Utilities Directive obligates a contracting authority to apply a "3% penalty" to a Chinese company if more than 50% of the Chinese company's goods originate in China.

6 The most common legal remedy: arbitration in Greenland

Foreign investors in Greenland benefit from a politically stable and relatively investor-friendly climate. Arbitration is common in Greenland for two reasons. Firstly, authorities in Greenland always settle disputes by arbitration administrated by the Danish Institute of Arbitration in Copenhagen. This is in accordance with Article 90 of the Greenland Mineral Resources Act and part of the standard terms of the various kinds of licenses[28]. Secondly, the arbitration process and results remain confidential, while a court judgment is normally made public. The possibility of appointing experienced arbitrators with industry knowledge and the nonpublic nature of the arbitration proceedings are just two of the advantages of choosing arbitration.

According to Article 90 of the Mineral Resources Act, "A license may stipulate that a dispute between the Greenland government and the licensee as to whether the terms of a license have been complied with must be brought before a court of arbitration whose decision will be final". Although the wording of Article 90 may create a different impression, arbitration is not used to solve all disputes between the government of Greenland and licensees[29]. Decisions, which according to the stipulations of the license depend on the judgment or decision of the authorities, are not subject to arbitration, but such administrative decisions can be reviewed by the ordinary courts in accordance with Article 63 of the Constitution of the Kingdom of Denmark. This is expressly stated in the standard terms that form the basis of licenses issued by the Ministry of Mineral Resources

According to the Standard Terms for Prospecting Licenses for Minerals, Article 19, and Standard Terms for Exploration Licenses for Minerals, Article 20, the arbitration clause and choice of law and venue is mandatory: (1) the place of arbitration shall be Copenhagen; (2) Danish law shall be applied; (3) the arbitration tribunal shall consist of three arbitrators; (4) the government of Greenland and the licensee each appoint one arbitrator and they jointly appoint the chairman of the arbitration tribunal; (5) the Chief Justice of the Danish Supreme Court will appoint the chairman if the parties cannot reach an agreement on the choice of chairman; (6) the arbitration tribunal makes its decision by a majority of votes; and (7) the arbitration tribunal will lay down its own rules of procedure.

Sometimes investors allow agreements between them to be subject to the laws and rules of arbitration that apply in a third country, despite the clause relating to the mandatory involvement of the Greenlandic authorities. Although Danish judges are known to be fair and honorable, investors may prefer another arbitration venue or another method of electing the chairman, bearing in mind that arbitration in Denmark and a Danish chairman elected by the Chief Justice of the Danish Supreme Court could be considered as "home ground" advantages for the government of Greenland.

The standard terms do not mention the arbitration language, which means that Danish will most likely be the language used for arbitration, even if the license and all correspondence between the parties are in English. If so, English will be used in the Danish Arbitration Institute, whereas Danish will be used for the Danish Construction Arbitration Board[29]. Therefore, it is important to negotiate the details of the arbitration procedure because the wrong institute, the wrong language, or the wrong appointment of arbitration chairman or arbitrator can prove costly and time-consuming.

7 Bilateral investment treaties

For more than 50 years, bilateral investment treaties (BITs) have been negotiated between states to protect foreign investments, especially in long-term projects such as those in the mining industry. China and Denmark signed a BIT in 1985.

Greenland is not covered by existing Danish investment protection treaties, including BITs (see Article 1(5) of the BIT between China and Denmark). However, some BITs include a provision allowing territorial extension on the basis of an agreement between the contracting parties. It is up to the government of Greenland to decide whether they want to be part of the existing Danish BITs[30]. Taking part in the Danish

investment treaty regime could be a way for the government of Greenland to demonstrate their openness and commitment toward foreign investors.

Without a BIT between Greenland and China, there is an increased level of political risk, and Greenland risks being seen as a less attractive option for foreign investors, including Chinese investors. Alternatively, Greenland might choose to negotiate its own investment treaties.

8 Concluding remarks and looking ahead

Mining opportunities can be found in many places throughout the world, and there are numerous factors that determine whether investments in the mining industry are attractive for Chinese, as well as other investors. Greenland is only one of many possible targets for an investor, although Greenland is attracting considerable attention in relation to certain natural resources, such as REEs, of which Greenland has one of the world's largest deposits.

Investment in mining operations is a long-term investment that is vulnerable not only to market risk but also to political risk. Chinese stakeholders are generally seen as willing to provide a long-term commitment.

During 2016, the idea of developing an investment fund has been increasingly highlighted in Denmark. Discussions have taken place at various levels, most importantly among the Danish Confederation of Industries at the annual Arctic Cluster on Raw Materials in November 2016. The potential for public–private partnerships has increased, along with a greater understanding of the importance of ensuring that both Greenland and Denmark engage in such initiatives. This would serve to demonstrate the stability, continuity, and unity of the Realm, three elements that are fundamental to engaging foreign investors on a large scale. The idea of establishing an investment fund seems to be attracting more and more political support in both Greenland and Denmark. The new coalition government that took office in Greenland at the end of October 2016 has spelled out an explicit desire to establish an investment fund. In Denmark, the Danish Growth Fund and the Danish Export Credit Agency have recently been granted an Arctic mandate. Establishing an investment fund seems to be a solution in terms of moving forward. A key priority will be the development of infrastructure in Greenland, particularly in remote areas where the natural resources in the subsoil are highly prized. At first glance, the central stakeholders who have been mentioned as potential participants in an investment fund are the Nordic Investment Bank and the European Investment Bank, in addition to the Danish Government and the Greenlandic Government[31]. Nevertheless, as it is clear that Chinese companies have the necessary capital, competence, and experience working in rural areas, it seems likely that Chinese companies will become involved at some point. Low world market prices for minerals and political uncertainty provide barriers to foreign investment. However, the establishment of an investment fund seems to offer an ideal opportunity to mitigate the latter obstacle.

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