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中伊法律对两国投资合作的影响

Sino-Iranian Legal Implications on Investment Cooperation

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摘要

由于技术革新造成的快速发展，在经济上和日常生活中，经济合作已经是另一种的合作方式。在世界关系下，经济合作有了需要法律分析和兼容法制界限的特征。

对于两个有共同「友好」利益的国家,若符合双方的利益及现实上的要求,经济合作便是一件很正常的事。

在整个地区，制裁救济会允许中国公司在石油部门的贸易和投资已达到更大的利益。因为收到了石油，北京把伊朗市场从各阶层消费品特别是非石油部门，像建筑业、制造业和交通业建立了良好的关系。

通过亚洲基础设施投资银行，中国赞助国际金融机构为了投资于基础设施项目在亚洲-太平洋地区、在陆基的「新丝绸之路」和「海上丝绸之路」，伊朗成为了合作国家其中一个很重要的国度。伊朗欢迎外国投资并且敦促所有的外国投资者，用心仔细的分析伊朗的外国投资促进和保护法案，并注意其执行的法律为了保护自己的权利和设施，包括他们会享受如果在伊朗投资所需的法律义务和要求。

这篇论文我打算分析其立法框架的创建，以及中国伊朗贸易机会的前景。

关键词：中国，伊朗，投资，双边投资公约，国外直接投资

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Abstract:

Since the fast development due to technological innovations, economic cooperation is just another threshold in the economic space and daily reality, it becomes the most common features in World relations which simultaneously needs legal analyzes and compatible legal boundaries.

For two 'friendly' countries, who share common values it is normal that there will also be an economic cooperation, if both countries' interests match and require this reality to happen. Over this area, lifting the sanctions against Iran will allow Chinese corporations to gain more benefits even larger bonanza in oil and gas investment and trade. To give in return for oil, China has flooded markets in Iran by providing good and cheap merchandises and instituted relations in non-oil parts such as transportations, constructions and manufacturing.

Asian Infrastructure Investment Bank (AIIB), China supported by international financial institute that has the goal of investing in infrastructure projections in Middle East and Asia Pacific area, Maritime Silk Road and the land based new Silk Road, which Islamic Republic of Iran is among the members and important part. Iran opens more opportunities for foreign investments and motivates the investors from all over the world (specially China) to intently survey Iranian Foreign Investment Promotion and Protection Act (FIPPA) and its administrative by laws to be informed about their rights and know more about the protections and possibilities which they might reach like requirements and legal obligations entails by investing in Iran.

This perspective and China-Iran investments initiate a legal framework of discussions and analyzes which I intend to do in this thesis.

Key words: China, Iran, Investments, BIT, FDI.

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Abbreviations:

AIIB (Asian Infrastructure Investment Bank)

BIT (Bilateral Investment Treaty)

CNPC (China National Petroleum Corporation)

CPECC (China Petroleum Engineering and Construction Corporation)

ECO (Economic Cooperation Organization)

ETF (Exchange Trade Fund)

ETN (Exchange Trade Note)

FDI (Foreign Direct Investment)

FET (Fair and Equitable Treatment)

FIPPA (Foreign Investment Promotion and Protection Act)

FPS (Full Protection and Security)

ICISD (International Center for Settlement of Investment Dispute)

IRI (Islamic Republic of Iran)

LAPFI (Law on the Attraction and Protection of Foreign Investment)

LNG (Liquefied Natural Gas)

LPG (Liquefied Petroleum Gas)

MFN (Most Favored Nation)

MNCs (Multi National Corporations)

NT (National Treatment)

OIC (Organization of the Islamic Conference)

PRC (People's Republic of China)

SCO (Shanghai Cooperation Organization)

WTO (World Trade Organization)

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Introduction

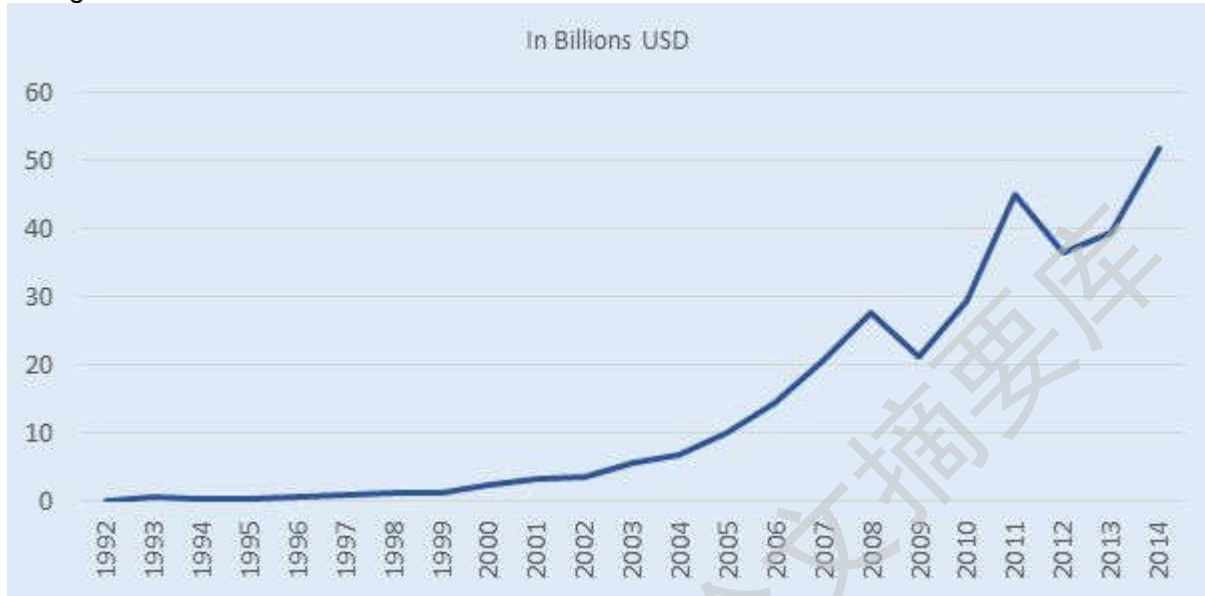
Sino-Iranian relationships arise from deep and strong epochal roots. Those Iran and China are the heritors of the two of greatest empires and civilizations. In pre Islamic times, representatives of Han dynasty instituted relations and contacts with the Partians and after that, Sassanid provided the trustable foundation for beneficial commercial ties between Iran as Persia and China.

During Islamic times, main lifeline was Silk Road which Sino-Iranian trade and cultural relations flourished through that. The old Silk Road is related and communicated to their great achievements in the past and the relations between them; still correlated from those effects. The intention of kindling the relationships between them comes through common desires to recreate the past one, not only as commemorate. After that, China emerged from the Cultural Revolution and declared a new and independent foreign policy to open up its economy.

Sino-Iranian relations has been a warming trend in since past and till now, Economic cooperation is one of the most common features in World Politics. Since the fast development due to technological innovations, economic cooperation is just another threshold in this space and it is a daily reality in International Relations. Recently, the public interest and erudite in bilateral relations and collaboration between People's Republic of China (PRC) and Islamic Republic of Iran (IRI) has firmly increased and led to analyze probable legal implications in more aspects. For two 'friendly' countries, who share common values (not necessary same culture and history) it is normal that there will also be an economic cooperation, if both countries' interests match and require this reality to happen. In international law history, beside the political and diplomatic relations, economic relations in different national legal foundations were the very next challenge and in some cases the real reason for having cooperation between two states. China has already tight relationships with those countries that are located along this route and is thankful for the present economic and trade cooperation, but China is looking to strengthen the infrastructure of transportation and build new regional centers and huge industrial parks.

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The following chart shows China-Iran steady increase in trade volume between the two countries during 1992-2014¹



Since 1993, China became an importer in oil sector; so it has turned to Iran to help satisfy its expanding energy requirements. In the past, when UN sanctions were inflicted, China's crude oil importation from Iran was the third, among the other suppliers which was 550,000 barrels per day². People's Republic of China also warily established sanctions against Iran but on the other hand they didn't stop importing oil from Iran since the sanctions were in place. There were also reports that in December 2013, United States of America sanctioned Zhuhai Zhenrong Company which was negotiating with the national Iranian oil corporation about a new gas condensed contract. Due to the Wall Street Journal, China's Oil importation over the last 5 years has increased to 30% and now is 9% of all its importation³. Over this area, lifting the sanctions against Iran will allow Chinese corporations to gain more benefits even larger bonanza in oil and gas investment and trade. To give in return for oil, China has flooded markets in Iran by providing good and cheap merchandises and instituted relations in non-oil parts such as transportations, constructions and manufacturing. In 2015, China enhanced its stock for

¹ Emma SCOTT. 2016. **Defying Expectations: China's Iran Trade and Investments** [Online]. Middle East Institute. Available: <http://www.mei.edu/content/map/defying-expectations-china%E2%80%99s-iran-trade-investments> [Accessed 17 Apr. 2016].

² Courtney BLILER. 2015. **China and Iran's New Love Affair?** [Online]. The National Interest. Available: <http://nationalinterest.org/feature/china-irans-new-love-affair-13434> [Accessed 27 Mar. 2016].

³ Courtney BLILER. 2015. **China and Iran's New Love Affair?** [Online]. Andrew The Prophet. Available: <https://andrewtheprophet.wordpress.com/2015/07/29/the-china-iran-nuclear-connection-daniel-7/> [Accessed 28 Mar 2016].

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foundation investment more than 50% in Iran⁴. The regime of sanctions inflicted limitation in receiving the Iranian currency which actually was beneficial for China by extending its currency and market quota in Iran to the loss of local commerce. Chinese Corporations are occupying a most favorable position for deriving benefit through non-oil privileges and investments after sanctions are lifted and leaving other investors and rivals a step behind and anyway the Sino-Iranian cyber compromise is not a new thing. Reuters News reported in 2012 that Chinese ZTE Company that is based on telecommunications signed a 130.6 million dollars networking goods contract with the telecommunication Corporation of Iran in 2010, that most of Iranian landline services would be under the control of ZTE for helping Iran to monitor voice communications, internet and text.⁵ After that, chairman of ZTE Company stated that United States criminal investigation forced the corporation to step back the business with Iran and also incriminated the most important rival of ZTE, Huawei Technology Corporation by continuing doing business in Iran. Iran has long depending on China for these kinds of technology and they are working on cooperation in investment, telecommunication, research and airspace. In the coming years, Tehran is going to speed up coordination with Beijing to improve its both domestic cyber warfare and surveillance with international corporations.⁶

The idea to reconstitute China's pre-nineteenth century greatness and influence till making it a 'strong, culturally advanced, prosperous and harmonious country.' is a common interest of both states. The Suggested renewal for such an enormous trade path which almost 2000 years ago bridged Western and Eastern cultures across the continents of Europe and Asia might well help come off that objective. The New Silk Road's Language, has become something of quick and fast driving in planning, more than a patching on the old and ancient Silk Road strategy which used to be in Han Dynasty, the insignia of President Xi Jinping's still early responsibility. For all it matter, Chinese expectation of a New Silk Road economic belt (which named One Belt, One Road by Chinese authors) holds within 4.4 billion people that is a huge population when also has a collective GDP of one-third of the world's wealth(21 trillion dollars) and interconnects emerging markets with other strong and powerful growth potential. China has already tight

⁴ Anu SHARMA. 2016. **Closer Ties For Iran And China Post Sanctions** [Online]. Foreign Observer Research India (FORE India). Available: <http://www.foreindia.com/readmore.php?data=287> [Accessed 25 Apr. 2016].

⁵ Steve STECKLOW. 2012. **Special Report: Chinese firm helps Iran spy on citizens** [Online]. Reuters. Available: <http://www.reuters.com/article/us-iran-telecoms-idUSBRE82LOB820120322> [Accessed 23 Dec. 2015].

⁶ Courtney BLILER. 2015. **China and Iran's New Love Affair?** [Online]. Nationalinterest. Available: <http://nationalinterest.org/feature/china-irans-new-love-affair-13434> [Accessed 21 Apr. 2016].

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relationships with those countries that are located along this route and is thankful for the present economic and trade cooperation, but China is looking to strengthen the infrastructure of transportation and build new regional centers and huge industrial parks. The foundation network which visualized by Chinese will link their country with three continents finally in roadways, pipelines, railroads resurrecting trade over land beside the Maritime that has its own shipping routes. If they can finally fulfill this vision, all the roads will head to Beijing at the end.

The New Silk Road between other targets of China can be used as a tool for enhancing national economic development by raising exports rate, providing support to main domestic industries and boosting access to their important needs which are natural resources.

Since is heading to do this huge project beside the other incredible ones such as having six out of ten world's tallest buildings, bridges, high speed railways system, airports, high rise buildings and highways, no country can even think about beating China in these fields. Also China has been fully stabilized its capacity and skills to strengthen the links and connectivity between China and other countries starting in Central Asia, Middle East, Europe and even countries in far Africa.

The Maritime Silk Road and Silk Road combination will create an enormous loop connecting for three continents. Here there is only the Xinhua map that can reclaim the China's ambitions as the Middle Kingdom, joined to the world through these roads by cultural and trade exchanges. As it is obvious, the name of Silk Road by itself links and reminds China's past and making it as source of information and goods for the world.

On November 2014, Chinese President Xi Jinping announced the Fund of establishing Silk Road will be 40 billion dollars for supporting foundation investments in countries who are involved and joined in the One Belt One Road project.⁷ This is the proposal that already has included the 51 countries which has joined to the AIIB (Asian Infrastructure Investment Bank). The exigent factor of this project is to "break the connectivity bottleneck" in Asia and other countries that really has prevented development in these kinds of developing countries. Most probably the most amount of this funding will be provided for railways, building roads and ports in those developing countries.

⁷ **One belt one road - China's new outbound trade initiative** [Online]. 2016. DLA Piper. Available: <https://www.dlapiper.com/en/hongkong/insights/publications/2016/01/chinas-new-outbound-trade-initiative/> [Accessed 2 Apr. 2016].

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With the above facts in mind, one cannot say that Iran and China's mutual interests are only limited to opposing the threats. Strategic plans that have been presented by President Xi can create new horizons for cooperation between the two countries. Xi's initiatives concerning the creation of the AIIB, Silk Road Economic Belt and New Asian Security Structure could enhance Sino-Iranian dialogues toward mutual interests.

As mentioned above, common interests and mutual needs play a main role in the shaping of Sino-Iranian relations. Both countries' needs and interests can be considered in terms of global, regional, and bilateral levels. However, since there are few Iranian investments in China, this thesis will focus on Chinese investment in Iran on the investment cooperation aspect from the legal perspective.

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Chapter I Sino-Iranian Investment Cooperation

I. FDI in the era of globalization

“There can be no doubt that foreign direct investment has joined international trade as a primary motor of globalization,” Which Mr. Renato Ruggiero said; who was the WTO director general at the seminar of UNCTAD for multilateral trading system and FDI in Geneva on 12th of February 1996.

Raising liberalization of market access and exchange controls caused by financial markets that evolved to a comprehensive unified body. This accretion actually accelerated by raising rivalry between participants of markets, have led to the presentation for new financial requirements for large markets accesses and attracting investors from different nationalities all over the world and economics with a lower transactions fee and costs. This expansion and amplification of cross borders financial processes have been accelerated with technological novation in data flows and communications.

FDI (Foreign Direct Investment) is actually a main factor in such a fast evolving international trade and economic integration that is also regarded to as globalization. FDI prepares requirements for creating long lasting, stable and direct links between economics. Due to the policy circumstances, it can be served as important mean for local investment development and also may cause a healthy competitive situation for the investing economy (home) and recipient (host) economy. Foreign Direct Investment specifically encourages the stock-in-trade and transferring of technology between economies since also provides opportunities by promoting products and goods of host economy to international markets. In addition, FDI can be an important source for capital of a sphere of both home and host economies beside the positive effects that bring development for international investment and trade.

It is obvious that FDI is beneficial for all the developing countries. Many economics around the world have undertaken liberalization kingcraft for attracting foreign investors into their countries. This policy has proved that by investing in host countries, the host could get higher in returns which are beneficial for both sides. Among these kinds of relations, in a case of need, countries can also get a loan from each other aid their economies that can be really helpful for undeveloped and developing economies.

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The Foreign Direct investor

A Foreign Direct investor is an existence (a corporate unit) inhabitant in one economy that has obtained, no matter that is indirectly or directly, should be ten percent of voting power of an enterprise (corporation) at least, or if not, be equal for an unincorporated enterprise, inhabitant in another economy. A direct investor could be categorized to any part of the economy and could be any of the following:

- a) A private or public corporation;
- b) A government body;
- c) A social organization, trust or estate;
- d) An individual;
- e) A group of related individuals;
- f) A group of related corporations;
- g) An unincorporated or incorporated or corporation; or
- h) Any combination of the above

Due to the world development report in 2005, a good investment environment will prepare opportunities and motivations for also private companies, from multinational corporations and manufacturing enterprises to small entrepreneurs and even farmers, for expanding, generating jobs and investing productively. For most of objectives, the investment environment regards to the level of barriers, costs and risks that may occur an investor's conception of returns that can be obtained from an investment.⁸

The attitude towards inward Foreign Direct Investment has actually changed during the last decades. As most economies have liberalized their kingdom to absorb investments from MNCs (Multinational Corporations). Expectations of that foreign multinational corporation will increase exports, tax revenue, employment or some knowledge which is brought by foreign corporations might spillover to host country's domestic companies, governments over the world tried to reduce entry barriers and open up new parts for foreign investment. A large number of host governments, try to motivate foreign investors by providing safe and easy procedures to invest like lower taxes and tax holidays for them in pecuniary field and preferential loans to

⁸ Blerta (Spahija) DRAGUSHA & Elez OSMANI. 2012. **Some Attractive Factors To Foreign Direct Investments In Albania** [Online]. European Scientific Journal: Paperity. Available: <http://paperity.org/p/59105120/some-attractive-factors-to-foreign-direct-investments-in-albania> [Accessed 10 Nov. 2015].

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