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## **THE HUMAN RIGHTS RISK IN THE FIELD OF OVERSEAS INVESTMENT**

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The prospective relationship between human rights and foreign investment

With the continuous improvement of human rights consciousness, what is traditionally considered as a foreign investor's profit-making investment is that the relationship between foreign investors and the current state of human rights in the host states is more complicated. Various factors indicate that good human rights protection is more conducive to attracting foreign investment. Countries with good human rights are generally more open, transparent and efficient.

It is, not only about the influence of economic globalization, overseas investment and other economic activities are becoming more frequent but also with the background of the maturity of international market rules, human rights risks often become the cause and trigger of withdrawal.

Many regions with rich fossil fuels are often more prone to crises such as dictatorship corruption, regional conflicts, and human rights violations. The activities of isolating and compromising the governments of the countries involved, such as the withdrawal of capital, as economic sanctions, have impacted the past. The industry system also limits the freedom of foreign investors to pursue business opportunities. In a turbulent environment, foreign investors are more likely to be criticized for supporting or partnering with evil governments to infringe on human rights, thereby being more cautious or even giving up their investments.

The beginning of the human rights risk: divestment campaign

The War in Darfur, which is a major armed conflict in the Darfur region of Sudan that began in February 2003 when the Sudan Liberation Movement and the Justice and Equality Movement rebel groups began fighting the government of Sudan. This resulted in the death of hundreds of thousands of civilians.

In order to exert financial pressure on the government of Sudan to change its policies and bring peace to its people, Save Darfur launched a divestment campaign, Divest for Darfur. The campaign was similar to Genocide Intervention Network's divestment project, The Sudan Divestment Task Force.

However, These actions caused millions of damages for those company who has invested here. At the same time the principal of the Socially Responsinle Inverting has aroused concerns in the field of industry And business.

How corporate social responsibility affect investment decisions

Compared with the developed human rights protection systems in developed countries, developing countries also have detailed or lacking human rights protection rules. Company decisions depend on decision-making considerations, and foreign investors often come from more developed countries with relatively complete human rights. For these investors, they generally have high moral values. For investors, their property is not only tangible assets such as returns, but also intangible assets such as good business reputation other than earnings, which makes them have higher social moral obligations for ordinary citizens and also promotes. This the motivates the maintenance of greater social responsibility, promotes the development of host state's markets, reduces costs and obtains a higher premium.

Some businesses and financial institutions are already taking steps to meet their responsibility to respect human rights and environmental rights in their global operations, subsidiaries, portfolios and/or supply chains. However, too many others are linked to serious abuses.

The global legal framework

Since the United Nations(UN) Global Compact been formed. The Global Compact has derived many international agreements on human rights protection, for instance the Universal Declaration of Human Rights, the International Labour Organization's declaration on fundamental principles and rights at work etc.

In 2011 UN Human Rights Council established business and human rights resource centre. And its also approval the principe of corporate responsibility to respect human rights, which means that business enterprises should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. The need to provide victims of business-related human rights abuses with access to an effective remedy is a core pillar of the UN Guiding Principles on Business and Human Rights (2011) (UNGP), which were unanimously endorsed by the UN Human Rights Council in 2011.

Moreover, Corporate Social Responsibility in European Union Comprehensive Free Trade Agreements has been set up towards Sustainable Trade and Investment. This increased attention for environmental and social issues has long been reflected in the private sector. In the absence of a supranational accountability framework, non-binding Corporate Social Responsibility (CSR) frameworks and tools have mushroomed during the past decades and, as global business expands, CSR is expected to play an increasingly important role in promoting sustainable development. There are many examples of regional and bilateral trade and investment agreements that include social responsibility clauses, aimed at State practice.

Human rights challenges in international economic and trade cooperation

International economic and trade cooperation in the name of promoting development does not of course help to respect human rights, but may ignore or even violate human rights because of blind pursuit of economic interests. For example, foreign-invested enterprises have deliberately lowered workers' wages, extended working hours, unsafe working conditions, restricted union rights, hired child labor, discriminated against women workers, and other labor-related incidents in order to reduce costs during their operations. Another example is that business activities have caused green damage and environmental pollution, which have harmed the local residents' environmental rights, as well as the right to health, the right to safe drinking water, and the right to food safety. For another example, investors have engaged in corrupt practices such as bribing local officials in order to obtain operating rights, violate local residents' right to know and participate in public decision-making, and so on.

1.Concerns about environmental rights

The right to the environment is a collective human right recognized by international human rights law. It provides all nations with the right to a generally good environment conducive to their development. At present, coal and oil are still the main energy sources in Kazakhstan, and the problems of water pollution and air pollution caused by it are still serious challenges. The opaque

fine system and corruption of officials make foreign companies vulnerable to environmental risks to residents.

## 2. Concerns about labor's rights

Kazakhstan's regulations on foreign labor quotas have actually brought many negative impacts on the production and operation of foreign-invested enterprises: not only restricting the expansion of many foreign companies' operations in Kazakhstan, but also affecting the normal operations of foreign enterprises. At the same time, there are structural problems in the labor supply and demand market in Kazakhstan. The main manifestation is the insufficient supply of labor in technical positions, especially high-level technical positions. The Kazakh government has introduced a series of measures to introduce foreign laborers in order to protect the employment rights of its citizens. Restrictive measures.

These measures set rules such as the proportion of foreign workers, registration, and insurance that should be paid. However, the current measures have not improved the demand for talent in the current Kazakhstan market, which has reduced the effectiveness of enterprises.

As can be seen from the report of the UN Working Group, the impact of economic and trade cooperation on human rights has expanded from key areas such as the right to the environment, employment, and labor rights to a wide range of economic, social, and cultural rights such as the right to health, education, and water. Subjects whose rights are affected include not only domestic citizens, but also foreign laborers working in the country; potential subjects involved include not only foreign companies investing, but also local Kazakh companies, which exacerbates the issue of human rights by "local protectionism" and Risks of "economic nationalist" corporate investment.

Although some legal measures and policies and regulations built a higher standard in the construction of investment market, such protective measures beneficial effect on the sustainable development of the investment market.

### Business and Human Rights : Flexible coping strategies

Investment treaty tribunals have grappled with human rights issues in a number of recent cases and it is also now common for businesses to include human rights clauses in commercial contracts. However, from a global perspective, there are still relatively few ways to settle disputes over human rights risks. The UN Guiding Principles also require effective remedies for victims and enforced due diligence to improve human rights and environmental protection.

Generally speaking, EU companies can refer human rights disputes to arbitration. Although this improves the efficiency of dispute resolution to a certain extent, it also provides a channel for the negative impact on victims. However, it should not be ignored that, compared with individuals, multinational companies are often familiar with arbitration rules. In order to ensure that victims are remedied, national judicial or non-judicial grievance mechanisms need to be strengthened to reduce the barriers to trade and legal procedures to help victims Enjoy substantial rights. Secondly, commercial agreements, as arbitrary rules intended by enterprises, have greater flexibility, allowing regions outside the EU to determine the relationship between responsibility and obligation in the form of treaties. In this regard, it is particularly important to improve national human rights. The role of organs and the active promotion of regional multilateral treaties, bilateral treaties between countries, and norms and standards for business activities are all conducive to preventing the settlement of human rights disputes in transnational investment under the conditions of international public policies.

### Human rights risks in the context of economic globalization

The complexity of cross-border business investment makes it harder to clarify the boundaries of rights and obligations. In this case, it is extremely difficult to promote the principles of human rights protection and corporate obligations, even in the development of the relatively mature inter-state alliance, the European Union. It said that it also did not fully make mature arrangements for human rights risks involved in transnational investment. Especially after Brexit, the integrity of human rights and environmental protection has also been broken and more legal issues have arisen. For Kazakhstan, as a host country of transnational investment, the prevention of human rights risks is not only the country's obligation to protect the personal and property rights of citizens, but also a

top-level design of a responsible government for the sustainable development of its economy and its future development strategy.

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