



中国在摩尔多瓦的投资项目保护

Protection of Chinese investments in Moldova

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LAWYERS

一、主要情况

作为其发展议程的一部分，摩尔多瓦政府力求更好地开发并利用该国作为东西方自然过渡点的潜力。为了实现这一目标，需要对该国的基础设施、人才技能和经济组织进行大量投资，而这超出了当地公共或私营部门的财力。摩尔多瓦共和国渴望提高其外国直接投资（FDI）的吸引力。

近年来，摩尔多瓦的投资环境已得到显著改善，且外国直接投资的监管框架通常遵循国际惯例。大多数法律均符合欧盟（EU）标准，同时已经建立了现代市场经济必须的业务监管机构。与商业活动有关的法规和政府决策现已被合并至一个专门的企业注册机构，且许多不必要的法律法规均已终止。

I. INTRODUCTION

As part of its development agenda, the Moldovan Government seeks to better exploit the country's potential as a natural transit point between the East and West. For this to happen, a large injection of investment in the country's infrastructure, skills and economic tissue is required, which goes beyond the financing capacity of the local public or private sector. The Republic of Moldova is keen to enhance the country's attractiveness for foreign direct investment (FDI).

Over the years, the Moldovan investment climate has considerably improved and the regulatory framework for FDI generally follows international practice. Most laws comply with European Union (EU) standards, while the institutions required for regulating and administering business in a modern market economy have been set up. Regulations and governmental decisions related to business activity are now consolidated in a special business registry and many unnecessary laws and regulations have been abrogated.

摩尔多瓦政府还改善了与私营部门之间的对话，开始对所有与商业有关的法律草案进行监管影响评估，并发布法律草案征询公众意见。然而，尽管已取得了一些进展，但摩尔多瓦仍未在开展业务便利度、行政管理和法规方面与竞争对手拉开距离。

摩尔多瓦政府近年来采取的投资策略可能对中国投资者具有吸引力，特别是考虑到“一带一路”倡议的影响。本手册主要就中国在摩尔多瓦的投资保护，介绍可为中国投资者所用的国际及摩尔多瓦国内法律框架。

The Moldovan government has also improved the dialogue with the private sector and started applying a Regulatory Impact Assessment to all draft laws concerning business, and publishing draft laws for public comment.

However, the country does not yet distance itself from its competitors with regard to ease of doing business, administration, and regulations.

The investment strategy adopted in recent years by the Moldovan government might be attractive for Chinese investors, particularly in light of the "Belt and Road" initiative. This handbook focuses on the protection of Chinese investments in Moldova and gives an overview of the international and Moldovan domestic legal framework that can be used by Chinese investors.

二、适用于摩尔多瓦外国投资的国内法律框架 (特殊规定)

投资登记

根据第81/2004号《企业活动投资法》，外国投资者可以合资企业形式或外商投资企业形式设立外商投资企业。根据该法律，合资企业指部分股本由外商投资构成的企业。外商投资企业指股本完全由外商投资构成的企业。

外商投资企业的登记、活动和解散程序与国内企业的登记、活动和解散程序相似。

资金自由转移

通过外商投资获得的资金和商品在履行了相关财税义务后，可在摩尔多瓦共和国境内外使用和转移。

II. NATIONAL LEGAL FRAMEWORK

Registration of investments

Under the Law on Investments in Entrepreneurial Activity no.81/2004, foreign investors can establish enterprises with foreign investments in the form of joint ventures or enterprises with foreign capital. Under the law, a joint venture is an enterprise, whose share capital is partially composed of foreign investments. Enterprise with foreign capital is the enterprise, whose share capital is composed exclusively of foreign investments.

The procedure for registration, activity, and dissolution of the enterprise with foreign investment is similar to the domestic enterprise.

Free transfer of funds

The funds and goods obtained from foreign investment, after fulfilling the tax obligations, are usable and transferable on the territory of the Republic of Moldova and abroad.

外国投资者有权将摩尔多瓦共和国的本国货币自由兑换成外币，或将外币兑换成摩尔多瓦本国货币。

无非法征用

投资项目不得被征收，亦不得对其采取与直接或间接剥夺投资者对该投资项目的所有权或控制权效果相似的措施。投资活动仅可能在下列情况下被强行中断：

- a) 中断系因公共事业引起，但需对外国投资者进行公正、优先、无区别对待的赔偿；
- b) 中断系由公私合营伙伴关系中规定的合同条件所致。

投资协定

为了降低投资风险并获得国家对战略投资项目的支持，摩尔多瓦政府可在其权限范围内缔结有关该等项目实施的投资协定。

Foreign investors have the right to freely convert the national currency of the Republic of Moldova into foreign currency and vice versa.

No unlawful expropriation

Investments may not be expropriated or subject to measures with a similar effect that deprive the investor, directly or indirectly, of title or control over the investment. However, the investment activity can be forcibly interrupted only under the following conditions:

- a) the interruption is operated for reasons of public utility, with a fair and prior compensation, and is not discriminatory;
- b) the interruption is due to the contractual conditions established within the public-private partnership.

Investment agreements

In order to reduce investment risks and obtain state support for strategic investment projects, the Moldovan government can conclude investment agreements related to the implementation of such projects within its jurisdiction.

战略投资项目是为执行国家计划和战略规定而进行的投资项目，这些项目有助于国民经济增长。

摩尔多瓦政府将制定、确定和选择战略投资项目、拟订方式（包括结构要素）、缔结投资协定并监督投资协定执行情况以及投资权利和义务的相关标准。

Strategic investment projects are investment projects carried out in order to implement the provisions of state programs and strategies and which contribute to the growth of the national economy.

The Moldovan government will formulate, determine and select strategic investment projects, formulation methods (including structural elements), conclude investment agreements, and supervise the implementation of investment agreements, as well as relevant standards for investment rights and obligations.

三、国际法律框架

截至2021年4月，摩尔多瓦和中国已缔结了62项适用于商业经济合作、相互投资保护、避免对所得税和资本税的双重征税、航空服务、领事领域、青年、教育、旅游、卫生、文化的双边条约和公约。其中，与外商投资最相关的协定如下：

- 1992年1月18日在基希讷乌签署并于同日生效的**摩尔多瓦共和国政府和中华人民共和国政府经济贸易协定**。在众多其他义务中，缔约双方有义务刺激并保护缔约一方在另一方领土的资本投资。

III. INTERNATIONAL LEGAL FRAMEWORK

As of April 2021, Moldova and China have concluded 62 bilateral treaties and conventions applicable to commercial-economic collaboration, mutual protection of investments, avoidance of double taxation on income and capital taxes, air services, consular field, youth, education, tourism, health, culture, etc. Among these, the most relevant to foreign investments are:

- **Economic and Trade Agreement between the Government of the Republic of Moldova and the Government of the People's Republic of China**, signed in Chisinau on 18 January 1992, in force since 18 January 1992. Among many other obligations, the contracting parties undertook the obligation to stimulate and protect the capital investments of one of the contracting parties in the territory of the other.

- 1992年1月19日在基希讷乌签署且于当日生效的**摩尔多瓦共和国政府代表团与中华人民共和国政府经济贸易代表团谈判议定书**。除其他事项外，缔约双方承诺拟定并签署有关保护外商投资、避免双重征税、组织互利贸易及发展合作关系事宜的文件。
- **Protocol of negotiations between the Government Delegation of the Republic of Moldova and the Governmental Trade and Economic Delegation of the People's Republic of China** signed in Chisinau on 19 January 1992 and in force since the same date. The contracting parties undertook, *inter alia*, the obligation to elaborate and sign the respective documents regarding the issues of protection of foreign investments, avoidance of double taxation, organization of mutually advantageous trade; and development of cooperation relations.
- 2000年6月7日在北京签署并于当日生效的**摩尔多瓦共和国和中华人民共和国在21世纪继续加强全面合作的联合声明**。为了深化双边贸易和经济合作，缔约双方有义务加强中摩经济贸易合作委员会的作用并创造有利于其开展工作的条件。
- **Joint Declaration of the Republic of Moldova and the People's Republic of China** on further strengthening multilateral cooperation in the 21st century, signed in Beijing on 07 June 2000 and in force since the same date. In order to deepen bilateral trade and economic cooperation, the contracting parties undertook the obligation to strengthen the role of the Moldovan-Chinese Commission for Trade and Economic Cooperation and create conditions conducive to its work.

缔约双方有义务鼓励并支持这些司法辖区的商业公司、经济代理人、银行和企业，以建立直接联系并促进互利多边合作，包括通过共同开发和执行投资项目。

- 2001年11月20日在北京签署并于当日生效的**摩尔多瓦共和国政府和中华人民共和国政府葡萄栽培和酿酒合作备忘录**。缔约双方同意建立密切的技术和贸易关系，同意彼此推荐合作伙伴以在葡萄栽培和酿酒、贸易、进出口方面进行合作，并指导和促进双边合作关系发展取得成果。在根据市场需求建立贸易合作关系时，双方将鼓励商业伙伴在建设领域进行共同投资。

The contracting parties undertook the obligations to encourage and support commercial companies, economic agents, banks and enterprises in these jurisdictions in order to establish direct contacts and promote mutually beneficial multilateral cooperation, including through the joint development and implementation of investment projects.

- **Memorandum on cooperation in the field of viticulture and vinification between the Government of the Republic of Moldova and the Government of the People's Republic of China**, signed in Beijing on 20 November 2001 and in force since the same date. The contracting parties agreed to establish close technological and trade relations, agreed to recommend each other partners for cooperation in viticulture and winemaking, trade, import, and export and to guide and promote the fruitful development of bilateral cooperation relations. The parties would encourage business partners to make mutual investments in the construction field, in establishing trade cooperation relations in accordance with the market demand.

1992年11月6日签署并于1995年3月1日生效的中摩双边投资条约（1992年）

中国和摩尔多瓦签订的双边投资条约保护中国个人或实体在摩尔多瓦境内进行的外商投资。该条约拟定了司法管辖要求及投资保护的实质性规定。

关键司法管辖区要求

- **投资定义**

根据该条约，“投资”指缔约一方的投资者根据缔约另一方的法律法规，在缔约另一方的领土内提供的任何资产，尤其包括：

- a) 动产和不动产，以及其他财产权；
- b) 在相关公司持有的股份及在该等公司的其他形式参股；
- c) 与资金和其他具有经济价值的债务有关的应收款项；

Bilateral Investment Treaty China-Moldova (1992) signed on 6 November 1992 and in force as of 1 March 1995

The Bilateral Investment Treaty concluded by China and Moldova protects foreign investments made by Chinese individuals or entities made on the territory of Moldova. The Treaty envisages the jurisdictional requirements as well as substantive provisions of investment protection.

Key jurisdictional requirements

- **Definition of Investment**

Under the Treaty, the term investment means any assets contributed by the investors of a contracting party in the territory of the other contracting party, in accordance with its laws and regulations, and includes in particular:

- a) movable and immovable property, as well as other property rights;
- b) shares in companies and other forms of participation in these companies;
- c) receivables related to funds and other obligations with economic value;

d) 著作权、工业产权，专有技术和技术；及
e) 根据法律提供的特许权，包括与自然资源的勘探和开发有关的特许权。

- **投资者定义**

根据该条约，“投资者”指：

- a) 具有中华人民共和国公民身份的任何自然人；
- b) 根据中华人民共和国法律设立的任何经济实体，其常设机构位于中华人民共和国境内。

关键实质性条款

- **公平公正待遇**

根据该条约第3条，与缔约任一方投资者的投资相关的投资和活动应得到公平公正对待，且应在缔约另一方的领土内得到保护。

d) copyright, industrial property, know-how and technologies; and
e) concessions offered in accordance with the legislation, including those related to the exploration and exploitation of natural resources.

- **Definition of Investor**

Under the Treaty, the term investor means:

- a) any natural person who holds the citizenship of the People's Republic of China;
- b) any economic entity established under the legislation of the People's Republic of China and having its permanent establishment in the territory of the People's Republic of China.

Key substantive provisions

- **Fair and Equitable Treatment**

Under Art. 3 of the Treaty, investments and activities associated with investments of investors of either contracting party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other contracting party.

待遇和保护力度不得劣于提供给任何第三国投资者的该等投资相关投资和活动的待遇和保护。此外，待遇和保护不应包括缔约另一方基于关税同盟、自由贸易区、经济联盟、与避免双重征税或促进边境贸易有关的协定提供给第三国投资者投资的任何优惠待遇。

- **无非法征用**

条约的任一缔约方均不得征收或国有化缔约另一方投资者的在其领土内的投资项目，或对该等项目采取类似措施，除非满足以下所有条件：

- (a) 出于公共利益；
- (b) 根据国内法律程序；
- (c) 无区别对待；
- (d) 有针对性的赔偿。

The treatment and protection shall not be less favorable than that accorded to investments and activities associated with such investments of investors of a third state. Additionally, the treatment and protection shall not include any preferential treatment accorded by the other contracting party to investments of investors of a third State based on the customs union, free trade zone, economic union, agreement relating to avoidance of double taxation, or for facilitating frontier trade.

- **No unlawful expropriation**

Neither contracting party to the treaty shall expropriate, nationalize or take similar measures against investments of investors of the other contracting party in its territory unless the following conditions are met:

- (a) for the public interests;
- (b) under domestic legal procedure;
- (c) without discrimination;
- (d) against compensation.

上述赔偿款应相当于宣布征收时的被征收投资项目价值，且可兑换和自由转让。不得无故拖延支付赔偿款项。

缔约一方投资者因战争、全国紧急状态、叛乱、暴乱或其他类似事件而就其在缔约另一方的领土内的投资项目遭受到损失时，应由缔约另一方在采取相关措施时提供不劣于提供给第三国投资者的赔偿。

• 资金自由转移

该条约规定，任一缔约方应在遵守法律法规的前提下，保证另一缔约方投资者可以转移在该缔约方的领土内持有的投资项目和收益，包括：

(a) 利润、股息、利息及其他合法收入；

The compensation above shall be equivalent to the value of the expropriated investments at the time when expropriation is proclaimed, be convertible, and freely transferable. The compensation shall be paid without unreasonable delay.

Investors of one contracting party who suffer losses in respect of their investments in the territory of the other contracting party owing to war, a state of national emergency, insurrection, riot, or other similar events, shall be accorded by the latter contracting party, if it takes relevant measures, treatment no less favorable than that accorded to investors of a third State.

• Free transfer of funds

The Treaty provides that each contracting party shall, subject to its laws and regulations, guarantee investors of the other contracting party the transfer of their investments and returns held in the territory of the one contracting party, including:

(a) profits, dividends, interests and other legitimate income;

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| (b) 投资项目全部或部分清算所得的金额； | (b) amounts from total or partial liquidation of investments; |
| (c) 根据与投资项目相关的贷款协议进行的付款； | (c) payment made pursuant to a loan agreement in connection with investment; |
| (d) 特许权使用费； | (d) royalties; |
| (e) 技术服务费、管理费的技术援助付款； | (e) payments of technical assistance of technical service fee, management fee; |
| (f) 与合同项目有关的付款； | (f) payments in connection with projects on contract; |
| (g) 缔约另一方国民与在该缔约一方领土内的投资项目有关的工作收入。 | (g) earnings of nationals of the other contracting party who work in connection with an investment in the territory of the one contracting party. |

• **投资者与国家间争端解决**

根据双边投资条约，缔约一方投资者与缔约另一方就在缔约另一方领土内的投资产生的任何争端，应由争端双方通过协商友好解决。

• **Investor-State Dispute Settlement**

Under the Bilateral Investment Treaty, any dispute between an investor of one contracting party and the other contracting party in connection with an investment in the territory of the other contracting party shall be settled amicably through negotiations between the parties to the dispute.

如果争端无法在六个月内通过协商解决，则争端任何一方均应有权将争端提交接受投资的缔约方的管辖法院。

如果涉及征用补偿金的争端无法在诉诸协商后六个月内得到解决，则可以应任一方的请求将该争端提交至临时仲裁庭。

该等仲裁庭应按下列方式就每个个案设立：争端每一方应指定一名仲裁员，且该两名仲裁员应选择与缔约双方皆缔结有外交关系的第三国的一名国民担任仲裁主席。应在争端一方向争端另一方发出书面仲裁通知后两个月内指定前两名仲裁员，且仲裁主席应在四个月内选定。

If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the contracting party accepting the investment.

If a dispute involving the amount of compensation for expropriation cannot be settled within six months after resort to negotiations, it may be submitted at the request of either party to an ad hoc arbitral tribunal.

Such an arbitral tribunal shall be constituted for each individual case in the following way: each party to the dispute shall appoint an arbitrator, and these two shall select a national of a third state which has diplomatic relations with the two contracting parties as Chairman. The first two arbitrators shall be appointed within two months of the written notice for arbitration by either party to the dispute to the other, and the Chairman be selected within four months.

如果在上述期限内未能设立仲裁庭，则争端任一方均可邀请国际投资争端解决中心秘书长作出必要的任命。

接下来，仲裁庭应确定其自己的程序。但是，仲裁庭在确定程序过程中，可以以国际投资争端解决中心的仲裁规则为指导。

仲裁庭应以多数票作出裁决。该等决定应具有终局性且对争端双方具有约束力。缔约双方应根据其各自的国内法律执行该裁决。

If within the period specified above, the tribunal has not been constituted, either party to the dispute may invite the Secretary-General of the International Center for Settlement of Investment Disputes to make the necessary appointments.

Next, the tribunal shall determine its own procedure. However, the tribunal may, in the course of determination of procedure, take as guidance the Arbitration Rules of the International Center for Settlement of Investment Disputes.

The tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding on both parties to the dispute. Both contracting parties shall commit themselves to the enforcement of the decision in accordance with their respective domestic law.



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