BRICS JOURNAL OF ECONOMICS
https://www.brics-econ.org/archive/2020.Vol.1.No.4/3/
2020 Volume 1 Number 4
https://doi.org/10.38050/2712-7508-2020-1-4-3

Investment cooperation in the BRICS countries

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Reference to this paper should be made as follows: **Sholokhova, M.** (2020).
Investment cooperation in the BRICS countries.
BRICS Journal of Economics, 1(4), 24–32. https://doi.org/10.38050/2712-7508-2020-1-4-3

Abstract
The purpose of the study is to analyze the current stage of investment cooperation between the BRICS countries in terms of current investment projects and legislation regulating investment interaction. The methods of the research are as follows: investigating the issue of investment cooperation between different member states and the legal framework for such cooperation; finding sources such as books, magazines, journals, legal acts, and websites; collecting all the necessary data; critical analysis of the data on the issue of the research; developing an outline. The investment interaction under study is presented at three different levels: outward foreign direct investments from the BRICS countries; foreign direct investments into the BRICS countries; and investment cooperation between the BRICS countries. All levels of investment cooperation are regulated both at the national and international levels.

Keywords: investments, BRICS, investment cooperation, foreign direct investments, BIT.

JEL: E22, P33.

Introduction

In the modern world, interaction with other countries, namely, active participation in international organizations, is of great importance for the development of any state. BRICS is an influential intergovernmental network whose purposes are not limited to agenda-setting, policy coordination, multilateral economic cooperation, and information exchange.

The BRICS countries are characterized by high regional influence and economic potential. They account for 27% of the entire territory and 43% of the world's population, as well as 25% of the world's GDP (China has 13% of the world's nominal GDP, India — 5.5%, Russia — 3.7%, Brazil — 2.9%) (Shavina, 2018). The BRICS countries have been

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working together for more than a decade to strengthen trade and economic ties. One of the main areas of cooperation between the BRICS countries is strengthening investment cooperation between the members of the group.

An increase in investment inflows helps to achieve the major goals of BRICS, namely, fostering economic growth of the member countries and achieving a high level of quality of life by ensuring financial and social stability. The mutual desire of the BRICS countries to strengthen their relations on a developed legal and contractual basis is crucial for successful investment cooperation.

1. Investment flows and ongoing projects in the BRICS countries

The BRICS countries are active investors on the world arena. In 2016, their investments reached 222 million USD, which amounts to 15,3% of global investments (Gorshenkova & Dorokhova, 2018). Most of the BRICS countries' investments go to neighboring countries, developing countries, and the EU. These investments are aimed at finding new markets and establishing long-term economic relationships.

The BRICS countries together provide a massive part of the world's infrastructure investment. Infrastructure is a key factor of economic prosperity of countries.

The New Development Bank and the Asian Infrastructure Investment Bank, two international financial institutions initiated by the BRICS countries, are primarily focused on supporting infrastructure investments. These institutions can strengthen the multilateral framework for addressing infrastructure development on a global scale, creating additional capacity to meet significant investment needs (Qureshi, 2017).

As representatives of rapidly developing economies, these countries are the driving force of economic growth. Moreover, they have economic stability, trade openness, good infrastructure, and a potentially huge consumer market. All these factors attract more and more foreign investors. Thus, in recent years, the BRICS countries experienced a rapidly increasing inflow of foreign direct investments.

Brazil, Russia, India, China and South Africa has become host states for foreign investors from all over the world. In 2016, the inflow of FDI to the BRICS countries reached 276 805 million USD (FDI to China amounted to 133 700 million USD; to Brazil — 58 680; to India — 44 486; to Russia — 37 668; and to South Africa — 2 270 million) (Gorshenkova & Dorokhova, 2018).

Within the framework of multilateral cooperation, the BRICS countries are implementing major energy, agriculture and environmental projects, as well as projects in the manufacturing and mining industry.

In 2019, the BRICS countries decided to launch a new international payment system, BRICS Pay.[1] This system is expected to contribute to the stability of payments and investments in national currencies, accounting for more than 20% of the global

[1] BRICS Information portal. https://infobrics.org/

foreign direct investments inflow.[2] In addition, the BRICS Business Council is discussing the creation of a single cryptocurrency for payments between countries.[3]

However, the share of mutual investments remains relatively small. Russia has a high production, technological and scientific potential, yet, due to the economic and political situation in the world, it does not attract a large number of foreign investors. Despite this, China is actively investing in Russia. There are also Indian investments in Russia, which are mainly concentrated in mining, diamond processing, wholesale, textile industry, and pharmaceuticals. Since 2001, the largest Indian state-run Oil and Natural Gas Corporation (ONGC) has been participating in the oil and gas project Sakhalin-1 via its subsidiary ONGC Videsh Limited (OVL). It acquired a 20% share of this project. OVL is engaged in development and commercial production in Sakhalin together with the largest Russian oil and gas company Rosneft and other global companies, such as Exxon Mobil, and the Japanese company SODECO.[4]

Apart from that, there are many other joint projects of Russian company Rosneft and Indian companies, including Taas-Yuryakh, the Vankor cluster (a consortium of Indian companies owns 49% in the Vankor cluster field), Far East LNG, Nayara Energy, and the Vostok Oil project. The goal of the Vostok Oil project is to establish a new oil and gas province in the North of Russia, in the Krasnoyarsk Territory, which has the advantage of being close to the Northern Sea Route. Moreover, in February 2020, Rosneft and Indian Oil Corporation Limited (IOCL) signed a contract to supply up to 2 million tons of oil to India via the port of Novorossiysk by the end of 2020.[5]

One example of Russian investments in India is Sistema Shyam Teleservices Ltd (SSTL, MTS India). SSTL is an Indian mobile operator, a joint venture of the Russian AFK Sistema (73.71% of shares) and the Indian group of companies Shyam (23.79% of shares).

There is also a relatively active investment cooperation between Russia and South Africa. Russian industrial giant Renova, which specializes in manganese ore mining, manganese and ferroalloys production, and solar energy projects, operates its joint venture in South Africa. Besides, the Russian public limited liability company Severstal (production of briquetted iron) and the public joint-stock company KAMAZ (delivery of trucks and dump trucks, preparation for the assembly of vehicles) are operating in South Africa, too. The Russian company Rosgeologia and the South African state corporation Petro-ES have entered into an agreement on cooperation in the field of exploration and development of hydrocarbons on the Southern shelf of South Africa.

Several South African companies operate on the territory of Russia, namely, SAB-Miller (beer production), Mondi (cellulose production), Naspers (information technology),

2 Official website of BRICS Pay. http://bricspay.org.ru/

3 BRICS Roadmap for Trade, Economic and Investment Cooperation until 2020. http://www.unido.ru/upload/files/b/brics_roadmap.pdf

4 Imperial Energy Official Website. http://www.imperialenergy.com/en/about/history/

5 Information from the News portal PortNews. https://en.portnews.ru/news/290962/

Bateman (supplies of equipment and technologies for mining and metallurgical industries), Bell (heavy engineering), Standard Bank (financial services). The volume of accumulated Russian investments in South Africa is estimated at 1.5 billion USD. The volume of South African investment in Russia exceeds 5 billion USD.[6]

Brazil is Russia's largest trading partner in Latin America, yet the level of mutual investment between the countries is rather low. However, there are also examples of successful investment cooperation between the countries. Thus, the Russian company Biocad has opened a subsidiary in Brazil to implement a project aimed at organizing the production of modern highly effective medicines. In 2014, PJSC Uralkali acquired 25% of shares in the holding company Equiplan Participacoes S. A., the main shareholder of the marine cargo terminal Terminais Portuarios da Ponta do Felix in Antonina (Brazil). In 2012, PJSC KAMAZ and the Brazilian group of companies Marcopolo S.A created a joint venture for the production of buses, KAMAZ-Marko LLC in Neftekamsk, Bashkortostan. Serial production of Bravis buses started at the end of 2012.[7]

2. China's "going out" strategy

Due to China's political and economic weight, this country's role in mutual investments within the BRICS countries is the biggest. China is not only the second largest recipient of inward foreign direct investment, but also the third in terms of outward foreign direct investment (OFDI) (UNCTAD, 2013). Between 1978 and 1985, China opened its first special economic zones (SEZs) in the provinces of Guangdong (Shenzhen, Zhuhai, and Shantou), Fujian (Xiamen), and Hainan, which contributed to the establishment of BRICS (García, 2014). Later, China created economic and technological development zones (ETDZ), financial zones (FZ), new and high-tech industrial development zones (Touch), border economic cooperation zones (BECZ), and export processing zones (EPZ).

The growth of the Chinese OFDI began in the late 1990s with the adoption by the Chinese government of a strategy to expand China's influence abroad (走出去战略) — the "going out" strategy. Over the past decade, thanks to this policy, China's OFDI "has soared from almost nothing to more than USD 100 billion."[8]

In 2001, this strategy was embedded in the Tenth Five-Year Plan for national economy and social development and included in every subsequent plan (Deng, 2007). This strategy is a long-term plan to increase the number of Chinese investment in foreign countries by adopting special regulations. These regulations include, but are not limited to, a number

6 Rossijsko-Yuzhnoafrikanskie otnosheniya (Russian — South African relations) https://russianembassyza.mid.ru/web/russianembassyza-ru/ekonomiceskoe-sotrudnicestvo

7 Ekonomicheskie otnosheniya Rossii i Brazilii. Dos'e (Economic relations between Russia and Brazil. Dossier) http://tass.ru/info/3331792

8 Riding the Silk Road: China sees outbound investment boom. ChinaGoAbroad, March 2015. http://www.chinagoabroad.com/en/article/riding-the-silk-road-china-sees-outbound-investment-boom

of incentives and benefits, such as tax rebates, investment insurances, direct and indirect subsidies, low interest loans, or export credits from financial sources, provided by Chinese policymakers. The "going out" strategy's goal is to foster economy of China and intensify China's influence abroad.

A growing volume of Chinese OFDI is favorable, in particular, for the BRICS countries. Foreign investments contribute to the economic growth of a country, as they help to develop certain regions, improve infrastructure, create more jobs, and attract more financial resources from abroad. Moreover, China is implementing its own initiatives, including the Belt and Road Initiative (BRI) and the Asian Infrastructure Investment Bank.

Russia and China have long and stable investment relationships. Currently, they actively cooperate via the international organizations they are members of and implement the Chinese Belt and Road Initiative.

One of the most important areas of investment cooperation between Russia and China is the oil and gas sector, since Russia has rich reserves of natural resources, and China is one of the largest importers of these resources. Currently, China and Russia are conducting many projects in the Arctic. Russia owns a major share in the extraction of Arctic resources. China wants to take a strong position in the Arctic and open up new possible trade routes across the Arctic. In 2018, China introduced its Arctic Policy, which establishes China's desire to build a "Polar Silk Road" and "facilitate connectivity and sustainable economic and social development of the Arctic."[9] Sino-Russian projects in the Arctic are: the LNG 2 project in Northern Russia, the Yamal LNG project, the Payakha oilfield, the new deep-water port in Arkhangelsk, and the Zarubino port development project.

Apart from investing in the Arctic region, China has also undertaken other big projects on the Russian territory. For example, the Railway Construction Corporation (CRCC) is going to expand the Moscow metro network. The CRCC is to build a 4.6 km section and three stations on the Large Circle Line.[10] The CRCC also committed to build another 6.4-kilometer line.[11]

A significant part of investment cooperation between Russia and China is conducted via sovereign investment funds. In 2011, the Russian Direct Investment Fund (RDIF) and the Chinese Investment Corporation (CIC), each investing 1 billion US dollars, jointly founded the Russia-China Investment Fund (RCIF) to promote bilateral investment. The RCIF has undertaken many major investment projects. For example, the RCIF invested in the Russian Forest Products (RFP) group, the largest timber holding in the Russian Far East; in the Moscow Exchange, the largest exchange in Russia; and in DiDi, Chinese conglomerate providing transportation services.

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[9] China's Arctic Policy, The State Council Information Office of the People's Republic of China, January 2018. http://english.www.gov.cn/archive/white_paper/2018/01/26/content_281476026660336.htm

[10] China's construction giant expands metro network in Moscow. CGTN News. 27-Dec-2019 https://news.cgtn.com/news/2019-12-27/China-s-construction-giant-expands-metro-network-in-Moscow-MLMjikqXK0/index.html

[11] Green Belt and Road Initiative Center. https://green-bri.org/bri-country-perspectives-russia?cookie-state-change=1589308239986

In 2019, the RCIF, together with Chinese investment bankers Suiyong Capital and Dazheng Investment Group, launched the China-Russia Regional RMB Fund in order to simplify investments in the Chinese and Russian currencies and contribute to the development of Siberia, the Russian Far East, and the North-East of China.

3. Legal framework of investment cooperation

Investment cooperation between countries is regulated both on the national and international levels. The interdependence of international and national legal regulation of foreign investments is based on the principles of the relationship between international and domestic law. The systems of international and national law are independent. However, they are closely related to each other and mutually influence each other. National legislation reflects national investment policy and helps attract investments from companies and individuals of the capital exporting state to the host state.

As for national legislation, each sovereign state has the right to regulate foreign direct investments. States can restrict investments in certain areas or, on the contrary, encourage investments in specific sectors. States can attract foreign investments by providing domestic incentive schemes, establishing economic processing zones, and opening investment promotion agencies.

In order to consolidate their relations on a contractual basis, countries conclude bilateral and/or multilateral treaties with each other. Such legal acts create the basis of trade, economic and investment cooperation between different countries, including the BRICS countries.

Investment treaties are the main sources of international investment law. Multilateral investment treaties (MITs) are concluded between two or more sovereign countries (MITs are mostly regional), while bilateral investment treaties (BITs) are concluded between two contracting sovereign countries. BITs establish terms and conditions for legal entities willing to make investments in another state. Investment treaties aim at providing a legal framework for qualified investors who want to contribute to the economy of the host state. Most importantly, they provide investors with guarantees against states that violate the principles of international investment law.

Modern MITs and BITs (including those ratified by the BRICS countries) contain necessary provisions on fair and equitable treatment of investments (FET), expropriation, and compensation for losses. FET is a central standard in international investment law. It establishes that the host-state treats investments made by investors of the other contracting party and activities related to such investments without abuse. Expropriation is a compulsory acquisition of an investor's property by the host-state. Expropriation can be illegal or legal if certain requirements are met. In the event that the host-state breaches certain obligations under the BIT, it usually pays compensation to foreign investors for their losses or compensate them in another way. Many BITs establish that disputes between the host-state and foreign investors are settled amicably or/and via international arbitration.

4. Bilateral investment treaties concluded by the BRICS countries

At the international level, the BRICS countries have not reached a common opinion on how investment cooperation should be regulated, and there are no special investment agreements between them. The BRICS countries have different approaches to investor-state dispute settlement (ISDS) and to investment treaties (both bilateral and multilateral).

Brazil is known as a country that has signed many BITs, but has not ratified them. In 2015, Brazil launched its Model BIT, which is built upon an approach of investment cooperation rather than investment protection — something that a typical BIT entails (Ranjan, 2020).[12] Moreover, Brazil is a party to several multilateral treaties and agreements containing investment provisions, including the existing India-MERCOSUR Framework Agreement.

By 2016, India entered into 82 BITs, of which 72 are in force.[13] However, in recent years, India was trying to re-negotiate treaties with many countries. In 2016, India amended its model bilateral investment treaty (the Indian Model BIT). On January 25, 2020, India and Brazil signed an investment agreement — the India-Brazil BIT. This BIT is aimed at promoting investment and cooperation. The India-Brazil BIT is more focused on the Brazilian approach to investment treaties; however, it reflects the Indian approach as well.

South Africa started negotiating BITs in the early 1990s in order to promote and protect foreign investments. South Africa has a bilateral investment agreement with two other members of BRICS — Russia and China. The Russian Federation — South Africa BIT entered into force in 2000. The China — South Africa BIT entered into force in 1998. The South African model investment treaty applies the broad British model approach, meaning that protection provisions contained in the treaties include obligations to pay market value compensation in case of expropriation, national emergency, revolt, insurrection, riot, or other similar events in the territory of the other party.[14] However, since the South African government is in the process of modernizing and improving the country's investment regime, the basis of a new model investment treaty may change. In 2013, the South African government released a draft Promotion and Protection of Investment Bill.

China has a relatively large number of BITs, despite the fact that it only started concluding BITs in 1982. The reason for this is that since the Chinese economy is constantly growing, China is becoming an increasingly attractive destination for foreign investors,

[12] Ranjan, P. (2020, March 19). *India-Brazil Bilateral Investment Treaty — a new template for India?* Kluwer Arbitration Blog. http://arbitrationblog.kluwerarbitration.com/2020/03/19/india-brazil-bilateral-investment-treaty-a-new-template-for-india/

[13] Herbert Smith Freehills. (2016). *India and Brazil conclude negotiations of Bilateral Investment Treaty.* https://hsfnotes.com/arbitration/2016/12/05/india-and-brazil-conclude-negotiations-of-bilateral-investment-treaty

[14] Information from South African Ministry of Trade and Industry. http://www.thedti.gov.za/editmedia.jsp?id=2504

while investments of Chinese enterprises around the world are constantly rising. As of June 2013, China concluded 131 BITs (Berger, 2013). The China-South Africa BIT was concluded in 1997, the India-China BIT came into force in 2007.

The China-Russia BIT, or Agreement between the government of the Russian Federation and the government of the People's Republic of China on the promotion and reciprocal protection of investments, was concluded in 2016. This important act regulates Sino-Russian investment cooperation. The China-Russia BIT aims at intensifying cooperation between the two states on the basis of equality and mutual benefits and creating favorable conditions and guarantees for investments by investors of one contracting party in the territory of the other contracting party. The India — Russian Federation BIT entered into force in 1996, but was unilaterally terminated in 2017.

5. Results and discussion

Having considered all of the above, we have come to the conclusion that other countries invest in the BRICS region as actively as the BRICS countries invest worldwide. Since the BRICS countries have huge economic potential, foreign investors are crucial for their development. At the moment, investment cooperation between the BRICS countries is generally limited. However, there are many bilateral projects between some of them. China is actively investing in these countries, implementing its national strategies of increasing OFDI, which raises the level of intra-BRICS investment cooperation.

Investment cooperation in the BRICS countries is regulated by national and international legislation. While national legislation reflects national investment policy, international investment treaties ratified by the BRICS countries reflect modern practices of protecting and encouraging foreign investors. The BRICS countries have developed different approaches to international investment treaties, but this does not preclude them from providing stable and fair legal framework for all foreign investors. Bilateral investment treaties concluded between the BRICS countries establish rights and obligations of foreign investors and the host-state. They also contain necessary provisions for fair and equitable treatment, expropriation, and compensation.

The BRICS counties do not have a multilateral investment treaty. It is presumed that the conclusion of such a treaty can have a positive impact on the BRICS investment cooperation since it will protect foreign investors from possible violations of their obligations by the host state. However, the BRICS countries cannot enter into a MIT unless they follow a similar approach when drafting their model investment treaties. Thus, the question of whether the BRICS countries should conclude MITs is still open.

Conclusions

There are large outflows of investments from the BRICS countries, as well as inflows of foreign investments to the BRICS countries. Since the BRICS countries become increasingly strong economically, such investments are expected to grow. However, the level of investment cooperation between the BRICS countries is still relatively low. Despite the fact that the BRICS countries offer a stable legal framework for investors, there are not so many investment projects concluded between the countries. Notwithstanding this, the investment activity that is currently underway is going successfully. Bilateral investment treaties ratified by the countries make such investment cooperation possible and prosperous.

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