

Asia FDI Forum II

China's Three-Prong Investment Strategy: Bilateral, Regional, and Global Tracks

29 - 30 November 2016

The CUHK Graduate Law Centre

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Chinese world map, drawn by the Jesuits, Early 17th century. Reproduction in *Historic Maritime Maps*, Donald Wigal, Public Domain-Art

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Conference website: <http://webapp1.law.cuhk.edu.hk/2016conference/1129/conf>

Concept Note

Launched by the CUHK Faculty of Law in 2015, the **series of Asia FDI Forum** provides a multi-stakeholder platform anchored in Hong Kong for participants from academia, government, the private sector and civil society to discuss regional investment trends, highlight specific features of investment treaties and policies, analyze Asia's relationship with other regions of the world, and explore the various legal and policy implications of the emergence of new actors, issues and norms which shape the future of Asia FDI (NB: *The Asia FDI Forum is meant to provide a platform for expert discussion based on academic research and policy oriented presentations, mostly related to legal developments but also sovereign economics and politics of FDI in Asia. In this respect, during the discussions we operate under 'Chatham House rules'; persons may report what was said, but in reporting may not attribute a statement or opinion to an individual or institution.*)

The Asia FDI Forum 2016 is structured around the emerging **three tracks of China's investment policy and strategy**. As China is experiencing 'painful and treacherous' (Premier Li Keqiang in a speech at the WEF 2015) economic transition from state-led manufacturing to a service-based economy, new strategies are needed to fuel its stalled economic reforms and development goals as articulated in China's 13th Five-Year-Plan (2016-2020). For China's domestic investors, there is a shrinking pool of good investment opportunities in the country compared to its very high savings rate. According to World Bank's Doing Business Index, which measures business-friendly regulations, China was ranked 84 in 2015, after Ukraine ranked at 83. It is thus important for China to adjust its investment rules and policies with its major economic partners and within the Asia-Pacific region.

- **The Bilateral Prong:** In recent years, China, a country which has historically preferred to deal bilaterally with foreign nations, has launched bilateral talks with its top high-income trading partners to advance its interests and gain more influence. China has concluded bilateral deals with certain strategic partners e.g. ASEAN (2009), Canada (2012), and Australia (2015). In addition, there are two notable deals under negotiation: US-China BIT (launched in 2008) to govern a more complex economic relationship between the world's two largest economies, and EU-China investment treaty (launched in 2013 at the 16th EU-China Summit) to encourage further liberalization of China's economy.
- **The Regional Prong:** China has also actively participated in shaping the economic architecture of the Asia-Pacific region. Spurred by regional economic integration in the West (EU, NAFTA, MERCOSUR, Pacific Alliance) and frustrated by the deadlock of WTO multilateral negotiations, countries in the Asia-Pacific region are leaning towards harmonization and modernization of their foreign investment rules. To fulfill the "Asia-Pacific dream" touted by President Xi, China has, since 2006, been promoting an Asia-Pacific trade pact, Free Trade Area of Asia Pacific (FTAAP), arguably with Regional Comprehensive Economic Partnership (RCEP) and (Trans Pacific Partnership) TPP as pathways created by China and the U.S. towards harmonization. In 2014, a level of harmonization has been achieved in the East Asia as China-Japan-Korea Trilateral Investment Agreement entered into force. And of course the potential coming into force of the TPP, even without having China, must be part of the analysis, as it could also have complex and significant impacts on the region's investment governance.
- **The Global Prong:** China has garnered increasing attention through its introduction of the One Belt One Road (OBOR) in 2013, aimed at strengthening its "Go global" policy by opening up new markets and increasing the value of cross-border business. Over China's G20 Presidency in 2016, a multilateral consensus has been reached on Global Investment Policymaking, which specifically reference inclusive growth and sustainable development as objectives of investment policymaking, and implementation of which will be pivotal in reducing the fragmentation of international investment law and policy going forward.

The 2016 Forum's overarching topic is whether these three tracks compete with each other, or whether they complement one another—a question of profound importance. Also the discussion will allow participants to understand the process that China is going through from a net capital importer to an active capital exporter. How that transition is reflected in Chinese treaty practice (post and pre-establishment, negative list approach), the difficulties of incorporating historical investment treaties concepts such as customary international law and China's approach with ISDS will be other important issues addressed by the panelists. We look forward to welcoming you to discuss legal and policy frameworks governing foreign investment in, among and by Asian states, and hope that together we can advance efforts to identify research and policy gaps that must be filled in order to promote more sustainable and responsible investment in the region, and globally.

Tuesday, November 29, 2016:

8:30 – 9:00 **Coffee and registration (GLC Foyer)**

9:00 – 9:30 **Welcome and opening remarks**

Mr. Christopher Gane, Dean, Faculty of Law, CUHK

Mr. Julien Chaisse, Professor and Director of CFRED, Faculty of Law, CUHK

Ms. Lise Johnson, Head, Investment Law and Policy, CCSI, Columbia University

Mr. Cristián Rodríguez Chiffelle, Lead, International Trade and Investment Policy, WEF

9:30 – 11:00 **Session I: What do China's global investments mean for China and the world?**

Chair: Mr. Julien Chaisse, Professor and Director CFRED, Faculty of Law, CUHK

- **Chinese Enterprises 'Going Global': Trends, Policy Support and International Implications**
Mr. Huiyao Wang, President, Center for China and Globalization (CCG), Beijing
- **China's Negotiations on Bilateral Regional and Multilateral International Treaties: Three Prongs in the 21st Century**
Ms. Zhao Hong, Vice-president, Chinese Academy of International Trade and Economic Cooperation, Beijing
- **Three Prong and Three Arbitrations: Commercial Arbitration, State-to-State Arbitration and State-Investor Arbitration**
Mr. Jingzhou Tao, Managing Partner, Beijing Representative Office, Dechert LLP
- **Lead discussants followed by Q&As**
Mr. Mario Ignacio Artaza, Chief, Banco Security & President, Chile Chamber of Commerce
Ms. Mimi Zou, Assistant Professor, Center for Human Rights and Justice, Faculty of Law, CUHK

11:00 – 11:30 **Coffee Break (GLC Foyer) and Group Picture**

11:30 – 13:00 **Session II: Shaping a New International Investment Order?**

Chair: Mr. Lutz-Christian Wolff, Wei Lun Professor, Faculty of Law and Dean of the Graduate School, CUHK

- **China Foreign Investment in One Belt, One Road**
Ms. Ka Zeng, Professor, Department of Political Science, Director of Asian Studies, University of Arkansas
- **China's Role and Interests in Central Asia: Exploring the China-Pakistan Economic Corridor**
Mr. Manzoor Ahmad, Former Pakistan Ambassador and Senior Fellow, International Centre for Trade and Sustainable Development (ICTSD), Geneva
- **The Future of Investment: ICT Industry and the Internet of Things**
Mr. James Lockett, Vice President, Head of Trade Facilitation and Market Access, Huawei Technologies Co. Ltd.
- **Lead discussants followed by Q&As**
Ms. Anna Joubin-Bret, Principal, Joubin-Bret Cabinet d'Avocats, Paris and Member, ICTSD/WEF E15 Initiative
Mr. Li Ka-Yin, Consultant, AnJie Law Firm, Beijing; Fellow and Council Member, The Hong Kong Institute of Directors

13:00 – 14:30 **Lunch break (Shanghai Garden)**

14:30 – 16:00 **Session III: China's Regional Investment Treaties: past, present and future treaties**
Chair: Ms. Lise Johnson, Head of Investment Law and Policy, CCSI, Columbia University

- **East Asian trilateral investment agreement**
Mr. Won-Mog Choi, Professor of Law, Director of the WTO Law Center, Ehwa Womans University and President, Korea Society of International Economic Law
- **RCEP: Learning from Past Chinese FTAs**
Mr. Heng Wang, Associate Professor, Faculty of Law, The University of New South Wales; Adjunct Professor, Southwest University of Political Science and Law
- **China and the TPP: Reactions and Potential Consequences**
Mr. William W. Burke-White, Deputy Dean, Richard Perry Professor and Inaugural Director, Perry World House, School of Law, University of Pennsylvania
- **Lead discussants followed by Q&As**
Mr. Jyh-An Lee, Assistant Professor, Faculty of Law, CFRED, CUHK
Mr. Cristián Rodríguez Chiffelle, Lead, International Trade and Investment Policy, WEF

16:00 – 16:30 **Coffee Break (GLC Foyer)**

16:30 – 18:30 **Session IV: Chinese BITs over Time: a review of the latest treaties**
Chair: Mr. Chao Xi, Professor, Vice Chancellor's Outstanding Fellow, Faculty of Law, CUHK

- **The 2012 Canada-China Investment Treaty: Lessons for a U.S.-China BIT and beyond?**
Mr. Kyle Dickson-Smith, Senior Counsel, Canada/Australia
- **Do Vintage BITs sound better? China and Australia investment treaties 1988/2015**
Mr. Andrew D. Mitchell, Professor, Melbourne Law School and Visiting Fellow, Clare Hall and Lauterpacht Centre for International Law, Cambridge University
- **China's Practice and Recent Developments regarding IIA Balancing Mechanisms**
Mr. Matthew Levine, Research Fellow, Capital Markets Institute, University of Toronto
- **The Mutations of China's Investment Treaty Practice: Issues and Directions**
Mr. Rodrigo Monardes, Counsellor, Trade and Investment of the Permanent Delegation of Chile, OECD
- **Lead discussants followed by Q&As**
Mr. Luke Nottage, Professor, School of Law, The University of Sydney
Mr. Romesh Weeramantry, Foreign Legal Consultant, Clifford Chance, Hong Kong

18:30 – 20:30 **Reception (GLC Foyer)**

Wednesday, November 30, 2016:

8:30 – 9:00 **Coffee and registration (GLC Foyer)**

9:00 – 10:30 **Session V-A: Toward a US-China Investment Treaty**

Chair: Ms. Lise Johnson, Head, Investment Law and Policy, CCSI, Columbia University

- **A US-China BIT: A New Chapter for Investment Liberalization**
Mr. Mark Feldman, Associate Professor, School of Transnational Law, Peking University
- **Chinese SOEs in the U.S. and the BIT negotiations**
Mr. Xinquan Tu, Professor and Deputy Director, China Institute for WTO Studies, University of International Business and Economics
- **AIB, Silk Road and other Chinese led initiatives in the context of the US-China rivalry**
Mr. Joel Slawotsky, Professor, Interdisciplinary Center (IDC) Herzilya, Israel
- **Lead discussants followed by Q&As**
Mr. Kyle Dickson-Smith, Senior Counsel, Canada/Australia
Ms. Ka Zeng, Professor, Department of Political Science, Director of Asian Studies, University of Arkansas

9:00 – 10:30 **Session V -B: Opportunities and Challenges for Investment in China**

Chair: Mr. Cristián Rodríguez Chiffelle, Lead, International Trade and Investment Policy, WEF

- **The Tax Factor: Chinese FDI and anti-tax avoidance measures**
Ms. Li Na, Lecturer, East China University of Political Science and Law, Shanghai
- **The Nexus of Foreign investment and Trade in Services: Issues and Challenges for China**
Mr. Pascal Kerneis, Managing Director, European Services Forum, Brussels
- **China's performance in the Sustainable Trade Index**
Mr. Stephen Olson, Research Fellow, Hinrich Foundation, HK
- **Lead discussants followed by Q&As**
Mr. Michael Gestrin, Senior Economist, Directorate for Financial and Enterprise Affairs, OECD
Ms. Yan Xu, Assistant Professor, CFRED, Faculty of Law, CUHK

10:30 - 11:00 **Coffee Break (GLC Foyer)**

11:00 – 12:30 **Session VI-A: EU-China Bilateral Investment Treaty Prospects**

Chair: Mr. Julien Chaisse, Professor and Director CFRED, Faculty of Law, CUHK

- **Integration by Stealth: How the European Union Gained Competence Over Foreign Direct Investment**
Ms. Sophie Meunier, Research Scholar, Woodrow Wilson School of Public and International Affairs, Co-Director EU Program, Princeton University
- **Chinese FDI in the European Union: highway in the making (tbc)**
Mr. Dewen Tian, Director of Department for European Society and Culture Studies of Institute of European Study, Chinese Academy of Social Science

- **The Inclusion of Investment Court System into the EU-China BIT: Problems and Implications for Investor-State Arbitration**
Mr. Chi-Chung Kao, Professor, National Quemoy University, Taiwan
- **Lead discussants followed by Q&As**
Ms. Jane Drake-Brockman, Director, EU Centre for Global Affairs, The University of Adelaide
Mr. Fernando Dias Simões, Assistant Professor, Faculty of Law, University of Macau

11:00 – 12:30 **Session VI-B: Investment Policy Trends and Key Issues for China**
Chair: Ms. Anna Joubin-Bret, Principal, Joubin-Bret Cabinet d'Avocats, Paris and Member, ICTSD/WEF E15 Initiative

- **The Economic Impact of Chinese IIAs: New findings**
Mr. Rodolphe Desbordes, Reader, Department of Economics, University of Strathclyde
Mr. Ian Wooton, Head of Department, Department of Economics, University of Strathclyde
- **Models for Investment Treaties in the Asian Region: An Underview**
Ms. Amokura Kawharu, Professor, Faculty of Law, The University of Auckland
Mr. Luke Nottage, Professor, School of Law, The University of Sydney
- **SOE Investments and National Security Concerns: Implications for China**
Ms. Lu Wang, Dual PhD Researcher, School of Law and Social Justice, University of Liverpool, and School of Law, Xi'an Jiaotong University
- **Lead discussants followed by Q&As**
Mr. Christopher To, Independent Arbitrator, Adjudicator and Mediator, HK
Mr. Dini Sejko, Ph.D. Cand., Faculty of Law, CUHK

12:30 – 14:00 **Lunch (Shanghai Garden)**

14:00 – 15:30 **Session VII: China and Investment Arbitration: Experience and Prospects I**
Chair: Mr. Heng Wang, Associate Professor, Faculty of Law, The University of New South Wales; Adjunct Professor, Southwest University of Political Science and Law

- **Investment Treaty Arbitration in Asia: The China Factor**
Mr. Matthew Hodgson, Partner, Allen & Overy, Hong Kong
- **The definition of a “foreign” investment or investor in China: new criteria or back to basics?**
Ms. Janes Willems, Associate Professor, Faculty of Law, Tsinghua University
- **Use of Investor-State Dispute against China’s Enforcement of the Anti-Monopoly Law: Belling the Panda?**
Mr. Sungjin Kang, General Counsel, Gymworld Inc., Seoul
- **Lead discussants followed by Q&As**
Mr. Mark Feldman, Associate Professor, School of Transnational Law, Peking University
Mr. Dennis Cai, President of Policy and Compliance, Dot Trademark TLD Holding Company Ltd

15:30 – 16:00 **Coffee Break (GLC Foyer)**

16:00 – 17:30 **Session VIII: China and Investment Arbitration: Experience and Prospects II**
Chair: Mr. Julien Chaisse, Professor and Director of CFRED, Faculty of Law, CUHK

- **The scope of the dispute resolution clause in recent Chinese IIAs: a comparative analysis in light of recent jurisprudence**
Mr. Rahul Donde, Senior Associate, Lévy Kaufmann-Kohler, Geneva
- **Systems of Control in ISDS and the Unique Tools of the State**
Mr. Patrick W. Pearsall, Chief of Investment Arbitration, Office of the Legal Adviser, U.S. Department State
- **Standing panels in investor-state arbitration**
Mr. Leon Trakman, Professor of Law & Former Dean, Faculty of Law, University of New South Wales
- **Lead discussants followed by Q&As**
Ms. Olga Boltenko, Counsel, International Arbitration Practice, CMS Hasche Sigle
Ms. Manini Brar, Deputy Counsel, Secretariat of the ICC International Court of Arbitration-Asia Office

17:30 – 18:00 **Closing remarks**

Mr. Julien Chaisse, Professor and Director CFRED, Faculty of Law, CUHK

Ms. Lise Johnson, Head, Investment Law and Policy, CCSI, Columbia University

Mr. Cristián Rodríguez Chiffelle, Lead, International Trade and Investment Policy, WEF

End of the conference

Conference Organizers

Columbia Center on Sustainable Investment

The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is a leading research center and forum dedicated exclusively to the study, practice and discussion of sustainable international investment (SII) worldwide. Through research, advisory projects, multi-stakeholder dialogue and educational programs, CCSI constructs and implements an investment framework that promotes sustainable development, builds trusting relationships for long-term investments, and is easily adopted by governments, companies and civil society.

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For more information, see: <http://www.law.cuhk.edu.hk/en/research/cfred/about-CFRED.php>

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PRACTICAL INFORMATION

Venue: Warren Chan Moot Court, CUHK Graduate Law Centre, 2/F Bank of America Tower, 12 Harcourt Road, Central

Conference website: <http://webapp1.law.cuhk.edu.hk/2016conference/1129/conf/index.php>

Attendance is **free of charge** but is reserved on a first-come-first-served basis. Seats are limited. Early registration is encouraged. The first day of the Forum (November 29) will be followed by a reception with refreshments and light snacks starting at 6pm in the GLC foyer.

Online registration: <https://cloud.itsc.cuhk.edu.hk/webform/view.php?id=2204137>

Enquiries please contact Miss Frances Wang (gian.wang@cuhk.edu.hk) and/or Miss Bonnie Leung (swleung@cuhk.edu.hk)

Directions:

The CUHK Graduate Law Centre 香港中文大學法律學院研究生部
2/F, Bank of America Tower, 12 Harcourt Road, Central, Hong Kong
香港中環夏愨道12號美國銀行中心2樓

MTR Admiralty Station Exit B, Central Station Exit L/J3
金鐘港鐵站B出口, 中環港鐵站L/J3出口

Bus Route 巴士路線:

The Bank of China Tower station 中銀大廈站 -

1,5,5B,5S,5X,10,11,15,25,26,37A,75,90,90C,97,101,104,113,373A,690,811,905,914,960,961

Queensway Plaza station 金鐘廊站 -

1,2,5,5B,5C,5S,6,6A,6X,10,11,15,23,23B,25,26,40,40M,66,103,104,111,115,182,260,307,373,

511,601P,603,603P,619,621,630P,680X,681,681P,690,692,720,720A,722,930,930A,960P,961P,969B,982X,A11,E11



And, if you need GPS coordinates, the Bank of America Tower is a 38-floor 146 m (479 ft) skyscraper located in the Admiralty area of Hong Kong Island Coordinates 22.2813°N 114.16303°E