



东非雄风 RISING IN THE EAST

在中非投资专题报道的第二部分, **Vanessa Ip**将深入非洲东部, 关注埃塞俄比亚、肯尼亚、马达加斯加、毛里求斯、莫桑比克、坦桑尼亚和乌干达的最新动态

IN THE FINAL ARTICLE IN OUR SERIES ON CHINA'S GROWING INVESTMENT ACROSS AFRICA, **VANESSA IP** EXPLORES EAST AFRICA FOR THE LATEST DEVELOPMENTS FROM ETHIOPIA, KENYA, MADAGASCAR, MAURITIUS, MOZAMBIQUE, TANZANIA AND UGANDA

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非多国目前已跻身非洲大陆最具活力经济体之列。根据安永在2017年发布的报告《重新定义互联互通》中的预测，肯尼亚、坦桑尼亚、乌干达和埃塞俄比亚在未来十年的增长速度有望超过6%。该四大所还预计流入该等核心经济体的外国直接投资(FDI)持续攀升，大多数投资者将对多元化程度较高的大型经济体青睐有加。

David Thompson 是 Cliffe Dekker Hofmeyr 律师事务所在南非开普敦市的合伙人兼公司和商业部地区执业负责人，他表示，东非将成为首个受益于一带一路倡议的非洲地区。“特别是，吉布提、埃及、肯尼亚和坦桑尼亚等国将迎来一大波基建和能源投资浪潮。”

埃塞俄比亚。在一份2017年报告中，麦肯锡公司称埃塞俄比亚作为中国的“忠实搭档”之一，体现了中非经济战略合作的最高水平。根据约翰·霍普金斯大学高级国际研究学院的《中非研究计划》报告，自2010年至2015年，仅从中国这里，埃塞俄比亚就获得了107亿美元的贷款。

East Africa comprises of some of Africa's most buoyant economies. Ernst and Young predicts, in its 2017 report, Connectivity Redefined, that Kenya, Tanzania, Uganda and Ethiopia will all grow at an annual rate of more than 6% for the next 10 years. The "Big Four" accountancy firm also expects that foreign direct investment (FDI) into these hub economies will continue to climb, with the majority of investors gravitating towards large and more diversified economies.

David Thompson, director and regional practice head of corporate and commercial at Cliffe Dekker Hofmeyr in Cape Town, South Africa, says that East Africa will be the first to benefit from the Belt and Road initiative in Africa. "In particular, countries such as Djibouti, Egypt, Kenya and Tanzania stand to gain huge surges of investment in infrastructure and energy," he says.

Ethiopia. In a 2017 report by McKinsey & Company, Ethiopia is described as one of China's "robust partners", encompassing the highest level of strategic engagement between China and an African economy. It was reported by the China-Africa Research Initiative at Johns Hopkins University's School of Advanced International Studies that Ethiopia received US\$10.7 billion in loans from China from 2010 to 2015.

This heightened level of engagement and investment, says Kidist Abayneh, a partner at Kidist and Associates Law Office in Addis Ababa, is more than welcomed by Ethiopia and will provide huge employment opportunities for the country, particularly in manufacturing and construction.

"China's Belt and Road strategy is welcomed by Ethiopia," she says. "It's known that the new initiative will also link China's southern coast with East Africa. Though it seems that the implementation of this strategy [is not progressing] in Ethiopia, the increasing number of Chinese investors in the country and their huge [levels of investment in the construction and manufacturing industries] shows the acceptance of the strategy by the Ethiopian government, which continues to encourage Chinese investors to invest in the country."

In Abayneh's experience, the major frustrations complained of by foreign investors in the country include the strict nature of the labour law (especially on terminations), the rigorous and unclear nature of the tax system, lengthy procedures involving revenue and customs authorities, difficulties in obtaining foreign currencies due to shortages, and lengthy court procedures. Abayneh hopes that by continuing to lobby government bodies, and by working closely with the Ethiopian Investment Commission, some of these issues can be resolved.



Kidist and Associates 律师事务所在亚的斯亚贝巴市的合伙人 Kidist Abayneh 表示,如此火热的合作和投资不仅深受埃塞俄比亚欢迎,也为当地提供大量就业机会,尤其是制造业和建筑业。

她说:“中国的一带一路倡议受到埃塞俄比亚的欢迎。众所周知,这一新倡议也会深化中国南部沿海地区与东非的联系。虽然目前该战略似乎还未推进到埃塞俄比亚,但已有越来越多中国投资者涌入埃塞俄比亚,他们对建筑业和制造业的巨量投资反映了埃塞俄比亚政府对一带一路虚怀以待,它不断地鼓励中国投资者进入该国投资。”

Abayneh 从自己的办案经验指出,埃塞俄比亚的外国投资者面对的主要困难包括:劳动法过于严格(尤其是关于终止劳动关系的规定);税收制度严格且不明晰;税收部门和海关部门办事效率不高;外汇紧缺导致兑换困难;以及法庭审案时间过长等。Abayneh 希望通过继续游说政府机构以及与埃塞俄比亚投资委员会密切合作来解决部分问题。

肯尼亚。作为非洲东部和中部规模最大、增长最快的

Kenya. This is one of the largest and fastest growing economies in East and Central Africa, making it an attractive hub for FDI, specifically in the areas of agriculture, manufacturing and mining.

John Miles, managing director of JMiles & Co in Nairobi, considers construction to be the most popular industry for Chinese investment in Kenya in both the private and public sectors. Chinese businesses have invested heavily in construction, the upgrading of the country's transportation network, property development and industrial parks. Miles adds that investment opportunities in trade, agriculture and energy are also gaining popularity.

In May 2014, the Kenyan Government signed a US\$3.6 billion contract with the China Road and Bridge Corporation for the construction of the Standard Gauge Railway line. Nigel Shaw, a partner at Kaplan & Stratton Advocates in Nairobi, advises that this infrastructure project has probably been the largest of the Belt and Road initiative in the region. The railway line, which became functional in June 2017, has reportedly created more than 27,000 jobs. Kenya has also been upgrading its port in



JOHN MILES
JMiles & Co
管理合伙人
内罗毕市, 肯尼亚
Managing Director
JMiles & Co
Nairobi, Kenya

肯尼亚的外企最常用的企业形式还是私人股份有限公司,因为它需要遵守的企业治理要求比较少

The most common form of business entity used by foreign companies in Kenya is a private company limited by shares, because of fewer corporate governance requirements

经济体之一,肯尼亚成为吸引外国直接投资的中心,尤其是农业、制造业和采矿业三大领域。

JMiles & Co 律师事务所在内罗毕市的管理合伙人 John Miles 认为,无论在私营部门还是公共部门,建筑业都是肯尼亚最受中国投资者欢迎的行业。中国企业投入大量资金建设和升级该国的交通网络、房地产开发项目以及工业园区。他补充说,贸易、农业和能源行业的投资机会受欢迎度也在持续提高。

2014年5月,肯尼亚政府与中国路桥工程有限责任公司签订了一份涉及资金总额 36 亿美元的标准轨铁路建设合同。Kaplan & Stratton Advocates 律师事务所在内罗毕市合伙人 Nigel Shaw 表示,该基建项目很可能是区域内最大的一带一路项目。该铁路线于 2017 年 6 月投入运营,据报道创造了 27,000 多个就业岗位。此外,肯尼亚正在推进的蒙巴萨港口升级项目以及多条公路的投资,预期也有助于提高经济生产力。

法律从业人士预期 2018 年的政策和监管动态将为

Mombasa and investing in its roads, which is expected to help increase economic productivity.

Practitioners expect to see policy and regulatory developments this year that will support the Kenyan President Uhuru Kenyatta's "Big Four" agenda, creating further opportunities for foreign investment. "The newly elected government in Kenya has highlighted four areas in which it will devote its efforts in 2018 to 2022," says Akash Devani, a partner at Anjarwalla & Khanna in Mombasa.

"The four areas are manufacturing, affordable housing, health-care and food security. The specific goals include building 500,000 low-cost houses, universal healthcare, a 10-fold exports increase, irrigation of 1.2 million acres of land, and millions of new jobs."

While the future seems to hold many opportunities for foreign investors in Kenya, Miles says they will inevitably face various challenges "depending on the legal entity they want to use for business, and the investment sector, because of the sector-specific laws". Some non-sector-specific legal and regulatory challenges

肯尼亚总统的“四大”议程提供支持，从而为外国投资创造更多机会。Anjarwalla & Khanna 律师事务所蒙巴萨市合伙人 Akash R. Devani 表示：“肯尼亚新当选的政府强调从 2018 年到 2022 年将以四大领域为工作重心，分别是制造业、经济适用房、医疗保健和食品安全，简称‘四大’。具体目标成果包括建设 50 万套低成本住房，实现全民医疗，出口额翻 10 倍，建设覆盖 120 万英亩土地的灌溉体系，以及创造数百万个新就业岗位。”

Miles 表示，对于肯尼亚的外国投资者来说，未来将涌现大量机会，但他们也无可避免地需要直面各种挑战，“具体取决于两点，一是选择经营的法律实体类型，二是所投资的行业的具体法律”。投资者通常面临的一些与行业无关的法律和监管挑战包括三种，一是设立和组建过程漫长，二是有大量证照要求需要满足，三是持股限制。

Miles 解释道：“通常来说，外国投资者会组建一家本地公司或设立一个分支机构，但也有其他投资者愿意以有限责任合伙的形式与当地建立合作。但是，肯尼亚的外企最常用的企业形式还是私人股份有限公司，因为它需要遵守的企业治理要求比较少。”

that investors usually face include lengthy processes of set-up and incorporation, extensive licence and permit requirements, and restrictions on ownership.

“Usually foreign investors will incorporate a local company, set up a branch office, while others will opt to partner with locals through limited liability partnerships,” says Miles. “However, the most common form of business entity used by foreign companies in Kenya is a private company limited by shares, because of fewer corporate governance requirements.

“The cost of setting up any of the entities is lengthy, although the time has been shortened by the digitization of the registration process, eliminating the need for manual submission of documents. [With regard to business licences and permits] ... in some instances an investor has to get approvals and clearances with both the national and county governments, for example in the mining sector.

“For certain types of businesses, there are legal restrictions on foreign ownership, either wholly or partly. For instance, private companies that intend to purchase agricultural property in Kenya cannot have foreign shareholders at all. For telecoms



NIGEL SHAW
Kaplan & Stratton
合伙人
内罗毕市，肯尼亚
Partner
Kaplan & Stratton
Nairobi, Kenya

自新宪法出台以来，肯尼亚还在向一种由中央和县两级政府组成的新治理形式过渡

Since the new constitution, Kenya has been adjusting to a new form of governance with a national government and county governments

“随着注册流程数码化，目前已无需手动提交文件，因此办理手续的时间已大为缩短，但建立实体的时间成本还是不低。[就申领营业执照和许可证而言]，在某些情况下，投资者必须获得国家和县政府的批准和许可，采矿业就是一个例子。”

“对于某些类型的企业，法律限制外资持股，甚至完全禁止外资进入。例如，如果一家私人公司有在肯尼亚购置农业资产的计划，它甚至不能接受任何外国股东。又比如，电信公司至少有 30% 的股权必须由肯尼亚人持股。”

MMC Africa Law 律师事务所内罗毕市合伙人 Bernard Musyoka 指出，提供基础设施服务是政府的职责。他介绍：“政府通常通过公私合作模式提供这类服务，民间合作伙伴可以是外国投资者或是其他人。无论是哪种情况，公私合作项目往往在财务可行性上都有所欠缺，也就是说虽然财政上不可行，但却有经济合理性和必要性。”

“在这种情况下，肯尼亚政府可以通过向项目供款人出具支持函的方式给予支持。此外，肯尼亚公私合作法律要求建立公私合作项目促进基金，对于那些大众需要、但

companies, at least 30% of the shareholding must be taken up by Kenyans.”

According to Bernard Musyoka, a partner at MMC Africa Law in Nairobi, the provision of infrastructure services is the role of the government. “The government often provides these services through a public-private partnerships [PPP] arrangement in which the private party may be a Chinese investor or otherwise,” says Musyoka. “In either case, PPP projects often face finance viability gaps in that they are not financially viable but are economically justified and necessary.

“In case of such a circumstance, the government may give support by issuing a letter of support to project financiers. Additionally, the PPP law in Kenya provides for the establishment of the PPP project facilitation fund, which may be applied to extend viability gap finance to projects that are desirable but cannot be implemented in the absence of financial support from the government of Kenya.”

Despite the challenges in setting up, Kenya has enacted laws that promote foreign investment, such as the Investment Promotion Act of 2004, under which foreign investors investing

缺乏肯尼亚政府财政支持就无法实施的项目，可以从此项基金中拨款填补资金缺口。”

尽管在设立方面存在困难，肯尼亚已颁布了若干项促进外国投资的法律，其中包括《2004年投资促进法》。根据该法，投资额达到10万美元（含）以上的外国投资者可以向肯尼亚投资局申领投资证书。据Miles介绍，投资证书提供两项优势，一是可以快速申办一些营业执照，二是管理人员和技术人员以及业主、股东、合伙人及其家属可以办理某些类型的入境许可证。

Kaplan & Stratton律所的Shaw指出，肯尼亚投资局的职责是协助投资者进入市场并提供后续服务。他认为，此类政府采取的措施（包括不久前对公司法进行的修改）成效明显：在世界银行发布的营商便利指数排行榜中，肯尼亚从2014年的第129位一举跃升至2016年的第80位。

Shaw补充说，在新宪法于2010年实施之后，肯尼亚一直在对若干部法律进行现代化调整。新宪法不仅要求废除或修改几部现行法律，而且还要求就先前未覆盖的领域起草新法。

肯尼亚公私合作法律要求建立公私合作项目促进基金

The PPP law in Kenya provides for the establishment of the PPP project facilitation fund

以促进当地人和外国人的贸易投资为目标的主要立法动态包括改进若干项有关公司治理和透明度的法律。

例如，《反贿赂法》于2017年1月13日正式生效。Devani说：“根据《反贿赂法》，行贿受贿行为正式入罪，不论是否涉及公共机构或官员，这就从根本上扩大了肯尼亚反贿赂反腐败法律的范畴。在这之前，只有涉及政府官员的贿赂才是刑事犯罪。《反贿赂法》有强制举报要求，它规定企业必须制定防贿赂反腐败的政策和程序。”

Musyoka补充说，公司现在还必须保存所有股东的记录，并向公司注册处提交备案。

Shaw表示，由于发布流程不畅，公众不能在第一时间获取这些新法律的资料。“因此，投资者可能会在遵守法律方面遇到困难。另外，自新宪法出台以来，肯尼亚还在向一种由中央和县两级政府组成的新治理形式过渡。这导致两级政府之间在宪法责任和权利方面出现争端，”他说。

“有关华企汾西矿业集团公司的报道就是一个例子。该公司2014年签订了肯尼亚煤矿开采承包合同。该项目

US\$100,000 or more can apply for an investment certificate from the Kenya Investment Authority. “The benefits of an investment certificate include prompt issue of some business licences, and specific classes of entry permits for management and technical staff as well as for owners, shareholders or partners and their dependents,” says Miles.

According to Shaw, from Kaplan & Stratton, the role of the Kenya Investment Authority is to assist investors entering into the market and provide aftercare services. He says the result of such government interventions, including the recent revamp of the Companies Act, is reflected in Kenya’s improved World Bank’s Ease of Doing Business rankings to 80th in 2016 from 129th in 2014.

Shaw adds that Kenya has been modernizing several of its laws following the enactment of a new constitution in 2010, which required several laws to be repealed or redrafted as well as draft new laws for areas previously not covered.

Notable developments aimed at promoting trade and investments for both locals and foreigners include improved corporate governance and transparency laws.



BERNARD MUSYOKA

MMC Africa Law
合伙人
内罗毕市，肯尼亚
Partner
MMC Africa Law
Nairobi, Kenya

For example, on 13 January 2017, the Bribery Act came into force. “The Bribery Act has radically extended the remit of Kenya’s bribery and corruption laws by criminalizing the giving or receiving of bribes, regardless of whether there was a public body or official involved,” says Devani. “Previously, only public official bribery was a criminal offence. The Bribery Act has a mandatory reporting requirement and requires businesses to have policies and procedures in place to prevent bribery and corruption.”

Musyoka adds that companies are also now required to keep a record of all shareholders, and to lodge the same for filing with the Registrar of Companies.

All of these new laws, says Shaw, are not immediately accessible due to poor publishing processes. “Investors may therefore encounter difficulties in complying with the law. In addition, since the new constitution, Kenya has been adjusting to a new form of governance with a national government and county governments. This has led to disputes between the two arms of government in relation to constitutional responsibilities and entitlements,” he says.

现已陷入停产状态，部分原因是中央政府和县级政府对如何分享煤矿开采形成的财富不能达成共识。”

莫桑比克。Henriques Rocha & Associados 律师事务所在马普托市的管理合伙人 Fabrícia de Almeida Henriques 介绍说，能源、自然资源、农业、建筑、基础设施和商业是莫桑比克最受中国直接投资者欢迎的行业。

中国投资者在莫桑比克面临的普遍难题是办理证照和外商直接投资批准的过程手续繁琐、耗时冗长。为了解决一部分程序问题，莫桑比克于 2017 年 7 月 28 日正式实施《新的经济活动经营简化许可制度》。根据新法案，某些商业和服务相关活动不再需要以领取执照为前提。Almeida Henriques 介绍，经营这些行业的企业和投资者现在只需要领取事先沟通证明。

但也有其他行业被加强监管。Almeida Henriques 说：“新法案还针对不遵守新法案项下义务的执照或证明持有人实行为期 15 日的营业暂停期。根据旧法案，许可证持有人未开展相关活动逾 12 个月的，给予吊销许可证的处理。但根据新法，未开展活动的期间达到六个月即可撤销权利。

对于外国投资者来说，驾驭莫桑比克的外汇政策也是一个棘手的难题。一般来说，外国人和居民之间的交易必须经莫桑比克央行授权或登记。Almeida Henriques 解释道：“第 20/GBM/2017 号法令批准了一项新的《外汇管制法》，该法促进商业银行参与若干项此前直接由申请人向莫桑比克央行办理的程序。

“例如，资金出入境申请现在必须发送给商业银行，由其转交莫桑比克央行批准。只有在不能向商业银行提交的情况下，才允许直接向莫桑比克央行提交申请。外国直接投资登记手续也要向中间商业行办理。只有在满足下列条件的情况下才允许直接向莫桑比克央行办理登记：(1) 投资以进口设备、机器或其他实物货物的形式进行，或者 (2) 投资标的是专利技术和商标使用权。”

虽然资本交易仍需莫桑比克央行批准，为给贷款提供便利，政府已针对该等交易进行了多项修改。Almeida Henriques 表示：“只要金额不超过 500 万美元并且满足以下三项条件，金融贷款的事前授权不需要由莫桑比克央行经手：(1) 贷款利率不超过贷款货币的基准贷款利率加四个基点；(2) 参考利率和保证金的总和不超过国家银行体系实行的信贷利率；以及 (3) 贷款期限不短于 3 年。”

“如果贷款金额超过 500 万美元，必须向中间商业行提交授权申请，由其发送给莫桑比克央行。股东贷款也必须经事先授权，但是下列两种情况的股东贷款无需莫桑比克央行事先批准：(1) 利率为 0%，期限不短于 3 年，无佣金和其他手续费；或者 (2) 合约利率超过 0% 但低于贷款货币的基准贷款利率，期限超过 3 年，无佣金和其他手续费，贷款金额不超过 500 万美元等值额。”

毛里求斯。为了成为中国投资通往非洲的门户，毛里求斯和中国于 2017 年 12 月签署了一份谅解备忘录 (MOU)，以开启两国的自由贸易协定 (FTA) 谈判。

根据 ENSAfrica 律师事务所在毛里求斯路易港的合伙人 Martine De Fleuriot de la Colinière 以及执行律师 Xavier Koenig 的介绍，该交易揭开了中毛两国正式启动 FTA 谈判的序幕，这将成为中国和非洲国家签订的首个自由贸易协定。

“For example, the reported case of the Chinese firm Fenxi Industry Mining Company, which was contracted to mine coal in Kenya in 2014. The project has stalled partly due to a conflict between the national and county governments on the sharing of wealth from the coal mining.”

Mozambique. According to Fabrícia de Almeida Henriques, the managing partner of Henriques Rocha & Associados in Maputo, energy, natural resources, agriculture, construction, infrastructure and commerce are the most popular industries for Chinese direct investment in Mozambique.

A common challenge faced by Chinese investors in Mozambique is the bureaucratic and time-consuming nature of the permit, licence and FDI approval process. The New Simplified Licensing Regime For The Exercise Of Economic Activities came into force on 28 July 2017, and aims to address some of these procedural issues. For instance, under the new act, it is no longer necessary to obtain a licence for certain commercial and service-related activities. According to Almeida Henriques, businesses and investors operating in these sectors now need only obtain a certificate of prior communication.

However, other areas have become more regulated. “The act also establishes a 15-day suspension of the activities of those holding either a licence or a certificate in case of non-compliance with the obligations established under the act,” says Almeida Henriques.

“While the previous regime established that all licence holders that did not carry out the respective activities for a period of longer than 12 months would have their licences revoked, the act now establishes that the revocation of the titles may take place after six months of no activity.”

Navigating Mozambique’s foreign exchange policies can also be problematic for foreign investors. As a general rule, transactions between foreigners and residents must be either authorized or registered with the Bank of Mozambique. “Order No. 20/GBM/2017 approved a new regulation of the Foreign Exchange Law,” says Almeida Henriques.

“This regulation promotes the involvement of the commercial banks in several of the procedures previously carried out directly between the applicant and the Bank of Mozambique. For example, the request for the import or export of capital must now be sent to the commercial bank and the latter will forward it to the Bank of Mozambique for approval.

“The request may only be submitted directly to the Bank of Mozambique in cases in which it is not possible to resort to a commercial bank. The registration of foreign direct investment is also carried out with the commercial intermediary bank. Registration is carried out directly at the Bank of Mozambique only in the case of investments made: (1) through the importation of equipment, machinery or other material goods, or (2) through the right to use patented technologies and trademarks.”

While capital transactions are still subject to the approval of the Bank of Mozambique, they have undergone changes in order to facilitate lending. Almeida Henriques says: “Prior authorization of financial loans do not require pre-authorization by the Bank of Mozambique, provided that the amount does not exceed US\$5 million, and provided that: (1) the interest rate is not higher than

两位专家补充介绍：“谅解备忘录还呼吁在两国之间建立自由贸易区。中国是毛里求斯的第二大贸易伙伴，也是其最大的进口来源地。2016年11月，两国开始了FTA谈判的联合可行性研究，成为中国与非洲国家此类进程的先例。

“FTA谈判既符合中国和毛里求斯的利益，也有利于促进和进一步深化两国之间的经贸联系。中毛自贸区的成立既有利于促进两国间的双边贸易和投资，也为中非关系转型注入新的动力。作为多项有利条约和投资保护协议的缔约国，毛里求斯经常发挥非洲投资枢纽和平台的作用。

“这也会有助于在非洲推动实施一带一路倡议。除了不久前协助毛里求斯政府完成一个机场项目以及 Terre-rouge Verdun 交通环线项目的建设以外，中国也在投资开发一个经贸合作园区，这将有助于增强中国企业在毛里求斯的布局。”

毛里求斯为华企提供了水产养殖、农工业、海洋经济、可再生能源、海鲜和海洋旅游等领域的独特投资机会。道路建设、机场、港口和度假景点等基建项目对该国也非常重要。

在基础设施和建筑领域经营的中国投资者应特别注意2017年3月1日生效的《2016年建筑业发展委员会(修订)法案》。Koenig表示，针对外国承包商执照申请，该法案已对专业化经营、工程等级以及级别三大事项进行了简化。他说：“实质上，任何希望在毛里求斯经营生意或者争取建筑等相关项目的外国承包商(包括中国客户)都需要向建筑业发展委员会登记，然后才能开展工作或争取项目。”

与此同时，在房地产领域，《投资促进法》为引入智慧城市计划(SCS)和房地产开发计划(PDS)作出了相关规定。De Fleuriot de la Colinière评论道：“为了解决非公民购房需求不断增加的问题，取代原来的IRS和RES计划的PDS计划允许开发一系列面向非公民、公民和毛里求斯侨民销售的居住项目。

“非公民在PDS计划下购买别墅资产后，只要其投资额超过50万美元或可自由兑换外币的等值额，即有资格申领居留许可。智慧城市计划则旨在推动特定经济活动发展，同时巩固工业和服务基础，为生态可持续发展开辟经济多样化的道路。一些中国公司在毛里求斯投资了SCS项目。对于有意向投资房地产开发项目的中国客户，了解相关法规和政策相当重要。”

坦桑尼亚。FIN & LAW 律师事务所在达累斯萨拉姆的合伙人 Eric Ringo 介绍说，中国在坦桑尼亚的直接投资一向集中在加工和制造行业，但中资大举投资建筑业和采矿业的趋势日益增强。

外国投资者在坦桑尼亚遇到的一些“操作小难题”牵涉到土地所有权。在坦国，通常只有坦桑尼亚公民有权获得土地所有权。劳动法对外国投资者在当地聘用的外籍员工数量也设定了限制。

Ringo表示，虽然存在上述问题，但坦桑尼亚政府也在不断地努力为中国投资者创造更有利的环境。“政府通过坦桑尼亚投资中心为投资者提供若干投资激励措施、投资机会和适当的指导，包括有可能允许外国投资者对土地拥有衍生产权……对于通过坦桑尼亚投资中心投资的外国人以及投资于出口加工区和经济特区等经济区的外国人，坦桑尼亚政府也以提供税收优惠的方式为其创

the base lending rate of the currency of credit denomination plus four basis points; (2) the sum of the reference rate and the margin do not exceed the interest rate of credit practised in the national banking system; and (3) it has a maturity of three years or more.”

In the case of loans exceeding US\$5 million, application for authorization must be submitted to the intermediary commercial bank, which should send it to the Bank of Mozambique, says Almeida Henriques. “As per shareholder loans, they are also pre-authorized, without requiring the prior approval by the Bank of Mozambique, provided they have an interest rate of 0%, with maturity equal to or greater than three years and free of commissions and other charges; or they are contracted at an interest rate of more than 0% but lower than the base lending rate of the currency of credit denomination, with a maturity of more than three years, free of commissions and other charges, up to the amount equivalent of US\$5 million.”

Mauritius. In a bid to become the gateway for Chinese investment into Africa, China and Mauritius recently signed a memorandum of understanding (MOU), in December 2017, to open negotiations on a free-trade agreement (FTA) between the two countries.

According to Martine de Fleuriot de la Colinière, a director, and Xavier Koenig, an executive at ENSAfrica in the Mauritian capital Port Louis, the deal marks the official initiation of China-Mauritius

[新的外汇管制法] 促进商业银行参与若干项此前直接由申请人向莫桑比克央行办理的程序

[A new foreign exchange regulation involves] commercial banks in several of the procedures previously carried out directly between the applicant and the Bank of Mozambique

FABRÍCIA DE ALMEIDA HENRIQUES

Henriques Rocha & Associados
管理合伙人

马普托市, 莫桑比克

Managing Partner
Henriques Rocha & Associados
Maputo, Mozambique

造更好的条件。政府还通过建立一站式投资中心来消除官僚主义作风。”

在过去12个月，坦桑尼亚政府通过了两项法律，Ringo认为其对外国投资者意义重大。其中，《2017年自然财富和资源（永久主权）法》引入了“本地成分”概念，规定“在外国人建立的公司，多数股东和雇员必须是坦桑尼亚人”。《2017年自然财富和资源合同（审查和重新商定不合理条款）法》是另一项最新立法，它授权坦桑尼亚议会审查政府与投资于自然资源的外国投资者之间签订的含有不合理条款的合同。议会拥有在审查合同后为投资者和政府之利益提出合理的条款。

乌干达。中国在非洲的投资仍然集中在采矿、资源和基础设施三大领域。过去18年，中国累计向非洲能源项目投资348亿美元，其中有21亿美元投向乌干达，这使乌干达在这方面成为非洲第四大国家。

中国海洋石油总公司（中海油）乌干达有限公司是乌干达油气行业的主要参与者之一。随着乌干达准备在2020年产出第一批石油，预计将有更多华企争相进入该行业。

MMAKS Advocates 律师事务所在坎帕拉的合伙人 Fiona Magona 表示，拟投资油气行业的中国投资者必须遵守“本国成分”要求。她说：“2016年出台的《石油（炼油、转化、输送及中游储存）（本国含量）条例》就油气行

negotiations on FTA, which will be the first such agreement between China and African countries.

“The MOU also calls for the establishment of a Free Trade Zone (FTZ) between the two countries,” the two lawyers say. “China is the second-largest trade partner and the largest import origin of Mauritius. In November 2016, both countries started a joint feasibility research on FTA negotiations, which was the first such process between China and African countries.

“The FTA negotiations are in the interests of both China and Mauritius, and should facilitate and further deepen the economic and trade ties between the two countries. The establishment of Sino-Mauritius FTZ will not only be favourable to boosting bilateral trade and investment between the two countries, but it will also infuse a new momentum to the transformation of relations between China and African countries (Mauritius being often used as a hub and platform for investment into Africa due to favourable access to treaties and investment protection agreements).

“This should also help promote the Belt and Road initiative in Africa. China has recently assisted the Mauritius government in the building of its airport, as well as the ring road project of Terre-rouge Verdun. China is also investing in the development of the Jin Fei trade zone, which should enhance the presence of Chinese enterprises in Mauritius.”

Mauritius provides Chinese enterprises with unique investment opportunities in aquaculture, agro-industry, ocean economic, renewable energy, seafood and marine tourism. Infrastructure projects are also of great importance for the country, namely road construction, airport, port and resorts.

Chinese investors operating in the infrastructure and construction space should pay close attention to the Construction Industry Development Board (CIDB) (Amendment) Act 2016, which became effective on 1 March 2017. Koenig says it has simplified the fields of specialization, classes of works, and grades for application for foreign contractor licences. “In essence, any foreign contractor wishing to do business in Mauritius or pitch for construction and related projects in Mauritius (including Chinese clients) should register with the CIDB as a condition to work or pitch,” he says.

Meanwhile, in the property sector, the Investment Promotion Act has made provisions for the introduction of a Smart City Scheme (SCS) and a Property Development Scheme (PDS). “With the growing demand that Mauritius is facing from non-citizens to acquire residential properties, the PDS, which replaced the IRS and RES, allows the development of a mix of residences for sale to non-citizens, citizens and members of the Mauritian diaspora,” says de Fleuriot de la Colinière.

“A non-citizen is eligible for a residence permit upon the purchase of a villa under the PDS scheme when he/she has invested more than US\$500,000 or its equivalent in any freely convertible foreign currency. The SCS will promote targeted economic activities while at the same time consolidate the industrial and service base to provide an economic diversification path aimed at ecologically sustainable development. Some Chinese companies have invested in SCS projects in Mauritius. It is important for those Chinese clients who have interest in investing in real estate development projects to understand the related regulations and policies.”

政府通过坦桑尼亚投资中心为投资者提供若干投资激励措施、投资机会和适当的指导

Through the Tanzania Investment Centre, investors are provided with several investment incentives, investment opportunities and suitable guidance



ERIC RINGO

FIN & LAW

合伙人

达累斯萨拉姆市，
坦桑尼亚

Partner

FIN & LAW

Dar es Salaam,
Tanzania

AVIVA RAMANITRA

LEXEL Juridique & Fiscal

管理合伙人

安塔那那利佛市, 马达加斯加

Managing Partner

LEXEL Juridique & Fiscal

Antananarivo, Madagascar



[新电力法] 也包含一些旨在保障外资安全的条款

There are also various articles that have been included [in the new electricity law] to secure the investment of foreign investors

业的本国成分进行了规定,它适用于参与石油经营活动的许可证持有者、承包商、分包商和其他实体。中国企业在向油气项目投标时必须选择优先采购乌干达生产供应的商品或者乌干达公民和公司提供的服务。

“投资方首先要成立一家乌干达公司,即经乌干达石油管理局批准后根据2012年第一号公司法注册成立的、至少有70%的雇员为乌干达人的公司。另一个方案是,投资方也可以与一家乌干达公司组建合资企业,其中乌干达实体的持股比例至少要达到48%。”

尽管中国投资者在乌干达的业务不断增长,Magona观察到他们往往对拟从事行业的监管环境和许可制度知之甚少。正因如此,华企设立的公司结构往往效率低下,某些情况下还无证经营,因此触犯了法律。

例如,《投资守则法案》(第92章)要求每个外国投资者在乌干达开展业务之前必须从乌干达投资管理局获得投资许可。申请者必须证明其银行账户内有10万美元的专项乌干达投资资金,但Magona表示许多企业无法满足这一要求。

马达加斯加。马达加斯加将自己定位为“印度洋猛虎”,为外国投资者提供了无与伦比的机会。马达加斯加自然资源丰富,矿业成为外资集中的行业,尤其是中资。

Aviva Ramanitra是LEXEL Juridique & Fiscal律师事务所在安塔那那利佛的执行合伙人。她表示,采矿业的外国投资者面临的最大的挑战之一是领取经营开展业务所需的证照。目前马达加斯加政府已暂停向新公司发放采矿许可证,因此“这会对采矿业增长造成影响,使看中马达加斯加繁荣前景的潜在投资者利益受到损害”,她说。

Tanzania. According to Eric Ringo, a partner at FIN & LAW in the Tanzanian capital of Dar es Salaam, Chinese direct investment in Tanzania tends to be focused on the processing and manufacturing industries, however, there is a growing trend towards large-scale Chinese investment in the construction and mining industries.

Some of the “minor operational challenges” foreign investors may encounter in Tanzania concern land ownership, which is generally restricted and limited to Tanzanian citizens. Labour laws also put restrictions on the number of foreign employees a foreign investor may hire in country.

Despite the challenges, the Tanzanian government is continually aiming to create a more conducive environment for Chinese investors, says Ringo. “Through the Tanzania Investment Centre, investors are provided with several investment incentives, investment opportunities and suitable guidance, including the possibility for derivative ownership of land by foreign investors,” he says “The government of Tanzania has [also] improved the climate to foreigners by providing tax incentives for those who are investing through the Tanzania Investment Centre, or those who are investing in economic zones such as export processing zones and special economic zones. The government has also removed bureaucracy by establishing a one-stop investment centre.”

In the past 12 months, the government has passed two laws, which Ringo says are of significance to foreign investors. The Natural Wealth and Resources (Permanent Sovereignty) Act 2017 introduced the concept of “local content” where “if a foreigner wants to establish a company, the majority of its members and employees must be Tanzanian”.

The Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act 2017 empowers the parliament of Tanzania to review any contract that contains unconscionable terms between the government and a foreign investor that has invested in natural resources. The parliament may review the contract and suggest good terms for the benefit of both investor and the government.

Uganda. Chinese investment in Africa remains focused on mining, resources and infrastructure. In the past 18 years, China has invested US\$34.8 billion in African energy projects. Of this, Uganda has received US\$2.1 billion, making it the fourth-highest African recipient in this category.

China National Offshore Oil Corporation (CNOOC) Uganda is one of the major players in Uganda’s oil and gas sector. It is anticipated that as Uganda prepares to produce its first oil in 2020, even more Chinese firms will clamour to be involved in the sector.

Fiona Magona, a partner at MMAKS Advocates in Kampala, says Chinese investors intending to invest in the oil and gas sector must comply with the national content requirements. “The Petroleum (Refining, Conversion, Transmission Midstream Storage)(National Content) Regulations, 2016, provide for national content in the oil and gas sector and apply to licencees, contractors, subcontractors and any other entity involved in petroleum activities,” says Magona. A Chinese business bidding for a contract in the oil and gas space must ensure it makes preference for the procurement of goods produced and available in Uganda, or services rendered by Ugandan citizens and companies.



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Ramanitra 不久前担任了一家大型中国银行的贷款协议条款顾问，他认为，虽然马达加斯加政府正在努力精简和放宽部分手续，但外国投资者还是需要聘请知名律所帮助他们解决复杂的本地法律问题。她指出：“这是一个复杂的协议，因为我们必须兼顾马达加斯加和中国两地的法律，确保不存在任何矛盾的条款。这宗案子需要对合同、证券、银行和外汇法律法规有全面的了解。”

马达加斯加的最新监管动态是对电力法律进行了彻底修订。Ramanitra 表示新法对可再生能源实施一系列新指令：“现行税法向电厂提供各种优惠待遇，例如税收优惠。为了吸引外国投资者进入马达加斯加能源行业，新法也包含一些旨在保障外资安全的条款。”

马达加斯加计划在未来加强与在中国在能源、航空、运输、港口和机场建设等方面的合作。中国已将大量资金投入马达加斯加的基础设施、农业和能源行业。由于当地劳动力成本低廉，Ramanitra 预计这些行业将与制造业一起茁壮成长。▲

[石油条例] 就油气行业的本国成分进行了规定，它适用于参与石油经营活动的许可证持有者、承包商、分包商和其他实体

[The petroleum regulations] provide for national content in the oil and gas sector and apply to licencees, contractors, subcontractors and any other entity involved

FIONA MAGONA

MMAKS Advocates

合伙人

坎帕拉市，乌干达

Partner

MMAKS Advocates

Kampala, Uganda



“The Chinese business would need to set up as a Ugandan company, which is defined as a company incorporated under the Companies Act No. 1 of 2012, employing at least 70% Ugandans as approved by the Petroleum Authority of Uganda,” she says. “In the alternative, the Chinese business may form a joint venture with a Ugandan company, which must have the Ugandan entity holding at least 48% of the shares.”

Despite their growing presence, Magona observes that Chinese investors in Uganda are frequently ignorant of the regulatory landscape and licensing regimes applicable to their proposed activities in the country. As a result, she says Chinese businesses often set up inefficient corporate structures, and in some cases operate without the requisite licences, falling foul of the law.

For example, the Investment Code Act (Cap 92) requires every foreign investor to obtain an investment licence from the Uganda Investment Authority before commencing business in Uganda. Applicants for this licence must show proof that they have US\$100,000 in their bank accounts ring-fenced for investment in Uganda. Magona says many businesses are unable to satisfy this requirement.

Madagascar. This island nation positions itself as the Tiger of the Indian Ocean, with unparalleled opportunities for foreign investors. Being rich in natural resources, mining has become a pillar of foreign investment, particularly among Chinese investors.

Aviva Ramanitra, the managing partner at LEXEL Juridique & Fiscal in the capital, Antananarivo, says one of the greatest challenges faced by foreign investors in mining is obtaining the licences and permits required to operate and commence their activities. Currently, the Malagasy government has put a halt to the granting of mining permits to new companies, thus “impacting the growth of the mining sector and causing prejudice to potential investors in Madagascar’s prosperity”, says Ramanitra.

Although the Malagasy government is working towards streamlining and liberalizing some of its procedures, Ramanitra, who recently advised a large Chinese bank on the terms of a loan agreement, says it is crucial for foreign investors to consult a reputable law firm to help them navigate the intricacies of Malagasy legislation. “It was a complex agreement as we had to take into consideration Malagasy and Chinese legislation, and ensure that there would not be any contradictory clauses,” she says. “This deal involved [an extensive understanding] on the law on contracts, security, banking and foreign exchange.”

A recent development in Malagasy regulation has been the overhaul of the law governing electricity. Ramanitra says that the new code implements “various advantages such as taxation benefits” to producers of electricity under the current tax code. “There are also various articles that have been included to secure the investment of foreign investors, in order to attract them to the Malagasy energy sector,” she says.

Madagascar intends to improve co-operation with China in energy, aviation, transport, ports and airport construction in the future. China has already invested heavily in Madagascar’s infrastructure, agriculture and energy sectors, and Ramanitra expects these sectors to grow alongside manufacturing, due to the low cost of labour in the country. ▲