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**COMENTÁRIO A JULIEN CHAISSE (ED), CHINA’S INTERNATIONAL INVESTMENT STRATEGY: BILATERAL, REGIONAL, AND GLOBAL LAW AND POLICY (OXFORD UNIVERSITY PRESS, 2019)**

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**Abstract:** This text aims at commenting Julien Chaisse’s book on China’s international investment strategy, acknowledging that it presents a ground breaking approach and a wealth of thought-inspiring insights into the transformation and systemic impact of China’s international investment rule-making and participation in investor-state arbitration. Indeed, the mentioned work will be able to assist, under the Belt and Road Initiative (BRI), professionals, policy makers and other interested parties to comprehend the impact of China’s investments on the regional and global legal framework.

**Keywords:** International Investment Strategy, China, International Regulation, Foreign Investment.

**Resumo:** O presente texto tem como objetivo comentar a obra de Julien Chaisse sobre a estratégia chinesa de investimento internacional, reconhecendo-se que a referida obra apresenta uma perspectiva inovadora e um conjunto rico de ideias aptas a suscitar novas questões sobre a transformação e impacto sistémico da regulamentação e participação da China na arbitragem entre o investidor e o Estado. Com efeito, o referido trabalho irá assistir, ao abrigo da iniciativa Iniciativa Faixa e Rota, profissionais, decisores políticos, decisores políticos e outras partes interessadas a compreender o impacto dos investimentos chineses no quadro jurídico global e regional.

**Palavras-chave:** Estratégia de Investimento Internacional, China, Regulação Internacional, Investimento Estrangeiro.

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Professor Julien Chaisse's book entitled *China's International Investment Strategy: Bilateral, Regional, and Global Law and Policy* is a timely piece of international publications dealing with the impact of China's investment strategy on the global law and policy. Professor Chaisse of City University of Hong Kong realises a tour de force in putting together the 27 chapters into a coherent and powerful volume. The book presents a ground breaking approach and a wealth of thought-inspiring insights into the transformation and systemic impact of China's international investment rule-making and participation in investor-state arbitration. This book will prove to be essential reading for legal scholars and professionals alike, as well as benefitting Non-Governmental Organizations, stakeholders in international economic governance and policymakers looking for in-depth insight into China's increasing role in the international regulation of foreign investment.

China is fast becoming a major force in an international investment scene. As a practitioner of Association of Southeast Asian Nations (ASEAN) investment and trade policy, the author of the review is seeing the increased presence of China's investment in the ASEAN region. Chinese investments have significant impact on the development of the ASEAN Member States. It is a win-win arrangement for China and ASEAN. Under the Belt and Road Initiatives (BRI) China sees ASEAN as part of the land bridge connecting China to Southeast Asia, South Asia, the Indian Ocean, and the China-Indochina Peninsula Corridor sea route (China – South China Sea – Indian Ocean – Europe). On the other hand, ASEAN Member States regard the BRI as an avenue to improve connectivity with infrastructure development which will increase trade and investment in the region through improved logistics. Hence, ASEAN Member States, in collaboration with Chinese entities (construction companies and funding agencies) are developing infrastructure projects, mainly through joint ventures.<sup>2</sup>

ASEAN requires improved infrastructure to drive economic growth through increased trade, investment, competitiveness, and connectivity in the region and with the rest of the world. The ASEAN Development Bank (ADB) estimates that the total infrastructure investment needs in ASEAN from 2016 to 2030 will be between \$2.8 trillion (baseline estimate) and \$3.1 trillion (climate-adjusted estimate).<sup>3</sup> These infrastructure needs are important to support the increasing amount of ASEAN trade, with total merchandise trade increased from \$ 4 trillion in 2010 to \$ 5 trillion 2017.<sup>4</sup> The total merchandise trade is expected to increase as ASEAN grows from the seventh largest economy on the world to the fourth largest economy in the world by the year 2050, with an annual expected GDP growth of 5.25% between 2016 and 2020.<sup>5</sup>

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2. See S. JUSOH, "The Impact of BRI on Trade and Investment in ASEAN, in CIMB ASEAN Research Institute" in M. Cox (ed.) *China's Belt and Road Initiatives and Southeast Asia*, LSE, London, 2018, pp. 10-18.

3. See Asian Development Bank, *Meeting Asia's Infrastructure Needs*, 2017.

4. ASEAN Stats database, available in <https://www.aseanstats.org/> (last visit 30 July 2018).

5. See *Outlook 2017: ASEAN still beckons*, IE Singapore, 2017, available in <https://ie.enterprisesg.gov.sg/-/media/files/asean-outlook-2017/presentation-materials/outlook-2017---asean-still-beckons.pdf?la=en>.

Most of the BRI projects are developed through joint-ventures (JV) between an ASEAN host country entity and a Chinese entity, with financing from China's linked financial organisations.<sup>6</sup> These JVs carry out their projects under concessions, i.e. the permission of the local government, or direct government procurement. China's investment, either through BRI or non-BRI projects have raised few legal issues. Many of the investments are made through China's state-owned enterprise and funded by the state-owned banks. This raises the question whether they are considered as an investment by a sovereign state or by a commercial entity. One would argue that the investment should be treated as private investments on a commercial term by a state-owned enterprise. The impact is, if there is any dispute, the state-owned enterprise may plead sovereignty and seek diplomatic protections. This is despite the fact that the investments could have been negotiated at arm's length and having proper commercial agreement. The situation may occur as China and ASEAN does not have any agreement dealing with the treatment of state-owned enterprise.

Another important legal issue is the nature of contracts being negotiated and sealed. Many of the contracts are non-transparent and not opened to public scrutiny especially on their commercial terms. Many time China's banks make all payments for the contracts in China without any actual capital inflow into the recipient countries. On the other hand, loan recipient countries will have to make payments to China on the value of the project implemented in their countries.

Thirdly from the perspective of balance of payment, BRI projects could also contribute to the trade imbalance between ASEAN and China. Trade in goods and services between ASEAN and China will continue to be in China's favour. The importations of goods meant for construction of BRI projects will further contribute towards an imbalance in China's favour, at least until the completion of BRI projects. Thereafter ASEAN should work to increase exports to China, to achieve greater balance in the trade of goods and services. However, as ASEAN and China are inter-dependant of each other, there is no likelihood of any trade tension between these two main economic partners.

In conclusion, Julien Chaisse's and the contributor's excellent work will be able to assist BRI professionals, policy makers and other interested parties to comprehend the impact of China's investments on the regional and global legal framework.

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6. This type of activity clearly falls within the definition of investment which involves commitment of capital, the expectation of gain or profit or the assumption of risk. For an example of definition of investment, see the ASEAN Comprehensive Investment Agreement (ACIA), Article 4.