

# 中国投资拉丁美洲基础设施时机成熟

## Latin American infrastructure ripe for Chinese investment



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**基**础设施，例如道路、公用事业、机场、医疗机构和教育设施等，对于我们大多数人来说都是政府理所当然的份内事。然而在拉丁美洲，各国政府面临财政预算赤字和国债市场吃紧等痼疾，在过去几十年里是愈来愈多地依靠外国投资来提升其基础设施的数量和质量。基础设施领域因此成为中国进军拉美市场的切入点，特别是考虑到最近出台的有关政策业已为基础设施领域的投资做好了铺垫。

中国并非拉美地区传统上的主要投资者，与欧盟在该地区每年6,200亿美元的投资额相比，其每年220亿美元的投资有些相形见绌。然而，根据中国官方数据，中国在拉丁美洲的投资大约占中国境外投资总额的四分之一。中国最近在该地区对委内瑞拉的交通和电信行业，以及巴西的航空、铁路和航运业的投资就高达数十亿美元。

只要看一眼拉丁美洲基础设施行业的增长预期，就知道中国此时的投资机会有多好。在经历多年的缓慢增长后，南美地区的国内生产总值增长率到2010年将达到原来的三倍。墨西哥2007年基础设施行业的增长率接近5%，2009年跌至-1.5%，而这一数字有望在未来一年内迅速上升至近3%。此外，该地区基础设施固定投资总额占国内生产总值的比重（加权平均值），在过去二十年内从3.6%下降到1.9%。

在此背景下，该地区各国政府纷纷承诺实施经济刺激计划，而其中大量资金将用于基础设施开发和再投资领域。此外，各国正在制定新的法律框架，鼓励更多公私合伙形式（PPP）的投资。在这种合作模式下，政府与私营企业基础设施项目共担费用并共享收益。因此，更多基础设施投资基金经理正在进入拉美市场，希望参

与该地区的资产私有化进程并提供在经营和金融方面的专业服务。藉此希望达到的预期效果是：效率得以提升。

与此同时，基础设施投资基金正以前所未有的扩张速度在募集资金。2004年，只有6家拉美基础设施基金，资本总额为34亿美元。今年，活跃的基金机构达到24家，共筹集444亿美元投向美洲各国。尤其值得一提的是，根据睿富另类投资（RREEF Alternative Investments）公布的《2009年美洲基础设施投资报告》，尽管有全球金融危机的影响，拉丁美洲基础设施项目相关投资和交易在过去数年仍保持了相对稳定。

### 法律与政治风险

中国投资者开始积极涉足拉美基础设施项目之际，应当特别关注政治、经济和法律风险。由于固有的语言障碍和文化差异，要评估和降低这些风险不是一件易事。

在政治方面，财产征用和转移损失的风险通常是在投资决策时，特别是针对项目期较长的基础设施投资，需要考虑的关键因素。如果某国政府可能会无偿征收、征用投资者的财产或严禁投资利润汇出境外，投资者将不愿在这样的国家进行投资。根据比利时出口信贷机构 Office National du Ducroire评估，所有拉丁美洲国家中，委内瑞拉和玻利维亚在征收或征用方面的风险最高，而玻利维亚和阿根廷的转移损失风险最高。此外，政府参与或干预经济的一贯性和连续性，是我们在规避政治风险时需要考虑的另一因素。世界经济论坛在其出版物《基础设施领域吸引私人投资竞争力国别报告（拉美）》



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(*Benchmarking National Attractiveness for Private Investment in Latin American Infrastructure*)中建议，避免这一风险的最佳选择，就是去智利投资。

与当地合作伙伴开展合作往往是避免法律障碍的最有效途径。许多拉美国家的司法系统都十分官僚、不稳定且效率低下，因此与当地熟悉其国内法规的知名企业合作显得至关重要。投资者还应调查了解投资目的国政府在一定时期内维持其投资法规和政策连续性方面的历史记录。考虑到基础设施项目期较长的特质，这一调查尤其重要。对任何投资者来说，最糟糕的情况莫过于因为某个短命政府的一时喜怒失去所有，而又得不到适当补偿。

### 争议解决程序至关重要

中国投资者要考虑的另一个关键问题是拉美缺乏真正有效的争议解决机制。高效的争议解决程序是投资者整个投资过程的一个重要组成部分，因为这往往成为保障投资者利益的最后一根救命稻草。因此，中国投资者进军拉美时，一定要在确保有此类争议解决程序作为保障后，方可开展其他工作。仲裁程序通常被认为优于诉讼程序，因为其在费用和时间方面更为节省。投资、合伙协议中拟订的一条完善的仲裁条款至少应包括仲裁庭的组成、适用的法律、仲裁程序和仲裁语言。

如果在拉美的中国投资者未雨绸缪、尽早规划，就能够避免许多重大经济和法律风险的发生。尤其是值此拉美各国亟需投资和改善其基础设施之际，中国投资者如能赢得良好开局，将可整体提高中国在该地区的经济影响力。■

Infrastructure is what most of us take for granted – roads, utilities, airports, healthcare sites and educational facilities.

In Latin America, where governments face the age-old problems of budget deficits and strained public debt markets, the trend over the past few decades has been to depend more and more on foreign investment to improve the amount and quality of such infrastructure. It is in this area that China could step into the market, especially given recent policy decisions which smooth the way for investment in infrastructure.

China has not traditionally been a major foreign investor in the region, with its US\$22 billion per year piling in comparison to the European Union's US\$620 billion. However, according to official Chinese data, Latin America accounts for about one quarter of China's total overseas investment. Recent major Chinese investments include billions for Venezuela's transportation and telecommunications sectors, as well as Brazil's aviation, rail and shipping industries.

### Now is the time for investment in infrastructure

A quick look at the projected growth of the infrastructure industry in Latin America shows how the time for Chinese investment is now. South America is expected to triple its GDP growth rate in 2010 after a few years of slow growth. Mexico, which had seen its infrastructure industry reach nearly 5% growth in 2007 before falling to -1.5% in 2009, is expecting to shoot up to nearly 3% growth in just one year. What is more, total investment in infrastructure in the region has fallen over the past two decades from a weighted average of 3.6% of GDP to 1.9% of GDP.

Against this background, various governments in the region have pledged economic stimulus packages with large amounts earmarked for infrastructure development and reinvestment. Likewise, they are enacting new legal frameworks that encourage more public-private partnerships. Through these partnerships, partners in the public and private sectors share the costs and benefits of the infrastructure itself. And finally more infrastructure fund managers are

entering the market in the hope of participating in the privatization of assets, and lending their operational and financial expertise. The desired result: improved efficiency.

At the same time, infrastructure capital funds are raising money like never before. In 2004, there were only six Latin America infrastructure funds with a total of US\$3.4 billion in capital. This year, there are 24 active funds raising \$44.4 billion to invest in the Americas. Critically, according to the Americas Infrastructure Update 2009, published by RREEF Alternative Investments, transaction activity relating to Latin American infrastructure projects has held relatively steady over the past few years, despite the recent credit crunch.

### Legal and political risks

As Chinese investors start to become actively involved in infrastructure projects in Latin America, political, economic and legal risks are of paramount concern. Due to the inherent language barriers and cultural differences, evaluating and mitigating those risks is not an easy job.

Politically, the risk of expropriation and transfer loss are usually the key factors in investment decisions – especially in the infrastructure field, where projects tend to be long-term. Investors are loath to invest millions of dollars in a country where the government is likely to take their property without compensation or prohibit expatriation of profits. According to the Office National du Ducre, the Belgian export credit agency, Venezuela and Bolivia present the highest risk in terms of expropriation among all Latin American countries, while the risk of transfer loss is highest in Bolivia and Argentina. In addition, the consistency and continuity of governmental economic involvement is another aspect to consider when attempting to mitigate political risks. In order to best avoid that problem, invest in Chile, says the World Economic Forum in its publication *Benchmarking National Attractiveness for Private Investment in Latin American Infrastructure*.

Teaming up with a local partner is often the most effective way to avoid legal setbacks. Many Latin American countries have overly bureaucratic, unstable, and inefficient judicial

systems, so it can be crucial to work with a reputable local enterprise that is familiar with the domestic laws and regulations. It is also suggested to check the track record of the government of the destination country with regard to maintaining the continuity of the applicable investment regulations and policies over time. This is particularly important considering the long time-scale often inherent in infrastructure projects. The worst-case scenario for any investor is to lose everything, without due compensation, merely because of the political whims of a volatile government.

### Dispute resolution procedures essential

Another crucial issue for Chinese investors to consider is the lack of truly effective mechanisms for resolving disputes in Latin America. Quality dispute resolution procedures form an essential part of an investor's overall investment, as it often becomes the last best chance to protect investors' interests. Thus, as Chinese investors move into Latin America, they need always to make sure that such procedures are firmly in place before any work is done. Arbitration is usually considered a better approach than litigation because it offers savings in terms of cost and time. A well-drafted arbitration clause in investment and partnership agreements should include, as a minimum, provision for a proper arbitration tribunal, and the specification of applicable laws, procedures and language.

### Forward planning

Chinese investors in Latin America can avoid many of the most dramatic economic and legal risks with some simple planning at the outset. Doing things right from the beginning could lead to an overall increase in Chinese economic influence in Latin America, particularly at a time when the region is begging for capital and improvements in infrastructure. ■

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