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Research Article

Preliminary Study on Construction of China's Overseas Investment Insurance System Based on Comparative Analysis of Investment Insurance Systems of the US, Japan, Germany, and MIGA

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With the advancement of the *Belt and Road* strategy, China's foreign direct investment has grown rapidly, and the political risks faced by Chinese enterprises in overseas investment are also increasing. It is a common practice in the world's major capital exporting countries to prevent overseas investment risks by establishing an overseas investment insurance system. Among them, the insurance systems of the United States, Japan, Germany, and the Multilateral Investment Guarantee Agency (MIGA) are the most representative, and they are also models for countries to follow. At present, China has not yet established a legal system for overseas investment insurance. China Export & Credit Insurance Corporation is the only operating institution that provides overseas investment insurance in China, and its overseas investment insurance business only accounts for a small proportion and has not played its due role in safeguarding overseas investment. This paper, on the basis of comparative analysis of foreign experience, combined with China's actual problems and needs, selects the most worthy reference systems of various countries and proposes specific ideas for establishing and improving China's overseas investment insurance system.

1. Introduction

In recent years, China's foreign direct investment has developed rapidly, especially the investment along the "Belt and Road" has increased significantly. Based on "2020 Statistical Bulletin of China's Outward Foreign Direct Investment" released by Ministry of Commerce, PRC, in the year 2020, China's direct investment in countries along the "Belt and Road" reached US$ 22.54 billion, a year-on-year increase of 20.6%, accounting for 14.7% of China's total foreign direct investment during the same period.

Compared with domestic investment, foreign direct investment faces greater risks, especially the political risks of the host country. In particular, countries along the "Belt and Road" have increased political risks, due to their complex geopolitics, frequent regime changes, complex social structures, racial and religious conflicts, single economic structures, and inadequate legal systems. According to the "Report of Country-Risk Rating of Overseas Investment from China (2020)" by the Chinese Academy of Social Sciences, in addition to Singapore, Israel, Czech Republic, Poland, and other 11 countries in the 65 countries along the "Belt and Road," the other 54 countries are medium-risk or high-risk areas, and the percentage of countries with medium to high risk takes up to 83%. However, China's overseas investment is dominantly concentrated in industries that are easily affected by political factors, such as mining, energy, power, and infrastructure [1]. In addition, enterprises' own risk awareness and risk prevention and control capabilities are generally weak, thus facing higher political risks.

According to the "Report on Chinese Enterprises Globalization (2014)," 65% of the 120 failed overseas investment cases of Chinese enterprises from 2005 to 2014 were caused by political risks in the host country [2]. There are countless examples of Chinese companies losing money in overseas investments due to political risk. In 2009, Sinohydro

Corporation's investment in Myanmar's Myitsone Hydropower Station was stopped by the Myanmar government [3]; in 2011, the Libya war caused serious damage to more than 50 projects invested by 75 Chinese companies in the local area, with losses reaching US$18.8 billion; in 2015, the Sri Lankan government changed, which has caused $1.4 billion Colombo Port City project invested by China Bank of Communications to be shelved, suffering heavy losses. Political risks are often closely related to the sovereign behavior of the host country, are mandatory and overall, are more destructive than ordinary commercial risks, and are difficult to predict and control by enterprises themselves.

Therefore, diversifying risks through overseas investment guarantees has become the most common choice for investors in various countries. All major capital exporting countries in the world have established overseas investment insurance systems to protect the interests and safety of their investors' overseas investment. Among all the capital exporting countries, the United States, Japan, and Germany are recognized as the most outstanding countries for their overseas investment insurance practice. These three countries, listed in the biggest or earliest capital exporters, have created and promoted comprehensive overseas investment guarantee systems, especially the insurance systems, which have been playing influential roles in facilitating and supporting outbound investments, and have become worthy examples followed by other countries.

The United States is the first to create overseas investment insurance system, by initiating "bilateral mode" of legislation, establishing Overseas Private Investment Corporation (OPIC) as the only official agency providing overseas investment insurance, and pioneering "subrogation right" for the insurance agencies to claim compensation from the host countries after making compensation, which could be very enlightening for us.

Japan is one of the few countries that apply "unilateral mode" of legislation, which means insurance could be underwritten even for those overseas investments in host countries with which Japan has not signed BITs. The "unilateral mode" simplifies the process of application and claim settlements and thus may provide more protection for Japanese investors. Besides, Japan has innovated "loss reserve" policy for overseas energy investments or overseas engineering contracting, as a supplement of insurance system, to resist overseas investment risks for Japanese investors. China has gone through similar process as Japan in its overseas investment and focuses on similar sectors and industries when investing abroad, so it may learn from Japanese precedent.

Germany, same as China, is one of the countries which has signed the most BITs with other countries and applies blend mode combining "bilateral" and "unilateral" modes. The signing of a BIT with the host country is not a legal condition for German agency to underwrite overseas investment insurance, but in practice, in order to ensure the effectiveness of domestic insurance, it generally provides guarantees to investment projects in the host country that has signed a BIT with Germany. The German blend mode might be a good reference for China at the stage of exploration of overseas investment insurance.

Multilateral Investment Guarantee Agency (MIGA), a member of the World Bank Group, is the most influential international overseas investment insurance agency and is well known for its relaxed insurance conditions, wide range of guarantees, and smart claim settlement process, which will be a good example for Chinese practice.

Thus, this paper, on the basis of comparative analysis of the most representative overseas investment insurance systems such as those of the US, Japan, Germany, and MIGA, combined with China's actual problems and needs, will select the worthiest reference systems of various countries and propose specific ideas for establishing and improving China's overseas investment insurance system.

2. Literature Review

2.1. Overseas Investment Guarantee System. The review starts with a general issue of overseas investment guarantee system. Some authors such as Ni and Zheng sorted out overseas investment risks faced by Chinese investors and analyzed on essentials of establishing Chinese outbound investment security and protection scheme, including signing bilateral investment treaty (BIT) and establishing overseas investment insurance system, etc [4].

Other authors including Hu further compared the practices of the United States, the European Union, and Japan in their overseas investment guarantee measures of financial support, multilateral and bilateral investment environment, overseas investment guarantee legislation, and overseas investment authorities and, on the basis of that, suggested improving Chinese overseas investment guarantee system [5].

More authors suggested to establish overseas investment guarantee systems, in particular legal systems, based on references from specific countries or focused on some sectors or industries. Korean practice of overseas investment guarantee has been studied as a good example, including its overseas investment approval, overseas investment insurance, BIT negotiation, and signing, for the purpose of providing reference for Chinese legislation [6, 7]. The experience of the United States, Japan, France, and Germany in overseas investment guarantee legislation in industries of mining, energy, and retail has also been analyzed, and advice has been given accordingly on making and improving overseas investment supporting laws for specific sectors or industries [8, 9].

The above research studies mainly focused on general overseas investment guarantee system, centered on legal system. The overseas investment insurance system has only been slightly involved as a component of the general guarantee system.

2.2. Overseas Investment Insurance System. The review then narrows down to the issue of overseas investment insurance system. Most studies on overseas investment insurance system were concentrated in legal issues. Some of them covered legal nature, legal definition, legal subjects and legal identification of political risks, and so on [10], and some went through status and problems of Chinese overseas investment insurance and provided references for Chinese

practice in detailed issues of underwriting categories, underwriting conditions, qualified investor, and qualified investment, by learning from the United States, Japan, and Germany modes [11]. The above studies have constituted the legal theoretical basis for overseas investment insurance.

More studies, based on the background of "One Belt One Road" (OBOR), suggested reconstructing Chinese overseas investment insurance legal system in terms of legislative mode, insurance underwriter, underwriting categories, operation mode, financing mode, qualified investors, and claim settlement [12, 13] or viewed from the perspective of financial institutions and investigated measures to prevent overseas investment risks by means of cooperation with international insurance agencies, insurance product innovation and reinsurance plan, and so on [14].

Some research studies started from prevention of political risks in overseas investment, figured out the status and problems faced by Chinese investors during their overseas investments, and then suggested improving Chinese overseas investment insurance system [2].

The available studies of overseas investment insurance are mainly centered around legal system, or based on the background of OBOR, or from the perspective of specific institution or certain kinds of investment risks, so they can neither capture the full essentials of overseas investment insurance system nor meet the needs of Chinese practice.

2.3. International Comparative Study of Overseas Investment Insurance System. The review further narrows to a more specific topic of international comparative study of overseas investment insurance system. There are existing studies of overseas investment insurance which have covered most of the typical capital exporting countries such as the United States, Japan, and Germany, including issues of underwriting conditions, underwriting categories, underwriting terms, and claims settlement [15, 16]. However, these studies were made more than 30 years ago, and there is a lack of updates of overseas investment insurance of these countries, so they might be outdated for Chinese practical needs.

In recent research studies, experiences of the United States, Japan, and Germany in general guarantee system of overseas investment have been analyzed from the perspective of overseas investment risk prevention. The overseas investment insurance system has been roughly mentioned as a point of the general guarantee system without detailed analysis [4, 5, 17].

Additional studies focused on financial supporting or tax incentive policies of overseas investment and provided valuable references by comparing practices of the United States, Japan, Germany, and France in measures of overseas investment loans, subsidies, tax preference, and insurance, without detailed analysis on overseas investment insurance systems or policies of the above countries [18–22].

3. Research Gap and Research Topic

It can be concluded from the above literature review that there are only few studies in the overseas investment insurance domain, especially in the comparison of different countries' practices, and this lack of updated international comparative studies has been identified as a viable research gap to be addressed.

Existing studies mainly cover the general guarantee system of overseas investment, in which the overseas investment insurance has been briefly mentioned as a point of the general system. Recent research studies on overseas investment insurance are concentrated in legal system, or based on the background of OBOR, or on the perspective of specific institutions or risks, and thus they are not comprehensive enough. Those comparative studies among experience of major capital exporting countries were made years ago, and they lack recent updates, while recent comparative analysis mainly focuses on general guarantee system or prevention of overseas investment risks, including financial supporting policies or tax preferences in specific countries, but not involving full-scale comparison on detailed insurance rules and policies of major capital exporters.

To address the above research gap, this paper will compare detailed insurance rules, policies, and practice of the United States, Japan, Germany, and MIGA, in light of the status and needs of Chinese overseas investment, and then propose measures to establish Chinese overseas investment insurance system, including legislative mode, legislative system, underwriting categories, underwriting conditions, insurance terms, insurance amount, insurance premium rate, venture fund or loss reserve, SME supporting plans and cooperative mechanism, etc., aiming at providing some useful references for Chinese practice.

4. Research Method

4.1. Literature Review. The author has reviewed all the studies related to promotion, guarantee, and insurance of overseas investments and made a comparison, conclusion, and analysis thereof, for the purpose of finding out the research gap and determining the research topic of this paper.

4.2. Comparative Study. The author has also compared overseas investment insurance systems of the United States, Germany, Japan, and MIGA in order to find out the difference and similarity among them and to provide good references for China on establishing overseas investment insurance system and protecting overseas investment interests of Chinese enterprises.

4.3. Category Induction. The author has sorted out the main contents and components of overseas investment insurance system, including legislative models, legislative models, underwriting categories and underwriting conditions, etc., and further categorized and analyzed on these contents and components of different countries or organization to refine enlightenment experience for Chinese practice.

5. An Overview of the Overseas Investment Insurance System

5.1. Concept and Characteristics of Overseas Investment Insurance System. The overseas investment insurance system is a system in which the capital exporting country provides guarantees or insurance for the political risks that overseas investors of their own countries may encounter abroad, and after the domestic insurance institution compensates for the losses, it will then seek compensation from the host country by subrogation [23].

The overseas investment insurance system is in essence a government guarantee, which is different from general commercial insurance. Its characteristics are as follows: the category of insurance is limited to political risks, and the underwriting items are limited to foreign direct investment. The underwriting agencies are generally government departments or state-owned companies, which are not profit-seeking and have both prevention and post-event compensation functions to relieve investors from worries [24].

5.2. The Origin and Development of the Overseas Investment Insurance System. The overseas investment insurance system first originated in the United States. After World War II, the United States implemented the "Marshall Plan" to revive Europe. In order to dispel investors' concerns and encourage American investors to invest in Europe, the United States introduced the "Economic Cooperation Act" in 1948 and created the first overseas investment insurance system. The initial categories of insurance were limited to foreign exchange insurance only. In the following ten years, insurance agencies have changed several times, and the Economic Cooperation Agency, the Common Security Agency, the Overseas Affairs Administration, the International Cooperation Bureau, and the International Development Agency are in charge of overseas investment insurance affairs in turn [25]. In 1969, the "Overseas Aid Law" was revised again, and the Overseas Private Investment Corporation (OPIC) was established accordingly and became an insurance institution specializing in providing overseas investment guarantees, and the coverage was also expanded to foreign exchange insurance, expropriation insurance, and war insurance. Japan followed the United States and created an overseas investment (original) insurance system in 1956, then added overseas investment profit insurance in 1957, and finally merged the two insurances. In order to encourage Japanese investors to participate in overseas mineral energy development, Japan established an overseas mineral energy investment insurance system in 1972 [26]. In 2001, Nippon Export and Investment Insurance (NEXI) was specially established to be responsible for underwriting overseas investment insurance. Since then, major capital exporting countries such as Germany, France, Britain, and the Netherlands have followed suit and established their own overseas investment insurance systems. Among them, the practices of the United States, Japan, and Germany are the most representative and have become models for countries to learn from.

In addition to the overseas investment insurance systems of various countries, some regional or international organizations are also gradually exploring the establishment of overseas investment guarantee systems. Generally speaking, the number of regional overseas investment insurance institutions is limited, and they only guarantee investments in specific regions, and thus it is difficult to play their functions in a wider range. Among the international overseas investment insurance agencies, the most influential one is the Multilateral Investment Guarantee Agency (MIGA), a member of the World Bank Group. MIGA has been increasingly recognized by its wide range of guarantees, relaxed insurance conditions, and flexible operation mechanism and has also become the focus of research on overseas investment insurance systems in recent years.

5.3. Core Issues of the Overseas Investment Insurance System. The right of subrogation is the core issue of overseas investment insurance, and it is also the link for the overseas investment insurance system to operate. Different from the domestic insurance system, the subrogation right in overseas investment insurance cannot be realized only by domestic law and must be exercised by obtaining the validity of international law. According to the different legislative models of various countries, the international legal basis for the exercise of the right of subrogation can be divided into two categories, one is the bilateral investment treaty (BIT) signed by the home country of investment and the host country, and the other is the international law's general principles of diplomatic protection. The former is represented by the United States and Denmark. Insurance institutions sign a BIT with the host country as a prerequisite for underwriting; after the insurance agency compensates investors for losses, they can directly obtain subrogation rights in accordance with the subrogation rights clause of the BIT. Therefore, the subrogation rights obtained in this way have stronger legal effect. The latter is represented by Japan and France. Insurance institutions are not premised on the signing of bilateral investment agreements with host countries. After making compensation, the insurance agency can only make a request to the host country in accordance with the relevant diplomatic protection principles of international law. During this period, they may face many defenses such as "exhaustion of local remedies" and "continuation of nationality" proposed by the host country government, thus hindering the realization of the right of compensation. Therefore, even though some countries (such as Germany) have stipulated a "unilateral model" similar to the United States, in practice, they still take signing a BIT with the host country as an important condition for underwriting in order to ensure the subrogation rights of insurance agencies.

6. International Comparison of Overseas Investment Insurance System

6.1. Using the Law to Guide Insurance Practice Starts with Legislation. Basically, all countries follow the path of legislation first, clarifying the establishment purpose, legal status, insurance coverage, insurance qualifications,

insurance conditions, and the right to claim compensation of insurance institutions in the form of legal systems, providing legal basis and guidelines for the operation of overseas investment insurance agencies. Legislation is the primary basis for the smooth implementation of overseas investment insurance.

The United States first established the overseas investment insurance system through the Economic Cooperation Act in 1948 and has continuously improved and refined the system in the multiple revisions of the Foreign Aid Act and the Common Security Act, and finally became the current mature overseas investment insurance system. Japan launched the Export Insurance Law in 1956 and revised it in 1978, which clearly stipulated the scope of insurance, insurance institutions, qualified investors, qualified investments, insurance period, insurance amount, and premium rate. German laws on the foreign investment insurance system include the Federal Budget Act, the Foreign Economic Act, and the Regulations on Guarantee for Foreign Direct Investment. In particular, the Regulations on Guarantee for Foreign Direct Investment clearly stipulate that the government is obliged to provide guarantees for the overseas investment of German companies that need support. Not only countries guide overseas investment with legislation, the Multilateral Investment Guarantee Agency Convention (also known as the "Seoul Convention") was also formulated before the establishment of the Multilateral Investment Guarantee Agency and became the main basis for MIGA's guarantee activities.

6.2. Bilateral and Unilateral Legislative Models. From the perspective of legislative mode, the overseas investment insurance system of various countries can be divided into two categories: "bilateral mode" and "unilateral mode." The former is represented by the United States, and investment insurance can only be obtained by investing in the host country that signed the BIT. The subrogation right clause in the BIT directly grants OPIC the right of subrogation to claim compensation from the host country after making compensation. This domestic and international system connection ensures the smooth acquisition of the right of claim. The signing of a BIT with the host country is not a legal condition for Germany to underwrite overseas investment insurance, but in practice, in order to ensure the effectiveness of domestic insurance, it generally provides guarantees to investment projects in the host country that signs a BIT with Germany, which is essentially a "bilateral model." The latter is represented by Japan, and insurance agency only provides guarantees based on a country's domestic and overseas investment insurance system. After making compensation, the insurance agency can only claim the right of subrogation against the host country in accordance with the principle of diplomatic protection in international law, and it is very likely that the subrogation cannot be achieved due to the host country's various defenses based on international law and domestic law.

6.3. Two Types of Legislative System, Integrated System and Separated System. In terms of legislative modes, the legislative practice of countries can be divided into two categories: one is the integration of the overseas investment insurance approval agency and the business operation agency, and the other is the separation of the approval agency and the operating agency.

The former is still represented by the United States, and OPIC is responsible for the approval and underwriting of overseas investment insurance in the United States. OPIC has both public and private attributes. On the one hand, OPIC is directly under the leadership of the State Council, the legal capital is allocated by the US treasury, and the company's directors are appointed by the president; on the other hand, OPIC, as an independent legal entity, operates independently and is responsible for its own profits and losses. The US way of legislation system is designed to allow OPIC to "serve as a bridge between foreign governments and US investors, enabling political issues to be resolved commercially," and thus "avoid direct government-to-government confrontation" [27]. In 2018, OPIC was merged into the United States International Development Finance Corporation, and the functions of OPIC were inherited by it. Japan at first also implemented the integrated system. The Enterprise Bureau of the Ministry of International Trade and Industry of Japan is responsible for the approval of insurance, and the Long-term Export Insurance Section under the bureau is responsible for underwriting insurance. Under the integrated system, investors and insurance institutions are not only equal contractual subjects but also administrative subjects between managers and managed subjects.

The latter is represented by Germany. The decision-making committee composed of representatives of the German Ministry of Economic Affairs, the Ministry of Finance, and the Ministry of Foreign Affairs, together with the advisory committee composed of representatives of the Federal Bank and the Accounting Audit Office, is responsible for approval. Hermes Kreditversicherungs AG and Treuarbeit AG are responsible for the underwriting. Japan established Nippon International Insurance Co. Ltd. (NEXI) in 2001 to undertake overseas investment insurance business, and the underwriting responsibility has transitioned from government departments to state-owned enterprises, showing a trend of the separation system. Under the separation system, investors apply to the approval agency for insurance, and after being approved by the approval agency, they sign an insurance contract with the operating agency and pay the premium. When a risk occurs and they suffer losses, they can directly claim to the operating agency according to the insurance contract. The relationship between the investor and the insurance institution is an insurance contract, and the relationship between the investor and the approval institution is a vertical manager-managed relationship. Under the separation system, the legal relationship is clear, the rights and responsibilities of each subject are clearly defined, and each party performs its own duties, which helps to prevent corruption.

Table 1: Comparison of overseas investment insurance coverage in different countries.

	United states	Japan	Germany	MIGA
Expropriation insurance	(i) Time requirement: requires the expropriation to last more than one year	(i) Including indirect expropriation: including the forced transfer of shares held by Japanese investors due to the nationalization of joint ventures	(i) Includes indirect expropriation	(i) Includes indirect expropriation: government legislative or administrative action that actually has the effect of expropriation, causing investors to lose ownership, control, or be deprived of the main benefits of their investment
War risk insurance	(i) Terrorism insurance included	(i) Force majeure insurance, including the risk of loss due to war, civil disorder, and natural disasters		(i) Includes losses caused by the investor's inability to use transportation lines for a certain period of time due to war or civil unrest
Foreign exchange insurance	(i) Includes non-payment insurance	(i) Includes non-payment insurance and transfer insurance	(i) Includes non-payment insurance and transfer insurance	(i) Includes non-payment insurance and transfer insurance
Other insurances	(i) Terrorism insurance can also be used as an independent insurance (ii) Business interruption insurance (iii) Export or business license cancellation insurance	(i) Government default insurance (included in expropriation insurance) (ii) Delayed performance insurance (only in the field of resource development)	(i) Stop/delay payment insurance (ii) Currency devaluation insurance	(i) Government default insurance (ii) Insurance of non-fulfillment of sovereign financial obligations

6.4. Underwriting Categories. The underwriting categories of overseas investment insurance in various countries mainly include expropriation insurance, war risk insurance, and foreign exchange insurance. In terms of insurance categories and their contents, countries are different, as shown in Table 1.

In expropriation insurance, various countries basically include direct expropriation and indirect expropriation, and the insurance sets out that the government expropriation behavior cannot be attributed to the investor's own fault or improper behavior. The United States also regards contract rights as the object of expropriation and sets a corresponding time limit for expropriation (lasting more than one year); Japan confirms that the nationalization of joint ventures leading to the forced transfer of shares held by Japanese investors is also expropriation; MIGA stipulates that as long as it is the government's legislative or administrative action that actually has the effect of expropriation, causing investors to lose ownership, control, or be deprived of the main investment income, these behaviors are all considered as expropriation behaviors.

In the war risk insurance, countries normally exclude the conflicts and disturbances caused by general economic conflicts and labor disputes and require that there be an inevitable and direct connection between damage and war. With the continuous escalation of political risks, some countries have gradually updated the connotation of this type of insurance. After the 9/11 incident, the United States developed the terrorism insurance included in the war risk into an independent insurance. Japan has extended the risk of war to force majeure, including the risk of war and civil disturbance and the risk of losses due to natural disasters such as earthquakes, floods, and tsunamis.

In foreign exchange insurance, all countries exclude losses due to normal changes in exchange rates or foreign exchange controls that have been or may be implemented by the host country at the time of signing the insurance contract. The difference of countries is that the United States only includes non-payment insurance, while Japan, Germany, and MIGA include not only non-payment insurance but also transfer insurance.

In addition to the above three traditional risk insurances, many countries have added government default insurance, and use investors have exhausted local judicial remedies as a precondition for claiming default insurance. In addition, the United States also underwrites business interruption insurance, Japan underwrites delayed performance insurance (applicable to the field of resource development only), Germany underwrites stop or delay payment insurance and currency devaluation insurance, and MIGA underwrites non-performance sovereign financial obligation insurance.

6.5. Underwriting Conditions. Underwriting conditions usually include three aspects: qualified investor, qualified investment, and qualified host country.

As far as qualified investors are concerned, most countries follow the "nationality plus capital control principle," including natural or legal persons of their own nationality, or foreign legal persons who are not nationalized but controlled by their own nationals. Qualified investors in the US include US citizens, US legal persons, and foreign legal persons actually controlled by US citizens or legal persons (holding more than 95% of the shares). Japan also has similar regulations, while Germany

Table 2: Comparison of underwriting conditions of overseas investment insurance in various countries.

	United states	Japan	Germany	MIGA
Qualified investor	(1) US citizen (2) US legal person (US citizens or legal persons hold more than 51% of the shares) (3) A foreign legal person actually controlled by a US citizen or legal person (holding more than 95% of the shares)	(1) Japan nature person (2) Japan legal person.	(1) German citizen or legal person (2) Have residence in Germany	(1) Natural or legal persons of MIGA member countries other than the host country (2) Domestic investors of the host country, whose investment properties originate outside the host country, and jointly invest with foreign investors
Qualified investment	(1) New investments and "investments in the expansion, modernization, and development of existing enterprises" (2) The form of investment includes equity investment or non-equity investment (3) The US government agrees to guarantee investments in underdeveloped countries/ regions and investments in countries that have signed BITs with the US approved by foreign governments	(1) New investment and expansion of existing projects (2) Investment forms include equity investment, long-term loans related to equity investment, direct investment in real estate, and long-term loans for the purpose of developing input resources [28] (3) In line with Japan's national interests and contributes to the economic development of the host country	(1) New investment or capital increase of existing projects (2) Investment forms include equity investment, investment in the establishment of overseas branches, and equity-related loans. (3) In line with the national interests of Germany, has a positive effect on Germany, complies with the laws of the host country and meets appropriate environmental standards, and is economically feasible and reasonable	(1) New investment and additional investment or reinvestment (2) Investment forms include equity investment or non-equity investment (3) Contribute to the economic development of the host country
Qualified host country	(1) Respects human rights and workers' rights (2) The per capita income is below a certain limit (3) Established friendly relations with the United States (4) Signed a BIT with the United States	(1) BIT host country does not need to sign BIT with Japan	(1) Host country has relevant laws and measures to protect foreign investors	(1) Developing countries only

requires investors to have a residence in Germany in addition to nationality requirements, as shown in Table 2.

Qualified investment includes three aspects: investment time, investment form, and investment significance. In terms of project time, countries usually require new projects and capital increase in existing projects; in terms of investment forms, it includes not only equity investment but also non-equity investments such as loans, leases, technical assistance agreements, and license agreements; in terms of investment significance, all countries require the investment to meet the interests of the home country and must contribute to the economic development of the host country, in line with the laws of the host country or approved by the host country government. Different countries have slightly different priorities. The United States focuses on the impact of investment projects on the environment, balance of payments, and labor employment. In addition to the above requirements, Germany also requires that investment projects are economically feasible and reasonable.

In terms of qualified host countries, in addition to whether to sign a BIT, all countries basically require the host country to be a developing country. On the one hand, the investment risk of developing countries is higher than that of developed countries, and it is more necessary to provide investment guarantees; on the other hand, the purpose of most countries encouraging overseas investment is to obtain international resources, develop emerging markets, and promote the economic development of developing countries. Obligated international organizations, in particular, aim to promote developing countries, and MIGA's guarantee is limited to investments in developing countries only. In contrast, the United States has the most stringent requirements, and the host country must meet four conditions: respect for human rights and workers' rights, per capita income below a certain percentage, maintaining friendly relations with the United States, and signing a bilateral investment protection agreement.

6.6. Insurance Term, Insurance Amount, and Insurance Premium Rate. In terms of insurance terms, considering the long period of most overseas investment projects, the insurance period in most countries can be as long as 15 years, and the longest can be as long as 20 years. Germany can provide up to 15 years insurance for equity investments and 20 years insurance for investments in production equipment manufacturing; the MIGA Convention stipulates that the insurance period is no less than 3 years, up to 15 years, and

Table 3: Comparison of overseas investment insurance term, insurance amount, and insurance premium rates of various countries.

	United States	Japan	Germany	MIGA
Insurance term	(i) Up to 20 years	(i) 5–15 years generally (ii) Can exceed 15 years based on investment and construction needs	(i) Equity investment up to 15 years (ii) Term for investment in production equipment manufacturing is 20 years	(i) 3–20 years
Insurance amount	(i) 90% of the investment loss; the total compensation does not exceed 100 million US dollars	(i) 90% of the equity or loan claim	(i) The insured bears 80%–95% of the loss	(i) Equity investment: 90% (ii) Loan investment: 95% (iii) Other protocol investment: 95%
Insurance premium rates	(i) Foreign exchange insurance: 0.3% (ii) Expropriation insurance: 0.4–0.8% (iii) War risk insurance: 0.6% (iv) Comprehensive insurance: 1.5%	(i) Comprehensive insurance: 0.55% (ii) Investment in resource development: 0.7%	(i) Insurance period within 5 years: 0.6% (ii) Insurance period within 5–10 years: 1% (iii) Insurance period within 15–20 years: 1.5%	(i) Guaranteed amount less than $25 million: $5,000 (ii) Guaranteed amount over $25 million: $10,000

can be extended to 20 years in special circumstances. In terms of the insurance amount, overseas investment insurance in most countries provides insufficient insurance, and the insurance amount is only a part of the investment amount, and the specific proportion is roughly the same, basically 90%–95%. In terms of insurance premium rates, in order to encourage overseas investment, the premium rates set by various countries are generally not high, and they vary by type of insurance, investment industry, scale, and the risk environment of the host country, as shown in Table 3.

6.7. Venture Fund or Reserve System. Overseas investment projects are usually large-scale and high-risk; therefore, providing overseas investment guarantees to back them up requires a large amount of capital. In addition to the government providing financial support, establishing risk funds, and absorbing private insurance funds, countries are also actively exploring new ways to expand risk reserves. Among them, Japan's overseas loss reserve system is a major innovation to expand capital reserves and resist overseas investment risks. This system is currently only applicable to overseas investments in energy such as oil, natural gas, coal, metal minerals, and timber. According to this system, the insured pays the reserve according to the investment ratio before the project is implemented, and the reserve ratio varies according to the different stages of mineral energy development. When an enterprise's overseas investment is damaged, in addition to applying for overseas investment insurance claims, it can directly obtain compensation from the reserve; if there is no loss, the reserve can be accumulated for a certain year (usually 5 years) and divided into a certain fraction (usually 5 copies), which are consolidated into the taxable income for taxation year by year, thereby reducing the tax burden on investors. The loss reserve system, to some extent, can be regarded as an investor's preexisting capital reserve to defend against the risks that may be brought about by overseas investment. On the one hand, it reduces the pressure of government claims settlement, and on the other hand, it is combined with the overseas investment insurance system to increase the channels for investors to obtain compensation, alleviate the impact of investment losses on enterprises, and help enterprises resist investment risks.

6.8. SME Support System. SMEs play an irreplaceable role in the economic activities of countries, including overseas investment activities. Therefore, the overseas investment guarantee systems of various countries usually set up special preferential support policies for small and medium-sized enterprises. Taking the United States as an example, the US overseas investment insurance system requires OPIC to give priority to underwriting overseas investment projects of small and medium-sized private investors, provide additional insurance types for SMEs, increase the underwriting ratio, provide premium discounts, and give priority to protecting the interests of SMEs in overseas investment. German guarantee agencies provide diversified services for SMEs, provide consulting for SMEs overseas investment, and negotiate insurance coverage on a case-by-case basis to meet the specific insurance needs of SMEs. MIGA even launched the Small Investment Program (SIP), which offers SMEs more favorable rates and faster insurance procedures.

6.9. Flexible and Diverse Cooperation Mechanisms. To enhance the vitality and applicability of the overseas investment guarantee mechanism and give full play to its role in guaranteeing, countries are actively developing flexible and diverse cooperation mechanisms. The Japanese government requests to cooperate with the government of the host country and entrusts the local insurance agency of the host country to accept the insurance application of the Japanese-funded enterprise, and the Japanese insurance agency will reinsure the reinsurance business of the local insurance agency. In the event of a government risk, the Japanese-

funded enterprise will receive compensation from the Japanese insurance institution. Through this “co-insurance” and “reinsurance” to bind benefit, the local insurance agencies in the host country are motivated to protect the investment rights and interests of Japanese companies, and the political risks faced by Japanese companies in the host country are reduced. US law also encourages OPIC to “co-insure” and “reinsure” with private investment guarantee agencies to meet market needs to the greatest extent possible [29]. MIGA actively cooperates with guarantee agencies of various countries to provide reguarantee for the overseas investment projects it has already underwritten.

7. Current Situation and Problems of China’s Overseas Investment Insurance

In the 1980s and 1990s, the People’s Insurance Company of China and the Export-Import Bank of China took the lead in obtaining the qualification to operate overseas investment insurance business. In 2001, China Export & Credit Insurance Corporation (“SINOSURE” for short) was established, replacing the above-mentioned agencies as the only agency providing overseas investment insurance in China. Since 2003, it has officially launched overseas investment guarantee business.

Judging from the legal basis, China has not yet established a legal system for overseas investment insurance. SINOSURE undertakes overseas investment insurance business, mainly guided by a series of regulations in the form of notices by relevant departments. Among them, the normative document with the highest legislative level is the “Notice on Issues Concerning the Establishment of a Risk Protection Mechanism for Key Overseas Investment Projects” (“Notice”) jointly issued by the National Development and Reform Commission and SINOSURE in 2005 [3]. The “Notice” briefly stipulates the key projects supported by risk insurance, the subject of application for insurance, and the content of insurance scope. The Supreme People’s Court also issued relevant judicial interpretations in 2013, clarifying the application of law in the trial of overseas investment insurance contract disputes by the people’s courts. In addition, the normative documents issued by the Ministry of Commerce, the Ministry of Finance, the Ministry of Science and Technology, etc. are also slightly involved with overseas investment insurance, But the normative documents issued by these departments are not systematic and merely touch on. At present, the main basis for guiding overseas investment insurance business is still the “Guidelines for Overseas Investment Insurance” (“Guide to Insurance”) formulated by SINOSURE. In terms of nature, the “Guide to Insurance” is only a guide for the business handling of SINOSURE, not a legal document, and does not have common legal binding force [24]. In general, the legislative level and effectiveness of China’s legal system related to overseas investment insurance are low. The content of those legal documents is too general and principled, and it lacks operability and does not play the due role of legislation to protect and promote overseas investment insurance.

In terms of legislative model, the “Guide to Insurance” describes qualified investment as “should comply with policies in terms of foreign policy, foreign trade, industry, fiscal and financial sectors, comply with the laws and policies of the host country of the investment project, and obtain approvals related to the investment project” [29]. It is clear that China adopts the “unilateral model,” which may make it difficult for insurance agencies to seek compensation from the host country after settlement of claims. In terms of the form of legislation, SINOSURE is solely responsible for the approval and underwriting of insured projects, which is the mode that the approval agency and the operating agency are integrated. However, SINOSURE is only a policy-based financial agency, not the subject of administrative evaluation and approval, and it lacks a clear legal basis to act as an evaluation and approval institution. In terms of insurance types, SINOSURE covers expropriation insurance, exchange restriction insurance, war and political riot insurance, and default insurance. These types are mainly designed for the characteristics of political risks of overseas investment in the 1960s and 1970s. The types and their contents are generally traditional, and they do not cover the emerging insurance types in recent years, and their specific connotations are not clear enough and lack operability. In terms of underwriting conditions, qualified investments stipulated in the “Guide to Insurance” include domestic legal persons in China, overseas legal persons actually controlled by Chinese legal persons, and domestic and overseas financial institutions that provide financing for the project, excluding natural person investors; qualified investment projects shall comply with China’s national interests and obtain project-related approvals and shall be in line with the laws of the host country; the form of investment is limited to direct investment, including equity investment, shareholder loans, shareholder guarantees, and loans from financial institutions. The insurance period and insurance amount are roughly the same as those of other countries, but the average insurance rate of 4% is generally higher than the average rate of 0.5%–2% in major capital exporting countries such as the United States, Japan, and Germany, which, to some extent, inhibits the enthusiasm of investors to purchase insurance, as shown in Table 4.

Judging from the data of the past five years, the overseas investment insurance underwritten by SINOSURE has increased year by year. In 2019, the underwriting amount reached 61.33 billion US dollars, which was five times higher than that in 2010, but the proportion of the total underwriting amount of SINOSURE was still limited. It reached the highest level in history, but only accounted for 10.06% of the total insurance coverage. Compared with the stock funds of foreign direct investment in China in the same period, the insurance coverage rate is only 2.92%, which is still far from the international average of 10%–15% [2]. Moreover, the structure of the insured is extremely unreasonable. State-owned enterprises account for the vast majority, and the share of central enterprises is as high as 2/3 [30]. To sum up, the overseas investment insurance business of SINOSURE has not been fully developed, and it is far from playing its due role in protecting the overseas investment of enterprises. The main reason lies in the lack of legislation and the lack of clear and systematic legal norms in insurance practice, which greatly restricted the business development.

Table 4: 2015–2019 SINOSURE overseas investment insurance business and insurance coverage statistics.

Year	Covered amount of overseas investment insurance (100 million USD)	Total covered amount (100 million USD)	Proportion of overseas investment insured amount (%)	Stock funds for overseas investment (100 million USD)	Insurance coverage rate (%)
2015	409.4	4713.2	8.69	10978.6	3.73
2016	426.5	4730.7	9.02	13573.9	3.14
2017	488.9	5246	9.32	18090.4	2.7
2018	581.3	6122.3	9.49	19822.7	2.92
2019	613.3	6097.9	10.06	20994	2.92

8. Some Ideas on Establishing and Perfecting China's Overseas Investment Insurance System

Based on the legislative experience of the United States, Japan, Germany, and MIGA, this paper proposes the following ideas for the construction of China's overseas investment legal system.

The United States has founded US Model BIT through numerous negotiations and inserted "subrogation" term into BITs signed with other countries, to provide international legal basis for domestic insurance agency to claim compensation from the host countries after making compensation. Moreover, the United States has protected the interests of small and medium-sized private investors in overseas investment by giving priority to SMEs in their overseas investment insurance. Such practice could be a worthy example for China.

Japan, same as China, is one of the major economies in Asia, which has faced similar circumstances and has gone through similar development process in overseas investment compared with China [31]. Japan has achieved notable success by a raft of overseas investment promoting and supporting measures, especially the "loss reserve" policy for overseas investments in sectors of energy, electricity, and infrastructure. These will be very enlightening and might meet the needs of Chinese investors who are involved in the same location and sectors or industries in their overseas investments.

Germany and China are the countries which signed the most BITs with other countries. German blend legislative mode combining "bilateral" and "unilateral" modes, and the legislative system in which approving agency is separated from operating agencies, might be more suitable for Chinese practice.

MIGA has been recognized as the most efficient and influential overseas investment insurance agency in the world, for its flexible and effective insurance rules and policies, especially the rules of underwriting categories and underwriting conditions and terms, and may provide valuable references to China.

On the above basis, the author would like to suggest the following approaches of establishing Chinese overseas investment insurance system.

8.1. Developing Legal System for Overseas Investment Insurance in a Timely Manner. First, laws related to overseas investment insurance should be formulated in a timely manner to provide norms and guidelines for overseas investment insurance practices. At this stage, the "Overseas Investment Insurance Regulations" can be formulated to clarify the purpose and objectives of the overseas investment insurance system, the nature and status of insurance agencies, the scope of insurance, insurance conditions, insurance procedures, insurance amount, duration and rate, loss compensation, and other matters. In particular, the subrogation rights of insurance institutions should be clarified. When conditions and time are ready, the regulation can be upgraded to the "Overseas Investment Insurance Law" or integrated into the "Overseas Investment Law" and lay out the institutional foundation for overseas investment insurance.

8.2. Establishing "Bilateral Model" Investment Guarantee System. China's Credit Insurance has only been established for 20 years, and the operating time of overseas investment insurance business has not been long. Compared with the US's tens of billions of US dollars of registered capital, China Credit Insurance's 4 billion registered capital has weaker anti-risk capabilities. It is necessary to ensure subrogation through the subrogation clause of BIT to prevent risks. Furthermore, China has signed BITs with more than 130 countries around the world and basically covers the 20 countries with the most concentrated foreign investment. Among the 65 countries along the "Belt and Road," China has signed BITs with 56 countries, most of which contain subrogation clauses [29] and have established the basis for the establishment of a "bilateral-based" legislative model. Therefore, China should adopt a "compromising" legislative model, that is, to take the bilateral model as principle and the unilateral model as exception when necessary. Specifically, a BIT signed by China and the host country should be the premise for insurance; on this basis, China should leave some room for key investment projects encouraged by the state, which can be free from the restrictions of signing a BIT, so as to protect investors' investment rights and regulate the focus and direction of overseas investment.

8.3. Establishing a Legislative System That Separates Approval Institutions from Operating Agencies. China's overseas investment insurance system should establish a legislative system that separates the approval institution from the operating agency, with a specialized institution directly under the State Council as the approval institution for overseas

investment projects and SINOSURE as the only operating agency for overseas investment insurance business.

At this stage, the Ministry of Commerce can perform the approval duties concurrently, with the active cooperation of the Ministry of Finance, the Ministry of Foreign Affairs, and other departments. When conditions and time are ready, representatives of the above departments can be formed to set up a special "underwriting approval committee." Among them, the Ministry of Commerce is responsible for the evaluation and review of investors and investment projects, the Ministry of Finance is responsible for paying investors in advance after risks occur, and the Ministry of Foreign Affairs is responsible for the communication and negotiation with the host country government when risks occur, and to claim against the host country on behalf of the country after the Ministry of Finance makes the payment to the investors.

SINOSURE has accumulated rich experience in overseas investment insurance business. As the sole underwriting institution, it will continue to perform its underwriting duties. When conditions are ready, the overseas investment insurance business can be separated from its business, and an independent overseas investment insurance company can be established to undertake the business and clarify the legal status of the institution in the form of law.

8.4. Expanding Insurance Coverage Appropriately and Relaxing Insurance Conditions. In terms of underwriting types, the types and their contents should be further expanded and updated in accordance with overseas investment practices and needs. Specifically, transfer insurance and losses caused by discriminatory exchange rates adopted by the host country should be supplemented in the foreign exchange insurance; terrorism insurance should be added to war and political riot insurance; expropriation insurance should include both direct violent expropriation or seizure and indirect "cannibalizing expropriation"; and government default insurance should cover the violation or non-performance of relevant investment agreements by the central government, local governments, and state-owned enterprises, and the premise of applying for compensation is limited to the investor being unable or unable to obtain judicial relief in the host country in a timely manner. In addition, necessary insurance types such as delay or stop payment insurance and business interruption insurance should be added to strengthen the protection of overseas investment rights.

In terms of qualified investors, we should learn from common international practices and clarify that qualified investors include Chinese natural person or juridical person and foreign enterprises actually controlled by Chinese natural or juridical person, so as to enhance the enthusiasm of investors for insurance. In terms of qualified investment, first of all, it should be clarified that the investment project must conform to the national interests of China and be approved by the competent authorities and must comply with the laws and regulations of the host country or be approved by the host country. In terms of investment time, it can be either a new project, additional investment, or reinvestment. In terms of investment forms, flexibility and diversification should be encouraged and allowed, and it is not appropriate to impose too many restrictions in the form of investment projects. Various forms of investment such as equity, creditor's rights, and loans should be allowed to maximize the participation of Chinese enterprises in international competition. In terms of compliant host countries, corresponding to the legislative model, qualified host countries should be limited to countries that have signed a BIT with China and maintain friendly relations with China. As for the economic development level of the host country, since China's overseas investment is widely distributed in both developed and developing countries, there should be no restriction on developed countries or developing countries in order to improve the applicability of overseas investment insurance.

In terms of coverage period and coverage amount, the current practice of SINOSURE is in line with international practice, and it is recommended to confirm it in the form of legislation. As far as the insurance rate is concerned, it is recommended to reset the insurance rate and ensure that the single type of insurance rate does not exceed 1% and the comprehensive insurance rate does not exceed 3%, so as to reduce the insurance cost of investors and increase their enthusiasm for insurance.

8.5. Establishing Venture Fund or Reserve System. The existing funds of SINOSURE come from the Export Credit Insurance Risk Fund, which is allocated by the national budget. Compared with the huge risks faced by overseas investment and the required funds, the scale of funds is very limited. To ensure that overseas investment insurance can truly play a protective role, it is necessary to increase financial support to SINOSURE and expand risk funds in a timely manner. At the same time, we can learn from the practice of Japan to establish a risk reserve system. For high-risk fields such as energy and minerals, power communication, infrastructure, and so on, the insured can voluntarily choose to pay the reserve before the project is implemented as compensation for future losses or as a basis for tax relief, so as to resist the risks that may be brought about by overseas investment.

8.6. Implementing the SME Support Program. At present, the number of small and medium-sized enterprises in China has accounted for more than 99% of the total number of enterprises in the country, creating a value equivalent to 60% of GDP and making significant contributions to promoting domestic economic development, increasing employment, and expanding exports and overseas investment. However, small and medium-sized enterprises lack the experience and necessary resources for overseas investment, and their risk awareness and risk tolerance capability are weaker than those of large state-owned enterprises. They face greater risks in the process of overseas investment, and it is necessary to provide support and help. SINOSURE should implement a SME support plan, set up a department to especially provide

insurance services for SMEs, open up green channel for SMEs, and design convenient and fast insurance procedures for SMEs to apply for insurance with certain discounts. In the meantime, it should provide early-stage investment consulting, risk assessment, financing assistance, etc. to SMEs to protect their overseas investment.

8.7. Developing Multilateral Cooperation Mechanism. SINOSURE can learn from foreign experience, actively develop diversified cooperation mechanisms, and cooperate extensively with private insurance agencies, foreign investment guarantee institutions, and international investment guarantee institutions. In particular, it should strengthen exchanges and cooperation with MIGA. It should adopt diversified cooperation modes such as reinsurance, co-insurance, and reinsurance and develop overseas investment insurance business with the help of various favorable resources to meet the diversified security needs of investors.

9. Notes

(1) Currency depreciation insurance refers to the risk in which overseas investors suffer losses due to the fact that the other party stops or delays payment and cannot freely convert the currency to depreciation.

(2) Delayed performance insurance refers to the risk of investment loss due to reasons not attributable to the investor, the bankruptcy of the investment counterparty, or the delay in performance due to debts for more than 6 months.

(3) Exhaustion of local remedies, also known as exhaustion of domestic remedies, means that when a foreign investor has a dispute with the government, enterprise, or individual of the host country, the dispute should be submitted to the administrative or judicial authority of the host country for settlement in accordance with the laws of the host country. Until the law has exhausted all local remedies, international procedures may not be sought, and the foreigner's home government may not exercise the right of diplomatic protection to hold the host country accountable.

(4) Expropriation means that the host country takes approaches such as nationalization, confiscation, expropriation, and so on to deprive the ownership and management rights of investment projects or the right to use and control the funds and assets of investment projects; exchange restrictions mean that the host country impedes, restricts the freedom of exchange of investors or increases the cost of exchange, and prevents the remittance of currency from the country; wars and political riots refer to revolutions, riots, coups, civil wars, rebellions, terrorist activities, and other war-like acts in the host country, resulting in the loss of assets or permanent inability of investment companies to operate; (government) default means the host country government or other subject recognized by the insurer breaches or fails to perform the agreement related to the investment project and refuses to pay compensation.

(5) Expropriation insurance refers to the risk of total or partial loss of the investment property of the insured due to expropriation or nationalization measures implemented by the host country government.

(6) Foreign exchange insurance refers to the risk in which the host country government takes corresponding measures to restrict or prohibit foreign investors from converting their investment principal, profits, or other legal income into foreign currency and transferring them out of the host country.

(7) Government default insurance refers to the risk of loss when the host government (and in some cases, state-owned enterprises) breaches or fails to perform its contract with the investor.

(8) Non-performance sovereign financial obligation insurance refers to the risk of loss to investors when the host country's central government, local government, or state-owned enterprise has unconditional financial payment obligations for investors' legitimate investments and fails to perform them.

(9) Suspended or postponed payment insurance is to insure against the risk that proceeds from the capital investment of an overseas investor that are unavailable due to the suspension or postponement of payment by the other party.

(10) The principle of continuation of nationality means that when a country wants to exercise the right of diplomatic protection for its nationals, it must prove that (1) the protected person is a citizen of that country and has the nationality of that country; (2) the protected person has continuous nationality of that country from the time of the injury to the time of jurisdiction or the official submission of the diplomatic request.

(11) War risk insurance refers to the risk of property loss of investors caused by war, revolution, riot, or civil strife in the host country.

Data Availability

The data used to support the findings of this study are available from the corresponding author upon request.

Conflicts of Interest

The author declares that there are no conflicts of interest.

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