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A Comparative Policy Analysis for Cross-border M&A between China and Africa that Advances China's Leading Position in Mining

Yuting Lei[1,a,*]

[1]College of Letters and Science, University of California, Los Angeles, CA 90024, United States
a. yuting616@ucla.edu
**corresponding author*

Abstract: China is still looking for resources and has recently engaged in aggressive cross-border M&A in the mining industry. Per China's 14th Five-Year Plan, the resource plan builds the foundation of China's rapid industrial development and growing economy. In recent years, it has been observed that acquisitions are focusing more on emerging markets' resources, such as Africa. Despite the negative effect of the pandemic, which cooled down cross-border mergers and acquisitions (CBMAs) in the mining industry, mining M&A's strategic importance to global industrial development makes it a major area of study. This phenomenon of mining M&A becoming China's story is closely related to economic policies and regulations in China and Africa. Hence, this article develops a comparative analysis of the different procedures in China and critical geographies in Africa that affects China's unceasingly expanding mining industry through acquisitions in Africa. Through comparative research analysis, we find that China’s One Belt One Road Initiative (BRI) promotes CBMAs and investments in Africa and reduces operational barriers in policies and technology. The CBMAs’ success relies on a thorough understanding of local rules, major players, and legal policies in both nations. African countries have worked to improve their mining codes and raised their devotion to ESG to attract foreign investments. The inference is that Africa still possesses a great untapped potential for Chinese investors in the mining sector who understands the local market realities and can alleviate risks.

Keywords: comparative policy, cross-border M&A, mining, China, Africa

1. Introduction

China has said to strengthen its strategic resource exploration in 2021-2025, including natural gas, copper, chrome, and rare earth, among others [1]. The resource grab is vital for allowing China to manage emergencies in times of political disputes and secure resource supplies. Africa is imperative in the Chinese economy that demands key minerals at this time. China's mining investment has dramatically expanded, especially in Sub-Saharan Africa. This region is rich in cobalt, chrome, and manganese found in South Africa, Ghana, and Sudan. China has also expressed an increasing interest in the mining belt of central southern Africa, which includes Tanzania, Zambia, and Mozambique, and is rich in copper, gold, iron, and manganese [2].

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Investment in Africa as part of China’s global development strategy results from a decision process that requires balancing socio-political, economic, and geological conditions affected by policies and regulations [3]. Proper decision evaluation plays a determining role in the success of complementary development. In this optic, the paper takes a comparative literature research approach to analyze choices and policies that affect China-Africa CBMAs' decisions on reasons for their failures or success.

The paper is discussed three-fold. First, it investigates the effects of the global pandemic on Africa's mining M&A activity. Then it aims to explore the choice of Africa as China's primary source of natural resources as a strategic partner in its economic and industrial development. Moreover, CBMA policies in China and some critical geographies in Africa's mining sector are investigated to observe its impact when making investment decisions, along with its opportunities and obstacles. Lastly, the study will shed light on potential challenges Chinese investors may face when engaging in CBMA. The study aims to provide useful recommendations and insights for Chinese companies looking to improve their overseas mining M&A performance in Africa.

2. Global Mining M&A in Africa with a Backdrop of COVID-19

Although critical minerals are vital resources under any global condition, the COVID-19 pandemic’s impact did have a hard blow on the mining investment environment of major resource countries. These countries are turbulent in the face of problems intensified by the pandemic, such as the failure of political governance, financial overspending, and rising unemployment. As a result, the global mining M&A market in 2020 has significantly cooled. According to Globaldata's Q1 2022 report, the global metals and mining industry's M&A deals amounted to $7.8B. This figure depicted a notable fall of 78.7% over the prior quarter and a 47.4% drop compared to the last four-quarter average of $14.73B [4].

In response to the impact of the pandemic, countries with significant resources have taken measures to strengthen their control of resources and intensified government intervention in the mining industry. Hence, studying government regulations and policies that vary across geographical regions is crucial when making CBMA decisions in the mining industry. Dangers and opportunities coexist, and the global mining supply chain and industrial developments are being restructured at an accelerated pace during the pandemic. More mining investments are flowing to developing countries such as Africa, which are enacting new mining policies to attract foreign investment and M&As during the pandemic to reap greater financial benefits. More to ensure the supply of critical minerals and support global industrial supply chains.

Africa, rich in natural resources, is a strategic location for China's investment. China and Africa’s developments are complementary since the two nations are in different stages of industrialization. Africa is at an early industrial stage and demands technology and financial support for its modern advancements. While China has moved ahead in recent decades to the late stages of modernization and possesses cutting-edge technology, that now demands critical minerals to sustain its fast industrial developments. Hence, the industrial growth and mineral reserve motivated China's investment and CBMAs in Africa's mineral resources, which could result in mutual benefits for the two nations.

The rapid development of the Chinese economy demands prime resources to fuel its economic activities. China's 14th Five-Year Plan emphasized the high quality and innovation of modern developments, which will continue to seek investments in African mining industries through cross-border M&As. Before investments, evaluating regulations and risks is a crucial step in making responsible decisions. Therefore, this paper aims to recognize the essential factors that affect China's CBMA decisions concerning Africa's mining corporations.

3. Choice of Africa

3.1. High-grade Natural Resources

Unsurprisingly, international investors, specifically China, would target resource-rich Africa in this era of constant technological advancement. Technological innovations in electric vehicles and rechargeable batteries have created a high demand for metals, such as cobalt and copper, found in many African mines. As the world's factory, China generates massive demand for minerals to secure private raw material supplies and fuel exports. Africa sits upon trillions of dollars worth of extractable resources, which are essential for Chinese manufacturing. According to the United Nations Environment Programme, Africa holds about 30 percent of the earth's total mineral reserves, 40 percent of the world's gold, and almost 90 percent of chromium and platinum. It is also home to the world's most significant cobalt, diamonds, platinum, and uranium reserves [5]. These abundant mineral resources spread across vast geographic areas are critical, particularly for emerging economies like China, in ensuring a supply of raw materials for economic growth.

3.2. Intergovernmental Collaborations between China and Africa (Belt and Road Initiative)

Chinese President Xi Jinping introduced the One Belt, One Road Initiative (BRI) in 2013 during his visit to Central and Southeast Asia. It had a wide impact on trade and investment in Africa. With a population exceeding 1.4 billion, China requires raw materials and is hungry for energy, thus making Africa an attractive investment destination.

The BRI aims to connect countries in Asia, Europe, and Africa along two routes: the land-based Silk Road Economic Belt and the ocean-going Maritime Silk Road. The Maritime Silk Road includes many African countries, such as South Africa in the far south, Egypt and Algeria in North Africa, and inland places such as Zimbabwe and the Democratic Republic of Congo [6]. Hence, BRI provided a framework for China's growing stakes in Africa; as said in the 2017 McKinsey & Company report, China's foreign direct investment in Africa has grown with an annual growth rate of 40 percent over the past decade [7].

Benefitting cross-border M&As and investment in Africa is BRI's call for greater policy cooperation, including financial integration, establishing free-trade areas, and improving new technology collaborations [6]. It reduces transaction costs while removing technical and implementation barriers to international trade issues [8]. Thus, China's BRI initiative promotes Chinese outbound investment along the BRI route.

China also works closely with African governments to create special economic zones, called Overseas Cooperation Zones (OCZs), to neutralize the Regulatory framework that does not entirely motivate foreign direct investment, such as cross-border M&As [9]. The development of OCZs is a way for Chinese firms to minimize the risk of exposure to foreign markets and follow the state laws and regulations in those markets [10].

Due to trade and investment promotion, Chinese CBMAs increased significantly in BRI areas. China's Ministry of Commerce reported a $200 million investment in BRI countries, contributing to 7.1% of China's total foreign direct investment. While in 2017, Chinese firms' direct investment in these BRI countries reached $14.36 billion, about 12% of the total investment [9].

Consequently, BRI is committed to intergovernmental cooperation and exchange that promotes investment, such as CBMAs in the African region. It provides financial and policy support for Chinese firms engaging in CBMAs in countries along the BRI route. But successful CBMA along BRI routes also has its risks and challenges. It is critical to conduct proper due diligence. Deal success often depends on finding the right partners and support networks that understand local regulations, market players, and legal policies in China and Africa [6].

4. CBMA Policies in China and Key Geographies in Africa's Mining Sector

The success of mergers and acquisitions across national borders is heavily influenced by legislation regulating the mining investment and M&A environment. Hence, this section will explore the regulatory conditions in China and several African countries, namely the Democratic Republic of Congo (DRC), South Africa, and Mozambique.

4.1. China

Some new regulatory trends in China have had a notable impact on the country's M&A market. Recent antitrust, national security reviews, and data security compliance regulations have created a stricter foreign trade environment. As the buy-side of the CBMAs in Africa, China may result in financial and strategic losses if it fails to conduct proper data compliance due diligence; based on such information, China may decide to adjust the deal price or terminate the deal to avoid potential significant risks [11].

China's rising infrastructure and energy investments in various developing countries, such as Africa, have led to the demand for guidance on greening the Belt and Road Initiative (BRI) released by China's National Development Reform Commission [12]. Incorporating ESG (environmental, social, and governance) into M&A's decision to create a greener economy results in major consideration in the due diligence process leading up to the M&A transaction [11]. ESG increases sustainability and helps Chinese businesses improve their brand image and meet customers' sustainable preferences.

Thus, China's outbound M&A investment in Africa will focus on conducting proper due diligence on data compliance and evaluating associated risks in the mining and energy sector. It will also pivot on the African firms' ESG commitment to meet their conservation and sustainability goals.

4.2. The Democratic Republic of Congo (DRC)

The DRC is famous for its high-risk, high-return mining opportunities. It has much-untapped gold, cobalt, which accounts for nearly half of the world's reserve for this metal, and high-grade copper. However, the country also possesses some political and security risks due to widespread corruption and inadequate underlying structures [13].

The 2002 Mining code regulates the mining sector in the country. The Mining Code covers regulations relating to the acquisition, and termination of mining rights, environmental protection, cultural heritage, and tax and customs incentives [13]. Laws allow for expropriation with fair compensation for public interest reasons, including public works requirements, community heritage, and the presence of precious minerals. Foreign investors may own unrestricted mining rights under the condition that they elect domicile with a mining and quarrying agent to act on their behalf.

Unfortunately, obstacles faced by foreign companies are often not regulations but are related to corruption. Government officials favor certain foreign investors for historical and political reasons, and they then receive benefits and superior terms when conducting business in the DRC. Furthermore, during the civil war from 1994 to 2002, foreign investment was discouraged, including cross-border M&A activity. But the development of the Mining Code in 2002 helped to reinstate the inflow of investment in the mining sector. The country's economic position also necessitates foreign funding to exploit its mineral resources. Recently, China has become one of the major investors in the DRC mines, owning approximately 80% of the mineral-processing plants in Katanga and up to 90% of these extracted minerals exported to China [13]. Risks exist, but the plentiful resources that can contribute to China's industrial development determined that the DRC remains a strong target of Chinese firms' CBMAs in Africa's mining sector.

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4.3. South Africa

South Africa is rich in cobalt, chrome, and manganese. Its vital legislation is the Companies Act 71 of 2008 and the Companies Regulations, 2011, which contain Takeover Regulations regulating public and private M&A activities [14]. Regulated companies under the Companies Act include public companies, state-owned companies, and private companies if 10% of their shares have been transferred within two years immediately preceding a proposed M&A transaction. For South Africa, no special laws are designated for overseas buyers or investors. The Protection of Investment Act, 22 of 2015, states that "foreign investors and their investment must not be treated less favorably than South Africa investors in like circumstances."

The Broad-Based Black Economic Empowerment Act, 53 of 2003, is legislation aimed at addressing racial inequalities during apartheid and encouraging the participation of historically disadvantaged persons (HDPs) in the economy. A score on a company's contribution to Broad-Based Black Economic Empowerment (B-BBEE) is measured considering its management control, skills development, and socioeconomic development, with Level 1 being the highest through to Level 8. Although companies are not obligated to obtain a particular rating, a good rating can help a foreign firm to compete for public and private mining opportunities [14].

Obstacles may be observed in regulatory approvals in cross-border M&A transactions. Intermediate and larger mergers may be subject to pre-implementation approval under competition/antitrust rules in the Competition Act, 89 of 1998, to prevent adverse economic effects within South Africa. The approval process involves assessing whether the merger will avoid competition in the specified markets and if it conflicts with public interests such as employment, participation of HDPs, and the ability of national mining companies to compete in the global market [14]. Such a competitive approval process can be incredibly challenging if it opposes public interest or if third-party stakeholders intervene [14]. Due to mining being a strategic sector for most African countries, obtaining sector-specific approvals may be complex and uncertain. South Africa’s ministerial consent is often required to implement mining transactions, which can take three to twelve months (or even longer) to receive this consent [15].

South Africa still possesses great prospects for foreign investors who understand the regional market realities and can mitigate risk. New laws such as the Competition Amendment Act 2018 elevated the importance of public interest review, which means reviewers may grant an anti-competitive merger if it addresses considerable public interest or results in technological efficiency that will offset the negative impact on market competition [14]. The embracement of ESG will also drive and affect how M&A activities are implemented.

4.4. Mozambique

With its large coal reserves and great potential for additional mineral deposits, Mozambique is uniquely positioned in China's foreign mining investment strategy. Apart from the vast coal resources, recent investments have focused on heavy mineral sands useful for various industrial purposes.

Mozambique had many reforms to the legal systems and raised its environmental protection policies. The country's cross-border trade and investment improved over recent years by refining its business environment. New reforms introduced by the government include stricter anti-corruption measures, tax and customs incentives, compulsory independent audits, and export licenses, which work to build investor confidence and encourage investors to view Mozambique as a desirable investment destination [16]. Tax and custom incentives under the Tax Incentives Code include deductions and exemptions from Value Added Tax for imports of specified equipment, deferred tax payment, and accelerated depreciation of new or reinstated buildings and equipment; all aimed to encourage and benefit foreign investors in Mozambique [16]. The Ministry for Land and Environment

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is responsible for regulating the environment. Small-scale mines will only be subject to Basic Rules on Environmental Management for Mining Activity to mitigate environmental damage and protect human health. Larger mines involved in the extraction of minerals for construction and exploration will be required to submit an environmental management (EM) plan, including a monitoring and rehabilitation program and an emergency and risk situation control program [17]. The government also passed green policies to work towards reducing greenhouse gasses.

Most foreign investments have the same rights and obligations as local investors [16]. However, distinctions in Mozambique mining laws exist between rights obtained by Mozambican nationals and those that foreign investors can get. Mining passes, marketing licenses and certificates may only be granted to Mozambican citizens or companies fully owned by Mozambican individuals. Furthermore, companies can only acquire mining concessions under Mozambican laws; foreign investors can hold companies under the condition that the company includes Mozambican nationals [17].

5. Challenges Facing Chinese Investors in Africa

5.1. Political Risks

Political risks are quite prominent problems that exist in many African countries. Civil conflict and fragmentation within the African countries' ruling parties often cause major failures in state-owned enterprises and deplete investor confidence. It may result in business losses due to a country's political decisions and actions. One example is Eskom in South Africa, whose poor policy implementation has caused unreliable energy supply and major economic losses. In August 2022, South Africans experienced Stage 6 load shedding, which means areas take shifts and undergo six hours per day without electricity. This power outage resulted in an economic loss of over ZAR 4B (USD 241M) daily. Mineral sales were reduced by 14.4% in 2022 [18].

The Russia-Ukraine war also interrupted mineral sales with high fuel prices, food insecurity, and inflation in many African countries. In response to global inflation, workers in the mining sector strike for salary increases to compensate for the rising cost of living. These strikes further plummeted mineral production. There is an urgent need for African countries to take action in their internal governmental management to change the political climate for foreign investment in Africa.

5.2. Social and Economic Instabilities

The pervasiveness of corruption also has severe economic implications on African countries and negative perceptions by Chinese investors. Governmental officials can keep valuable resources to benefit themselves or use their status to carry out activities after receiving bribes. This inefficient use of politicians' power creates severe issues for the African government's credibility and goes against the welfare of their citizens, further contributing to economic instabilities in those countries.

The high unemployment rate, wealth and social inequalities, and restricted and unequal access to public services cause civil unrest and dissatisfaction among workers in the mining sector, decreasing efficiency and productivity.

6. Conclusion

China’s expanding industrial development has led to a rising interest in mining CBMAs, particularly in Sub-Saharan Africa, due to its high demand for essential resources. Hence, the M&A and foreign investment policies of the involved parties should be evaluated to raise the success rate of such transactions. Many of these African countries are along the BRI route, which aids CBMAs in Africa through greater intergovernmental collaborations with China in policies and creating special economic zones like OCZs. China’s outbound M&As will remain focused on African companies’ data compliance while keeping in mind their environmental goals to go green. Obstacles and risks persist due to corruption and government fragmentation, and the rising concerns of unemployment and great income inequalities also lead to unrest that discourages foreign investors. However, African countries are really working to improve their political climate by introducing new reforms, including anti-corruption, tax cuts, and independent audits aimed at reducing transaction costs and political risks. There is also great importance in considering public interests and technological contributions that are unique to developing countries like Africa, which may be used to Chinese investors' advantage to gain favorable terms when working with governmental authorities. The study has potential limitations where legal policies are not discussed in relation to active cases that can demonstrate their effectiveness due to limited data published on CBMA deals. Further studies may inspect various case studies of mining CBMAs between China and Africa under their legal and political climates. Studies may also look deeper into the related risks of mining CBMAs in Africa and ways of addressing such issues to create a better trade environment for the parties involved. A bright future awaits Chinese mining CBMAs in Africa if there is full comprehension of local policies and preferences, and can transform risks into opportunities.

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