Legal Problems and Solutions of Village Environment Protection Infrastructure Investment and Financing in China

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Abstract. Village environment protection, infrastructure construction should be strengthened in village ecological civilization construction. Village environment protection infrastructure construction is critical in investment and financing problem. Village environment protection infrastructure has problems of insufficient aggregate investment, indefinite investment direction, simplified investment model, imperfect legislation, etc. thereby hindering village environment protection infrastructure construction seriously. Related legislation of village environment protection infrastructure, rural environment fund system as well as fiscal and tax system are perfected. Investment and financing mode is guided, which is dominated by the government and participated by multiple subjects jointly. It is a necessary approach for investment and financing of village environment protection infrastructure.

Introduction
Ecological civilization was discussed for the first time in the report of the 18th CPC National Congress. 'Beautiful China' is regarded as a grand goal of ecological civilization construction in the future for the first time. Ecological civilization construction is discussed in the height of overall layout. However, there are still many problems in village ecological construction under 'five-in-one' strategic background, wherein infrastructure construction is the key in rural ecological construction. Fund deficiency is the actual problem in ecological construction. Financing is the key in ecological construction.

Overall Situation of Village Environment Protection Infrastructure Investment and Financing in China
Overall situation of village environment protection infrastructure investment and financing in China can be analyzed from the following four aspects. Firstly, environmental protection investment scope in China includes the following three aspects mainly according to current caliber of environmental protection investment statistics in China from the perspective of infrastructure investment direction: urban environmental infrastructure construction investment, industrial pollution source control investment and construction project 'Three Simultaneities' investment. In recent years, urban environmental infrastructure construction investment accounts for the largest proportion in general investment of environmental pollution control in China, which is followed by construction project 'Three Simultaneities' investment, and industrial pollution source control investment accounts for the smallest proportion. Secondly, current investment subjects of village environment protection infrastructure include government subject, enterprise subject and other financial institutions mainly from the perspective of investment subject. However, government subject is in the dominant position. Secondly, aggregate financing of national environmental protection infrastructure is increased slowly and gradually from the perspective of aggregate financing. However, aggregate financing is different greatly between urban and village environment protection infrastructure. Aggregate financing of village environment protection infrastructure is greatly lower than urban environment protection infrastructure, and the growth speed is slow extremely. Finally, financing model is analyzed.
Financing of village environment protection infrastructure mostly belongs to single government dominant mode in China. In recent years, some new financing models are emerged, such as PPP, TOT, etc. PPP (Public Private Partnership) refers to a cooperation mode between public sector and private enterprise. It is a project financing mode of public infrastructure. Private enterprise and government are encouraged for cooperation and participation in public infrastructure construction under the mode. Its Chinese meaning is shown as follows: public, private and partnership. Architecture of PPP model is shown as follows: industrialization advantage of use of private resources is utilized from the perspective of public utility demand. Government and private enterprises cooperate for joint development and investment, construction. Cooperation mode of public utilities is maintained and operated, namely the cooperation partnership between the government and the private economy in the public field. TOT (Transfer - Operate - Transfer) is the short form of Transfer—Operate—Transfer. It refers that the government signs franchise agreement with investors. Then, benefited public infrastructure projects are transferred to private investors for operation, wherein the public infrastructure projects are put into production. Fund can be financed from investors in one time by the benefits of the facilities within several years in the future. The fund is used for constructing new infrastructure projects; investors can transfer the facilities to government for management for free after expiration of franchise term.

**Related Legislation Condition of Village Environment Protection Infrastructure Investment and Financing in China**

Related legislation of village environment protection infrastructure investment and financing is not perfect in China. Legislation includes three aspects mainly. The first aspect is current direct specification about environmental protection; the revised 'Law of Environmental Protection of the People's Republic of China' was approved through voting in 2014 during the eighth meeting of the 12th session of the standing committee of the National People's Congress. The environmental protection law is the most severe in the history, which was implemented since January 1, 2015. The red line of ecological protection is included into law for the first time. Supervision and administration responsibility of the government on environmental protection is further defined. Basic systems of environment protection are perfect in the aspects of total pollution load control, environment and health monitoring and impact assessment, joint prevention in different administrative zones, etc. Enterprise responsibility in prevention and control of pollution is strengthened. Legal sanction of illegal behaviors is enlarged. The second aspect is shown as follows: the State Council promulgated 'Environmental Protection Management Measures of Construction Project' jointly in 1986 in the name of Environmental Protection Committee of the State Council and State Development Planning Commission aiming at environment protection specification of project construction. 'Provisions on Environmental Protection Design of Construction Projects' was formulated in 1987. 'Regulations on Environmental Protection and Management of Construction Projects' were promulgated in 1998 in the name of state council document. In addition, the State Council formulated 'Regulations Concerning the Prevention and Cure of Pollution Damage of Marine Environment by Seashore Construction Project' in 1990. Water Resources and Power Ministry formulated 'Environmental Protection Management Method of Thermal Power Construction Project (Trial)' in 1987. The Ministry of Chemical Industry formulated 'Several Provisions on Environmental Protection and Management of Chemical Industry Construction Projects' in 1987 and formulated 'Appraisal Methods of Excellent Environment Impact Report of Chemical Industry Construction Projects' in 1994. Ministry of Energy promulgated 'Regulations for Preparation of Environmental Impact Assessment Outline of Thermal Power Construction Project (Trial)' and 'Notice of Environmental Impact Assessment Charging Principles and Reference Limit of Thermal Power Construction Project (Trial)' in 1990. Then, People's Construction Bank of China formulated 'Notice about Examination and Approval Authority Problems of Construction Project Environment Impact
Report' and 'Environment Protection Management Methods of Construction Projects' in 1986. The final aspect is international treaties which are participated and signed by China. More than two hundred multilateral environmental agreements have been reached in the international community. Dozens of the agreements contain terms of environmental protection. For example, it is required that member countries should bear the obligations of providing environment protection for infrastructure in International Convention for the Prevention of Pollution from Ships. Marine environment is free from gasoline pollution by ships or shore equipment. In addition, 'Montreal Protocol on Substances that Deplete the Ozone Layer' has the tenets that prevention measures are adopted for canceling total global emission of ozone depleting substance consumption, thereby protecting ozone layer. It is required in the agreement that all countries should control to use, collect and discharge more than 20 substances, which can damage ozone layer. These substances include freon, methyl chloride, etc.

Existing Legal Problems of Village Environment Protection Infrastructure Investment and Financing in China

Current situation of environmental protection infrastructure investment and financing legislation in China is combined for analysis from the legal perspective. There are following problems: (1) 'top-down' decision-making mechanism and legal norms hinder investment and financing. The 'top-down' decision-making mechanism is adopted for rural public product supply in China for long term. Government bears important task of providing public products. It is responsible for dominating the categories and quantity of rural public products. Consumption subjects (peasant households) of rural public products have less and even no initiative in the aspect of demand expression. The supplier (government) of rural public products is the subject of product demand decision-making. All governments are composed of people according to the perspective of public choice theory, which are consistent with the features of 'rational man', thereby pursuing the purpose of maximizing own benefits. The government always makes some decisions inconsistent with farmers' interests for the consideration of work achievement and own interests during supply of rural public products. The 'top-down' selection mechanism of rural public goods leads to excess supply of some public products. However, the supply of some public products is insufficient seriously. (2) Unclear property rights system affects investment and financing. In the construction of rural public products, borrowers do not have enough confidence and assurance to repayment source in view of the public product characteristics and the difference of derivative gain form and characteristics from general merchandise. Borrowers are also lack of confidence in loan repayment. It is determined by nature on public product property right. Therefore, it is critical for establishing the repayment confidence between the borrower and the lender to make clear the property right of public products, guarantee yield right, legitimate disposition right and legitimate protection right of public products. In China rural area, public product construction project should be made clear, the property right of public products construction project should be made clear aiming at financing of public products, thereby making clear respective rights and responsibilities of constructers, beneficiary and management personnel. These are system factors producing important influence on both financing supplier and demander of rural public products in China. (3) Difficult financing is caused by imperfect guarantee mortgage system. Local government promises to repay by future fiscal income in supply of rural public products, loan from the bank institution with the reputation thereof is a repayment mode which is adopted generally. Loans are repaid mainly through charging from project users as well as inner and outer environment analysis of fiscal budget of local government in rural infrastructure projects. Since infrastructure projects are generally characterized by high investment and longer recycling time, it is far insufficient to repay the loan by charging; there is general phenomenon of government 'final analysis' currently. Local government assumes the role of final repaying party. Government repayment suffers from credit deficiency risk due to some artificial factors. Government repays mainly through transferring land use right and tax. Government repayment is random due to insufficient specific restraint mechanism. Fund coordination mainly depends on idea and
consciousness of government leaders. Bank is the lender of fund, when loans are released through credit loan mode, local governments' repayment ability reputation, loan repayment concept and consciousness are not investigated deeply, which just become formalistic. Therefore, credit evaluation is not precise enough, and greater repayment risks are produced. (4) Investment and financing risks are enlarged due to imperfect rural financial supervision system. Currently, environmental responsibility and supervision are less regulated in China relevant financial legislation. Main financial institutions include rural credit cooperatives, rural village banks and rural financial mutual aid society, etc. in rural areas. The financial institutions have relatively weak ability to avoid risk, therefore rural financial markets are supervised insufficiently inside and outside, and investment and financing risks are increased.

**Investment and Financing Solutions of Village Environment Protection Infrastructure in China**

In conclusion, village environment protection infrastructure has problems of insufficient aggregate investment, indefinite investment direction, and simplified investment mode, etc., related legislation is still not perfect at the same time. Foreign experience and specific conditions in China are combined. We should enlarge investment on village environment protection infrastructure continuously. Government leading role should be emphasized. Diversified financing mode should be advocated. Meanwhile, perfection of relevant legislation should be accelerated. First of all, legal systems of the village environment protection infrastructure investment and financing should be established and improved. Environment clauses of investment and financing legal regulation are not sufficient, environment clauses and beneficial experience of solving disputes should be learned from development banks in the United States and Asia in order to solve the legal difficulty. Environment clause for embodying spirits of environment and resource protection law should be added in China domestic legal regulation about investment and financing and international bilateral investment agreements. Dispute solution mechanism adapted to corresponding legal order should be established. Environment responsibility system of investors and financers should be perfect. Environment compensation liability of lender and shareholder as well as social responsibility of enterprises on environment should be made clear. Secondly, related fiscal and tax legal systems of environmental investment and financing should be perfected. Tax expenditure system, fiscal budget and transfer payment, the government green procurement and many other fiscal and tax systems related to environmental investment and financing are perfected and adjusted. Thirdly, legal system of rural environment fund should be established and perfected. Local governmental environmental fund, national environmental fund and securities investment fund legal systems are perfected, initial funding source of local government environment fund should be changed. Fiscal funding should be regarded as complement on the basis of pollutant discharge fee, and initial capital of fund should be stabilized; Fund operation modes of 'grant subsidy' and 'soft loan' should be changed. Low-interest loan mode should be adopted properly. The recovered loan principal and interest, profits and other funds should be invested into local governmental environment fund for recycling. Finally, an investment and financing mode should be advocated, which is dominated by government and participated by multiple subjects jointly. China village environment protection public product market supply mode enriches and develops government supply mode. The government should formulate corresponding supporting policies to support village environment protection public product supply industry.

**References**


