

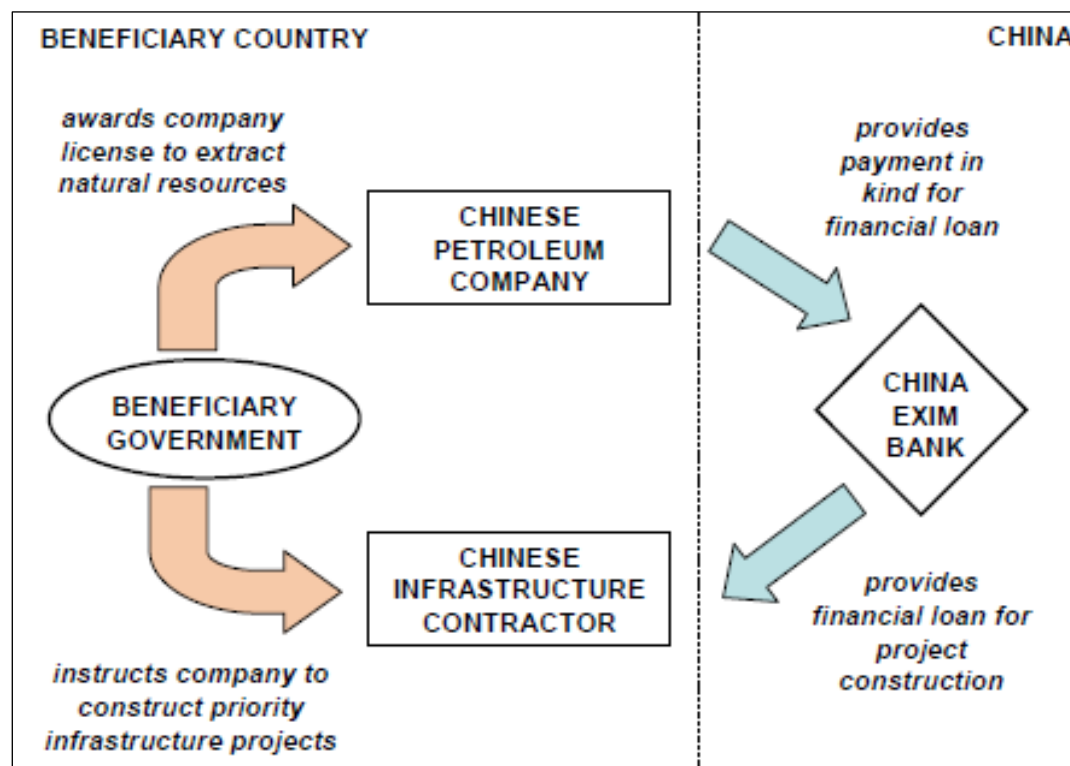
# Legal Character of Sino-African State Trading in Services

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# The Trading Model I

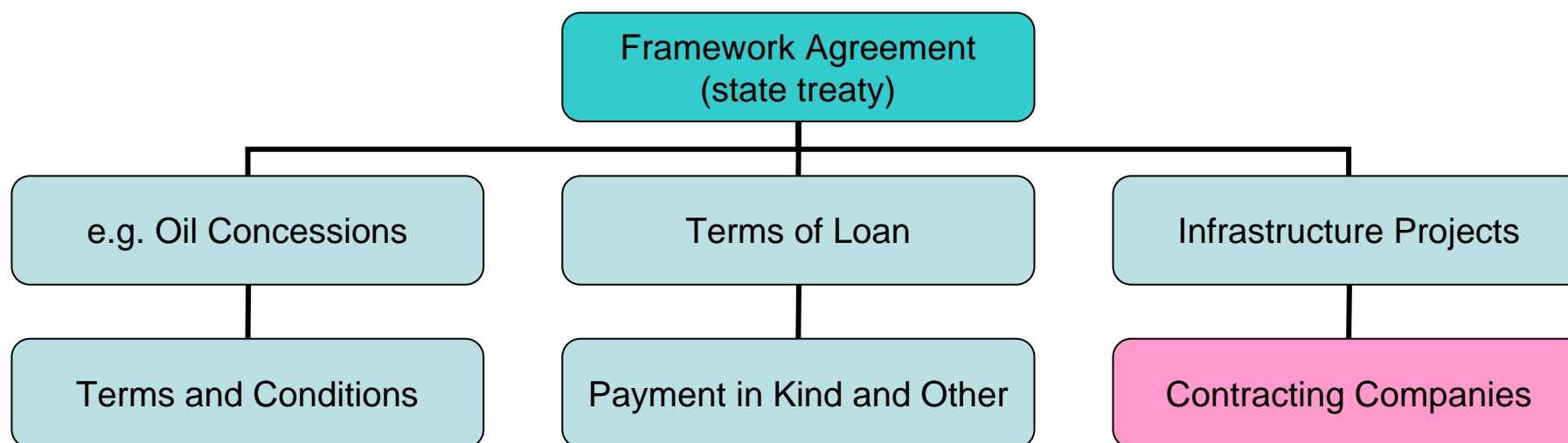
## The Angola-Model:



Source: *Building Bridges*, World Bank (2008).

# The Trading Model II

## The Legal Framework for the Angola-Model



# The Trading Model III

## Sino-African Services Trade in Numbers:

- In 2007, **800 Chinese companies** were operating in **49 African countries**
- Services trade went from **2 billion USD in 2001** up to **9.5 billion USD in 2006**
- In 2008, the **majority** of equipment for the SSA **telecommunication sector** came from Chinese companies (Huawei, ZTE, ASB, China Mobile)

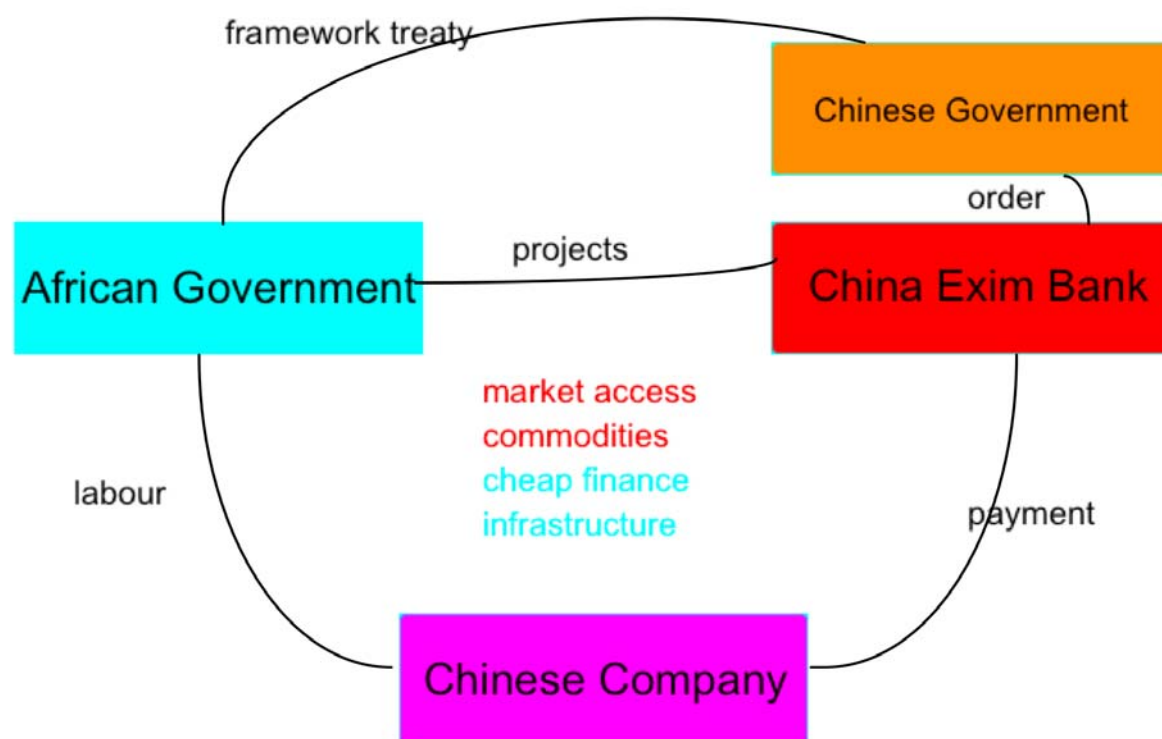
# The Problem I

## Contracting Companies

Chinese companies work in the African services sector as a consequence of Angola-Model Agreements:

- Is that a case of **Public Procurement**?
- Is it a case of **Preferential Market Access**?
- What about **competition** policies?

# The Problem II



# The Problem III

- It is not known whether the contracts between Chinese companies working in Africa and the China Exim Bank/African governments are based on Private or Public law.
  - The implications of either one are manifold: dispute settlement processes, GATS application, limitations to the content by law, aso.
- Transparency in the interest of all parties!

# Legal Character No 1

## Private Law:

- Freedom of choice of law (host country or general principles of law)
- Choice of tribunal (host country or dispute settlement body)
- Int. Trade Law not directly applying (nor other int. legal norms)



# Legal Character No 2

## Public Law:

- Governing law = public int. law
- Tribunal = int. dispute settlement body (if)
- Restriction by ius cogens, obligations from other international treaties entered by the two parties, formal requirements by VCLT

# Legal Character No 3

- No int. binding norms on public procurement: no violation of int. trade law as long as the contracts are concerned with procurement (tied aid – this practice has come under pressure recently)
- In some cases the procurement-character might be questionable: violation of MFN (GATS)

# Implications for Africa

- Careful with Angola-Model loaning: may not be sustainable (development aspects, int. politics, legal commitments)
- However: currently more freedom in Angola-Model (Barter-Trading) systems than in FTAs or simple GATS trading in the services sector

# Way Forward

- More transparency required in order to restore good faith of the int. community in Chinese-African trading and to protect better the African economy and people
- Engage in int. debate on public procurement regulations and, finally,
- Join int. treaty on public procurement

# Conclusion

Although the exact numbers are missing, there is evidence suggesting that Chinese service providers gain preferential market access to the African market as a consequence of Angola-Model loaning.

Despite the legal uncertainties, and possibly positive impact on African economies, focusing on the stimulation and creation of local (regional) services markets would provide more advantages and be more sustainable in legal and economic terms.