



Belt and Road Initiative
The view from **Africa**

Positive outlook

62%

of African participants aim to maintain or increase their involvement in the Belt and Road Initiative (BRI).

Legal risk

66%

of African participants and 71% of Chinese participants see legal and regulatory risk as a major concern in BRI projects.

New technology

While many traditional types of infrastructure remain central to BRI, digital technology is an increasingly important area for growth and investment.

BRI satisfaction

62%

of African participants are satisfied with the outcome of their involvement in BRI, with only 30% expressing dissatisfaction.

Investment boost

72%

of African respondents expect some nations to be more open to new BRI projects, as they seek post-pandemic economic growth.

Green focus

BRI 2.0 will help to promote the environmental priorities of many BRI participants, as well as new partnerships and more sustainable projects.

Working together

68%

of African respondents have participated in BRI-related joint ventures or partnerships, with 60% ready to do so in future.

More opportunities

70%

of African participants believe BRI 2.0 will make BRI more open to non-Chinese participants, as do 83% of Chinese respondents.

Health Silk Road

The Covid-19 pandemic is leading to changes, including more investment in BRI healthcare projects, anticipated by 86% of African participants.

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Methodology

In 2020 Acuris, on behalf of CMS, surveyed 500 senior executives to gauge their views on various aspects of the Belt and Road Initiative (BRI). Of the 500 respondents, 50 were either based in sub-Saharan Africa or predominantly working on BRI projects in the region, and are referred to in this report as 'African respondents' or 'African participants'. (Responses from North African participants were analysed in our report on MENA – see page 46 below.) Another 100 respondents were from Chinese entities. All respondents were either currently active or planning to participate in BRI projects. In order to ensure confidentiality, the identities of all respondents will remain anonymous.



In September 2013, Chinese President Xi Jinping proposed a Silk Road Economic Belt and in October, a 21st-Century Maritime Silk Road, together now referred to as the Belt and Road Initiative. The initiative attracted considerable attention from the international community and won a positive response from the countries involved. It integrates the historical symbolism of the ancient Silk Road with the new requirements of today. The initiative is a Chinese program whose goal is to maintain an open world economic system, and achieve diversified, independent, balanced, and sustainable development, and also a Chinese proposal intended to advance regional cooperation, strengthen communications between civilizations, and safeguard world peace and stability.

The Leading Group on the Construction of the Belt and Road, May 2017



Belt and Road Initiative

The view from Africa

China's Belt and Road Initiative may be the most ambitious development strategy ever.

Since it was launched in 2013, BRI has grown into a multifaceted global initiative. As well as creating infrastructure, it has sought to support priorities such as policy coordination, connectivity, unimpeded trade, financial integration, and connecting people.

Most African nations have now signed up to BRI. According to Chinese sources, when Botswana and DR Congo joined earlier this year, it brought the total of African countries in BRI to 46, with 40 of them in sub-Saharan Africa. In December 2020, China and the African Union also signed an agreement to promote BRI: the first BRI cooperation agreement China has reached with a regional international organisation.

A few African states – Burkina Faso, Central African Republic, Eritrea, Eswatini, Guinea-Bissau, Malawi, Mauritius, and São Tomé and Príncipe – remain outside BRI. But these nations may still enjoy Chinese investment (e.g. there are significant Chinese mining interests in CAR, and China's free trade agreement with Mauritius, its first with an African nation, recently came into effect – see page 11).

China continues to invest and develop trading relationships across the region, and Chinese companies continue to win African contracts. But as the global pandemic rages, and as trade and globalisation are buffeted by geopolitical tensions, there is debate about the long-term future of BRI.

Building on a major survey of BRI participants, we are publishing a series of reports – of which this is the sixth – to assess the challenges for BRI and the steps that BRI participants can take to achieve both success for themselves and a positive future for BRI. In this report we focus on BRI in sub-Saharan Africa, having covered African nations on the Mediterranean in our MENA report.

China is so far the only major economy to have grown back beyond its pre-pandemic level, with total GDP growth of 2.3% for 2020, and an additional 0.6% quarter-on-quarter in the first quarter of 2021. Exports have grown throughout the second half of 2020 and the first quarter of 2021: in dollar terms they were 30.6% higher in March 2021 than in March 2020.

This growth augurs well for the future of BRI and Chinese investment in BRI nations. But, as our report shows, an even greater impact may come from China's pivot towards greener and more sustainable principles for BRI, and an increasing emphasis on the Digital and Health Silk Roads.

We should like to thank all those who participated in our survey and, in particular, our interviewee in this report, Mohan Vivekanandan. We hope you find the report interesting and would be delighted to discuss any of its contents further with you.



Hugo Coetzee
Partner, Chairman CMS Africa
T +44 20 7367 3395
hugo.coetzee@cms-cmno.com



The Belt and Road Initiative in Africa

Key points

- » Sentiment towards BRI is relatively positive in Africa, with a majority of African respondents wanting to increase their involvement in BRI projects.
- » While a small majority of African respondents have found involvement in BRI projects more challenging than expected, a majority have also been satisfied with the outcome of their involvement.

China has long-standing links with many nations in Africa. As well as financing projects, it has developed strong trade relationships across the continent, becoming Africa's biggest trading partner over a decade ago.

A lot of China's investment into Africa, and lending to African nations, had in fact occurred by the time BRI was announced in 2013. Chinese companies have delivered hundreds of infrastructure projects in Africa over the past two decades, and Chinese finance has backed many of these projects, as well as sometimes being used for other purposes. The China Africa Research Initiative at Johns Hopkins University's School of Advanced International Studies estimated that between 2000 and 2019 Chinese financiers signed 1,141 loan commitments

worth USD 153bn with African governments and state-owned enterprises. Perhaps unsurprisingly, some commentators see BRI as an attempt to bring coherence to activities that were already well underway when it was launched.

BRI's vague boundaries and China's pragmatic attitude also mean that it is difficult to differentiate BRI activity in Africa – and elsewhere – from other forms of Chinese economic participation. While coastal nations in East Africa and North Africa form part of China's original '21st Century Maritime Silk Road' (linking the South China Sea, the Indian Ocean, the South Pacific and the Mediterranean), any African nation is now able to fit comfortably into BRI, whether or not it forms part of a 'traditional' trade route.

Enthusiasm for BRI

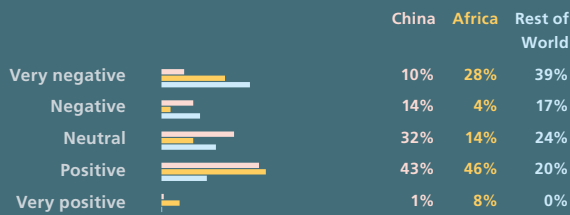
Which of the following best describes your organisation's intentions regarding involvement in BRI-related projects?



In overall terms, what was the sentiment of your organisation regarding BRI 12 months ago?



What is it now?



How would you rate the process of participating in BRI-related projects, based on your experience?



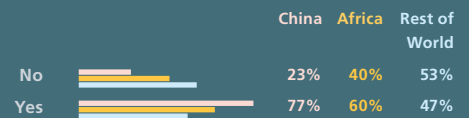
Generally, what has been your level of satisfaction in terms of the process and outcome of your involvement in BRI projects?



Have you participated in a partnership/JV as part of your involvement in BRI projects?



Would you consider such partnerships in the future?



How would you rate the overall experience of working with Chinese partners/JVs?



How would you rate the overall experience of working with cross-border, non-Chinese partners/JVs?



Have you encountered any differences in working with Chinese partners/entities on BRI projects compared to non-BRI projects?



If yes, was it generally easier or more difficult to work with a Chinese partner/entity on a BRI project compared to a non-BRI project?



One of the most recent examples of BRI's flexibility is the support China has pledged for the African Continental Free Trade Area (AfCFTA), which came into being in January. As well as helping to broker the agreement that created AfCFTA, and providing funding and training, China is likely to assist in the development of trade corridors across the continent and other infrastructure. This will facilitate trade between African nations – but will also complement China's investment in many African free trade parks and zones, enhancing its supply chains and the local operations of Chinese businesses. Collectively they stand to make China the biggest non-African beneficiary of AfCFTA.

During his African tour at the start of 2021, China's foreign minister Wang Yi spoke of boosting Chinese-African cooperation in several areas.

- Health cooperation, to defeat the coronavirus, and in the prevention of major diseases.
- Industrial capacity cooperation, helping Africa enhance its home-grown production capacity.
- Regional connectivity, increasing infrastructure, trade and financial connectivity to build a connected Africa.
- Agricultural cooperation, to enhance food security.
- Digital cooperation, to build a 'digital Africa'.
- Environmental cooperation, on climate change response and in pursuit of sustainable development.

- Military and security cooperation, to help Africa enhance its peacekeeping and counter-terrorism capacity.

As our report shows, there is extensive overlap between this programme for cooperation and BRI. While African projects can be seen in the context of BRI worldwide, it is also important to see BRI as one aspect of Africa's much broader relationship with China.

Working together

Joint ventures and other partnerships are well suited to addressing the challenges of BRI projects. Pooling resources and knowledge can help to mitigate risk, share skills, encourage local acceptance and move projects forward more rapidly.

A majority (68%) of our African respondents have participated in a partnership or JV as part of their involvement in BRI. Those who have had partnerships or JVs with Chinese entities tend to be positive about them, with more regarding them as positive (41%) than negative (30%). Furthermore, 60% would consider such partnerships in future.

The CIO of a South African investment fund observed that such partnerships allow the parties "to render services on a larger scale". He added that "pooled capabilities lead to significant development gains, and association with companies with the same objectives provides better scope for opportunities for us in the long run."

For the CFO of a telecoms infrastructure operator in Kenya, "positive outcomes can be achieved when parties involved

"An undertaking of such massive proportion is expected to hit a few bumps along the way, but China has been strong in their opinion and confident about the outcomes."

**Managing director,
Professional services firm,
Mauritius**



"As of now, we are expanding in African markets and our teams have been sourcing useful prospects for a more guided, albeit accelerated, growth approach."

Chinese supplier



Attitudes to BRI

Sentiment towards BRI is relatively positive in Africa, with 62% of the African respondents in our survey aiming to increase their involvement in BRI projects – the highest percentage we found anywhere outside China. We also found higher levels of satisfaction with BRI projects in Africa than in any other region except China.

While there has been some downturn in enthusiasm for BRI – with those describing the sentiment of their

organisation towards BRI as positive falling from 64% to 54% over 12 months – this deterioration in sentiment has been far milder than that seen elsewhere.

Despite the region's relative enthusiasm for BRI, however, 50% of African respondents said that their BRI involvement was more challenging than they had expected (compared with 40% of Chinese respondents who said the same).



are understanding and able to decide on activities that are mutually acceptable, without forgoing social guidelines.”

However, a large minority of African respondents (44%) have also encountered differences in working with Chinese entities on BRI projects compared to non-BRI projects, with nearly all of those who noticed differences also finding that the experience was more difficult.

One criticism is that sometimes Chinese partners did not pay enough attention to the needs of local communities and domestic partners. The CEO of a South African investment fund said that “local sentiments were not given the promised priority, with more stress on benefiting China’s intentions.”

Some African respondents felt that Chinese partners could be overly ambitious in BRI projects. According to one, “even after the problems were encountered due to their overambition, they lacked the perception to acknowledge these issues and act accordingly”.

A Nigerian CEO agreed: “It felt like entities were overambitious laying out the plans for development. There were legal and

regulatory issues which should have been studied and understood prior to elaborate planning.”

Our Chinese respondents likewise mentioned areas where their foreign partners could have made improvements, like the director of a Chinese fund who lamented a “lack of trust”, and the Hong Kong infrastructure operator who observed that “cultural issues became evident as soon as the initial talks began, and did raise some serious concerns on compatibility.” Some Chinese respondents also mentioned a mismatch between the capabilities of their own well-resourced entities and those of their project partners.

China has attempted to address some of the issues mentioned here – and many others – in its shift to ‘BRI 2.0’ (see page 15) and other initiatives to improve aspects of BRI such as governance and sustainability. But since some problems – particularly in consistency – arise partly from the lack of central control in BRI, the new approach may not be fully realised for some time. Until then, investors and contractors can still aim to reach better outcomes through clearer communication and by planning project milestones and goals well in advance.

“We look forward to many more partnerships since we are involved closely with the BRI project and commercial considerations will call for better opportunities in Africa.”

**Head of port investment,
Chinese infrastructure
operator**



“Some nations will be open to BRI now that the economic scene has changed. The pandemic has led to many problems with business closure and lack of availability of funding as well. Linking to BRI may be the most practical approach for some countries to address developmental issues.”

**CFO, Infrastructure operator,
South Africa**



BRI: A snapshot of diversity

There is no standard African experience of BRI. The variety of African approaches to the initiative is as great as the variety of African nations. And the priorities of Chinese investors also differ between countries.

Here we look at three contrasting nations, which have all seen strategic Chinese investment. But their strategic significance is different, and this has helped shape their divergent engagements with BRI.

Djibouti: Strategic location

Although Djibouti is one of Africa's smallest nations, it has attracted significant levels of Chinese investment, thanks to its strategic position at the mouth of the Red Sea. Like the US, France, Italy and Japan, China also has a naval presence in Djibouti – its only overseas military facility.

At the end of 2020, China Merchants Group signed a deal to expand the Port of Djibouti – in which it already has a stake – into a regional business hub, as part of a development reportedly worth more than USD 3bn. It also has a minority stake in the Doraleh Multipurpose Port.

Other projects with Chinese involvement have included the USD 4bn railway from Addis Ababa to Djibouti City (giving Ethiopia an important connection to the coast); the submarine communications cable between Djibouti and Pakistan; Djibouti International Free Trade Zone, which will be the largest free trade

zone in Africa when completed; a 765km pipeline to bring Ethiopian natural gas to Djibouti's ports; and a USD 330m pipeline carrying potable water from Ethiopia to Djibouti.

Perhaps unsurprisingly, the majority of Djibouti's public debt is now owed to China.

DR Congo: Natural resources

China's stakes in African cobalt mines mostly pre-date – and in some cases prefigure – BRI. In 2007, for example, China struck a USD 6bn 'minerals for infrastructure' deal with the Democratic Republic of Congo, which gave China rights to mine cobalt and copper in return for the construction of infrastructure such as hospitals and highways. DR Congo has just over half of the world's total cobalt reserves, and in 2020 accounted for over two-thirds of mine production. China is the world's biggest producer of refined cobalt (most of which originates in DR Congo), as well as the biggest consumer of cobalt, largely using it in the manufacture of rechargeable batteries.

DR Congo only signed a memorandum of understanding on BRI in January 2021, when it became the 45th African nation to join the initiative.





(China granted it some debt relief at the same time, and promised other support to help it fight the Covid-19 pandemic.) BRI will add a new layer to the country's existing relationship with China – and BRI projects may enhance aspects of that relationship, e.g. by improving connectivity, increasing efficiency, expanding the scope for synergies, or facilitating the refinancing of previous ventures – but it won't reinvent that relationship, or revolutionise the various commercial links between the two countries. How far it will further transform local infrastructure is currently unclear.

Mauritius: African entrepôt

Mauritius is (per capita) one of Africa's wealthiest and most developed nations, its traditional agricultural base having been supplemented not only by textiles and tourism but also by a thriving financial services industry. It is the highest-scoring African state in both the World Bank's Ease of Doing Business rankings and the World Economic Forum's 2019 Global Competitiveness Index.

It is also the first African nation to have negotiated a free trade agreement (FTA) with China.

The FTA, which came into effect in January, will probably not reduce the trade imbalance in goods which exists between the two nations. Chinese exports to Mauritius are worth many times more than the goods China imports from Mauritius. However, it may facilitate some Chinese exports to other African nations via Mauritius, especially as the African Continental Free Trade Area (AfCFTA) is now in operation.

Mauritius may gain more from the FTA in areas where its activity dovetails with BRI. In particular, enabling investment across Africa is already a core Mauritian activity. A 2018 study suggested that the facilitation of cross-border investments and related activities comprised 60% of the Mauritius International Financial Centre's economic value-add.

Although China has a number of its own bilateral investment treaties and tax treaties with African nations, the FTA will encourage Chinese entities to realise additional opportunities by structuring deals to take advantage of the formidable Mauritian portfolio of BITs and double tax agreements.

The investment chapter of the FTA, covering areas including investor protection and dispute mechanisms, offers greater security to Chinese enterprises that invest in Mauritius, and will make it a more attractive platform for onward investment into continental Africa. So will provisions such as the development of a Renminbi clearing and settlement facility in Mauritius, while a commitment for China and Mauritius to share fintech knowhow is likely to both enhance the status of Mauritius as a fintech hub and increase the presence of Chinese fintech in Africa.

China's links with Mauritius have grown progressively since the two nations established diplomatic relations in 1972. They have included finance and contracting for important infrastructure projects such as the Bagatelle dam and a new terminal at the island's international airport. Other Chinese investments in the country have included the Jinfei Smart City.

However, despite its close links with China, and its willingness to promote BRI projects, Mauritius has not itself signed up to BRI. The reasons are unclear. One common assumption is that Mauritius wishes to avoid antagonising India, its other key economic partner, which has frequently been critical of BRI and which signed its own long-awaited Comprehensive Economic Cooperation and Partnership Agreement with Mauritius just a few weeks after the China-Mauritius FTA took effect.

The FTA includes as an objective "examining the opportunities of international cooperation through the Belt and Road Initiative". Even without joining the initiative, though, Mauritius is well placed to benefit from BRI.



The impact of Covid-19 on BRI projects

Covid-19 has had a significant impact on the global economy. Inevitably, the pace and scope of BRI projects have also been affected, although China has been keen to emphasise that many BRI activities are continuing.

According to official Chinese data, in 2020:

- China's outbound direct investment (ODI) was up 3.3% year-on-year at USD 133bn, but non-financial ODI fell marginally to USD 110bn.
- Nearly USD 18bn of non-financial ODI went into 58 countries participating in BRI, a figure up 18.3% from 2019.
- While the number of major foreign engineering projects increased, the total contract value of newly signed projects (in all nations, not only those in BRI) was down 1.8% year-on-year.

New BRI projects are clearly still happening. But there have also been project delays and cancellations, with supply chains and travel disrupted. In June 2020, the Ministry of Foreign Affairs said that about 20% of BRI projects had been seriously affected by the coronavirus pandemic, with another 30–40% somewhat affected.

However, while it has impeded BRI, the pandemic also has the potential to reinvigorate it. Globally, governments have arranged massive stimulus packages to support their economies. And while this may be more problematic among African nations which already have high debt-to-GDP ratios, some governments at least may be able to capitalise on low borrowing costs to fuel economic growth by investing in infrastructure.

Chinese respondents believe some of this funding will reach BRI projects. More than two-thirds (69%) expect a greater availability of 'cheap money' for such investments, as do 44% of African respondents (with 26% disagreeing). They also tend to believe

that commercial funding will remain available for BRI projects: 38% expect the flow to lessen as banks and investors seek to rebuild their balance sheets, but 46% disagree.

The CFO of an insurer in Nigeria who does not expect commercial funding to diminish told us that "organisations and governments will try and improve trading conditions by providing favourable taxation policies and terms. However, countries that are hosting BRI projects termed controversial could withdraw their support entirely. The debt crunch and pressure from strong political views might result in withdrawals." A significant number (44%) of African respondents believe some governments will use the economic situation as a reason to withdraw from unsuccessful or controversial BRI projects, with 36% disagreeing.

Over two-thirds (68%) of African respondents and over three-quarters (78%) of Chinese respondents expect at least some BRI projects to enjoy more favourable terms, as the Chinese authorities seek to create demand for the output of Chinese companies. Even more (72% of African respondents and 81% of Chinese respondents) believe that some nations will now be more open to new BRI projects, in the hope that these will provide a boost to their economies. In practice this may depend on the project in question. Some, such as renewable energy projects or digital initiatives, could provide a relatively immediate boost. Benefits from larger, more traditional infrastructure projects may take longer to come through.

One thing on which our respondents generally agree is that the pandemic will lead to renewed emphasis on the Health Silk Road (see page 44), with 86% of African respondents expecting this to be the case.

Opinions on the impact of Covid-19 on BRI

In the light of the coronavirus pandemic and its likely economic and political impacts, do you agree or disagree with the following statements?

A greater availability of 'cheap money', through measures to stimulate the international economy, will support more international investment in BRI projects.



China is likely to reduce its emphasis on BRI in favour of supporting more domestic projects.



Some nations will be more open to new BRI projects, in the hope that they will provide an economic boost.



Some governments will use the economic situation as a reason to withdraw from unsuccessful or controversial BRI projects.



The coronavirus crisis will lead to a renewed emphasis on the Health Silk Road, intended to strengthen health coverage in BRI countries through Chinese cooperation and support.



Less commercial funding will be available for BRI projects as banks and investors seek to protect and rebuild their balance sheets.



Some BRI projects will enjoy more favourable terms, as the Chinese authorities seek to create demand for the output of Chinese companies.



Some existing BRI projects will become unsustainable and will have to be restructured or abandoned.



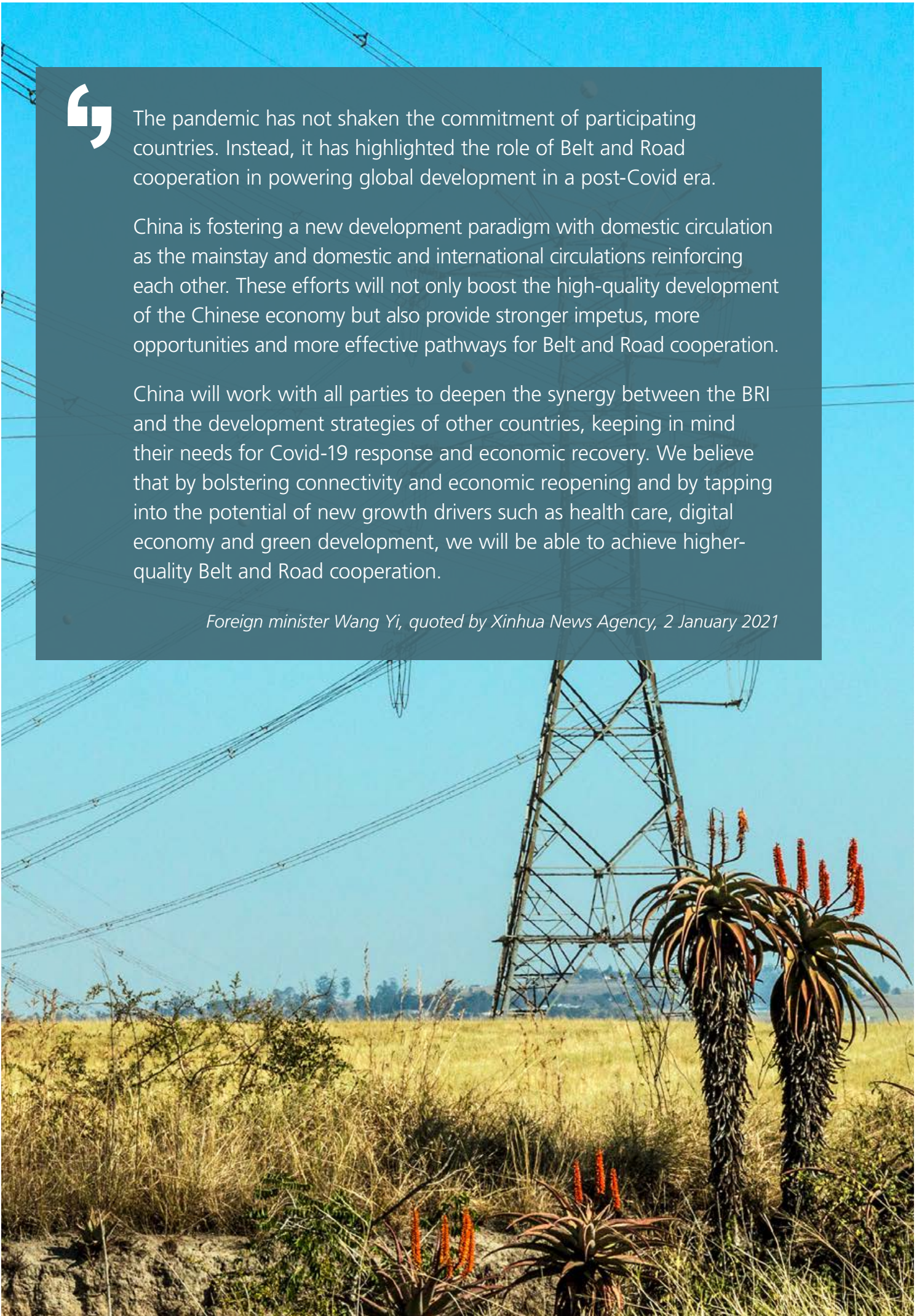


The pandemic has not shaken the commitment of participating countries. Instead, it has highlighted the role of Belt and Road cooperation in powering global development in a post-Covid era.

China is fostering a new development paradigm with domestic circulation as the mainstay and domestic and international circulations reinforcing each other. These efforts will not only boost the high-quality development of the Chinese economy but also provide stronger impetus, more opportunities and more effective pathways for Belt and Road cooperation.

China will work with all parties to deepen the synergy between the BRI and the development strategies of other countries, keeping in mind their needs for Covid-19 response and economic recovery. We believe that by bolstering connectivity and economic reopening and by tapping into the potential of new growth drivers such as health care, digital economy and green development, we will be able to achieve higher-quality Belt and Road cooperation.

Foreign minister Wang Yi, quoted by Xinhua News Agency, 2 January 2021





Belt and Road 2.0: Looking to the future

Key points

- » Launched in 2019, BRI 2.0 addresses many of the points that concern international participants, such as transparency.
- » Chinese participants are enthusiastic about e.g. its increased emphasis on environmental and sustainability issues.
- » Many international participants are not yet positioning themselves to take advantage of the opportunities it offers, with some clearly sceptical about the change it promises.
- » The pandemic is expected to boost the Health Silk Road initiative. There are also significant opportunities for BRI participants along the Digital Silk Road.

China's thinking has evolved since BRI was announced in 2013, and the geopolitical environment has changed significantly. BRI still has strong government support, but as China focuses more on issues such as its domestic economic security, digital development, the reduction of carbon emissions and the financial sustainability of major projects – as well as the need to navigate a world reshaped by the coronavirus – the initiative looks increasingly different from its initial form as a transportation-centred 'Silk Road Economic Belt' running across Asia.

The difference, however, is not quite as great as it may seem. From the beginning, commentators have tended to focus on the size and strategic ambition of BRI projects, and to overlook 'softer' aspects of the initiative, such as 'cultural and people-to-people exchanges', 'mutual learning', 'low-carbon infrastructure construction' and 'policy communication', all of which have been important in China's own view of BRI since the initiative began.

In the absence of any overall system of control or oversight, some projects have reflected these ambitions more consistently than others. One driver behind China's increased emphasis on the need for high-quality, sustainable projects is its wish to avoid any repetition of missteps made by some participants in the early years of BRI. But the drive for higher quality and sustainability also clearly reflects a stronger commitment to greener principles and technological integration.

It also recognises the practicalities of what will be needed to secure commercial funding, as BRI's global model continues to shift from one primarily supported by finance from Chinese policy banks to one that more closely resembles the public-private partnerships and co-financing models familiar from other infrastructure projects around the world.

The two Chinese policy banks, China Development Bank and the Export-Import Bank of China, have reduced their regional lending significantly in recent years. Their lending in Africa during 2020 was at its lowest level since 2008. However, other Chinese entities – including commercial banks and regional funds – have been increasing their activities, and have been increasingly willing to engage in co-financing activities with non-Chinese partners.

Some African nations have already taken steps to meet this shift towards private financing of BRI projects and other infrastructure projects by e.g. establishing or bolstering public-private partnership laws, promoting easier foreign exchange, and clarifying rules on asset repatriation to reassure investors.

In China, the shift was highlighted in the intention to "promote high-quality Belt and Road cooperation" expressed in the Government Work Report delivered in March by Premier Li Keqiang. According to the report, the government is "committed to the principle of achieving shared growth through consultation and collaboration" and "will, with enterprises as the main actors and acting on market principles, set up a sound, diversified investment and financing framework, and work to steadily advance cooperation on major projects and promote infrastructure connectivity."

The metamorphosis of BRI has been gradual, but a key moment came in April 2019, with President Xi Jinping's announcement of a 'new phase' of BRI, during his keynote speech at the second Belt and Road Forum for International Cooperation in Beijing. This was described as 'BRI 2.0' by another speaker at the forum, Christine Lagarde, who at the time was managing director of the International Monetary Fund, and that name is now widely used to refer to it.



Opinions of BRI 2.0

Do you agree or disagree with the following statements about BRI 2.0 and future BRI projects?

BRI will be more transparent than in the past.



In general, BRI will be more open to non-Chinese participants.



Dispute resolution (including cross-border disputes) will become easier.



Procurement processes will be more open and competitive.



Sustainability and environmental considerations will be given greater importance when planning and completing projects.





President Xi spoke of

- Being guided by the principle of extensive consultation, joint contribution and shared benefits.
- Acting in the spirit of multilateralism.
- Pursuing open, green and clean cooperation.
- Committing to transparency and clean governance.
- Pursuing a high standard of cooperation to improve lives and promote sustainable development.
- Adopting widely accepted rules and standards.
- Respecting the laws and regulations of participating countries.
- Giving priority to poverty alleviation and job creation.
- Ensuring the commercial and fiscal sustainability of all projects.

President Xi additionally described reforms that would expand market access for foreign investment, enhance IP protection, increase imports, and facilitate international macroeconomic policy coordination. He also spoke of ensuring the implementation of related policies, including multilateral and bilateral economic and trade agreements, and the revision and improvement of laws and regulations.

Contrasting views of BRI 2.0

In some quarters President Xi's announcement was viewed as a response to claims that BRI was disproportionately benefiting the interests of the Chinese state and Chinese companies over those of China's partners in BRI.

Such claims are not uncommon. One director from a US industrial group active in African BRI projects, for example, told us that in his experience the "concept of BRI being a collective effort and mutually beneficial was not displayed in the attitude of some Chinese organisations".

However, commentators who saw the announcement of BRI 2.0 only as a way of addressing such foreign criticisms of BRI – or as a portfolio of policies to align BRI more thoroughly with broader development practice – overlooked President Xi's emphasis on international cooperation and joint contributions, as well as its relationship to China's wider national ambitions in areas such as sustainability. Indeed, some of our respondents feel that a limited response and limited enthusiasm from governments and businesses outside China are preventing BRI from achieving its potential.

A key driver behind BRI 2.0 is a wish to ensure more non-Chinese participation in BRI: to spread risk, to share knowledge, to raise the quality of BRI projects and related standards, to secure international trade, and to enable the initiative to move forward more rapidly.

Nevertheless, there remain significant levels of scepticism among non-Chinese parties. While there is broadly held optimism that BRI 2.0 will be more open to non-Chinese participants – with 70% of our African respondents agreeing and only 4% disagreeing – other expectations are more downbeat.

For example, only 24% of African respondents agree that BRI 2.0 will be more transparent than the initiative has been in the past. By contrast,

Chinese respondents are overwhelmingly positive, with 83% believing that BRI 2.0 projects will become less opaque.

Similarly, only 26% of African respondents agree that tenders will become more open and competitive. This is a higher percentage than in any other region outside China – but only a fraction of the 76% of Chinese respondents who expect to see such an improvement in procurement.

This pessimistic view of BRI 2.0 among non-Chinese participants may be unjustified. There are signs that Chinese BRI participants are increasingly prepared to take minority stakes in projects, and to work more closely with regional and international players. Similarly, many non-Chinese participants are prepared to take on key roles in certain projects. As one infrastructure fund manager put it: “If a particular part of Belt and Road is investible and bankable, then it will attract all sorts of investors. If it isn’t, then it won’t.” There is real scope for BRI 2.0 to bring about more collaborative and sustainable partnerships between Chinese and international businesses.

The strategy director of a telecoms supplier in South Africa told us that one change of approach that could deliver positive outcomes would be a broadening of project scope. “BRI decision-makers should focus on social development and rural projects more often,” he said. “This will inspire locals and encourage their participation as well. Rather than just concentrating on city and infrastructure route development, support on humanitarian grounds is a good way to reach people.”

BRI in the Five-Year Plan

In March the fourth session of the 13th National People’s Congress approved China’s 14th Five-Year Plan, along with its long-term objectives for the period to 2035.

The plan’s section on BRI is largely a high-level reiteration of familiar themes, such as cooperation on finance and in areas such as science and technology, and a general emphasis on the reduction of barriers to global trade and investment through measures such as investment protection agreements and double taxation treaties. Equally familiar now is the encouragement of higher quality development, sustainability and risk resilience for BRI projects.

A few less familiar concepts are mentioned, such as the ‘Air Silk Road’, an idea that was first mooted some years ago and which has been gaining more currency in recent months. The ‘Silk Road of Innovation’ is also namechecked – this was publicised at the Second Belt and Road Forum for International Cooperation but has not been widely promoted since. However, its obvious relevance to the R&D strand of the Five-Year Plan may see it become more prominent in the future. In general, though, there is nothing in the plan to surprise anyone familiar with the principles of BRI 2.0.

Implicitly, the future success of BRI – or at least of its ‘hard’ infrastructure aspects – rests on its becoming more similar to other international investment programmes. A greater degree of marketisation will result in more attractive opportunities for non-Chinese partners.



The shift to digital

While much traditional infrastructure remains central to BRI 2.0, digital technology is an increasingly important part of the initiative.

Since it emerged as a concept in 2015, the Digital Silk Road (DSR) has not seen as much investment as many other aspects of BRI. But with the new priorities of BRI 2.0 and the worldwide boost given to new technologies by the pandemic, as well as China's strategic push to embed its own technological standards internationally (see page 24), it looks set to achieve much greater prominence over the next decade.

Some DSR projects are traditional BRI-style infrastructure, such as submarine communication cables and mobile phone networks. But there is an increasing understanding that DSR in fact encompasses all types of digital development along the Belt and Road, including fintech, the Internet of Things, smart cities and digital healthcare. As China pursues its aim of becoming a world leader in areas such as semiconductors, quantum computing and artificial intelligence, the Digital Silk Road will become ever broader and busier.

Many DSR projects globally have been focused on meeting local development goals, but others are commercial ventures that reflect the worldwide advance of the digital economy, enabling China's tech businesses to access new markets. DSR also creates demand for telecoms equipment, smart

sensors, data centres etc. And as in the rest of the world, the pandemic has acted as a spur for tech innovation in China, accelerating the development of various technologies and providing new opportunities to test them.

There is ample scope for Africa to benefit from DSR. According to the International Telecommunications Union, for example, in 2020 only 44% of Africa's population had 4G network coverage. Another 33% had 3G coverage, while 11% had 2G. The divide between rural and urban areas is stark, with only 22% of Africa's rural population covered by 4G, compared with 77% of urban dwellers. And while coverage is limited, Africa's mobile telephony is relatively expensive: data from industry body GSMA shows that a plan including 1GB of data costs an average 4.2% of monthly GDP per capita in sub-Saharan Africa, compared with 0.8% in Europe and Central Asia. According to GSMA, at the end of 2019, just 45% of people in sub-Saharan Africa subscribed to mobile phone services.

Pre-pandemic projections showed a steady improvement in these figures over the next decade – something more likely than ever to be encouraged by governments that appreciate the value of data and connectivity in supporting economic growth.





The potential benefits to African nations of improved digital infrastructure generally are clear. And it is also clear that many such improvements will involve Chinese entities. Huawei, for example, has not only built a majority of the 4G networks constructed in Africa but in July 2020 launched the continent’s first commercial stand-alone 5G network. Chinese businesses have worked on many other aspects of Africa’s digital infrastructure, such as data centres, smart traffic solutions and security systems, and Chinese providers dominate the market for smartphones and other phones.

Perhaps unsurprisingly, given this background, about a quarter (26%) of our Africa respondents are considering DSR projects – the highest number we found anywhere outside China, where over one-third (36%) of respondents are considering DSR projects. Another 12% of African respondents have considered such projects in the past.

Some BRI participants are keen to be involved in DSR projects, but are wary of potential problems, such as rapidly evolving technical standards, and local sentiments about cybersecurity. Another

concern for many is geopolitical tension. The Trump administration pushed back against aspects of DSR with measures such as its Clean Network Program, intended to restrict or eliminate Chinese involvement in, for example, telecoms networks that connect to US networks, and cloud systems and apps that handle US data.

The Clean Network has made little impact in Africa. (In January Eswatini became the first African nation to join the network, and shortly afterwards the first to withdraw from it.) The Biden administration is reported to be reviewing the programme – although there are strong indications from Washington that it will continue to push back against the roll-out of some Chinese technology, with the Senate also pressing for a policy of ‘strategic competition’ against China in areas including new technology. But whatever the US position it is likely that, with so many African nations in need of tech and comms infrastructure and investment, and with Chinese options typically available on relatively attractive terms, there will continue to be significant opportunities for BRI participants along the Digital Silk Road.

Are you currently considering or searching for investments/projects related to the Digital Silk Road?



Greener and cleaner?

BRI's greener focus coincides with a trend for major investors to reallocate capital from investments with poor ESG credentials to those that prioritise their environmental impact.

Internationally, there is increasing concern among investors that all projects – not just energy projects – should be sustainable, not only in the environmental sense but also in areas such as financing and in their impact on local communities.

However, our African respondents were the least concerned in the world about such ESG issues. Only 40% said it was important when considering involvement in a BRI project for the project to be sustainable and eco-friendly, compared with 63% in China and 65% across the rest of the world. But 48% of African respondents believe that sustainability and environmental considerations will be given greater importance when planning and completing BRI 2.0 projects (the highest number we found anywhere, apart from 84% from China).

Chinese BRI participants are increasingly aware that sustainable projects tend to lead to fewer disputes, and China's strength in areas such as renewables increasingly looks like a commercial advantage. Initiatives such as the China-based BRI International Green Coalition, and the Green Investment Principles for the Belt and Road issued by China and the UK, are attempts to embed sustainability at the heart of BRI.

Perhaps the most striking sustainability initiative is China's announcement that it will strive to reach a peak in carbon dioxide emissions before 2030 and achieve carbon neutrality by 2060. President Xi Jinping has gone even further, stating that by 2030 China will cut its carbon dioxide emissions

per unit of GDP by more than 65% from 2005 levels. While this is a domestically-focused target, the changes and developments it requires will undoubtedly be reflected in BRI as well.

Research from Refinitiv suggests that more BRI projects were launched in 1H20 than in 1H19 or 1H18, with 392 identified. But their total value was lower than in previous years. This agrees with our findings of increasing interest in greener projects, as well as the Digital Silk Road and Health Silk Road initiatives. Many of these projects are quicker and cheaper than traditional large infrastructure projects, and often easier to monetise.

The picture of a green pivot is reinforced by findings from Moody's which, tracking BRI projects in some 80 countries, found that renewable energy projects accounted for about 58% of new contract values in the first half of 2020.

Chinese banks have also strengthened their focus on sustainable finance. A number of projects unable to show financial viability or sustainability have recently been refused loans. China is well aware that projects will increasingly have to embrace principles such as sustainability to attract the non-Chinese finance BRI needs.

As China continues to promote sustainability – and with pressure from investors, and in some cases governments – it seems likely that the priority given to ESG issues by African BRI participants more generally will increase.

When considering involvement in a BRI project, how important is it that the project should be sustainable/eco-friendly?



Interview: Mohan Vivekanandan, Development Bank of Southern Africa



Mohan Vivekanandan, Group Executive: Origination & Coverage at the Development Bank of Southern Africa, talks about challenges of BRI projects in Africa and the future for Chinese investment in the region.

How does the Development Bank of Southern Africa engage with BRI?

The DBSA is a South African governmental entity focused on developing and financing sustainable infrastructure projects. We do this in South Africa and throughout sub-Saharan Africa. We typically finance around 20 projects in a year.

China is probably the single largest investor in African infrastructure projects, so from time to time there is some overlap in terms of us participating in projects with Chinese entities.

What is the current sentiment towards BRI in Africa?

There are a lot of different views and it's a hotly debated topic, although in the past 18 months or so there hasn't been as much discussion about BRI.

There is a view that Africa needs as much investment as possible, especially in infrastructure, given the size of the investment gap, so whoever is providing that will be welcomed. There is another view that a lot of African countries are entering a debt trap.

And a lot of BRI projects need to be serviced by African governments, because funding comes through government revenues. Some of the projects are beneficial, increasing economic capacity and social metrics in those countries. But there are others that don't do as much to improve and integrate their economies.

What are the most sought-after infrastructure sectors?

The investment gap is there in a lot of different sectors. The two primary ones that have been attracting investment have been the power and transport sectors.

There is a significant amount of Chinese investment in sub-sectors within those. On the power side, there's been a lot of Chinese investment in hydroelectric projects and thermal power projects as well. There has also been some on the renewable side.

On the transport side, Chinese investments have also been significant. We've read a lot about the rail and port projects that have been funded and built by Chinese entities, especially in East Africa.

Which countries are benefiting most from BRI and Chinese investment?

South Africa has benefitted but probably to a lesser extent than other countries in southern Africa such as Angola, Zambia and Zimbabwe. In East Africa, there's been a lot of investment in Kenya and Ethiopia.

What are the biggest risks and challenges associated with BRI projects in Africa?

The first one is the fact that governments have got to make sure that they've got the ability to repay the loans. They've got to make sure it's an asset that's going to add enough value. They need to ask themselves a number of questions –

not least whether they have the skill set to make sure that the project that's been put in place is going to be good value for money versus other options.

The second thing is the operations and maintenance side. You can put up infrastructure, but it's more challenging to operate and maintain it efficiently so you're maximising the lifespan of that infrastructure.

In South Africa, the National Treasury put together guidelines around the percentage that municipalities should be spending on maintaining their infrastructure. You need to be able to cover that recurring expenditure from your tax revenues or from user fees. That's an important element that needs to be thought through.

What is the future for Chinese investment in African infrastructure?

In the last couple of years, it seems like there has been a bit of a pullback in the scale of Chinese investment in infrastructure on the continent. But the Chinese have been adept at working through national governments on a bilateral basis and identifying their priorities, and working with state-owned entities to build infrastructure. Western entities have been slow to adapt to that model and hence China has been more successful. I think, for that reason, while, possibly it won't be at the same scale as before, China will continue to be the leading investor in the infrastructure space in Africa.

Dual circulation and Chinese standards

China has developed a new 'dual circulation' economic strategy, which will reinforce some elements of BRI 2.0 as well as having a broad impact on many aspects of China's international engagement. The latest Five-Year Plan makes clear that China is accelerating the establishment of dual circulation as the keystone of its "new journey toward the full construction of a modern socialist country".

First mentioned in May 2020, 'dual circulation' refers to the concept that China's domestic and foreign economic efforts can be adapted to boost each other. The 'great international circulation' that saw the export-oriented opening-up of China's economy from the late 1980s onwards will be complemented by the more recently conceived 'great domestic circulation', taking advantage of China's massive potential domestic market.

This stronger emphasis on 'domestic circulation' involves increasing domestic demand while lowering dependence on foreign inputs, with a greater degree of import substitution. 'International circulation' (continuing to develop export market share, and further liberalising cross-border capital flows) remains important, but also works more effectively to boost the development of the domestic economic cycle, whose strength in turn reinforces Chinese businesses, making them better able to compete internationally.

While this is a newly minted strategy, it is not exactly a new idea. China has been trying to rebalance its economy with greater domestic demand for some time, but has enjoyed only gradual success. In 2019, final consumption expenditure accounted for just 55.7% of the nation's GDP, according to World Bank figures. While significantly up from a low of 48.9% in 2010, this lags far behind the levels in the world's other largest economies, such as 81.8% in the US. The strategic assumption is that increasing

domestic demand for Chinese output will ultimately make its economy more self-reliant and sustainable, and less vulnerable to external shocks.

However, exports are still vital for China, and the development of domestic capacity will require foreign technology and investment. So China wants to remain open for global business – even increasing the level of foreign investment in its economy – while neutralising what it now sees as vulnerabilities that may have arisen through the globalisation of trade. The recent EU-China investment agreement and, in Asia, China's participation in the Regional Comprehensive Economic Partnership both emphasise that China still sets great store by – and hopes to bolster – its strong position in international trade.

The dual circulation strategy reflects the disruptions to trade experienced during the pandemic, and longer term concerns around productivity and competitiveness. But it was also clearly prompted by the Trump administration's restrictions on the export of some hi-tech components to China, most notably semiconductors. Viewing this as a national security issue, as well as a question of sustainability, China aims to ensure that the supply chains for key components are no longer open to such pressure.

A communiqué issued after October's plenary session of the 19th Central Committee of the Communist Party of China reinforced this stance, by emphasising that self-reliance in science





and technology is now a national strategic pillar. But as explained by Wang Zhigang, China's minister of science and technology, self-reliance in science and technology does not conflict with openness and cooperation and does not mean that China intends to 'decouple' from the world. "Open cooperation has been a key component of China's path toward independent innovation. On the other hand, self-reliance is the basis and prerequisite of conducting fair and mutually respected cooperation with other countries."

It has nevertheless been widely noted that this policy has the potential to lead to competing technological standards, with Chinese technology developed as an alternative to western (mainly US) technology. This scenario is contemplated in the China Standards 2035 plan, which has been in development since 2018 but whose final form has not been officially articulated at the time of writing.

Promoting standards

In some respects, China Standards 2035 builds on an existing national strategic plan. Introduced in 2015 but little mentioned of late, Made in China 2025 was developed to boost China's industrial and tech capabilities through extensive government support for certain key industries, including robotics and next generation IT. However, it attracted international controversy, amid allegations from other nations of unfair business practices and intellectual property infringement, leading to the imposition of punitive tariffs by the US. Its focus on new technology and innovation now appears to have been inherited by China Standards 2035.

The Chinese authorities perceive a strong connection between geopolitical power and the setting of standards. A slogan that has been circulating in China's corporate world for some time is that "third-tier companies make products, second-tier companies make technology, first-tier companies make standards".

Being able to determine international standards offers any nation significant market advantages. The China Standards 2035 project seeks both to harmonise and improve Chinese standards and to ensure that Chinese standards are incorporated into global standards. One practical reflection of this is the inclusion of terms on standards in various BRI agreements. According to the Office of the Leading Group for Promoting the Belt and Road Initiative, as of April 2019 China had signed 85 standardisation cooperation agreements with 49 countries and regions.

Harmonisation through BRI

The dual circulation strategy clearly has significant implications for the future of BRI. There will, for example, be more emphasis on creating markets for technology originating in China and incorporating Chinese standards, which will further bolster the Digital Silk Road initiative (see page 20). We will see even more of a focus on 'smart' infrastructure. China will seek more scientific and educational partnerships with BRI nations. Some foreign businesses, in certain sectors, may find access to China easier. And China will seek to strengthen and secure its supply chains – an imperative likely to be reflected in some strategic BRI infrastructure projects.

As President Xi said in a speech in November 2020, in the dual circulation strategy "China will work to pursue high-quality Belt and Road cooperation with its partners, and seek greater complementarity between the development strategies and connectivity plans of regions and countries concerned. China will further harmonise policies, rules and standards with BRI partners, and deepen effective cooperation with them on infrastructure, industry, trade, scientific and technological innovation, public health and people-to-people exchange. Together, we will make the Belt and Road a model of cooperation, health, recovery and growth and deepen cooperation on green development."

Sourcing opportunities

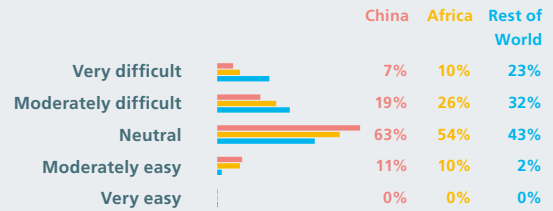
One of the bottlenecks slowing BRI progress has been the ability of prospective parties to source investable projects. There is no official database of BRI projects or central directorate to assist companies and investors seeking to access project deal flow.

Our research shows that many of those who have taken part in BRI projects have found the sourcing process challenging. Among African respondents, 36% say identifying and sourcing appropriate BRI opportunities is difficult (compared with 55% in the rest of the world, excluding China). Only 10% of African respondents found the process easy.

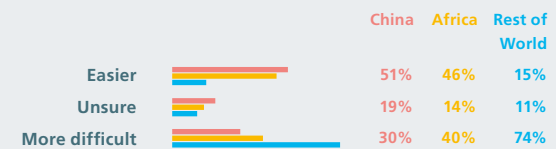
Unsurprisingly, Chinese participants experience fewer problems. But even they report some difficulties, with 26% finding it hard to source projects.

China is encouraging the adoption of general international rules and standards for BRI procurement, tendering and bidding. Interestingly, Africa was the only region (other than China) where our survey showed respondents were inclined to believe that sourcing opportunities will become easier, with 46% expecting them to get easier, 40% expecting them to get harder, and 14% unsure.

Generally, how would you rate the process of identifying/sourcing BRI opportunities?



Do you expect this process to get easier or more difficult going forward?





Overcoming obstacles

Key points

- » Operational difficulties are the most commonly cited obstacle in BRI projects for African respondents. Legal and regulatory risk is the most commonly cited risk.
- » Such risks can be managed through a mitigation plan, which should include an appropriate strategy for managing disputes, as well as realistic enforcement options.
- » BRI participants have additional means to help projects run smoothly and reduce risk, beyond formal mitigation strategies.

For African respondents, operational difficulties (56%) and national governments and political issues (52%) are the most frequently cited obstacles to involvement in BRI-related activity, closely followed by legal frameworks.

Legal and regulatory issues are seen as the most serious risk in BRI projects, being cited as a 'top three' risk by two-thirds (66%) of African respondents, well ahead of political risk (48%) and project stability (46%).

To some extent, the legal risks in BRI projects tend to be those found in similar non-BRI projects. BRI is mainly based on a series of 'soft law' regulations such as non-binding MoUs, declarations, principles and agreements. There is no such thing as 'BRI law', just as there is no single BRI treaty, no legal instrument that establishes the initiative or its protocols, and no regularised accession process.

This lack of uniform regulation gives BRI a high level of flexibility when dealing with different projects in

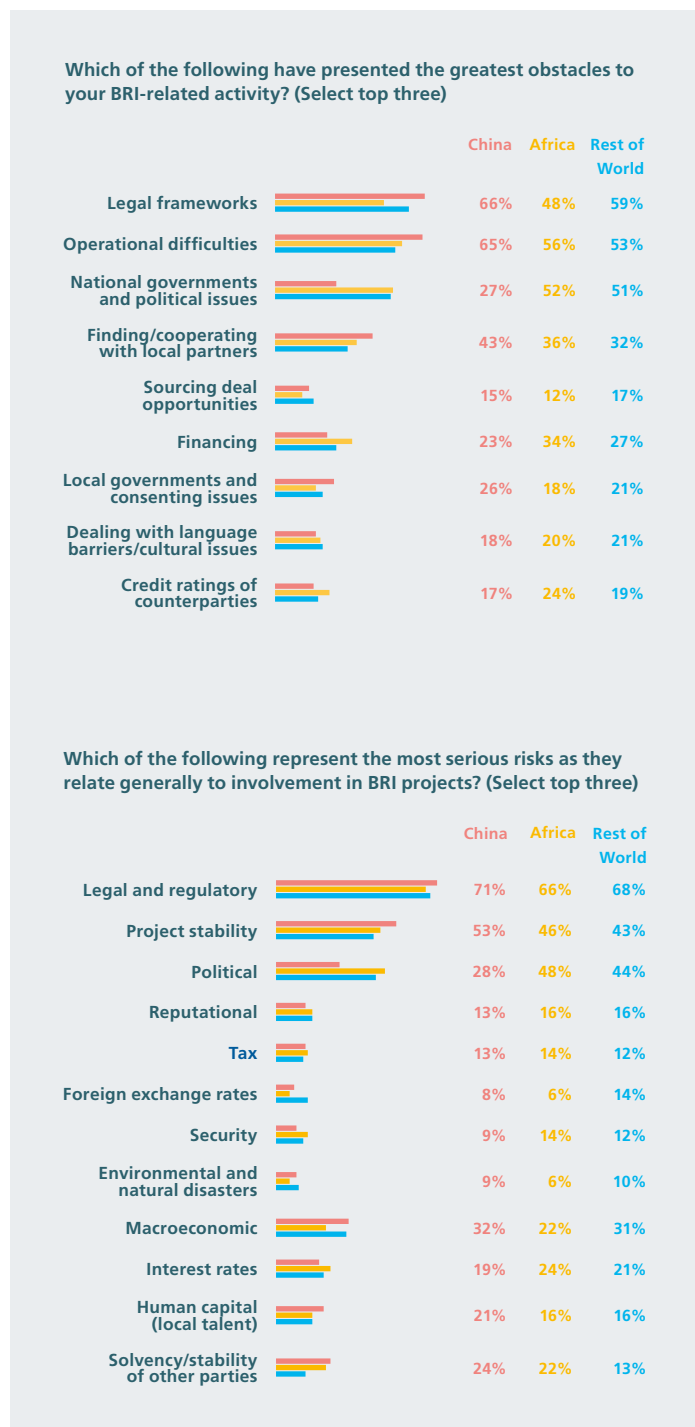


different nations and continents. But it also presents difficulties, as risk management, consistency, predictability and transparency essentially have to be addressed on a project-by-project basis, as do the relationships of participants in projects and, in turn, their relationships with local stakeholders.

Certain issues recur frequently as sources of legal difficulty in African BRI projects. One feature in some BRI agreements, for example, is the requirement of technology transfer clauses to narrow the technology and skills gap between foreign and local firms. Skills transfer, and knowledge and expertise sharing – as well as the transfer of capital goods and equipment – are widely felt to be useful in enhancing local capabilities. BRI contractors should be aware of various local content laws that African nations have in place to ensure the development of their economies and labour forces, some of which require a local shareholding in joint ventures for certain projects. Participants in BRI projects generally may need to be prepared to move away from standard turnkey agreements for construction to more flexible agreements that allow for technology and knowledge transfers.

Issues common across BRI projects in multiple regions include the breaching of contractual agreements and environmental regulations and laws. Project partners should not only familiarise themselves with local legal requirements before a project begins but actively monitor adherence to these requirements over the course of the project.

Sub-Saharan Africa is the worst-performing region in Transparency International’s Corruption Perception Index. Nearly half the nations in the bottom half of the index, and over half of those in the bottom quarter of the index, are African. Businesses active in the region need to undertake thorough due diligence in this area and implement adequate anti-bribery and corruption measures – potentially there is legal risk not only at a local level but also internationally, from foreign anti-bribery legislation.



Political risk

Political risk is, of course, distributed unevenly through the region. Some countries that participate in BRI projects are politically volatile, and such volatility can impact investments. Some, even on the simplest assessment, clearly carry more risk than others. However, these are often also the nations most in need of investment.

Large and politically significant BRI projects in Africa are particularly vulnerable to changes in governments or the policies of their host countries. Even in Africa's more stable democracies, election years often carry a higher risk for investments, as newly elected governments seek to differentiate themselves from their predecessors – and at least 13 BRI countries in Africa are scheduled to hold elections in 2021.

Such risks can be overstated though. While particular projects may be unpopular, BRI as a whole is viewed positively across the continent. However much a government may wish to start over, it is unlikely to jeopardise its infrastructure development programme – as well as its international trade – by turning its back on China. Even where significant change is sought, renegotiation is far more common than renunciation. And some African nations actively prefer China as a counterparty, since Chinese finance frequently comes with fewer conditions than support from international organisations or bilateral arrangements with western nations. On the whole, China is seen as an ally willing to work constructively with whatever government is in power locally.

Another element of political risk comes in the wider international picture – particularly, at the moment,

in tensions between the US and China. “We’ve acknowledged the major political threats to these projects, and learning about the geopolitical changes and power dynamics across the globe has been helpful,” said the CIO of a South African investment fund.

The options available to BRI participants wishing to mitigate political risk are limited. It is possible to insure against some political risks, and thorough due diligence should be undertaken as a matter of course (and should continue in some form over the lifetime of a project). Businesses can ensure that, as appropriate, security measures are in place on the ground. But the long life of most infrastructure projects, and their illiquidity as assets, will always result in a degree of risk for investors.

Even participants in a shorter time frame, such as contractors, will be unable completely to avoid exposure to the full range of political risks, ranging from peaceful regime change that may result in the reassessment of contracts to violence that can halt projects and endanger a workforce, or sanctions imposed by a third party. Here, too, the most important element is thorough due diligence, informing the development of an appropriate risk management and mitigation strategy. Local knowledge can pay significant dividends: advisors with experience of the host country's political landscape can help ensure, for example, that national and local government issues are avoided by anticipating potential disruptions such as elections. Parties will need to budget for this process and schedule it into their timelines.

Employment risks

The skills gap in Africa can hinder BRI progress. As much as 60% of the African workforce is under 30 years old and unemployment rates are high, with the African Development Bank estimating that well over half the young people on the continent are out of work. Construction has boomed on the continent over the past decade, but a shortage of skilled labour in some parts of Africa has put ambitious infrastructure development goals out of reach and affected project progress and results.

“We have noticed that a lack of a skilled workforce in some regions has impacted project continuity and quality,” said the CFO of an investment firm in Botswana. “We have been discussing these concerns with involved

parties for resolutions. Legal framework challenges are being mitigated in coordination with a newly appointed local advisory firm that also has knowledge of global operations.”

Much of the skilled labour in African BRI developments typically comes from Chinese contractors. This helps China manage its construction overcapacity while bringing much-needed experience and expertise to projects. But in some jurisdictions, as noted above, there are legal requirements to involve local labour in some projects. The shortage of skilled labour is likely to be a continuing problem for BRI, particularly as it opens up to greater involvement from non-Chinese parties in its efforts to deliver more equitable outcomes.

Operational issues

Operational difficulties are the most frequently cited obstacle to BRI involvement among our African respondents. Again, there are various risk mitigation strategies. But there are also things that all BRI participants can do to help projects run smoothly and reduce risk, even if they are not part of a formal mitigation strategy.

As noted earlier, positive cooperation – either generally or through structures such as joint ventures – can help to mitigate risk, share skills, encourage local acceptance, avoid local legal difficulties and move projects forward more rapidly. It may be particularly useful for businesses participating in markets with which they are not completely familiar.

Finding reliable partners can itself be challenging, and if not done well can bring its own risks. Businesses need a range of knowledge about their partners, from their financial strength to their technical capacity. Both these priorities inevitably involve a degree of transparency and information-sharing. In some cases, dedicated due diligence advisors can help to determine the track record, technical credentials, and financial integrity of a prospective BRI partner.

To form effective partnerships, organisations also need to understand where conflicts could arise, and ensure there are effective mechanisms for dealing with them. These include dispute resolution mechanisms, but also processes that can help to avoid conflicts, or to resolve them before they become serious disputes.

Flexible structures and partnerships are likely to be more effective in dealing with problems. But these should not be confused with ill-defined structures. Clarity about the nature and degree of flexibility available provides certainty for all parties.

It is also important to consider potential cultural conflicts or misunderstandings. Some respondents see this as a stand-alone problem to be addressed with training from their HR department. But there are others who view it as a potential

opportunity, such as the Chinese supplier who noted that in dealing with different BRI countries “we have learnt many new things and business concepts that will be useful in future projects.”

As the managing director of a credit insurer in South Africa, told us: “There are ways to understand different cultures, but in the business world we need to go beyond assumptions. Local consultants and advisors present opportunities to create long-term ties.”

Not all BRI participants are enthusiastic about partnerships, like the CIO from Hong Kong who told us that “during these tough times, we prefer to work independently” and the Chinese professional services provider who said “partnerships will be avoided for the most part because we prefer control on decision-making.” For one Kenyan business: “There were cultural differences that we encountered throughout the course of the project. Collaborating was much more difficult than we had anticipated. In the future, we will be more discerning when it comes to BRI association.”

But we found such negative experiences to be outweighed by positive ones, like that of the international banker whose organisation had “participated in several partnerships in the past because we believe that establishing our presence with the help of local partners creates more scope and acceptability.”

Comprehensive due diligence

Due diligence for political risks has already been mentioned, but all aspects of a project require due diligence, and the more high-risk the project, or the market, the deeper and more wide-ranging it should be. Despite this, in some cases due

“Involvement in these type of projects contains a number of unexpected risks. Constant evaluation of objectives is required to ensure that projects do not go off track.”

Insurer, Nigeria



“There are a few things that can be done differently to yield a better outcome. It starts with creating more visibility into the objectives and strategic plans. Entities want to know and understand the motivation behind the decisions, so that they can evaluate the viability of the planning structure and future prospects.”

Head of strategy, Regional development bank





diligence is insufficiently thorough, or is undermined by participants making faulty assumptions based on limited experience.

Due diligence should also lead to more than a 'stop/go' conclusion. It is a way of assessing and understanding the risks you are taking on, enabling the early identification of potential problems and, crucially, facilitating an appropriate risk management strategy. If it is treated simply as a way of identifying risks, rather than understanding them, it will not fulfil its commercial potential.

Effective due diligence and risk management are essentially collaborative. Identifying risks at the earliest possible stage, especially where local or specialist knowledge is needed, will probably involve expertise not only from within but also from beyond the organisation.

Participants in a project will also benefit from working together, wherever possible, in risk management. Combined efforts are likely to reduce the risk profile of their project in a way that uncoordinated individual risk management strategies will not.

Using technology

Some respondents are addressing operational challenges through the use of technology to improve communication and to ensure projects run more smoothly. For the investment director of a Chinese investment firm: "Adding new technological capabilities helped in communication and coordination among multiple parties and added more confidence to various critical processes. This helped to mitigate operational challenges."

Technology has, of course, become even more important in the past year. For some of our respondents it is a way to improve planning and project management, while others feel that, during the pandemic, remote access to projects and data has become critical.

Some contractors hope that mechanisation and automation will reduce the number of people needed to work on projects, which is an issue where freedom of movement is restricted to control the spread of infection. And some plan to use technology to monitor the health of workers, particularly in projects that are not easily accessible.

"I think more measurable results should be available, since so much time and money is being invested. It will improve standards and allow for more transparency throughout various processes. This will increase our enthusiasm for involvement in projects."

CEO, Ethiopian contractor



"Stricter project guidelines, ESG evaluations, and good ethical practices overall mitigate legal risks."

Director, Chinese construction contractor



MoUs, MITs and BITs

There is no overall 'Belt and Road Treaty'. But the context for BRI projects is often determined by various local agreements.

China has signed over 200 BRI cooperation documents with 140 countries and 31 international organisations. They include memoranda of understanding on aspects of BRI, cooperation agreements, 'intergovernmental documents', joint statements on various initiatives, and documents relating to particular projects.

Though differing in legal implication from country to country, a memorandum of understanding (MoU) is generally aimed at increasing cooperation within the BRI framework and substantiating the initiative's legitimacy.

In many countries, the strategic framework for the general or sectoral development of BRI projects and the organisational framework for specific BRI projects are introduced by MoUs, typically listing general principles, setting objectives and guiding principles for future cooperation between parties, and covering the main areas of cooperation.

Regardless of whether MoUs are strictly legally binding, they influence and guide the way China engages with these countries and organisations.

The full texts of these MoUs are typically confidential, but their basic structure generally covers five key cooperation priorities:

- policy coordination;
- facilities connectivity;
- unimpeded trade;
- financial integration; and
- people-to-people bonds.

In addition to its MoUs, China has numerous bilateral investment treaties (BITs) and multilateral investment treaties (MITs) which relate to BRI.

These are international law instruments agreed between two states (BITs), or between more than two states (MITs). In many cases they were signed before BRI began, but their provisions are often relevant to BRI projects, and Chinese investors in BRI projects in Africa may be protected by the provisions of these agreements. Some common forms of guaranteed protections include:

- compensation for expropriation or nationalisation of an investor's assets by a state;
- fair and equitable treatment, which creates an obligation to provide a stable and predictable investment environment, and to act transparently and consistently;
- full protection and security, which provides a positive obligation to protect investment by the exercise of reasonable care;
- protection against discriminatory measures: e.g. taxes, fines, penalties, licences, permits, visa restrictions; and
- 'umbrella clauses', i.e. clauses which may be incorporated into contracts entered into between a host state and investors as BIT obligations.



Dispute resolution

Our African respondents have been in fewer BRI disputes than those in other regions. But when such disputes do occur, what options are available?

Only 21% of Chinese respondents say legal disputes have arisen in their projects, whereas 24% of African respondents said the same. This is a much lower figure than the average of 40% that we found in the rest of the world – a positive difference that may reflect both the BRI projects undertaken in the region and, possibly, the knowledge of doing business in Africa that some Chinese entities have acquired over many years.

To some extent, the issues frequently found behind legal disputes in African projects are similar to those that are common elsewhere. Some respondents report disputes involving real estate, or environmental impact, or problems such as non-compliance with local labour laws. Others have experienced problems with procurement rules. Major BRI projects are vulnerable to the many potential disputes that can arise from any large, complex infrastructure development.

What is the best way to resolve BRI disputes? One option is to rely on established mechanisms. The most prominent of these is international arbitration: either commercial arbitration based on the agreement between two commercial parties, or investor-state arbitration based on an investment treaty concluded between sovereign actors.

While arbitrations are now possible in China, many Africa-related disputes are resolved by long-established arbitral institutions in Europe, Singapore or the US. Most African participants in BRI would probably prefer such venues – or African venues, with Johannesburg perhaps the most popular in sub-Saharan Africa. (The China Africa Joint Arbitration Centre, created to administer the resolution of international disputes between Chinese and African entities, also has several accredited centres in Africa.) But a contract is arrived at by negotiation, and there may be circumstances in which an African party judges it advantageous to accept the provision of a different venue for arbitration in return for concessions in other areas.

As BRI 2.0 continues to develop, 34% of African respondents believe dispute resolution will get easier, with 36% disagreeing. This finely balanced division of opinion makes BRI participants in the region comparatively optimistic when set against the average of 20% in the rest of the world who believe dispute resolution will become easier and the 51% who believe it will not. As many as 70% of Chinese respondents, though, see improvements to dispute resolution becoming a reality.

Risk mitigation

Whatever the challenges posed, participants are well advised to manage their risks through a risk mitigation plan with appropriate risk identification, management and mitigation measures. These may include:

- Conducting robust due diligence on local partners, including their track records on projects, creditworthiness, corporate structures and ownerships, key individuals, compliance with laws, litigation records, and any connections with local authorities.
- Being alive to areas where the risk of corruption is present, such as excessive commissions to third-party agents or consultants, vague consulting agreements, and any close relationships between third-party agents and officials.
- Avoiding shortcuts around compliance requirements, such as engaging a third party to manage government approvals without adequate due diligence or controls.
- Careful negotiation and drafting of contracts to include adequate risk management and allocation provisions, supported by clear liability language.
- Effective contract management and compliance with contractual obligations, ensuring that the project and commercial teams are familiar with the contracts.
- Selecting well-established and neutral dispute resolution forums.
- Appointing appropriate local advisors, familiar with the regulatory environment and relevant authorities, who can be invaluable in due diligence, risk analysis and risk management.



Spotlight on Angola



Alberto Galhardo Simões
Partner

China and Angola have developed a strong relationship over several decades, which is now underpinned by bilateral trade.

In 2019 China supplied nearly 22% of Angola's imports by value. Over 90% of Angola's exports are petroleum, and about 62% of those exports go to China. In 2019 that accounted for 9.5% of China's petroleum imports.

However, while Angola is one of Africa's richest countries in terms of natural resources, it still needs to improve its education and healthcare systems, logistics, transport links, energy networks and other infrastructure. And its heavy dependence on petroleum leaves it vulnerable to oil price fluctuations. In recent years the government's policy has therefore been to encourage diversification – an approach which has generated enormous opportunities for both local and foreign investors.

Many major Chinese projects in Angola began before BRI, including the USD 1.8bn Benguela Railway, and the upgrading of the port of Lobito. BRI has brought more. According to the China Research Initiative, Chinese lines of credit have financed over 100 projects in Angola, including the USD 2.5bn Kilamba Kiaxi new city, the Nzeto-Soyo road, and Soyo I, Africa's largest gas turbine power station. Angola also used about USD 10bn of its borrowing to recapitalise state-owned oil company

Sonangol, when the 2015 oil price crash left Sonangol struggling to repay its own borrowing from China.

Not all this lending has come from Chinese state entities – e.g. a USD 4.1bn loan for the 2,170 MW Caculo Cabaca hydropower project came from a syndicate led by the Industrial and Commercial Bank of China (ICBC), including the Bank of China's Beijing branch, China Construction Bank of Beijing, China Minsheng Bank, Ping An Bank, and the Bank of China's Shanghai Pilot Trade Zone Branch.

According to the World Bank's Debt Service Suspension Initiative, Angola's enthusiasm for Chinese lending has made it Africa's biggest borrower from China. It was reported in January 2021 that Angola and China had negotiated three years of payment relief on debts of over USD 20bn, including USD 14.5bn owed to China Development Bank and nearly USD 5bn owed to Eximbank.

Some opportunities

Angola has recently enacted legislation to streamline foreign exchange procedures and to facilitate private investment through a new free trade zone law with a number of incentives and benefits.



Tiago Machado Graça
Senior Associate

Other measures include the recently approved single investment window, and amendments to the private investment law to facilitate the approval of private investment projects and the negotiation of investments.

A key development sector in Angola is renewable energy. In particular, the government's aim of generating at least 7.5% of the nation's electricity from renewables (excluding major hydroelectric projects) by 2025 offers a variety of opportunities, including the improvement of distribution networks.

Angola's privatisation programme (Propriv) envisages the privatisation of 195 directly or indirectly state-owned companies, by public tender or through the Angolan Stock Exchange. The country also has a public-private partnership programme, which includes several major infrastructure projects.

Legal protection for foreign investors

Angola's legal system reflects its Portuguese origins and follows civil law tradition, with legislation as the primary source of law. (Precedent is accepted but not binding as in common-law countries.) At the legislative apex, the constitution establishes the general principle of the separation of judicial, executive and legislative powers. All judicial authority is vested in the courts, which are independent and subject to the constitution and the rule of law.

Law No. 10/18, of 26 August 2018 (the Private Investment Law) gives investors rights and guarantees such as:

- Access to the judicial system.
- Rights to a compensation in case of expropriation.
- Industrial property and intellectual creation rights.
- Rights to the ownership, use and lawful exploitation of land.
- Guarantees of non-intervention by the state.
- Importation and exportation rights.

Angola is also party to some bilateral investment treaties (with e.g. Italy, Germany, Portugal, Russia, and Brazil) that grant protection against expropriation and the inequitable treatment of foreign investors.

Risk and risk mitigation

Foreign investors will still wish to take the steps they would typically take elsewhere, such as obtaining legal advice to ensure that contractual arrangements are enforceable and comply with local law, undertaking thorough legal and commercial due diligence, and implementing adequate anti-bribery and corruption measures.

The World Bank's Ease of Doing Business rankings place Angola at 177 out of 190 nations. Substantial bureaucracy, restrictive local content measures and unclear investment regulations have all created difficulties for foreign investors over the years.

The government is now making a huge effort to improve the responsiveness of public institutions, including the judicial system. It has also improved business transparency, following President Lourenço's effort to fight corruption and implement legislation such as the New Criminal Code, the Competition Act and the legal regime for public contracts.

Under the Private Investment Law, investors have the right to transfer abroad dividends and profits distributed, the proceedings of any liquidation of their investments (including capital gains, upon payment of the taxes due), the proceeds of indemnities, and royalties or other earnings resulting from indirect investments, associated with the transfer of technology. However the Angolan foreign exchange regime is highly regulated, and investors should seek local legal advice when structuring operations to avoid unexpected complications.

Labour laws restrict the hiring of expatriate employees, and businesses must comply with administrative and reporting obligations relating to the training, recruitment and hiring of employees. Local content regulations exist, notably in the oil & gas sector, and are strictly applied.

Delays in dispute resolution in Angolan courts should, unfortunately, be expected. Parties may prefer to include arbitration clauses in their contracts. However, while Angola is a signatory to New York Convention on arbitration awards, investors may find that some specific sector regulations require the seat of an arbitration to be in Angola.

Incentives for investment

The Private Investment Law (see above) provides for tax benefits and incentives in priority sectors, investor protection, and the repatriation of funds by foreign investors. The main tax incentives are deductions, deferrals, accelerated depreciation, tax credits, and the exemption and reduction of tax rates and customs duties.

Free trade zones

Free trade zones may be created by presidential decree, with customs and tax exemptions and benefits for investors. Special visa, labour and foreign exchange regimes may also be applicable.



Spotlight on South Africa



Bridgett Majola
Partner

Despite its current challenges, South Africa has large market potential, relatively well-developed infrastructure and a large and competitive domestic economy.

Because of its relative economic strength, pan-African footprint and its strategic location, South Africa is recognised as a gateway to Africa. Its mining industry forms a major part of its economy, and still offers great potential for infrastructure and development projects.

In South Africa BRI has followed previous successful agreements with China, notably the 'comprehensive strategic partnership' launched in 2010 (following the 'strategic partnership' announced in 2004). As well as encouraging social and cultural cooperation, this has promoted significant economic linkage. There are now over 200 Chinese enterprises in South Africa, which according to the Chinese authorities have created 400,000 local jobs. In the first half of 2020, trade with China accounted for 15.5% of South Africa's total foreign trade.

Inevitably, there is Chinese involvement in various parts of the South African mining industry, as well as involvement in the oil & gas and energy sectors (such as Sinopec's acquisition of Chevron's South African assets in 2018). However, South Africa has seen fewer BRI projects than many other African nations.

Planning for growth

South Africa has endured a decade of weak growth.

It was in recession even before the pandemic hit and lockdown measures were imposed. Investment has stagnated in recent years, reflecting a lack of business confidence, while declining tax revenues and the financial bailouts of state-owned entities have led to the postponement of public capital expenditure.

Economic development has been further hindered by social unrest and strikes – many protesting against the unemployment rate, which passed 32% in the fourth quarter of 2020 – and by the frequent power cuts that result from a shortage of generating capacity and the increasing amounts of down-time required by ageing coal-fired power stations. And while the country scores better than most African nations in Transparency International's Corruption Index, it has had its share of corruption perpetrated by state officials, which has weakened some state-owned entities – although, under President Cyril Ramaphosa, a more vigorous effort is being made to fight corruption.

Ironically, South Africa's poor economic situation creates opportunities for structured and innovative private sector and foreign-funded investment in infrastructure. The government's plan for recovery from the economic setback of Covid-19 includes significant infrastructure investment. There is ample scope for this: as long ago as 2012 the National Development Plan 2030 suggested that South Africa had "missed a generation of capital investment in roads, rail, ports, electricity, water, sanitation, public transport and housing." President Ramaphosa has said he will "act quickly and boldly to place South Africa on a rapid growth trajectory", although the nation's high level of indebtedness limits his room for manoeuvre.

Protecting investments and resolving disputes

South Africa is a democratic republic with a written constitution. It has a hybrid legal system, based on uncodified Roman-Dutch law but heavily influenced by English common law. All judicial authority in South Africa is vested in its courts, which are independent and subject only to the constitution and the rule of law.

The Protection of Investment Act 22 of 2015 stipulates that foreign investors and their investments cannot be treated less favourably than South African investors in similar circumstances. Additionally, protection against the direct expropriation of property and the inequitable treatment of foreign investors can be found in most of South Africa's bilateral investment treaties.

Construction and infrastructure projects, including those that are part of BRI, involve various elements and stakeholders that could lead to disputes and legal challenges: e.g. in connection with the need to expropriate land or buildings or the need to take the interest of groups and communities into account. Statutory and regulatory challenges may arise, and such disputes have the potential to badly disrupt some projects.

Investors have access to international commercial arbitration through the Arbitration Foundation of Southern Africa, which can prove essential to the

resolution of cross-border disputes in order to avoid an unfamiliar court system and the uncertain enforceability of the resulting judgement.

South Africa is a signatory of the New York Convention, and the International Arbitration Act, 15 of 2017 provides for the recognition and enforcement of foreign arbitral awards. If a dispute arises and judgment is provided outside South Africa, the Foreign Civil Judgements Act, 32 of 1988 provides for the enforcement of civil judgements given in any country outside South Africa which the minister of justice has designated in the Government Gazette. There is a general consistency of the enforcement of foreign judgements in South African courts.

Incentives for investment

The Critical Infrastructure Programme (CIP) is a cost-sharing grant for projects designed to improve critical infrastructure in South Africa, available to approved applicants or infrastructure projects on the completion of certain milestones. The grant typically covers qualifying development costs from a minimum of 10% to a maximum of 30% of the total development costs of the qualifying infrastructure (up to a maximum of ZAR 50m), although more generous caps exist for agro-processing applicants, state-owned aerospace and defence national strategic testing facilities, projects that alleviate water or electricity dependency on the national grid, and projects in distressed municipalities and state-owned industrial parks.

Special economic zones are designated geographic regions where targeted economic activities are supported through incentives such as a preferential 15% corporate tax rate; a building allowance; an employment tax incentive; and a customs controlled area.

Foreign investors and local suppliers have to meet a strict eligibility criterion in relation to the Broad-Based Black Economic Empowerment programme (BBBEE), in order to benefit from government procurement incentives. BBBEE promotes the economic participation of people who were discriminated against during the apartheid era.





Spotlight on Kenya



Julius Wako
Partner

Kenya is the commercial, economic, logistics and technological hub of East Africa. For BRI, it is also a critical maritime gateway to central Africa.

BRI aligns with Kenya's own development goals as expressed in Vision 2030, a roadmap for accelerating Kenya's transformation into a rapidly industrialising middle-income nation.

Many projects with Chinese involvement have already been completed, such as the 50 MW Garissa solar farm, the USD 80m Access to Satellite TV project, and the USD 104m Kenyatta University Teaching Referral and Research Hospital, the first in Kenya to be fully financed by Chinese concessional lending.

Zhongmei Engineering Group has completed the Nuno-Modogashe highway, China Eximbank has financed power grid expansion, and Huawei has delivered 'safe city' security infrastructure in Nairobi and Mombasa. Perhaps most prominently, China Road and Bridge Corporation was responsible for the Mombasa Container Terminal

Current BRI projects include:

- China Road and Bridge's construction of an expressway connecting the Nairobi-Nakuru highway with Jomo Kenyatta International Airport (where China Jiangxi is refurbishing two terminals);
- parts of the Konza Technopolis tech hub, on which Huawei has been working;
- the mixed-use Global Trade Centre in Nairobi, being developed by Avic International;
- the Karimenu 2 Dam (being built by a JV between Avic and Shanghai Municipal Engineering Design Institute, with Eximbank funding);
- geothermal power plants in Olkaria (the latest of which will be the largest in the world, deploying some Chinese contractors and partly funded by Eximbank); and
- the deepwater Lamu Port project being conducted by China Communication Construction Company.

Lamu Port – which recently began welcoming vessels to its first completed berth – is a key part of Lapsset, the planned USD 24bn Lamu Port-South Sudan-Ethiopia Transport Corridor. However, other projects in the corridor have run into problems, and there have been suggestions that Ethiopia and South Sudan would rather focus their activities elsewhere.

In 2020 Lapsset was adopted as an African Union project and redesigned to link Lamu with Douala Port in Cameroon – though as Lapsset was already envisioned as part of a land route connecting Africa's east and west coasts, this may be more a change of emphasis than a significant change in design.

Another BRI megaproject that has not yet come to fruition is the planned railway from Mombasa to DR Congo, connecting with Uganda, Rwanda and South Sudan. A line from Mombasa to Naivasha via Nairobi has been completed by China Road and Bridge Corporation, with Eximbank finance. However, funding for subsequent phases has not yet been secured, with Eximbank reportedly requesting a revised feasibility study for the line's continuation to the Ugandan border.

In addition, Kenya recently terminated its contract with the Chinese-owned operator of the completed phase, five years earlier than planned, saving some USD 10m per month. It will be taken over by the state-owned Kenya Railways Corporation.

The cost saving is a reminder of Kenya's indebtedness. Like a number of African nations, it has been pushed by Covid-19 into seeking debt relief, with government debt now expected to exceed two-thirds of GDP. Both Paris Club lenders and China recently agreed to defer some repayments, including a reported USD 245m due to China Eximbank. The IMF has also agreed to provide USD 2.4bn in low-cost financing over three years, with other development partners providing more. But while Kenya's recovery strategy highlights areas for investment including urban development and transport, it appears unlikely to include the sums needed to bring either of its BRI megaprojects to completion.

Investment landscape

Notwithstanding these issues, Kenya is a relatively low-risk investment environment. As the IMF noted recently, Kenya achieved stable and healthy growth in the decade before Covid and made progress in reducing poverty and inequality. Foreign investors enjoy similar treatment to local investors, and foreign investment has been encouraged with laws such as the Foreign Investment Protection Act of 2019.

Foreign investment is permitted in most sectors, although restrictions may be introduced to protect

constitutional or certain third-party rights, or to ensure public safety, order, morality, health, security or defence. Foreign investors may not own private land, but may lease it for up to 99 years. Their ability to engage in transactions which would give them significant control in key sectors of the economy is limited. Sector-specific laws in construction, mining, telecoms, shipping and insurance have additional local shareholding requirements.

Kenya provides various tax incentives to foreign investors, and is party to several bilateral investment agreements and tax treaties. Major investment projects may benefit from additional incentives, and Kenya has many special economic zones which typically offer beneficial tax regimes.

Foreign enterprises establishing operations in Kenya can choose various corporate structures. There are some sector-specific shareholding requirements: e.g. any joint venture whose purposes include construction must reserve a minimum 30% of the equity ownership and profits for the local JV partner. The Kenyan Companies Act also requires that all limited liability companies incorporated in Kenya have at least one director with ordinary residence in Kenya.

Risk and risk mitigation

Kenya has a secure democracy (although the general election due in 2022 could see a repetition of the currency fluctuations, economic instability and political unrest that have characterised previous election years). But it ranks 137 out of 180 nations in Transparency International's Corruption Perception Index. BRI participants need to consider the risks of corruption entailed by doing business in Kenya, particularly in transactions and processes involving government bodies.

Foreigners who intend to engage in any employment, trade, business or profession require a permit, and



businesses need to ensure that their foreign staff have permits. Furthermore, projects in some sectors must include local participation, to encourage knowledge transfer and reduce the skills gaps in the local labour force.

Importing goods requires an understanding of the elaborate procedures involved and the documentation required. Import procedures can be slow and inefficient, and foreign contractors aiming to operate in Kenya may wish to link up with a local partner who fully understands the system.

The right to own property is not absolute, but the constitution imposes conditions on any attempt by the state to deprive a person of their right to property, including that the deprivation is for a public purpose, that there is prompt and just compensation, and that the person being deprived of this right has access to a court of law. Any compulsory acquisition must also observe statutory procedural requirements.

Construction projects require various approvals and permits. Failure to obtain these may lead to fines and other sanctions, including a full halt of the project. Participants also need to ensure that e.g. any environmental consents, land user allocations or zoning allocations that may be applicable to their project are in place.

Finance from Kenyan banks tends to have high interest rates. Local parties, with limited access to international finance, may seek to structure their businesses to have optimal credit risk for financing resources.

In an effort to better regulate cooperation between the private and public sector in infrastructure projects, Kenya's Public-Private Partnerships Act seeks to streamline such legal relationships (as well as imposing requirements that any party entering into a PPP needs to be aware of).

Kenya levies various taxes that may depend on a particular resident individual's operations or a company's structure. Business structures such as general partnerships are not liable to corporate income tax but in some cases may be liable to charge VAT. Kenya assures all foreign investors of the opportunity to repatriate profits and capital, subject to the applicable laws.

Legal protection for investors

Kenya's legal system is largely founded on English common law, with an adversarial judicial system. The courts substantially rely on precedent, although their jurisdiction is exercised in conformity with the constitution and other codified statutes.

Kenya's bilateral investment treaty with China gives Chinese investors additional legal protection against a number of risks, including nationalisation or expropriation unless conducted under the treaty (which would entitle investors to compensation).

Foreign investors may also enjoy rights and protections set out in contracts concluded with local partners, such as warranties and representations, parties' liability, indemnity, termination rights, choice of governing law, and dispute resolution rules. Broadly, any party whose rights are breached is eligible to claim damages, including direct damages and loss of profits. A contract may include additional penalties, and the parties can also agree on indemnification provisions. Clauses may also be used to limit liability or to allow the termination of the contract without significant financial losses if circumstances change.

Kenya primarily regulates contracts through the Law of Contracts Act, which borrows heavily from English legal principles on contracts and the general principles of contracts and equity. Disputes on contracts are primarily resolved through the Kenyan courts if no alternative dispute resolution clause exists. The courts tend to respect parties' freedom of contract. However, foreign investors must bear in mind that the judicial system, while similar to the English system, has several uniquely Kenyan characteristics. Contracts with Kenyan parties should be carefully drafted, with adequate dispute and jurisdiction clauses, and careful consideration should be given to the type of contract, as certain types – such as contracts for the purchase or lease of land – are regulated differently.

Dispute resolution

The parties to an agreement are free to choose Kenyan law or foreign law as its governing law. English law is a common choice of law as it offers neutrality among BRI participants from different countries.

Enforceability of court judgments largely depends on the forum selected. The parties are free to choose national courts (Kenyan or foreign), arbitration or other forms of dispute resolution, such as mediation.

Kenya has treaties allowing reciprocal enforcement with several countries. It is also a party to the New York Convention.

BRI participants should bear in mind that reliance on the judicial system can be costly and slow. Alternative dispute resolution may offer a timely and relatively cost-effective resolution of disputes. It often complements litigation enforcement procedures and can guarantee compliance to the contract by the parties.



Selecting sectors

Key points

- » 'Traditional' BRI sectors are still those where many African participants believe the greatest number of opportunities exist.
- » African participants are also increasingly interested in sustainable and eco-friendly sectors, which are often seen as lower-risk.

The BRI sectors most commonly targeted by African respondents to date have been energy networks and power grids (50%) and conventional power assets (48%) – well ahead of roads (28%) and oil & gas projects (24%).

We have seen similar priorities elsewhere, although the weighting towards conventional energy production is unusually strong. This correlates with Africa's continuing commitment to fossil fuels,

which account for more than 90% of total primary energy consumption, with fossil fuel extraction remaining an important part of various regional economies. However, some nations have already greatly increased their use of renewable energy. For example, the Garissa solar plant mentioned on page 38 increased the share of renewable energy in Kenya's energy mix to more than 90%, according to the Kenyan Ministry of Energy.

World Bank data suggests that, as recently as 2018, only 47.7% of the population in sub-Saharan Africa had access to electricity. (That headline figure, of course, hides massive national variations: from 100% in Seychelles to just 11% in Burundi.) An important question is whether the people who lack access can be brought on grid without growing the continent's carbon footprint.

The need for a green energy shift accounts for one of the most striking statistics in our survey: while only 16% of respondents have targeted BRI opportunities involving renewable energy or hydro projects in the past, 46% intend to do so in future. Conventional power projects, meanwhile, appear to be gradually losing their attraction, with the 48% figure mentioned above declining to 36% in respondents' future plans. The fall in enthusiasm for oil & gas projects is even more marked, down from 24% to 8%.

Other areas where we found interest had more than doubled include aviation projects (with 12% of respondents intending to target them, up from the 4% who have previously done so), smart cities (up from 6% to 14%), social infrastructure such as schools and civic buildings (up to 14%, from 4% previously), and other urban development (up from 8% to 20%).

But while these examples clearly demonstrate some shifting sector sentiment, 'traditional' BRI sectors are still those where many African participants believe the greatest number of opportunities exist. In particular, a massive 81% view roads as one of the five sectors presenting the most opportunities. Other sectors scoring highly include renewables and hydro (55%),

energy networks and power grids (53%) and logistics-related projects (49%).

Risk sectors

By far the riskiest sector, as perceived by our survey respondents, is oil & gas. Four out of five across our total sample see this industry as one of the five most risky, and 81% of African respondents concur. This reflects the long-term transition away from fossil fuels in favour of clean energy sources. Not only are governments growing more willing to address climate change, but institutional investors are also making ESG issues a matter of priority. And the increasingly competitive costs of renewable energy production are starting to make the development of some less clean alternatives commercially unviable.

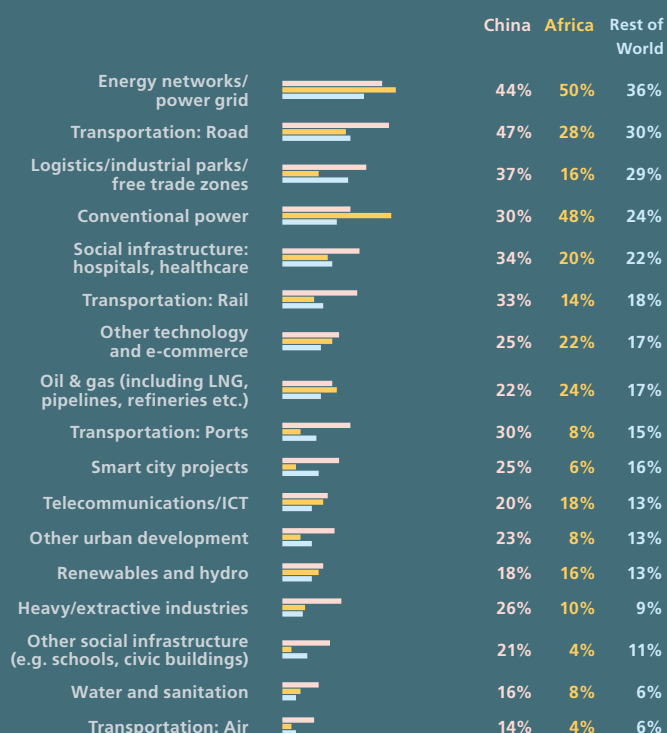
A majority of African respondents (51%) also ranked aviation as one of the five riskiest sectors for BRI investments, followed by heavy and extractive industries (49%) and conventional power (47%). As noted above, conventional power – in the shape of fossil fuel – remains important to many African economies. The extractive industries are also massively important to the continent: they account for most of the export value of a number of countries. The conjunction of perceived risk (linked not only to the practicalities of projects but also to the commodities cycle) and national necessity will make an interesting calculation for many BRI investors, as well as posing significant challenges for risk management.

Virtually no respondents consider renewables and hydro to be one of the riskier sectors, a view that is observable around the world and which is consistent with the secular political trend towards supporting cleaner energy sources.

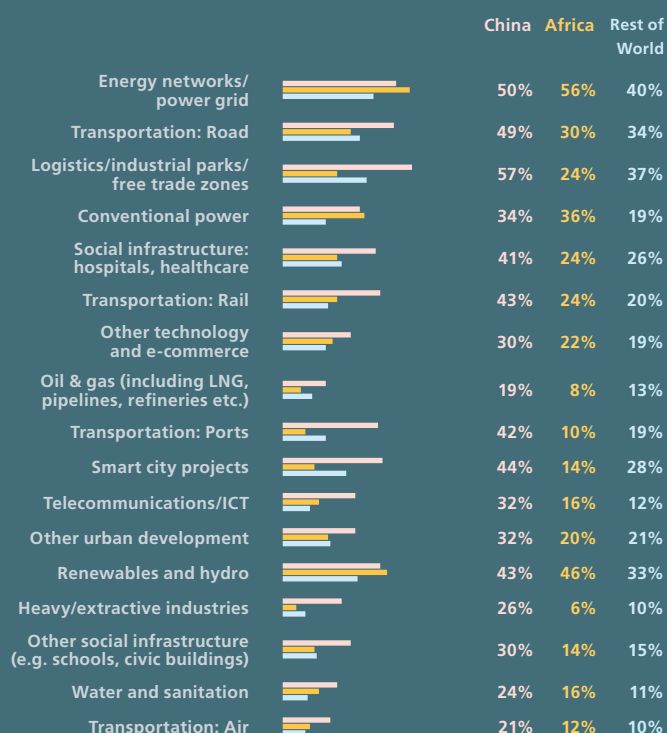


Sector opportunities and risks

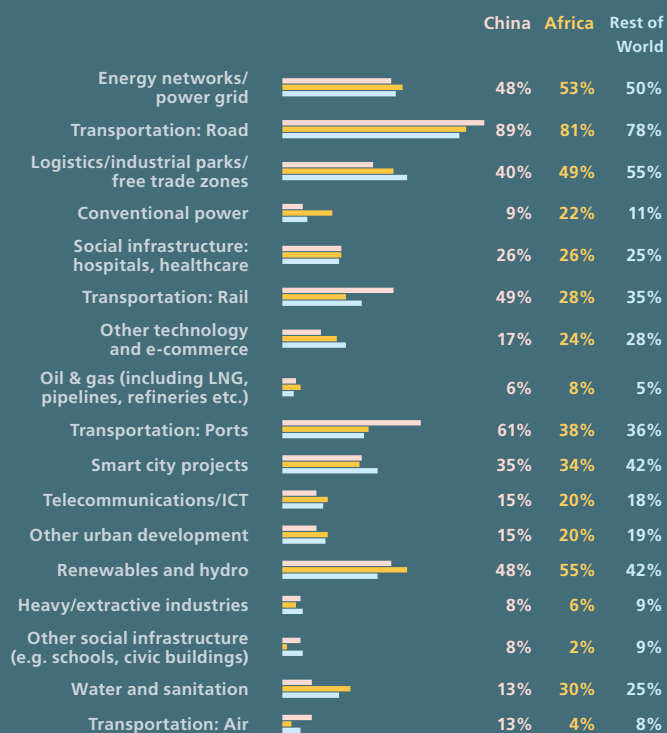
In which of the following sectors has your organisation previously targeted BRI opportunities?



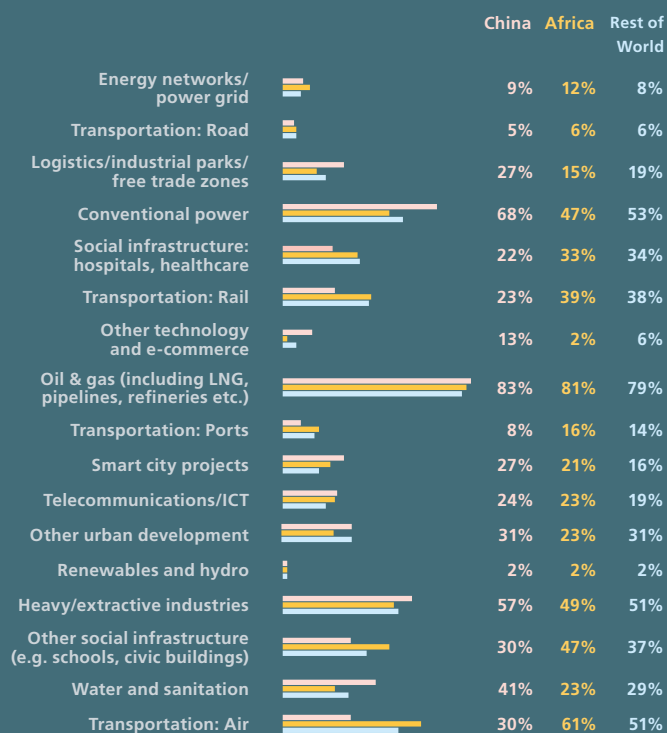
In which of the following sectors does your organisation have plans to target BRI opportunities?



Which of the following sectors offer the greatest number of BRI-related opportunities? (Select top five)



Which of the following sectors are perceived to be the riskiest? (Select top five)



The Health Silk Road

There is a consensus that the pandemic will lead to a renewed emphasis on the Health Silk Road, strengthening health coverage in BRI countries through Chinese cooperation and support.

The Health Silk Road (HSR) predates the current pandemic. A three-year plan for Belt and Road health exchange and cooperation was devised as long ago as 2015. By 2017 it had evolved into HSR, endorsed both by participating nations and by international bodies such as the World Health Organization and OECD.

Much of HSR's initial focus was on policies such as public health and strengthening people-to-people exchanges. But in 2020 the pandemic highlighted deficiencies in health infrastructure in many BRI countries, and China is now promoting the concept of HSR more strongly than ever. This is in line with both its efforts to position itself as a global leader in the containment of the pandemic and Covid-19 treatment, and its realignment of BRI. And an overwhelming majority (86%) of our African respondents believe that the pandemic will lead to a greater emphasis on HSR, with only 2% disagreeing.

In some ways Africa is a natural focus for HSR because of its existing medical links with China. According to Chinese statistics, since 1963 over 20,000 Chinese doctors and nurses have worked in Africa, treating more than

250m patients. China has provided infrastructure such as malaria prevention and treatment centres. During the pandemic, a variety of Chinese organisations have donated medical supplies such as masks and ventilators to African nations, and Chinese medical teams have continued to work across the continent.

While China (in common with other suppliers) has not been as quick to provide coronavirus vaccines in Africa as it has been elsewhere, it has nevertheless donated doses to countries ranging from Cameroon to Somalia. Altogether, it has promised vaccines, through sales or donations, to a total of 27 African states – a number which is likely to grow. Vaccinating Africa is a massive task: as of the start of May 2021, only 1% of people in Africa had received their first vaccination, compared with 44% of those in the United States. In some poorer African nations the number is as low as 0.01%. Chinese assistance is likely to be a key part of Africa's effort to control the pandemic with vaccines.

There is little doubt that China's medical outreach – both over the years

and during the pandemic – has created a generally positive impression, and emphasised the potential benefits for some nations of Chinese healthcare projects.

As the CIO of an investment fund based in South Africa highlighted: "In Africa, the pandemic has resulted in food shortages and loss of jobs, so rebuilding efforts and making sure there are functional routes to serve people in case of a future health crisis will all be part of the renewed perception of BRI."

Across the region, too, there is considerable scope for investment in 'next generation' medical infrastructure, particularly in relation to telemedicine and other digital applications. These offer potential synergies with the Digital Silk Road – an area in which China may also wish to build on its data-driven successes in combating the coronavirus.

China also hopes that cooperation on HSR projects – both those related to the pandemic and those addressing other health needs – will help to build strong foundations for similar cooperation on other aspects of BRI.





A Belt and Road future

BRI is a massive policy initiative but it should still be seen in the context of the world's infrastructure requirements.

The coming decades will pose massive challenges to governments that are seeking investment to upgrade inadequate infrastructure, help them move to carbon neutrality and achieve a variety of sustainable development goals.

Africa's infrastructure gap is particularly large. In 2018 the African Development Bank put the continent's needs at USD 130–170bn a year, with a financing gap of USD 68–108bn. A more recent study by the African Centre for Economic Transformation arrived at a similar figure, estimating the annual shortfall in investment to be USD 64–108bn.

However big BRI may be, it can only bridge part of such a huge gap. Nevertheless, it seems certain to be the world's largest infrastructure initiative for many years to come. Even many of the commentators who have expressed reservations about BRI acknowledge that the world will not be able to meet its goals for sustainable development and a post-carbon future without extensive Chinese involvement and leadership.

BRI will also continue to evolve. Its participants increasingly look to meet the trends of the future. Affordable projects, embracing modern technologies and methods, as well as the 'open,

green and clean' approach of BRI 2.0, will often be those that stand the greatest chance of success. So will those that anticipate the genuine future needs of the societies in which they are built.

As China's foreign minister Wang Yi told a press conference in March 2021; "As we pursue a new development paradigm, we will explore better pathways for Belt and Road cooperation and offer greater opportunities to BRI partners. We are ready to work with all stakeholders to advance high-quality Belt and Road cooperation with renewed commitment and greater resilience. Together, we can turn Belt and Road cooperation into a journey toward common development and prosperity for all."

In its early days BRI was widely seen outside China as being primarily an umbrella under which such projects could be grouped. The question now is whether it will come to be appreciated internationally as a vehicle for higher standards of project sustainability and governance, as well as mutually beneficial cross-border partnerships for both Chinese and foreign participants.

If it does, then it will truly be possible to describe it as, in President Xi's words, a path of "win-win cooperation".

Belt and Road Initiative: CMS reports

As a leader in many of the sectors that make up BRI – including infrastructure, energy, renewables, real estate, technology and healthcare – CMS commissioned a survey of 500 BRI participants from around the world, to assess in depth their feelings about BRI and the prospects they see for it.

Our findings have been published in a series of reports, of which this is the sixth. Previous reports covered China, the Asia-Pacific region, Central and Eastern Europe, the Middle East and North Africa, and Latin America.

You can find the reports at cms.law/bri



About CMS

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