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

2020

Plans for growth

68%
of Chinese BRI participants plan to increase their involvement. Only 10% aim to reduce it.

Working together

77%
of Chinese participants will consider them, but some BRI partnerships have had problems.

BRI 2.0

Despite international caution, BRI 2.0 offers strong possibilities for new partnerships and more sustainable projects.

Foreign concerns

Only **36%**
of international participants want more involvement in BRI. 52% want less.

Legal risk

A top risk for **71%**
of Chinese participants, legal and regulatory risk is a major BRI concern.

A green focus

BRI 2.0 will also help to promote the environmental priorities that many BRI participants wish to pursue.

Mixed experiences

75%
of Chinese participants – but only 37% of others – are satisfied with their BRI experiences.

Dispute resolution

21%
of Chinese participants and 38% of international participants have been in BRI disputes.

Health Silk Road

The Covid-19 pandemic is leading to changes, including more BRI investment in healthcare projects.

Contents

Methodology

In the first half of 2020 Acuris, on behalf of CMS, surveyed 500 senior executives to gauge their views on various aspects of the Belt and Road Initiative. Of the 500 respondents, 100 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.
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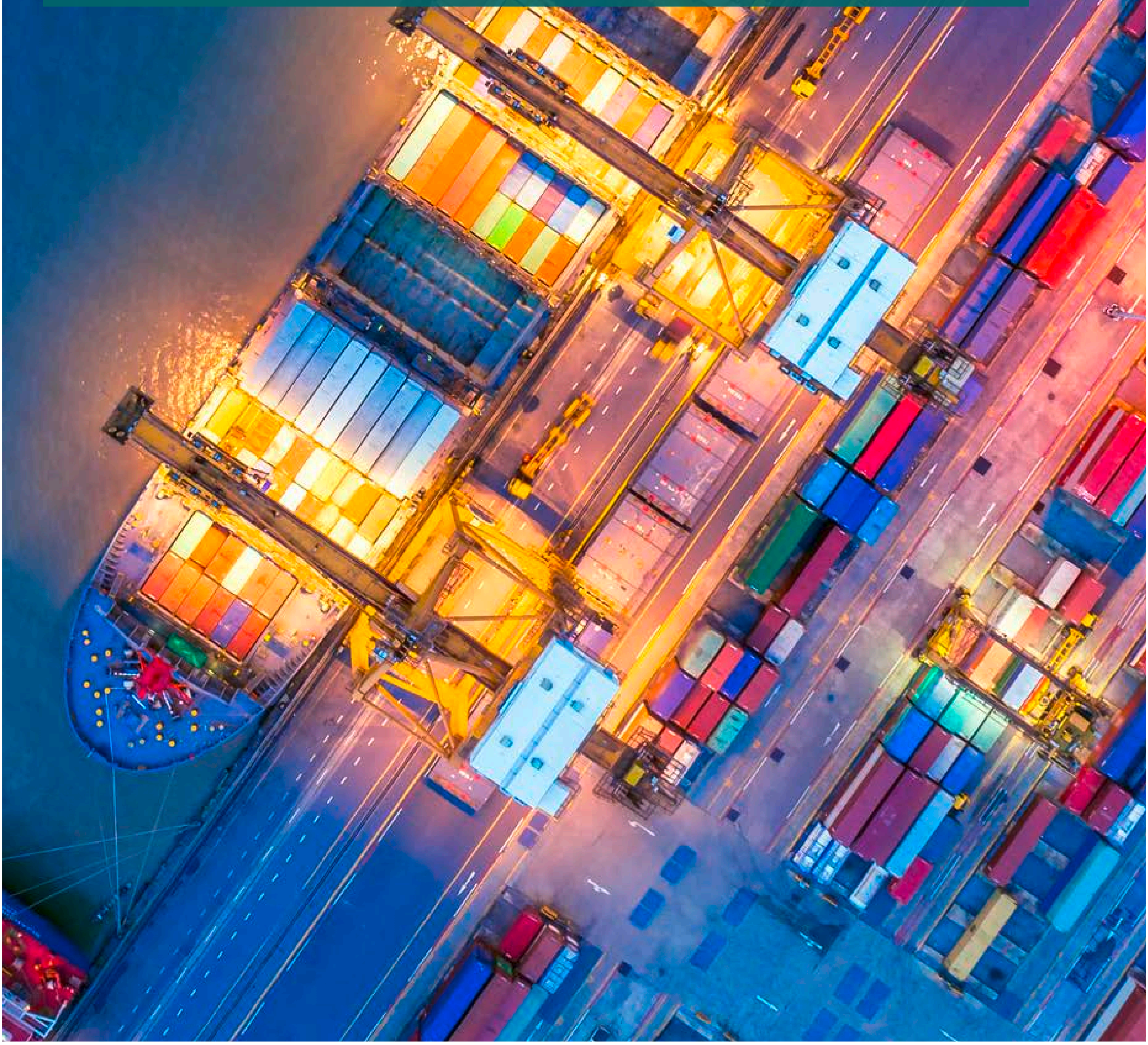
> *The Leading Group on the Construction of the Belt and Road, May 2017*



Belt and Road Initiative
The view from China

China's Belt and Road Initiative (BRI) may be the most ambitious development strategy ever. The numbers are staggering: it has already involved at least 138 countries with a combined GDP of USD 29trn and 4.6bn people. There is no official database of BRI projects (and there is no international consensus on exactly what constitutes a BRI project), but most observers believe that over 3,000 have already been started.

Since it was launched in 2013, BRI has evolved into an ambitious global plan for transnational infrastructure, trade and economic development, linking five continents through land and sea corridors and industrial sectors. Importantly, as well as creating infrastructure, BRI has sought to support priorities such as policy coordination, connectivity, unimpeded trade, financial integration, and connecting people. But in 2020, as the global pandemic rages, and trade and globalisation are buffeted by tariff wars, it faces unprecedented headwinds.

At CMS, many of our offices are in BRI countries and many of our clients have participated in BRI projects. Building on a major new survey of BRI participants conducted by respected global research firm Acuris, and in cooperation with TianTong Law Firm, we are publishing a series of reports 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.

This is the first of those reports, all of which will be made available over the coming months at **cms.law/bri**. As it is the one intended primarily for a Chinese readership, we are publishing it in both Chinese and English. We hope you find it interesting and would be delighted to discuss any of its contents further with you.

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Sentiment and collaboration

Over two-thirds (68%) of Chinese respondents intend to increase their involvement in BRI projects, with only 10% planning to reduce it. But only just over one-third (36%) of our international respondents aim to increase their BRI exposure, with over half (52%) intending to cut it. This is a potentially serious mismatch and shows a significant deterioration in the international view of BRI.

A year ago, only 18% of our international respondents had a negative opinion of it. And two years ago, when we surveyed 100 senior executives to gauge their views on the opportunities offered by BRI, 98% expected international investors to increase their investments in BRI projects. Positive sentiment towards BRI among international participants has clearly deteriorated.

This is partly due to macro issues. Geopolitical concerns, plus the coronavirus pandemic and the economic stresses it is creating, are making many businesses more cautious about all types of activity. Such macro issues help to explain why enthusiasm for BRI among both Chinese and non-Chinese participants has declined. So do some specific factors relating to BRI, which are discussed below. But they do not account for some of the other differences between the sentiments of Chinese and non-Chinese respondents.

Enthusiasm for BRI

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

	International	China
Decrease significantly	30%	5%
Decrease moderately	22%	5%
Remain the same	13%	22%
Increase moderately	25%	37%
Increase significantly	11%	31%

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

	International	China
Very negative	3%	0%
Negative	15%	5%
Neutral	49%	27%
Positive	32%	65%
Very positive	1%	3%

What is it now?

	International	China
Very negative	37%	10%
Negative	15%	14%
Neutral	23%	32%
Positive	24%	43%
Very positive	1%	1%

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

	International	China
Easier than expected	3%	8%
As expected	28%	52%
More challenging than expected	69%	40%

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

	International	China
Very unsatisfied	25%	11%
Moderately unsatisfied	24%	2%
Neutral	14%	12%
Moderately satisfied	27%	52%
Very satisfied	10%	23%

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

	Yes	No
International	50%	50%
China	69%	31%

Would you consider such partnerships in the future?

	Yes	No
International	48%	52%
China	77%	23%

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

	International	China
N/A	2%	0%
Very negative	15%	6%
Moderately negative	15%	1%
Neutral	37%	29%
Moderately positive	30%	59%
Very positive	1%	5%

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

	International	China
N/A	19%	9%
Very negative	2%	4%
Moderately negative	8%	23%
Neutral	37%	30%
Moderately positive	30%	30%
Very positive	4%	4%

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

N/A	3%
No	38%
Unsure	1%
Yes	58%

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?

Neutral	14%
Moderately more difficult	36%
Much more difficult	50%

Working together

Strong working relationships between Chinese and international organisations can help to mitigate risk, share skills, encourage local acceptance and move projects forward more rapidly.

"For sustainable financing options and to ensure that all ESG regulations are completed, partnerships have played a crucial role so far. We will be seeking new opportunities as projects resume and there is more requirement for funding."

Investment director, China

"Overall, there was a lack of organisation and communication between participants. This was somewhat unexpected; from the details we had researched, the consensus was that projects were being managed well."

MD, US commercial bank

Chinese respondents were largely enthusiastic about using joint ventures and partnerships, with 69% having already done so (compared with 50% of international respondents) and 77% ready to consider doing so in the future (compared with 48% of international respondents).

However, when Chinese respondents were asked about their experience of working with non-Chinese partners, only 34% rated it positive. Another 30% were neutral about it, and 27% were negative, with 9% expressing no opinion.

Some Chinese respondents were enthusiastic about their experience, such as the supplier for whom "involvement with Chinese and non-Chinese organisations accelerated the rate of growth" and another who had entered partnerships "to improve our chances to excel in challenging market conditions and drive innovative solutions that would be effective in global markets."

However, some Chinese participants in BRI found partnerships and joint ventures challenging for similar reasons as their non-Chinese counterparts (see below), like the director of a Chinese fund who lamented a "lack of trust", and the infrastructure operator from Hong Kong who observed that "cultural issues became evident as soon as the initial talks began, and did raise some serious concerns on compatibility in the long run."

For some, the experience is not one they wish to repeat, like the CFO of a Chinese supplier who told us that "coordinating with non-Chinese companies will not be targeted, given the earlier pushbacks and challenges that have been faced with negotiations and lack of confidence in the project."

Only 31% of our international respondents said that working with Chinese partners was a positive experience, with almost as many (30%) finding it a negative one. The proportion who found it 'very negative' (15%) was significantly higher than the equivalent (4%) among their Chinese counterparts working with international partners.

A **lack of openness** is a very common complaint. For a US investment director, "the main concern was the lack of transparency when discussing the various technical applications. We were not particularly thrilled about Chinese companies withholding important information, crucial to financial and IP decisions." An executive from a multilateral development bank "felt that many details were held back from us. We understand the extent of disclosures and sensitivity of information in the business field, but the lack of trust and coordination was uncalled for."

Other respondents have also experienced a **lack of trust**, while a **lack of interest** in suggestions from non-Chinese participants was noted by respondents such as the director of a Spanish business whose "Chinese partners did not acknowledge our suggestions and concepts." Many respondents would agree with the head of investment from a German fund who said "we were not satisfied with the outcome and process because our ideas and insights were not given importance."

Other respondents also reported **problems in communication and consultation**, like the investor who complained that "even at times when it should have been a priority, we were not consulted during the process." Some felt this reflected a more general lack of organisation.

While many projects were well managed, in others a lack of organisation also manifested itself as what one professional services provider called **poor project management**: "Talented staff with knowledge of technical aspects and projects handling capabilities should have been assigned to manage the workload." A Canadian investor suggested that "some of the management methods are way too flexible. For smaller projects, with limited staffing, equipment and material usage, this would be ideal. But, for large-scale workload, flexibility resulted in a lack of cost-efficiency and time delays." Another thought "a rush to complete the project impacted the quality of output."

Some respondents noticed a lack of **overall planning**. The CEO of a contractor in Bangladesh mentioned that in their previous experience Chinese entities had been good at planning, but "BRI-related projects have involved more impromptu decisions, that have not been practical at times."

A number of respondents linked planning and management problems to what a Nigeran CEO termed an **"over-ambitious" approach**. An EPC contractor from Croatia connected a tendency to be "much too ambitious" to a lack of "generalised risk perception". Several respondents said that, as a South African CIO put it, even after problems were encountered, over-ambitious participants had "lacked the perception to acknowledge these and act accordingly." A respondent from Myanmar had a similar experience: "they were not flexible enough to make the changes [to unrealistic plans] and allow for more innovation."

A similar **lack of innovation** was noted elsewhere by respondents who felt it damaged the long-term prospects of projects. One supplier was "very unsatisfied with the lack of innovation and research during the project. We were not able to prompt new ideas, which would have been ideal in providing stability to projects and enhancing the value over a period of time." A Latin American infrastructure operator found that Chinese partners in BRI projects "did not worry about innovation or increasing productivity levels gradually by automation or use of other technology."

But other international respondents reported only **positive experiences** of their Chinese partners, noting strong management and achievable ambitions. For a Hungarian banker, for instance, "the experiences we had with Chinese organisations overall have been good. They had ambitious plans for the completion of BRI projects and led the teams accordingly." An EPC contractor in Qatar found that partnering "has led to speedier resolution of challenges and improved potential for returns."

"One of the major hurdles we faced was finding cooperative local partners in host countries. Some of them were reluctant to adopt new practices or contribute with similar intentions to BRI projects."

Senior executive, Multilateral development bank, China

Are BRI partnerships different from others?

A majority of international respondents (58%) have encountered differences in working with Chinese entities on BRI projects and on non-BRI projects.

Most of them said this involved some degree of difficulty, and half said it was much more difficult to work with their Chinese partner on a BRI project than on a non-BRI project. A director from a UK investor told us that Chinese partners had appeared more "open" during non-BRI projects. "With BRI projects they seem somewhat guarded in their approach."

Many others made similar comments, often contrasting their experiences with previous positive ones, such as the Singaporean investor who felt "transparency within the BRI framework was lacking. Chinese entities did not create an environment of trust or try to promote the mutual development plans. During non-BRI projects, they are open to others' expertise and acknowledge experience in the industry."

There was a widespread sense of surprise and disappointment about this, typified by the contractor in Pakistan who had been "looking forward to a better understanding and sharing of insights" because of his previous experience of working with Chinese entities.

Some of our respondents thought that, in the words of an investment director from a policy bank, "there was some political influence that was prompting their unusually reserved behaviour." Non-Chinese participants may be too quick to suspect political intervention, or to assume that it comes from China when in fact a local government may be exerting pressure on a project. And some firms experiencing problems may be happy to let their non-Chinese partners believe that these are the result of official intervention, rather than bad management. But this type of perceived political risk is something that causes many non-Chinese entities anxiety. Chinese entities that can help their non-Chinese partners attain reasonable expectations in this area are likely to find that their long-term cooperation is much more satisfactory.

There are other reasons why cooperation on BRI projects may be harder. For example, an unusually high proportion of BRI projects have been in less stable nations that score more poorly in risk indexes. If the parties to a project are struggling to manage that additional risk – especially if they are relatively unfamiliar with it – their cooperation may suffer.

Inconsistent?

The variety of BRI is one of the things that can make it challenging for some participants. The markets involved are very different and what works in one place may be quite unsuitable in another. Different participants also have very different approaches. Crucially, while the initiative enjoys strong official support in China, there is no single coordinating organisation responsible for BRI. But some of our respondents found what they perceived as 'inconsistency' across BRI to be a problem.

"To yield a more positive outcome, BRI projects should be more driven by standardised practices and contracts."

CFO, Commercial bank, Africa

Are BRI projects more challenging than others?

Over two-thirds of international respondents (69%) found the process of participating in BRI-related projects was more challenging than they had expected.

The same was true for 40% of Chinese respondents, who found a wide variety of challenges including unexpected "legal and regulatory disturbances", interference from local authorities, unanticipated complexity, inadequate technology, awkward cultural differences, and problematic collaborators. For the director of a Japanese fund, "participating in BRI-related projects has been challenging for us, as we did not anticipate the current level of geopolitical tensions." Many other respondents have also found that the geopolitical climate makes BRI participation more difficult.

We heard a number of references to the recent trade disputes between the US and China, such as this from a Malaysian banker: "The prolonged exchange and aggression has created more risks and we have found it challenging to assess important return variables and long-term scope."

Many Chinese participants in BRI believe that a reduction in negative sentiment towards China would result in more positive outcomes for BRI projects, like the supplier who felt "enthusiasm from all participating countries and companies should collectively increase, so that China is not the only country pushing for the massive infrastructure project." That point was echoed by the banker who said: "More enthusiasm from other countries would be much appreciated. Right now, it feels like China is pushing the project singularly, with lack of enthusiasm for the end results, in terms of increasing global operations and facilitating smoother trading routes."

Many Chinese participants also feel that China's vision for BRI is not sufficiently appreciated internationally. An investment director "would be more enthusiastic if countries would acknowledge the concept and the basis on which it was designed, to fulfil the dream of interconnecting and encourage cooperation".

Some non-Chinese participants feel the same way, like the CFO of a North African bank who said "cooperation from countries that have previously been sceptical about BRI would be appreciated. They should look at this initiative as a joint undertaking, since China has agreed to majority funding and is looking to improve inter-continental relations."

The participation of more developed economies in BRI is cited as a potentially positive step by respondents such as the director of a Chinese EPC contractor, who told us that "the lack of support from developed and stable economies has been worrying, especially when you think about the potential that could be derived if they provide their expertise and resources." More local influence and benefits for less developed BRI nations are also seen as changes that could help to improve enthusiasm for BRI overall.

"The experience has been challenging because some countries involved are not as developed as China when it comes to talent, resources, finances or machinery."

Director, Chinese bank

"Even though many countries have been participating, I see a lack of enthusiasm for the BRI project in its entirety. China has been flexible and understanding, creating the changes to ensure local support, but mutual trust would be more beneficial."

Director, Insurer, China

Are BRI participants satisfied?

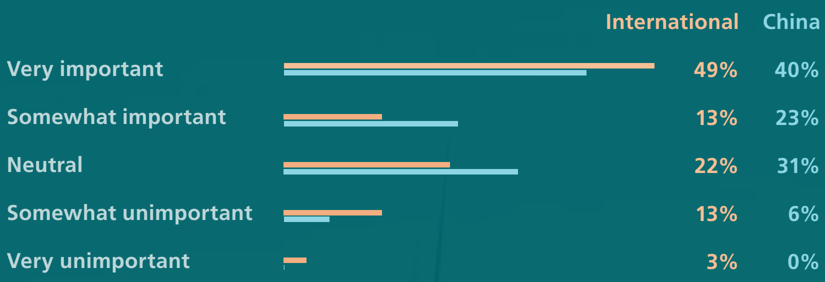
The majority (75%) of Chinese respondents have been satisfied with the process and outcome of their involvement in BRI projects. But only half as many (37%) international participants have been satisfied.

Chinese authorities often emphasise that a key aspect of Belt and Road cooperation is the principle of consultation and cooperation for shared benefits, as well as a spirit of openness, inclusiveness and transparency. This has not always been the experience of participants. However, China clearly understands the desirability of making BRI more attractive to non-Chinese participants, as aspects of its BRI 2.0 initiative (see page 39) show.

Environmental, social and corporate governance issues

Nearly two-thirds of both Chinese (63%) and international (62%) respondents believe it is important that their BRI projects should be sustainable and environmentally friendly. However, the number of international respondents who believe it is very important (49%) is rather higher than the 40% of Chinese respondents for whom it is very important.

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



Sustainability and **environmental, social and corporate governance** (ESG) issues are important parts of BRI 2.0 (see page 39). But they have not always featured in past projects, and they are still far from uniform across BRI. This has been a problem for some non-Chinese participants, such as the Australian investment director who found that "requests for use of more environment-friendly materials have been ignored by Chinese entities" and the Japanese banker who found "a lot of pushback on our suggestions" of a greener approach. (The lesson they drew from this was that "in future projects, we will need to discuss these considerations earlier on instead of waiting for mutual cooperation during the later stages of projects.")

Many participants also believe that social issues have not been given enough attention, like the CEE insurer who felt "the benefits of these projects have not been maximised to suit local requirements" and the South African CEO who complained that "local sentiments have not been given the promised importance." A real estate developer from the Philippines voiced the regret that "social and economic factors were not regarded as much when taking new decisions."

A number of respondents observed that ignoring ESG issues could create dispute risks, like the Australian infrastructure operator who said "social problems were not addressed soon enough, which led to disputes between employees and locals." A significant number of those interviewed in our survey had been involved in disputes where projects had fallen foul of local environmental rules.

Increasingly, Chinese participants in BRI are also seeing this as a problem, like the investment director of a Chinese bank who said disputes "emerging from non-compliance with environmental regulations" had been "a recurring issue" with projects, and the Chinese professional services provider who found that "BRI projects generated legal disputes on environmental grounds" and thought that "many Chinese agencies and investment firms have been facing the same issues during overseas investments."

Such experiences are one reason many Chinese participants are now keen to incorporate ESG principles more widely into their activity.

Covid-19

What effect has it had on BRI?

The global economy has already been significantly impacted by the Covid-19 pandemic. Inevitably, the pace and scope of BRI has also been affected, although China has been keen to emphasise that many BRI activities are continuing.

According to statistics from the Ministry of Commerce, in the first six months of 2020:

— Chinese enterprises made non-financial direct investments of RMB 57.1bn in 54 countries along the Belt and Road, up by 23.8% year on year. Investment hotspots were Singapore, Indonesia, Laos, Cambodia, Vietnam, Malaysia, Thailand, Kazakhstan and UAE.

— The number of newly signed contracts by Chinese enterprises in 59 countries along the Belt and Road amounted to 2,289 with a total contract value of RMB 424.02bn. This was 56.3% of the value of all China's newly-signed overseas contracted projects, down 1.7% year-on-year.

Clearly, new BRI projects are still happening. Nevertheless, there have been widespread reports of project delays and cancellations. Supply chains and travel have been disrupted, and in some cases it has not been possible for workers to continue on site. In June, Wang Xiaolong, director-general of the Ministry of Foreign Affairs' International Economic Affairs Department, said that about 20% of BRI projects have been seriously affected by the coronavirus pandemic, with another 30–40% somewhat affected and about 40% not affected.

However, there were signs even before the pandemic that lending and investment by Chinese bodies was slowing. In February, for example, Egypt shelved what would have been the world's second-largest coal-fired power plant, at Hamrawein, a USD 4.4bn project which was to have been undertaken by a Chinese-Egyptian consortium. It has been reported that the decision was motivated by concerns about overcapacity and pollution, rather than the pandemic. It is often said that the pandemic has 'changed everything', but not everything that changes is doing so because of the pandemic.

Health Silk Road

An overwhelming number of both Chinese (85%) and international (93%) respondents agreed the pandemic will lead to a renewed emphasis on the Health Silk Road (HSR).

The Chinese government is keen to promote HSR projects in the light of the pandemic and many BRI countries will welcome such projects. So it is unsurprising that so many of our respondents agreed with this suggestion. For more on the Health Silk Road, see page 43.

Economic stimulus?

Over two-thirds (69%) of Chinese respondents believe that a greater availability of 'cheap money', through measures to stimulate the international economy, will support more international investment in BRI projects. Only 29% of international respondents agree, with far more (45%) believing that this is unlikely to happen.

We consider the complex question of finance on page 25. There may be more international investment in BRI projects – but if there is, it is likely to be quite rigorously targeted.

Covid-19

Possible long-term effects 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.

	International	China
Strongly disagree	18%	3%
Moderately disagree	27%	11%
Neutral	26%	17%
Moderately agree	26%	50%
Strongly agree	3%	19%

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

	International	China
Strongly disagree	32%	41%
Moderately disagree	25%	18%
Neutral	31%	22%
Moderately agree	10%	9%
Strongly agree	2%	10%

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

	International	China
Strongly disagree	5%	2%
Moderately disagree	26%	4%
Neutral	23%	13%
Moderately agree	21%	29%
Strongly agree	25%	52%

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

	International	China
Strongly disagree	1%	3%
Moderately disagree	15%	33%
Neutral	20%	29%
Moderately agree	31%	21%
Strongly agree	33%	14%

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.

	International	China
Moderately disagree	1%	1%
Neutral	6%	14%
Moderately agree	26%	37%
Strongly agree	67%	48%

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

	International	China
Strongly disagree	2%	9%
Moderately disagree	22%	42%
Neutral	13%	23%
Moderately agree	30%	16%
Strongly agree	33%	10%

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

	International	China
Moderately disagree	25%	3%
Neutral	33%	19%
Moderately agree	21%	33%
Strongly agree	21%	45%

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

	International	China
Strongly disagree	1%	4%
Moderately disagree	13%	23%
Neutral	27%	39%
Moderately agree	36%	25%
Strongly agree	23%	9%

Commercial funding
Nearly two-thirds (63%) of international respondents felt that less commercial funding will be available for BRI projects as banks and investors seek to protect and rebuild their balance sheets. Only 26% of Chinese respondents agreed.

One possible explanation for the highly divergent views of Chinese and international respondents here is that the former may be thinking of China's state-owned commercial banks while the latter have in mind what they believe to be the likely responses of international banks.

Domestic focus?
Relatively few respondents expect China to reduce its emphasis on BRI in favour of supporting more domestic projects. Only 19% of Chinese respondents and 12% of international respondents expect this to happen.

Many commentators have suggested that China's acceleration of its own 'new infrastructure' projects as a response to the economic impact of Covid-19 will divert resources from foreign BRI projects. It is interesting that the BRI participants in our survey disagree so strongly with them.

A number concurred that investment in domestic projects would increase, but most did not think it would affect the flow of finance to BRI. However, finance for BRI may be affected by other factors, as we discuss below.

More favourable terms
Over three-quarters (78%) of Chinese respondents expect some BRI projects to enjoy more favourable terms, as the Chinese authorities seek to create demand for the output of Chinese companies. Fewer than half (42%) of international respondents agree, although another 33% are neutral on the matter.

Although China's domestic consumption has not yet recovered from the initial impact of the pandemic, Chinese exports have rebounded strongly. In July they rose by over 7% year-on-year in dollar terms, according to data from China's customs administration. Given their focus on higher quality projects, the Chinese authorities are unlikely to incentivise otherwise unjustifiable projects purely to bolster demand still further.

We have however noted an increasing Chinese emphasis on South-East and Central Asia, where supply chains with China are stronger and investment returns more foreseeable given cultural and socio-economic similarities. Favourable terms might be offered for significant projects that support supply chains in this context.

Restructuring projects
A majority (59%) of international respondents believe some BRI projects will become unsustainable and will have to be restructured or abandoned. Chinese respondents are much more divided on the question. Similarly, while 64% of international respondents believe some governments will use the economic situation as a reason to withdraw from unsuccessful or controversial BRI projects, only 35% of Chinese respondents agree.

China has launched various initiatives – such as the Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative, published last year by the Ministry of Finance – to promote a long-term, sustainable financing system for BRI countries. But not every older BRI project would meet that standard. In 2018 the Centre for Global Development concluded that "it is unlikely that BRI will be plagued with widescale debt sustainability problems. But it is also unlikely that the initiative will avoid any instances of debt problems among its participating countries." Covid-19 does not fundamentally change that calculation. Indeed, given the sheer number of BRI projects, it seems certain that some will see defaults in the current climate, and that renegotiations will be necessary. Whether projects will be abandoned is harder to assess. Many of our respondents believe some governments will opt to end controversial projects but it is not clear that China has ambitions significantly to slim down its BRI portfolio in this way if renegotiation is an alternative, particularly as renegotiation may have more positive long-term results. For example, Malaysia's 2019 renegotiation of its East Coast Rail Link attracted much attention. The line was shortened and its cost reduced. But the negotiation was in many ways a win-win deal for both China and Malaysia: it meant the project resumed after a year of inaction, and it facilitated the revival of the USD 34bn Bandar Malaysia property development in Kuala Lumpur, which had earlier been cancelled, as well as subsequent Malaysian-Chinese deals.

Fresh enthusiasm
A big majority (81%) of Chinese respondents believe that some nations will be more open to new BRI projects, in the hope that these will provide a boost to their economies. Significantly fewer international respondents (46%) have the same view.

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 and more traditional infrastructure projects are likely to take longer to come through. There is also the consideration that some countries may seek Chinese involvement if other sources of support for their Sustainable Development Goals are reduced by the economic consequences of the pandemic, or if the demands placed on traditional donors outstrip their ability to respond.

A legal consultant from **Norinco International** talks to us about why cooperation is vital for the continued success of the Belt and Road Initiative.

What is your role at Norinco International and how does it pertain to the Belt and Road Initiative?
I work as manager for the legal department of the company, offering legal support for investment projects for the BRI.

Where do you see most opportunity for BRI projects? And conversely, where do you see most risk?
We see opportunities in oil and gas development and real road infrastructural projects. However, they are huge in size and involve major investment. To make any profit, you need to make a huge investment. Also, this kind of project requires a high standard of quality and safety control. There is both financial and practical risk involved.

Which countries present the best opportunity for BRI projects, and why?
In South-East Asia, we are present in Laos, Thailand and Cambodia. We also see opportunities in Africa in countries such as Kenya and South Africa. In these areas, demand for infrastructure is high and the construction levels are still low.

In addition, the attitude of these countries to China is relatively friendly. They recognise the quality of the equipment provided by China. They also see the importance that the Chinese government is placing on these projects – these countries see that the Chinese are willing to provide sufficient facilities and loans for infrastructure projects.

How will Norinco International be focussing its efforts on these regions specifically?
We have invested in many different areas. For instance, in Laos we invested in hydropower and in Bangladesh we've invested in coal power plants. In Cambodia we invested in wind power, and in Mongolia the investment is focused on electricity resources and road infrastructure. In South Africa, we invested in the area of transportation integration.

In terms of how we invest, we are committed to outbound M&A deals.

What do you see as the biggest challenges to BRI projects and how do companies overcome these issues?
Typically, legal and regulatory issues such as currency control are the most challenging. Understanding the local taxation regime can also bring complexities. Knowing what transaction structure we should adopt often depends on the local tax law and regulations. To mitigate those risks, we engage international law firms with relevant experience – and we get them involved at the early due diligence stage.

A related challenge comes from the local laws in some jurisdictions. This means we need to hire local employees and also purchase the locally-made equipment in certain countries.

How has the Covid-19 pandemic affected the pipeline and the completion of BRI projects?
The pandemic has indeed affected the operations of ongoing BRI projects. Nine of our projects have been delayed or are at potential risk of breaching their contracts. At our other seven projects, the counterparty is likely to delay the operation which would breach the contractual obligation of the counterparty and the projects.

The main reason we encounter contract breaches is because sub-contractors now cannot supply in time, so operations have to be postponed.

How do you think China can encourage more international lenders and contractors to get involved in BRI projects?
Chinese companies need to adapt fully to local laws and understand them in great depth. By doing so China will have better relations with international entities.

How do you feel that Belt and Road 2.0 (BRI 2.0) will affect the pipelines of deals and the involvement of international investors?
In the first iteration of BRI, Chinese companies made huge investments. I believe that BRI 2.0 would require those companies to take this to another level. On this level, they need to focus on quality development. For example, they need to seriously consider local environment protection. BRI 2.0 is all about quality and regulatory transparency.

What is the future for BRI?
The situation for BRI has changed recently. The most notable change in the past few months has been the deterioration of China's image globally. In addition, the outside investment environment has also been complicated. In the long run, this could mean ongoing BRI disputes and disruptions.

The smooth running of BRI as an initiative and on an individual project basis will depend on diplomatic relationships between the Chinese and local government. If local government can maintain the good diplomatic relationship with China and still recognise the value of BRI then the projects can be advanced. Otherwise, there would be huge uncertainty for some projects in certain states and jurisdictions.

> Chinese companies need to focus on quality development. For example, they need to seriously consider local environment protection. BRI 2.0 is all about quality and regulatory transparency.

Managing risk and overcoming obstacles

There can be various obstacles to productive BRI cooperation. There can also, of course, be many different types of risk in BRI projects, varying according to the project, the market and the position of the participants. The two issues are intrinsically connected: it is impossible to have fruitful and trusting cooperation without the adequate management of risk and a shared approach to dealing with problems.

Are BRI projects riskier than others?

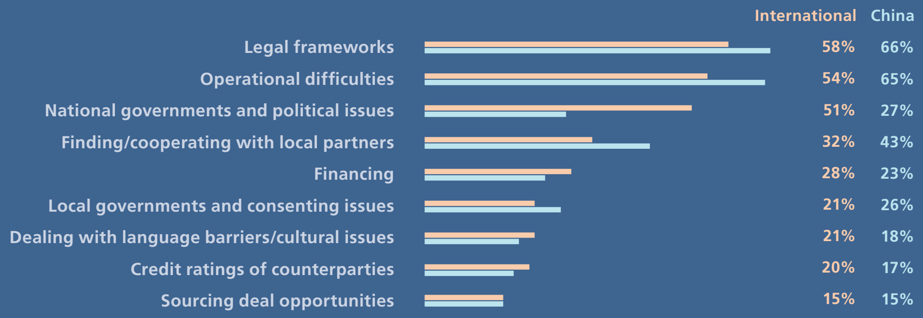
Some BRI projects have been cancelled or scaled down, sometimes after regime change in their host countries. But while these have received a lot of coverage in some foreign media, they represent only a very small percentage of BRI projects overall. It is certainly not clear that BRI contracts are more likely to be cancelled than others: for example, a World Bank study of PPPs in developing countries between 1990 and 2011 found an overall cancellation rate of 6%.

Nor is it clear that BRI projects have a higher failure rate than non-BRI projects. Depending on the definition of failure, studies suggest that anything between 50% and 90% of large infrastructure projects worldwide 'fail' by going over budget or schedule, or not delivering their intended outcomes.

Nevertheless, some BRI projects do present significant risk, along with the opportunities they offer. As the World Bank wrote in a report last year: "BRI projects carry inherent risks common to large-scale infrastructure projects, heightened because of weak domestic institutions and poor economic fundamentals in many participating economies." Ultimately, that risk is specific to each jurisdiction and each project, and parties to BRI projects must ensure that their due diligence is thorough enough for them to understand those risks, and that their risk mitigation strategy is robust enough to manage them in a commercial way.

Obstacles and risks

Which of the following have presented the greatest obstacles to your BRI-related activity?



Common obstacles to BRI activity

— A majority of both Chinese (66%) and international (58%) respondents included **legal frameworks** among the top three obstacles they had experienced to BRI activity.

— A majority (65% China, 54% international) also included **operational difficulties** among their top three obstacles.

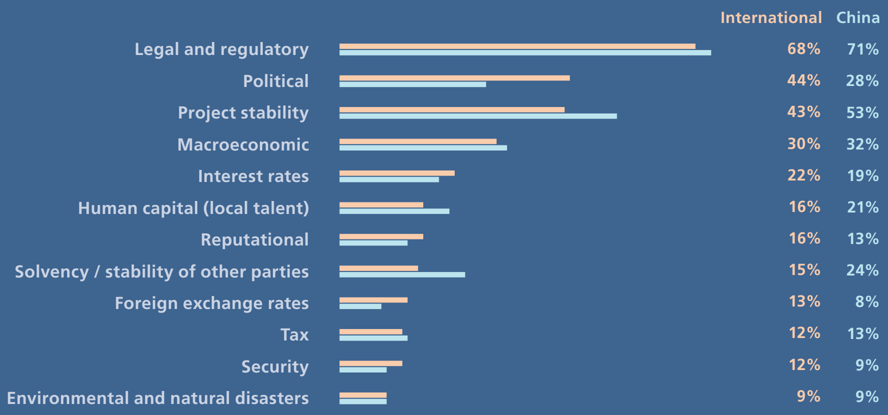
— A majority (51%) of international respondents put **national governments and political issues** among their top three obstacles, compared with only 27% of Chinese respondents.

— It was noticeable that a greater percentage of Chinese respondents (43%) than international respondents (32%) saw **finding and cooperating with local partners** as being among their top three obstacles.

"Addressing any challenges earlier on is the most effective way to mitigate them. Proactive decisions limit uncertainties in the form of political influences or legal challenges. Understanding the risks and their implications for the business is crucial."

Finance director, Policy bank, Central Europe

Which of the following represent the most serious risks as they relate generally to involvement in BRI projects?



Common BRI risks

— The most frequently cited risks are similar to the most common obstacles, with **legal and regulatory risk** the one most commonly identified by both Chinese (71%) and international (68%) respondents as a top-three risk.

— **Project stability** was the second most commonly cited risk among Chinese respondents (53%) and the third most commonly cited by international respondents (43%).

— **Political risk** was the second most commonly cited by international respondents (44%), but only the fourth most commonly cited by Chinese respondents (28%).

Some key risks

Contractors
In light of the ongoing Covid-19 pandemic, the health and safety of those involved in BRI projects is of paramount importance. This includes both workers on site and people in the wider community where these projects are underway. Because of Covid-19, disruptions in the supply of both goods and workers have caused severe delays to the implementation of some projects, and ensuring that sufficiently robust contingency plans have been put in place has become paramount.

The cross-border transactional nature of BRI presents the increased risk of disputes occurring. Parties to a BRI project are likely to come from a number of countries, raising difficulties regarding differing expectations of the operation (and interpretation) of local laws and regulations.

Additionally, compliance with environmental and workplace laws may require contractors to engage with the relevant unions and local communities. Seeking local legal advice and professional guidance is important to mitigate these risks.

Investors
For investors, the baseline consideration has always been the proper identification and mitigation of risk. BRI countries have a wide range of legal and economic systems, and in some there is significant investment risk in the form of change in law/ government, land acquisition risk and currency and inflation risk. Other categories of risk include foreign investment restrictions, corruption and bribery, and dispute resolution (and enforcement) certainty.

Investors are often keen to allocate these risks away or to employ measures to sufficiently mitigate against them.

Lenders
Macroeconomic concerns present a key threat to BRI investments and may be even more unpredictable than political issues.

BRI projects with currency discrepancies in revenue and financing streams could be adversely affected by currency volatility and resulting depreciations which lenders will need to consider.

Encouraging local currency financing is usually the preferred mode of financing, though this is not always available in the markets in which the BRI operates.

Key legal considerations for different players in BRI projects

A majority of both Chinese (66%) and international (58%) respondents included legal frameworks among the top three obstacles they had experienced to BRI activity. Legal and regulatory risk was also the risk most frequently cited by both Chinese (71%) and international (68%) respondents as a top-three risk.

Adrian Wong
Partner, Projects and Infrastructure
CMS Singapore

"There was no preparedness for regulatory disturbances. These could have been prevented by consulting with local authorities or hiring local advisors. It could have transformed the potential of projects."

Corporate development director, UK supplier

"During the expansion phase of projects, there were land disputes, which we had not expected. We encountered problems dealing with local authorities during the build and, halfway through the construction, disturbance to lifestyle also generated disputes."

Investment director, Infrastructure operator, China

Parties to a BRI project often come from a number of countries, raising difficulties regarding differing expectations of the operation (and interpretation) of local laws and regulations. This difficulty is compounded by sometimes inadequate legal protection in BRI countries where legal regimes are underdeveloped, or where social and judicial corruption is present.

Risks surrounding compliance issues such as bribery and corruption also pose a challenge to international participants. Many BRI countries score at the low end of Transparency International's Corruption Perceptions Index. This has led to an increased level of enforcement of anti-bribery laws in various BRI countries, particularly in China which has reiterated a policy of 'zero tolerance' of corruption. As the roles of local third-party agents and consultants, local suppliers and logistics companies, customs brokers etc expand, companies will need to take a more active role in ensuring that they fulfil the necessary compliance requirements.

Notwithstanding the challenges posed, participants can manage such risks through appropriate risk identification, management and mitigation measures, some of which include:

— Conducting robust due diligence on local partners, including their track records on projects, creditworthiness, corporate structures and ownerships, identities of the board of directors and key shareholders, compliance with laws, litigation records, connections with local governments and/or authorities etc.

— Careful negotiation and drafting of contracts to include adequate risk management and allocation provisions, which are supported by clear liability language.

— Effective contract management and compliance with contractual obligations, ensuring that the commercial and project teams are familiar with the relevant contracts to manage any issues and claims when they arise.

— Being alive to areas where the risk of corruption is present, such as excessive commissions to third-party agents or consultants, consulting agreements with vaguely described services and consultants in a different line of business than that for which they have been engaged, and any close relationships between third-party agents and foreign officials.

— Avoiding shortcuts around compliance requirements, such as engaging a third party to manage government approvals without performing adequate due diligence or putting in place controls around the third party's activities.

— Selecting well established and neutral dispute resolution forums. A majority of the countries on the BRI trade routes are party to the New York Convention, which would facilitate the enforcement of arbitral awards in respect of cross-border BRI projects in such member states. For more on dispute resolution, see the section beginning on page 31.

Broader risk management solutions

Many project risks will be the same, or very similar, for both Chinese and international participants. But in some cases different ways of managing them may be available. Organisations with a permanent local presence or strong local links may have a greater range of options. Some businesses may have greater access to, for example, parent guarantees. Not every solution will be available to every BRI participant, but every participant will certainly have various risk mitigation strategies to choose from.

There are also some 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. Some are as simple as having clear objectives, and being flexible when considering the structures you can adopt to protect your interests in BRI projects and partnerships.

Here are three other important ones.

Finding and working with partners

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.

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, ranging from their financial strength to their technical capacity. Both these priorities inevitably involve a degree of transparency and information-sharing.

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

Flexible structures and partnerships are likely to be more effective in dealing with problems. But these

MoUs, MITs and BITs

According to official sources, by the end of January 2020 China had signed 200 BRI cooperation documents with 138 countries and 30 international organisations. These documents include cooperation agreements, 'intergovernmental documents', memoranda of understanding on various aspects of BRI, '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) will generally be aimed at increasing cooperation within the BRI framework and substantiating the legitimacy of the initiative. An MoU's basic structure generally covers key cooperation priorities such as policy coordination, facilities connectivity, unimpeded trade, financial integration, and people-to-people bonds.

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

China has also signed a number of BRI-related bilateral investment treaties (BITs) and multilateral investment treaties (MITs). These are international law instruments agreed between two states (BITs), or between more than two states (MITs).

Unlike other trade or investment treaties, the BRI is an informal network of states participating in development initiatives under non-binding agreements. Therefore, while China may have previous existing BITs and MITs with some BRI participants, there is no BRI-specific investment treaty.

That said, investors should familiarise themselves with BITs and MITs between China and the BRI country where an investment is being made. This is because BITs and MITs frequently contain certain guaranteed protections in respect of investments (which are defined under the relevant BITs and MITs).

Some common forms of guaranteed protections include:

- commitments familiar from international investment law, such as 'fair and equitable treatment' and 'full protection and security';
- compensation for foreign investors whose assets are nationalised or expropriated by the host state;
- the protection of foreign investors from discrimination in areas such as taxation, licensing or regulation; and
- 'umbrella clauses' which can be used to bring specific commitments relating to particular investments under the 'umbrella' of the investment treaty.

should not be confused with ill-defined structures. Clarity about the nature and degree of flexibility available is invaluable for providing certainty to all parties.

It is also important to consider any potential cultural conflicts or misunderstandings. Some respondents see this as a standalone problem to be addressed with training from their HR department, but there are those who view it as a potential opportunity, such as the South African insurer who said that "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." A Chinese supplier noted that in dealing with different BRI countries "we have learnt many new things and business concepts that will be useful in future projects."

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 US investor who thought that "the higher probability of a recession and prolonged period of market instability does not encourage further partnerships or joint ventures."

Some find them incompatible with their corporate culture – in the words of one Chinese professional services provider, "partnerships will be avoided for the most part because we prefer control on decision-making." But for every comment like that, we gathered many more positive ones, such as this from a Mexican infrastructure operator: "To reach other markets and expand our client base, partnerships are crucial. Through involvement in the BRI, we expect to build long-term potential and relationships. Having useful contacts for future sourcing and partnerships is important to our plans."

Comprehensive due diligence

Any project requires due diligence, and the more high-risk the project, or the market, the more wide-ranging and thorough that due diligence should be. Yet in some cases due diligence is cursory, or is undermined by participants making faulty assumptions based on limited experience.

Due diligence should also aim for more than a 'stop/go' conclusion. It is a way of 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 bringing together 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. Combining their efforts is likely to reduce the risk profile of their project in a way that uncoordinated individual risk management strategies will not.

Using technology

Many of our respondents, both Chinese and non-Chinese, highlighted the importance of technology for their BRI participation. For some it was to improve planning and project management. Others felt that, during the pandemic, remote access to projects and data has become a critical factor. In a number of cases, businesses were responding to the challenges of the pandemic by changing work practices across their entire organisations, not just in BRI projects, but anticipated a particularly positive impact on their involvement in BRI.

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 infection. And some plan to use technology to monitor the health of workers, particularly in more remote projects.

"Although there have been challenges with involvement, we have learned new strategic viewpoints and market condition analysis by collaborating with various entities and strong market players."

CEO, Investor, Hong Kong

"We mitigated operational challenges by improving our technological capabilities. New technological changes, that helped in communication and coordination among multiple parties, added more confidence to various critical processes."

Director, Chinese investor

"Before agreements were finalised and the release of finances, we made sure the creditworthiness of parties and long-term value of projects were measured thoroughly. It took some additional time and effort on the part of our teams, but we were able to keep up our secure position."

MD, Chinese fund

Financing BRI

Chinese and non-Chinese participants in BRI have had a significantly different experience of financing, perhaps reflecting the fact that some types of project have largely involved only Chinese participants.

Which of the following have been primary sources of financing for the BRI projects you have participated in?

	International	China
International banks	29%	8%
Chinese state-owned banks	13%	56%
Multilateral financial institutions	22%	5%
Local lenders from the investment recipient country	21%	2%
Chinese state-owned investment funds	7%	27%
Bond financing	8%	2%

Generally, which have provided such financing?

	International	China
Local lenders from the investment recipient country	78%	26%
International banks	61%	37%
Chinese state-owned banks	40%	89%
Bond financing	50%	29%
Multilateral financial institutions	45%	42%
Chinese state-owned investment funds	24%	83%

Our Chinese respondents have typically been involved in projects funded primarily by Chinese institutions. Well over half (57%) have been funded primarily by Chinese state-owned banks, and another 29% by Chinese state-owned investment funds.

International respondents have experienced a more varied primary funding landscape, split roughly four ways between Chinese sources, multilateral financial institutions, local lenders and international banks.

Looking at sources of finance more generally, to include non-primary sources, there is more overlap in the experiences of our Chinese and non-Chinese respondents, although the general pattern persists. International respondents have been far less involved in projects backed by Chinese state-owned banks and investment funds than their Chinese counterparts, and far more involved with those supported by international banks and local lenders from the investment recipient country. Chinese and non-Chinese participants have had very similar levels of exposure to projects with funding from multilateral financial institutions.

Both Chinese and non-Chinese respondents report that bonds have so far been the primary source of financing for only a small number of projects. This proportion may be expected to grow, particularly with the increasing interest in 'green bonds' – China's green bond market is now the largest in the world.

Will financing BRI projects become harder?

Over two-thirds (69%) of Chinese respondents believe that a greater availability of 'cheap money', through measures to stimulate the international economy, will support more international investment in BRI projects. Only 29% of international respondents agree.

Traditionally, BRI projects have involved material funding contributions from Chinese investors (usually as lead investor or project sponsor). As the charts on the previous page show, these have tended to be China's state-owned banks, though other institutions, including China's policy banks and the Silk Road Fund, have also contributed.

As a World Bank report observed in 2019: "In itself, there is nothing remarkable in earmarking the award of BRI projects financed by Chinese entities to Chinese firms. Other countries do the same. Financing from national export-import banks or export credit guarantee institutions generally is earmarked for national companies, given the preferential or concessional nature of the associated financial support."

The substantial involvement of these state-owned financial institutions will often bring with it the advantage of a cheaper cost of capital, which may allow for an otherwise financially challenged project to become viable. And they remain a strong source of potential funding: Chinese banks now have more total assets than US banks or banks in the eurozone, and BRI lending is only a small fraction of total Chinese bank lending.

Project lenders are generally driven by bankability considerations for the relevant project. With significant funding coming from China's development banks and export credit agencies, some commentators have voiced the criticism that bankability has become a secondary priority in the context of the BRI. This is not entirely accurate, and we have increasingly seen Chinese financial institutions tightening their risk assessment and bankability review in their analysis of projects submitted for funding. For example, a number of projects that cannot show financial viability or sustainability and that do not support goals such as connectivity have recently been refused loans from policy banks.

Our charts show how non-Chinese finance has so far played a lesser role in BRI. However, as BRI develops under the principles of BRI 2.0, it will be increasingly important to attract more funding from other sources. In 2019 an official report, *The Belt and Road Initiative: Progress, Contributions and Prospects* from the Office of the Leading Group for Promoting the Belt and Road Initiative, observed that "the Belt and Road Initiative is in urgent need of finance" and looked at some of the developments already underway, such as the increasing involvement of sovereign wealth funds and investment funds from BRI countries, growing support from multilateral financial cooperation, closer cooperation between financial institutions, improved access to the financial markets, and deeper financial connectivity.

The ability to gain market access to developing economies along the Belt and Road corridors has been regarded as a top driver for investment, increasing the opportunity for the flow of international private sector capital. The economic shock waves of the pandemic will have changed some of those calculations. It was clear, for example, that many of the respondents in our survey have become more risk-averse generally, with a number of those still prepared to participate in projects looking for opportunities that carry clearly defined and manageable risk, even if such projects offer lower returns – although there were also those who thought that the crisis would see investors focusing on the most potentially profitable projects. Banks around the world may experience capital constraints and, probably, a significant increase in non-performing loans, which some commentators believe will lead to an influx of finance from less traditional sources.

Of course, some projects will still be supported by multilateral development banks, policy banks and similar organisations. But even these sources of finance are likely to look more critically at projects, and to place increasing emphasis on issues such as sustainability, as will many other investors.

It seems likely, across the board, that funding will be more readily available for high-quality, sustainable projects that promote good governance than for some of those which might have been financed during earlier stages of BRI but now fail to meet the standards of BRI 2.0 (see page 39) or have a risk or ESG profile unacceptable to international investors.

Insurance for BRI projects

A key element of any risk management strategy is the consideration of appropriate insurance cover. This is not always easy in a BRI context.

Kelvin Aw
Partner and Co-head of Infrastructure and Construction, CMS Singapore

Lynette Chew
Partner, CMS Singapore

In some respects BRI projects are similar to other infrastructure projects in their insurance needs, with each stage of a project requiring different categories of coverage, as well as a likely requirement for specialist insurance products, depending on the nature of the project. But BRI can also raise specific insurance issues.

In some BRI countries, for example, local insurance markets are not well developed, and have limited experience in covering major projects. Some nations present heightened political risk (and risk to people), and a number are significantly exposed to natural risks, ranging from earthquakes to floods – and, increasingly, exposed to climate change events.

The latest insurance issue to affect BRI is, of course, Covid-19. The limited healthcare coverage in many BRI countries, and their vulnerability to economic, social and political shocks resulting from the pandemic, will be issues to which insurers are paying very close attention – as will, for example, the impact of Covid-19 on travel and supply chains. Insurers are likely to be paying out for project delays, and parties may find it harder to source cover for some new projects that meets their risk management needs at an acceptable cost.

There have recently been calls for insurers to provide more integrated products to cover the lifecycle of a BRI project, capable of addressing both local and wider BRI needs, and to provide solutions that, for example, can combine the various specialist project-related covered cover that may be needed along the Belt and Road. There is demand for insurance products that can satisfy both the expectations of Chinese participants and the needs of international companies for coverage that will dovetail with their global insurance strategies.

Specific initiatives

Chinese insurers have provided insurance coverage to BRI projects since the initiative's earliest days. But some specific insurance initiatives have also been launched around BRI, some addressing the sort of demand mentioned above. For example:

— In July 2020, 11 reinsurance companies and insurers formed the China Belt and Road Reinsurance Pool (CBRRP) to support insurers covering BRI projects. The pool has various aims, including leveraging institutionalised arrangements and commercialised models to focus on special risk areas where overseas risk management is urgently needed but domestic technology is relatively weak. Members have described its long-term goal as being to "provide more comprehensive and stable risk protections" for BRI projects and to "become an important supporting force of the BRI risk protection system."

— A key member of CBRRP is China Re, the largest reinsurer in China and Asia, which has built a global service network to serve BRI projects, establishing BRI partnerships with many overseas insurance institutions which can provide local service channels for China's interests around the world. In 2019, China Re also launched the first domestic political violence insurance for Chinese businesses involved in BRI construction projects.

— The Monetary Authority of Singapore co-created the BRI Insurance Consortium with the industry to provide top-up capacity and specialised insurance coverage for BRI projects in APAC, bringing together Singapore-based insurers, reinsurers and brokers to contribute insurance capacity and provide risk management services.

— Hong Kong's Insurance Authority has a platform called the Belt and Road Insurance Exchange Facilitation (BRIEF) that helps domestic and foreign insurers gain access to BRI and provide insurance coverage for risks such as terrorism.

— Starr Companies is working with China's PICC Health Insurance Co. Ltd. to provide insurance for Chinese company employees working overseas in BRI countries.

Regulatory procedures for outbound investment

Under PRC law, when a domestic investor implements an outbound investment, certain formalities must be conducted with different authorities.

Dr. Ulrike Glueck
Managing Partner,
CMS China

Angela Chen
Junior Associate,
CMS Shanghai

The regulation and supervision of outbound investment by China's domestic enterprises are vested in three major departments: the competent Authority of Commerce (AoC); the competent Development and Reform Commission (DRC); and the competent State Administration of Foreign Exchange (SAFE).

The **AoC** is in charge of the recordal and approval of the outbound investment and issues an Enterprise Outbound Investment Certificate.

— Outbound investments which qualify under PRC law as transactions connected with sensitive countries and regions or with sensitive industries are subject to AoC approval. Those which do not are only subject to AoC recordal.

— The competent authority for outbound investments subject to AoC approval is the Ministry of Commerce. For outbound investments subject to AoC recordal, enterprises under central government management report outbound investments to the Ministry of Commerce and local enterprises report to their provincial department in charge of local commerce. In some provinces, such as Jiangsu, if the investment amount is under a certain threshold, the provincial AoC delegates regulation to the municipal AoC.

The **DRC** is in charge of the filing and approval of outbound investment projects.

— Outbound investments, which qualify as transactions in connection with sensitive countries and regions or with sensitive industries need DRC approval. Other are only subject to DRC filing.

— The National DRC is the competent authority for outbound investments subject to DRC approval, and for filing if the investor is an enterprise under central government management or if the investor is a local enterprise, but the investment is over USD 300m. For local enterprises investing less than USD 300m, it will be their provincial DRC. In some provinces, if the investment amount is under a certain threshold, the provincial DRC delegates regulation to the municipal DRC.

AoC and DRC approval formalities can be handled simultaneously. Both the AoC and the DRC require that the transaction documents submitted are binding to the parties.

The **SAFE** drafts national policies for foreign exchange and regulates the approval of inbound and outbound cash flow. According to SAFE's Regulation Measures Huifa [2015] No. 13, that power to approve cash flow has been delegated to the banks, which can exercise it via SAFE's dedicated online registration system. Many banks will register the outbound cash flow and make the relevant remittance once the AoC and DRC formalities are completed, as long as the investment does not conflict with the banks' current foreign exchange quota policy.

In some cases other formalities must be observed.

— If the investor is a listed company in China, it may have an obligation of disclosure when conducting the investment, which would require the relevant transaction documents to be submitted to the stock exchange and the local counterpart of the China Securities Regulatory Commission.

— If the investor is a state-invested enterprise (whether wholly state-owned, or a company to which the state contributes capital, or which is controlled or participated in by state-owned capital), outbound investment may need the approval of – or to be reported to – the State-owned Assets Supervision and Administration Commission.

— If the outbound investment meets the situations stipulated in the PRC Anti-Monopoly Law and the relevant regulations, a merger control notification must be filed with the PRC Anti-Monopoly Bureau.

In addition to these considerations, there may be regulatory requirements in the jurisdictions of the target companies or countries for outbound investment. Investors should seek professional advice on such requirements, as well as on PRC requirements.

Sectors and regions

In every sector we looked at, we found that a greater percentage of Chinese respondents than international respondents had targeted BRI opportunities.

This reflects the greater involvement to date of Chinese organisations across a wide breadth of BRI activity. The difference is least obvious in conventional power projects, where the gap we found was only 3%, and widest in road and heavy/extractive industrial projects.

Going forward, the most popular sectors among Chinese respondents for targeting opportunities were logistics etc (57%), energy networks and power grids (50%) and roads (49%), followed by smart cities, renewables and hydro, rail, ports and social infrastructure.

International interest is most widespread in energy networks and power grids (42%), logistics etc (35%) and roads and renewables and hydro (both 34%).

Again, in every sector, we saw more Chinese interest than international interest. The differences were greatest in port, road and logistics projects.

Overall, Chinese respondents felt that the sectors offering the greatest number of BRI-related opportunities were roads (with 89% regarding them as a 'top-five' opportunity) and ports, followed by rail, electricity networks and power grids, and renewables and hydro schemes.

International investors made similar choices, again with roads as the most popular option, followed by logistics etc, electricity networks and power grids, renewables and hydro, and smart cities.

It is clear that interest in more 'modern' and sustainable sectors, such as smart cities and renewables, is increasing significantly, while the 'core' of BRI – infrastructure for trade – is also expected to remain strong.

A substantial majority of both Chinese (83%) and international (79%) respondents view oil & gas as one of the five riskiest BRI sectors. Conventional power and heavy/extractive industries are also ranked highly as risk sectors.

The sectors expected to offer the most BRI opportunities were, by contrast, all among those seen as lower risk.

Sector opportunities and risks

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

Sector	International	China
Energy networks/power grid	38%	44%
Transportation: Road	30%	47%
Logistics/industrial parks/free trade zones	27%	37%
Conventional power	27%	30%
Social infrastructure: hospitals, healthcare	22%	34%
Transportation: Rail	17%	33%
Other technology and e-commerce	18%	25%
Oil & gas (including LNG, pipelines, refineries etc.)	18%	22%
Transportation: Ports	14%	30%
Smart city projects	15%	25%
Telecommunications/ICT	13%	20%
Other urban development	13%	23%
Renewables and hydro	13%	18%
Heavy/extractive industries	9%	26%
Other social infrastructure (e.g. schools, civic buildings)	10%	21%
Water and sanitation	6%	16%
Transportation: Air	6%	14%

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

Sector	International	China
Energy networks/power grid	42%	50%
Logistics/industrial parks/free trade zones	35%	57%
Transportation: Road	34%	49%
Renewables and hydro	34%	43%
Smart city projects	27%	44%
Social infrastructure: hospitals, healthcare	26%	41%
Transportation: Rail	21%	43%
Conventional power	22%	34%
Other urban development	21%	32%
Transportation: Ports	18%	42%
Other technology and e-commerce	20%	30%
Other social infrastructure (e.g. schools, civic buildings)	15%	30%
Telecommunications/ICT	13%	32%
Water and sanitation	12%	24%
Oil & gas (including LNG, pipelines, refineries etc.)	12%	19%
Heavy/extractive industries	9%	26%
Transportation: Air	10%	21%

Which of the following sectors offer the greatest number of BRI-related opportunities?

Sector	International	China
Transportation: Road	78%	89%
Logistics/industrial parks/free trade zones	55%	40%
Energy networks/power grid	50%	48%
Renewables and hydro	44%	48%
Transportation: Ports	37%	61%
Smart city projects	41%	35%
Transportation: Rail	34%	49%
Other technology and e-commerce	27%	17%
Social infrastructure: hospitals, healthcare	25%	26%
Water and sanitation	26%	13%
Other urban development	19%	15%
Telecommunications/ICT	19%	15%
Conventional power	13%	9%
Transportation: Air	8%	13%
Heavy/extractive industries	9%	8%
Other social infrastructure (e.g. schools, civic buildings)	8%	8%
Oil & gas (including LNG, pipelines, refineries etc.)	6%	6%

Which of the following sectors are perceived to be the riskiest?

Sector	International	China
Oil & gas (including LNG, pipelines, refineries etc.)	79%	83%
Conventional power	53%	68%
Heavy/extractive industries	50%	57%
Water and sanitation	29%	41%
Other urban development	30%	31%
Telecommunications/ICT	20%	24%
Transportation: Air	52%	30%
Other social infrastructure (e.g. schools, civic buildings)	39%	30%
Transportation: Rail	38%	23%
Social infrastructure: hospitals, healthcare	34%	22%
Logistics/industrial parks/free trade zones	18%	27%
Smart city projects	17%	27%
Transportation: Ports	14%	8%
Energy networks/power grid	9%	9%
Other technology and e-commerce	6%	13%
Transportation: Road	6%	5%
Renewables and hydro	2%	0%

For Chinese respondents: Where have you been involved in BRI projects and where do you think there are most opportunities?

	Previously completed or been involved	Plan to be involved	Offer most opportunities
South-East Asia	75%	90%	61%
China	100%	96%	68%
Central and Eastern Europe (inc. Russia)	25%	40%	27%
North Africa	28%	47%	23%
Latin America	17%	29%	30%
Middle East	23%	29%	2%
Sub-Saharan Africa	28%	42%	13%
South Asia	43%	56%	51%
Australasia	24%	38%	19%
East Asia	25%	41%	1%
Central Asia	13%	35%	3%
Rest of Europe	2%	9%	0%

All our Chinese respondents had been involved in BRI projects in China. Most (75%) had been involved in South-East Asian projects and many (43%) in South Asian ones. Involvement in other markets has been less widespread.

Perhaps it is not surprising that China (96%), South-East Asia (90%) and South Asia (56%) are also the markets in which the most Chinese respondents plan to be involved in the future, or that Chinese respondents choosing the three markets that offered them the most opportunities opted for China (68%), South-East Asia (61%) and South Asia (51%). Clearly proximity and familiarity are factors here.

Interestingly the fourth most popular market for opportunity offered was Latin America (30%), although it was lower on the list of those being targeted. In July state councilor and foreign minister Wang Yi told a video conference attended by foreign ministers from 13 Latin American and Caribbean (LAC) countries that, as well as providing pandemic-related support, China will see opportunities in the current crisis to advance BRI cooperation in infrastructure, energy, agriculture and other traditional fields, and that it also looks forward to branching out into public health, digital economy and other new infrastructure, and building a China-LAC Health Silk Road and a China-LAC Digital Silk Road.

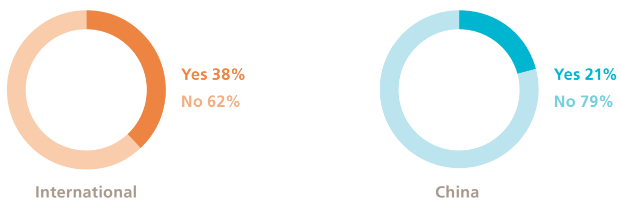
Dispute resolution

Over one-fifth (21%) of our Chinese respondents and nearly two-fifths (38%) of our international respondents have been involved in **BRI projects that have generated disputes** – numbers that show concerns about legal and regulatory risk are well founded.

BRI participants should put their dispute resolution strategies in place before a project starts. Having a good contract – one that has a robust arbitration clause – is definitely advisable. However, the greatest consideration should be given to enforcement and whether contractual obligations are enforceable in the jurisdiction where the project will be carried out.

In this chapter lawyers from CMS and TianTong give an overview of some of the options that BRI participants can consider when developing those strategies.

Have you been involved in a BRI project that generated legal disputes?



International arbitration and BRI

What is the best way to resolve disputes concerning BRI projects? 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.

Dr. Nicolas Wiegand
Managing Partner
CMS Hong Kong

Dr Tom Christopher Pröstler, LL.M. (Sydney)
Rechtsanwalt | Registered Foreign Lawyer
CMS Hong Kong

Some commentators have noted that traditional international arbitrations tend to be influenced by western common law concepts and procedures, and suggest that new dispute resolution mechanisms should be created in the framework of BRI, which better fit with Asian and Chinese traditions. In fact, several dispute resolution forums and initiatives aimed at BRI-related disputes have been established by both international institutions and the Chinese government. On page 34 David Gu of TianTong discusses one of these – the China International Commercial Court – in more detail.

Generally, the same legal instruments exist to protect BRI projects as exist for any other foreign investment project. Next to a properly drafted contract, including well considered choice of law and dispute resolution clauses, international investment law can serve as an important safeguard. With a few exceptions (such as Ethiopia, Yemen and Turkmenistan), BRI states are signatories of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (often called the New York Convention), which obliges them to enforce international arbitral awards.

Many BRI states have also concluded bilateral investment treaties (BITs) with foreign states including China and many other Asian and European investor states. However, investors should be aware that not all these BITs offer the highest level of protection. This may be a particular issue for Chinese investors, as many of China's BITs were signed in the 1980s and early 1990s, when China was still an investment-receiving state, and therefore offer only limited protection to investors. For example, in some cases arbitral tribunals cannot rule on the legality of an expropriation as such, but only on the compensation to be paid. The older BITs also provide for only ad hoc arbitration and not institutional arbitration.

Arbitral institutions for BRI

China's arbitral institutions have started a number of initiatives and created new arbitration commissions to attract international BRI-related disputes. For example, its largest and most internationally active arbitral institution, the China International Economic and Trade Arbitration Commission (CIETAC), has opened two new arbitration centres. The CIETAC Silk Road Arbitration Center in Xian, the starting point of the ancient Silk Road, is intended to handle commercial BRI-related disputes. The CIETAC Investment Dispute Settlement Center in Beijing deals with investment arbitrations under the new CIETAC Investment Arbitration Rules. These rules and the Beijing centre (as well as the older CIETAC Hong Kong Arbitration Center) are not aimed exclusively at BRI-related investment arbitrations, but one of their main functions is to cater for such disputes.

Several international bodies – including the International Court of Arbitration of the International Chamber of Commerce (ICC), the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC) – have also introduced their own BRI initiatives.

— The ICC has set up a Belt and Road Commission to drive the development of its existing procedures and infrastructure to support BRI-related disputes and to raise awareness of it as an arbitral institution of choice for BRI projects. It also seeks to profit from the fact that it has secretariats in Hong Kong and Singapore which can administer cases on the ground in Asia.

— SIAC has released updated arbitration rules and its new SIAC Investment Arbitration Rules, and has been strongly promoting itself as a neutral Asian forum for both commercial and investment arbitrations and thus a go-to institution for BRI disputes.

— HKIAC has also been active, advertising its services for the resolution of BRI-related disputes. Like the ICC, it has established an advisory committee to help develop its BRI-related business. In addition, it has launched an online platform providing information on BRI and on how its dispute resolution services can best be utilised for BRI projects.

Preparing for and resolving disputes
Companies participating in BRI projects, as well as the host states of BRI projects, should pay careful attention to negotiating dispute resolution and choice of law clauses.

For the many BRI projects which mostly involve Chinese companies, a strong role for Chinese arbitral institutions and courts makes sense. However, although the new specialised Chinese BRI arbitration centres and courts are advertised as providing neutral, efficient and cost-saving dispute settlement, non-Chinese parties may prefer a more traditionally neutral dispute resolution forum, not least because of the potential difficulties in the international enforcement of national court judgments.

In many contracts, the choice of a neutral forum which is well equipped to handle BRI disputes is therefore paramount. In Asia, Singapore and Hong Kong are the obvious choices. South Korea and Japan can also serve as good seats for international arbitrations but will be less agreeable to most Chinese parties. Beyond Asia, the traditional European arbitration hubs are of course also possible choices.

If a neutral forum is agreed, it is additionally important to choose an arbitral institution well equipped to handle BRI-related disputes. As shown above, several reputable institutions have created specific initiatives to serve such disputes, but an established institution with a proven record of handling large-scale international infrastructure and plant construction arbitrations may be a good choice even if it lacks a specific BRI initiative.

It is also important to draft a comprehensive contractual agreement and choose a substantive law which serves all contractual parties. In the many BRI projects that concern construction, for example, form contracts published by the International Federation of Consulting Engineers (FIDIC) are often employed as a contractual basis. When selecting substantive law, due account should be taken of the legal traditions of the parties. Thus, in cases involving only parties from civil law jurisdictions, the reflex of some lawyers and in-house counsel to press for English or another common law as purportedly neutral law should be resisted. In some situations, international parties may be prepared to accept Chinese substantive law in exchange for a neutral dispute resolution forum.

Demystifying the China International Commercial Court

An international forum for resolving BRI disputes.

David Gu
Partner
TianTong Law Firm

With the continuous construction and advancement of BRI projects in the world, more cross-border commercial disputes arise therefrom than ever before. As reported from 2013 to 2017, Chinese Courts of various levels handled more than 200,000 foreign-related civil and commercial cases, many of them related to BRI projects.

Against this backdrop, the Supreme People's Court of China (SPC) on 29 June 2018 established the China International Commercial Court (CICC) for:

- adjudicating international commercial cases according to law in a fair and timely manner;
- equally protecting lawful rights and interests of Chinese and foreign parties;
- creating a stable, fair, transparent and convenient "rule of law international business environment"; and
- serving and safeguarding the construction of BRI.

So far, CICC is present in two cities, with the First International Commercial Court in Shenzhen, and the Second International Commercial Court in Xi'an. Since CICC is part of the SPC, any decision rendered by CICC is a first instance court decision but becomes final and binding according to the Chinese civil procedural rules.

CICC has jurisdiction to hear cases that are international and commercial, and are either:

- first instance cases in which parties to a dispute over a contract or any other right or interest in property have referred them to be resolved by CICC by an express choice of court clause, with the amount in dispute not less than RMB 300m;
- first instance cases which are subject to the jurisdiction of High People's Courts that nonetheless as considered should be trialled by the SPC, to which leave has been granted;
- first instance cases that have a nationwide significant impact;
- cases where parties in certain arbitration proceedings apply for preservation measures, setting aside or enforcement of international commercial arbitral awards; or
- other cases that the SPC deems appropriate to be trialled by CICC.

A case is international and commercial if:

- one or both parties are foreigners, stateless persons, foreign enterprises or other organisations;
- one or both parties have their habitual residence outside the territory of the PRC;
- legal facts that create, change, or terminate the commercial relationship have taken place outside the territory of the PRC; or
- the subject matter in dispute is outside the territory of the PRC.

To date, SPC has designated 13 senior judges to serve both the First and Second International Commercial Courts. A collegial panel of at least three judges is convened to hear cases. A decision made by the majority of the panel is final and binding, although minority opinions may be expressed in writing.

All 13 judges are Chinese but are proficient in English. They all have extensive trial experience, and are familiar with international treaties and international trade and investment. Most of them have a doctorate in law and some of them have studied in the USA, the UK, Canada or Hong Kong.

CICC also has an international commercial expert committee of Chinese and foreign legal experts, well versed in international law and the law of their nations, with solid practical experience. During CICC proceedings, parties may resolve disputes by mediation presided over by any member of the committee, and Chinese judges at CICC may seek advice from the committee members.

Although CICC is an international commercial court, it attempts to integrate with international arbitration and mediation institutions to create an 'one-stop' dispute resolution mechanism. The institutions it works with include the China International Economic and Trade Arbitration Commission, the Shanghai International Economic and Trade Arbitration Commission, the Shenzhen Court of International Arbitration, the Beijing Arbitration Commission, the China Maritime Arbitration Commission, the China Council for the Promotion of International Trade Mediation Centre and the Shanghai Commercial Mediation Centre.

Parties to arbitration cases administered by these institutions may apply to CICC for e.g. evidence, property preservation and injunctions. After an arbitral award is rendered, parties may apply to CICC for it to be set aside or enforced.

The one-stop mechanism may be realised by online court platforms where litigation, arbitration and mediation are streamlined to efficiently and fairly resolve international commercial disputes.

Certain procedural requirements for foreign-related disputes under the Chinese civil procedural rules have been alleviated for CICC proceedings. For example, evidence that is created outside the PRC may be admissible for examination during CICC proceedings, even if it is not notarised or certified according to 'legalisation' procedures. A document in English without a certified Chinese translation copy attached can be directly submitted to CICC if the other party so agrees.

CICC has adopted modern technologies in several aspects of its operation. For example, CICC judges can use a video or audio conference or any other IT communication channel to collect and examine evidence. CICC has also made use of electronic platforms for litigation service, trial procedure information-sharing and other litigation-related services.

The First and Second International Commercial Courts accepted 13 international commercial cases between May 2019, when CICC held its first public hearing, and June 2020. They cover several areas of law, including product liability, commission agreements, the distribution of dividends, the confirmation of shareholder qualification, the liability of infringing company's interests and the validity of an arbitration agreement. The parties involved come from jurisdictions as various as Japan, Italy, and the British Virgin Islands.

So far CICC's record is good. It has demonstrated that it can efficiently resolve complex international commercial disputes, concluding five cases out of its first 13 within one year. Moreover, it has announced its decisions publicly in a timely and transparent manner, so that they can be adopted as authoritative reference or guidance for Chinese judges in lower courts.

CICC may add more senior Chinese judges to its panel and expand the scope of its expert committee. Although it is now unrealistic to have international judges sit with their Chinese peers in CICC, it is possible that Hong Kong jurists who are qualified to practise Chinese law may be an acceptable and welcome choice to enrich the composition of the CICC judicial panel and enhance its visibility as a truly international commercial court.

The General Counsel of Overseas Project Department at **China Railway Construction Group** (CRCG) tells us about the legal challenges his company has faced and the values that BRI should deliver.

What is your role at CRCG and what kind of activities have you engaged in for the Belt and Road Initiative?
My main responsibility would be the legal and compliance management of the group's overseas business. Our company is the largest subsidiary of CRCC (China Railway Construction Corporation) to work on housing construction.

What regions outside China do you think are the most attractive for BRI? And why?
The most attractive areas would be South-East Asia, the Middle East, and Eastern European areas. There are three main reasons. First, we can see that the countries in these areas are mainly developing. We can see their economic potential and there is a large infrastructure and construction market for us to explore in the future.

The second reason is many Chinese corporations already have projects in these areas. That is especially true for South-East Asia. We feel that their customs and the way they do business is similar to China. The risk in these areas is considerably more manageable.

Finally, the laws on Chinese labour and materials are more amenable in these regions. Our work is extremely labour intensive, and this constitutes a large portion of our expenses. In these areas the labour costs have advantages and the immigration policy for foreign workers is relatively friendly. So it can help us to control costs and generate revenue.

Many survey respondents saw legal and regulatory issues as the main challenge for BRI projects. What are some of the most common legal and regulatory issues that you've faced on BRI projects?
Most countries in the BRI are developing countries. They have various cultures and customs, and the laws and regulations are also very different. The nature of our business investment often involves dealing with governments and political organisations. So it is very important for us to abide by the laws and regulations of the host country and multilateral banks. And this has really raised the requirements for compliance management.

What advice do you have for Chinese and foreign companies who want to mitigate these risks?
I would say the best way is to comply with the rules, not only complying with the rules of China but also the laws and regulations of the whole country and international organisation.

The purpose of BRI is not only to construct railways, highways and housing in developing countries but to deliver values such as honesty, sincerity, transparency and compliance.

You have said that your company faced financial and cultural challenges in BRI projects. What kind of financial challenges have you experienced and how have you dealt with them?
Many countries have different regulatory standards on foreign exchange. For example, the Chinese Ministry of Commerce has restrictions on foreign investment in real estate and housing. This requires the Chinese domestic private owners to transfer financing obligations to the contractors. This can be a strain on cash flow for the contractors.

Actually, most contractors like us do not have so many financing means and resources in the host country.

And what about cultural differences?
The best way to solve this problem is trying to manage and utilise local resources. For example, increase the number of local labourers and local resources instead of using Chinese workers and material.

How can more international companies increase their involvement in BRI?
The government and the corporations need to find innovative ways to get international lenders and contractors more involved in the BRI. And I would say that the best way is to look at the factors that really attract those international players. For example, some international policy banks are really concerned about people's livelihoods. They would like to invest in those projects that are highly related to delivering a higher standard of living.

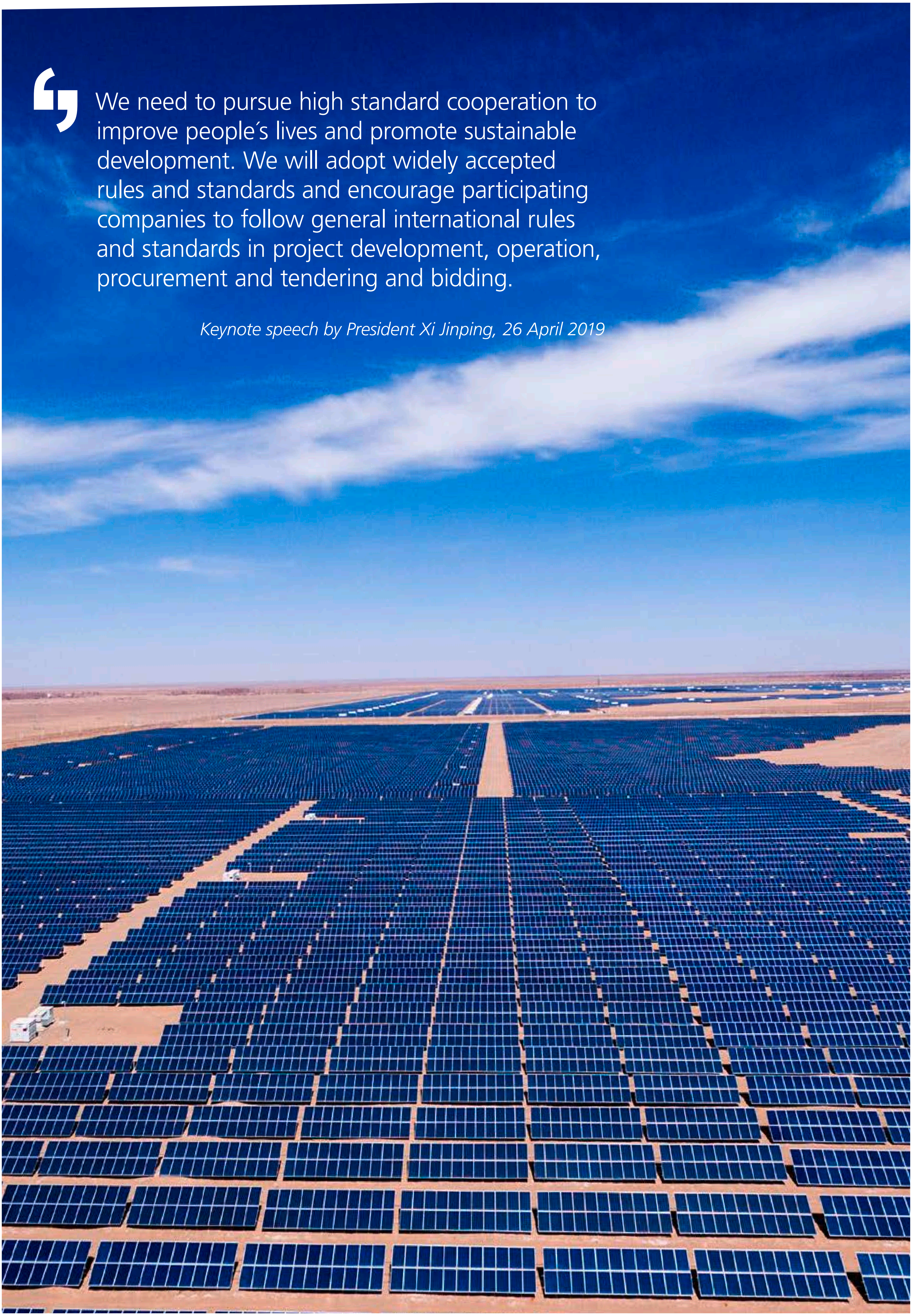
What does the future look like for BRI? How do you think it's going to develop?
BRI is a truly visionary project. Although we have encountered issues such as protectionism. But we are a global community and BRI is part of that. However, it requires more effort if it is to progress in the future.

For example, without a global community, we cannot solve problems such as Covid-19. And I believe that our role is similar in enhancing people's livelihoods in BRI areas. I feel that this is why BRI is going to be welcomed by the people and governments involved in the initiative.

> The government and the corporations need to find innovative ways to get international lenders and contractors more involved in the BRI. And I would say that the best way is to look at the factors that really attract those international players.

We need to pursue high standard cooperation to improve people´s lives and promote sustainable development. We will adopt widely accepted rules and standards and encourage participating companies to follow general international rules and standards in project development, operation, procurement and tendering and bidding.

Keynote speech by President Xi Jinping, 26 April 2019



Belt and Road 2.0, the Digital Silk Road and the Health Silk Road

A new phase of BRI was announced in April 2019 by President Xi Jinping at the second Belt and Road Forum for International Cooperation in Beijing.

It 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.

President Xi spoke of

- Being guided by the principle of extensive consultation, joint contribution and shared benefits.
- Acting in the spirit of multilateralism, and pursuing cooperation through consultation.
- Pursuing open, green and clean cooperation.
- Making a strong commitment to transparency and clean governance.
- Pursuing a high standard of cooperation to improve people's lives and promote sustainable development.
- Adopting widely accepted rules and standards and encouraging participating companies to follow general international rules and standards in project development, operation, procurement and tendering and bidding.
- Respecting the laws and regulations of participating countries.
- Giving priority to poverty alleviation and job creation so that cooperation benefits the people of participating countries and contributes to their social and economic development.
- Ensuring the commercial and fiscal sustainability of all projects.

President Xi also described a series of major reform and opening-up measures that would

- expand market access for foreign investment in more areas.
- intensify efforts to enhance international cooperation in intellectual property protection.
- increase the import of goods and services.
- more effectively engage in international macro-economic policy coordination.
- ensure the implementation of related policies, including multilateral and bilateral economic and trade agreements, and the revision and improvement of laws and regulations.

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.

	International	China
Strongly disagree	30%	6%
Moderately disagree	29%	3%
Neutral	26%	8%
Moderately agree	13%	43%
Strongly agree	2%	40%

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

	International	China
Strongly disagree	2%	1%
Moderately disagree	8%	3%
Neutral	36%	13%
Moderately agree	29%	26%
Strongly agree	25%	57%

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

	International	China
Strongly disagree	18%	4%
Moderately disagree	31%	11%
Neutral	29%	15%
Moderately agree	16%	40%
Strongly agree	6%	30%

Procurement processes will be more open and competitive.

	International	China
Strongly disagree	36%	4%
Moderately disagree	28%	6%
Neutral	21%	14%
Moderately agree	13%	36%
Strongly agree	2%	40%

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

	International	China
Strongly disagree	7%	1%
Moderately disagree	25%	5%
Neutral	33%	10%
Moderately agree	33%	59%
Strongly agree	2%	25%

— A big majority of Chinese respondents (83%) expect BRI 2.0 to be more transparent than BRI has been in the past. Only 9% think it will not be. The contrast with international respondents is stark: only 15% of international respondents expect it to be more transparent, while 59% think it will not be.

— The same divergence in opinion exists over whether procurement processes will be more open and competitive. Over three-quarters of Chinese respondents (76%) think they will be, with only 10% disagreeing. But again, only 15% of international respondents agree with the suggestion, while 64% think procurement processes will not become more open and competitive.

— Another big majority of Chinese respondents (83%) expect BRI 2.0 to be generally more open to non-Chinese participants than BRI has been in the past. Only 4% think it will not be. A smaller majority (54%) of international respondents also agree with the suggestion.

— Chinese respondents are also optimistic about dispute resolution, with a big majority (70%) believing that it will become easier in BRI 2.0. A mere 22% of international respondents agree.

— A big majority of Chinese respondents (84%) believe that sustainability and environmental considerations will be given greater importance when planning and completing BRI 2.0 projects. Only 35% of international respondents agree, with 32% disagreeing and 33% neutral. But It is worth remembering that, as noted on page 12, a majority of both Chinese (63%) and non-Chinese (62%) respondents say it is important that BRI projects they consider should be sustainable or environmentally friendly.

Commentators who saw this only as a response to foreign criticisms of BRI, or a portfolio of policies to align BRI more thoroughly with broader development practice, overlooked President Xi's emphasis on international cooperation and joint contributions. Indeed, as noted on page 11, some of our respondents feel that a limited response and limited enthusiasm from governments and businesses outside China is 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.

Since President Xi made his speech, a series of international developments have increased tensions between China and some other countries, making constructive cooperation more problematic rather than easier. It now seems possible, however, that the pandemic could be a catalyst for BRI 2.0, even though it has caused problems for some existing BRI projects (see page 13).

Projects which are structured and negotiated now, in the light of the pandemic and the principles of BRI 2.0, have every prospect of being more sustainable and more appealing to both Chinese and non-Chinese participants. And if they help to boost recovery in local economies and provide local employment, they are likely to be popular with the governments of BRI countries as well. Even though there may be fewer new BRI projects until the global economy recovers from the worst effects of the pandemic, if this results in a genuine focus on sustainable high-quality projects it may not be the body blow to BRI that some commentators have predicted. It may even enhance the reputation of BRI.

The strain placed on national healthcare provision around the world by the pandemic has also highlighted the need for a strong pipeline of Health Silk Road projects, and the boost given by the pandemic to many technologies around the world has enhanced the prospects for the Digital Silk Road (DSR). Both these initiatives are discussed in more detail on the following pages.

In June 2020, state councillor and foreign minister Wang Yi chaired a 'High-level Video Conference on Belt and Road International Cooperation', underlining many of the BRI 2.0, DSR and HSR messages in the context of the pandemic. He said BRI partners should "step up public health cooperation" and "strengthen connectivity to provide a solid underpinning for the economic recovery of our countries".

Foreign minister Wang also called for cooperation in innovation to encourage sustainable global growth, saying "we need to harness new industries and business models engendered in the course of Covid-19 response, strengthen cooperation in 5G, big data, artificial intelligence, and cloud computing, and push forward the building of the Digital Silk Road. We also need to work with UN development agencies to advance global sustainable development and build a 'green Silk Road'. This way, our economies will not just recover, but realise transformation and upgrading, and our countries will enjoy high-quality development."

That encapsulates the Chinese government's vision for BRI as it moves forward in a world ravaged by the pandemic. While it is, like so many other endeavours, deeply influenced by the pandemic, it is in fact not radically different from the vision for BRI 2.0 that existed before. For BRI – as for many other areas of activity, from e-commerce to remote working – the pandemic is accelerating trends that already existed.

"From our perspective, we need more support from Asian countries to achieve the goal within the expected time. Many have been sceptical about China's intentions and approach and it is time to change this outlook and adopt a more positive mindset."

MD, Commercial bank, Malaysia

"I think the BRI 2.0 objectives should be followed as per the set instructions. China should make sure that project managers not only understand, but also implement these changes to minimise ESG risks in the future."

Executive director finance, Facilities operator, Singapore

"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, Multilateral development bank

The Digital Silk Road

Over one-third (36%) of Chinese respondents are considering DSR projects, compared with just 10% of international respondents. Interestingly, nearly as many international respondents (9%) have considered DSR projects in the past but are not doing so any more.

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

	International	China
No	81%	61%
Yes	10%	36%
Previously, but not now	9%	3%

Since it emerged as a concept in 2015, the Digital Silk Road 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, 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 in remote regions. In some cases they are intended to improve connectivity between other BRI projects. But there is an increasing sense that DSR can potentially cover all types of digital development along the Belt and Road.

Some projects have been focused on meeting local development goals. The Chinese media has highlighted initiatives such as China Electronics Technology Group Corp’s digital education programme in Zambia, which enables teaching in multiple local languages, and ZTE Corporation’s work on a pilot Smart Health Monitoring Room for the African Union. But many others are commercial ventures that reflect the worldwide advance of the digital economy, enabling China’s tech businesses – including e-commerce giants, social media networks, and fintech providers – to access new markets. The DSR also, of course, helps to create demand for telecoms equipment, smart sensors, data centres etc.

The smart cities that are being developed along the Belt and Road will be important markets for the DSR, as well as fertile testing grounds for Chinese technology. And it will surely not be long before the DSR encompasses the rollout of autonomous vehicle technologies (probably combined with ‘green’ electric vehicles).

Many potential 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.

A bigger concern for many is geopolitical tension. The US has recently been pushing back against aspects of the Digital Silk Road, notably with its Clean Network Program, which aims to restrict or eliminate Chinese involvement in, for example, telecoms networks and undersea cables that connect to US networks, and cloud systems and apps that handle US data. This may limit the scope of DSR in certain markets. But with many BRI countries still very much in need of tech and comms infrastructure, which will in many cases bring significant social and economic benefits, there will clearly still be significant opportunities for BRI participants along the Digital Silk Road.

The Health Silk Road

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

As long ago as 2015, a three-year plan for Belt and Road health exchange and cooperation was devised, with activities ranging from the construction of a hospital in Kazakhstan to a joint prevention programme on artemisinin resistance from malaria.

By 2017 this had evolved into the Health Silk Road, endorsed by representatives of participating nations and international bodies such as the World Health Organization and OECD at a high-level meeting in Beijing.

Much of HSR's initial focus was on policies such as public health and strengthening people-to-people exchanges. China was also keen to promote traditional Chinese medicine in BRI countries. But in 2020 the pandemic has emphasised the deficiencies in health infrastructure in many BRI countries.

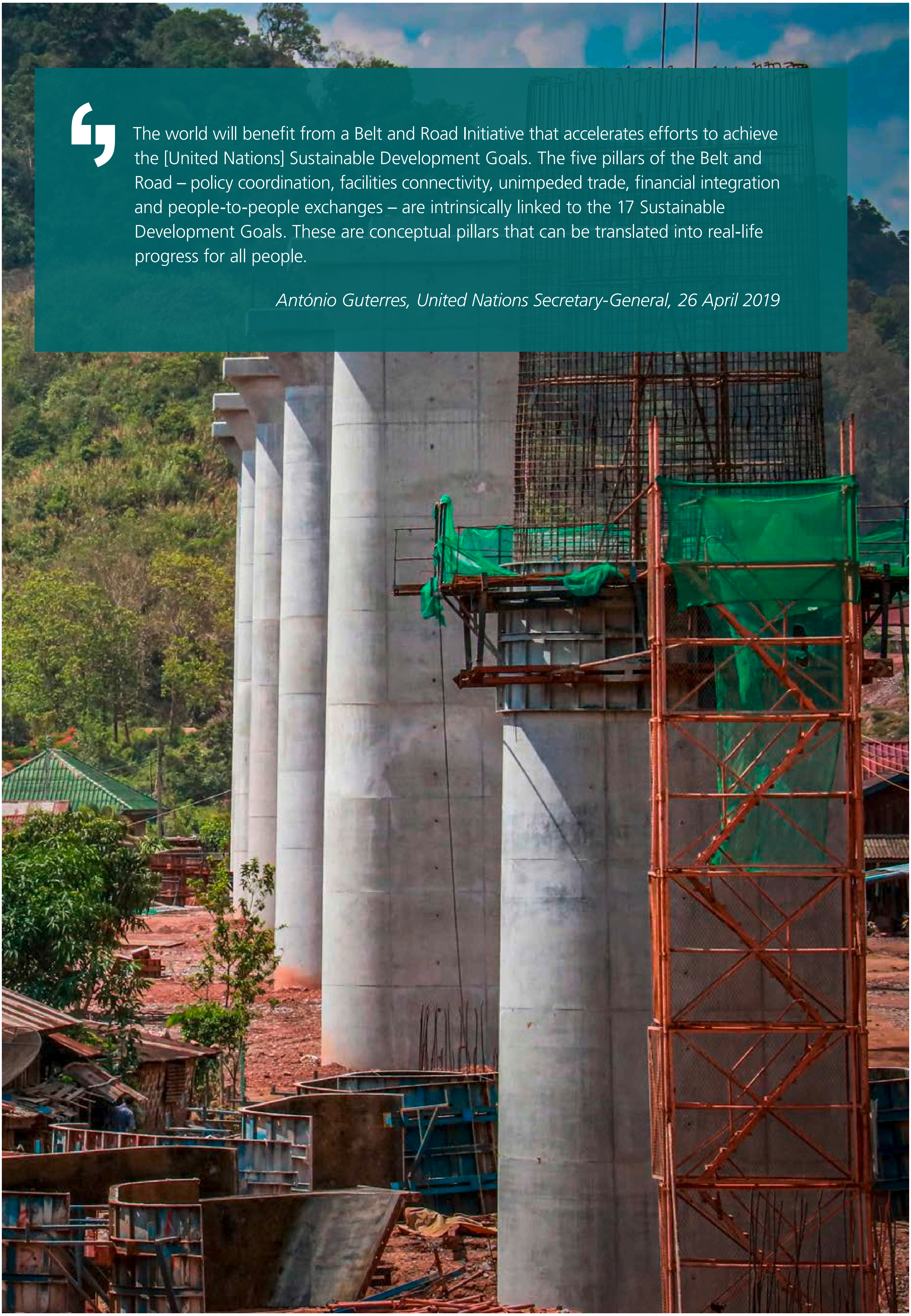
During the early months of the pandemic, China provided emergency humanitarian aid to about 150 countries and four international organisations, and sent teams of medical experts to 24 countries. But in the longer term, more permanent healthcare projects – including the construction and fitting out of hospitals, health centres and laboratories – are likely to become more important. Telemedicine and digital healthcare also offer enormous potential, and synergies with DSR – an area in which China may also wish to build on its data-driven successes in combating the coronavirus.

As the Beijing-based Asian Infrastructure Investment Bank (AIIB) wrote earlier this year, "developing economies will need to increase investments in healthcare and public health infrastructure" and "public health infrastructure needs to be supported by robust information and communications technology". AIIB has also said it is working to scale up infrastructure investment to better serve members impacted by Covid-19 and that "as a multilateral organization, AIIB will work with various stakeholders to prioritize infrastructure projects in areas of sustainable cities, resilient infrastructure, healthcare and ICT." Other development banks will doubtless do the same.

The Health Silk Road may also play a key role in any vaccination programmes that are developed in response to the pandemic. If one or more vaccines are developed to combat Covid-19, billions of people will need to be inoculated, in an international effort of unprecedented size and scope. Whether that effort is globally coordinated or not, all governments will have to address the practical difficulties of protecting their populations, and many in developing countries may look for the sort of assistance that the HSR would be able to provide. Furthermore, if vaccines only offer protection against the virus for a limited time, as seems possible, it may be necessary to develop infrastructure and other assets – including life sciences and technology assets – to support a permanent programme of repeat inoculations.

An additional advantage for China in promoting HSR projects and offering medical aid is that controlling the pandemic in BRI countries will facilitate economic recovery and the resumption of other BRI projects. And there is clearly the hope that cooperation on HSR projects – both those related to the pandemic and those addressing other health needs – will help to build strong foundations for cooperation on other aspects of BRI.

> The world will benefit from a Belt and Road Initiative that accelerates efforts to achieve the [United Nations] Sustainable Development Goals. The five pillars of the Belt and Road – policy coordination, facilities connectivity, unimpeded trade, financial integration and people-to-people exchanges – are intrinsically linked to the 17 Sustainable Development Goals. These are conceptual pillars that can be translated into real-life progress for all people.
>
> *António Guterres, United Nations Secretary-General, 26 April 2019*



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. In 2017, for example, the Asian Development Bank calculated that Asia alone would need USD 26trn of infrastructure investment by 2030. However big BRI may be, it is nowhere near that big.

But even though BRI is only one route among many to global development, it seems certain to be the world's largest infrastructure initiative for years – and probably decades – to come. Other recent innovations, such as the US-led Blue Dot Network, the new United States International Development Finance Corporation, the revived Export-Import Bank of the United States, and the 2019 EU-Japan connectivity partnership, are all much smaller. Even many of the Western 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 are increasingly looking to meet the trends of the future. Affordable projects, embracing modern technologies and methods, as well 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.

If we imagine a world in which BRI had never been conceived, we can be sure that developing countries would still be seeking to fund much-needed infrastructure projects with international financing, often from China, and that contractors from China would still be tendering for many of those projects. There would still be a huge need for international development, and the parties involved would still be grappling with complex questions, such as managing risk, negotiating local partnerships, and balancing sustainability with value for money and profitability.

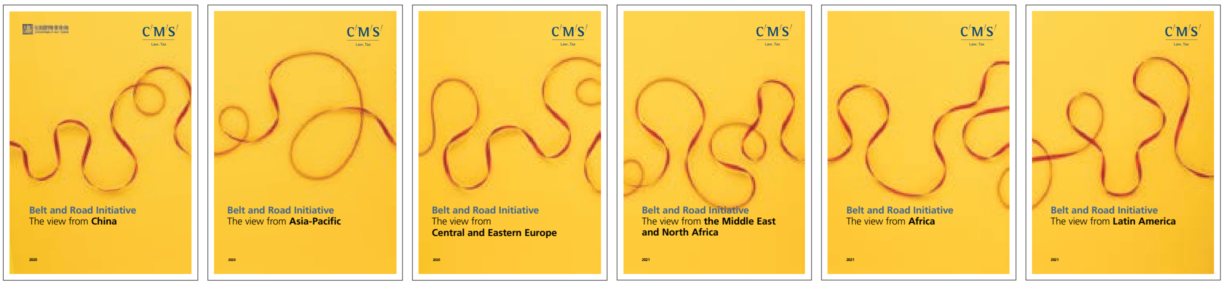
In its early days BRI was widely seen outside China as being primarily an umbrella under which such projects could be grouped. The question now is whether it will come to be appreciated internationally as a vehicle for higher standards of project sustainability and governance, as well as mutually beneficial 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 and interviews of over 500 BRI participants from around the world, to assess in depth their current feelings about BRI and the prospects they see for it.

We are publishing our findings in a series of six reports, beginning in September 2020 with this report on our findings from China, and another covering the rest of the Asia-Pacific region.

Reports covering Central and Eastern Europe, the Middle East, Africa and Latin America will be published in the coming months.



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CMS has more than 70 offices in over 40 countries across the world. More than 4,800 lawyers deliver expert advice in their local jurisdictions and across borders. From major multinationals and mid-caps to enterprising start-ups, CMS provides the technical rigour, strategic excellence and long-term partnership to keep each client ahead in its chosen markets.

CMS has been active in China on behalf of its clients for more than 30 years. We serve clients in China through our offices in Shanghai, Beijing and Hong Kong. We are well placed to advise both overseas companies doing business in the East and Chinese companies doing business in the West on cross-border issues.

With market leading sector specialist teams in Energy, Infrastructure & Project Finance, Financial Institutions and Technology, Media & Telecommunications, we have the right expertise and experience to advise on BRI-related issues.

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TianTong is a law firm dedicated to handling significant and complex commercial disputes and is widely recognised as one of the most successful dispute resolution law firms in China. Its practice consists of four areas, including litigation, arbitration, enforcement and restructuring. And its unrivalled track record before all levels of the people's courts (especially the Supreme People's Court and High People’s Courts) and major arbitral institutions (such as CIETAC, BAC, SHIAC and SZIAC etc) speaks for itself. TianTong has set up offices in Nanjing, Shenzhen, Chongqing, Zhengzhou, Xi'an, Shenyang and Sanya forming a “1+7” layout with national service capabilities, and will soon launch its Shanghai office.

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