

SKILLING UP FOR SUCCESSFUL BELT AND ROAD INVESTMENTS

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Legal Briefings

The Belt and Road Initiative (BRI) is China's US\$5 trillion outbound investment strategy to connect Asia, the Middle East, Africa and Europe through infrastructure investment.

Besides financial investment, it also requires new legal and technical skillsets.

In the five years since the BRI's launch, we have observed how best those interested can tool up for this big challenge.

First, getting sound legal advice is essential.

Contractors and investors are venturing into new countries and regions, often encountering unfamiliar political and legal regimes along the way. Chinese companies need legal advice on how best to structure a deal to meet local requirements as well as the expectations of the Chinese government.

Amongst other challenges:

- Multi-party, multi-faceted and multilateral contracts require a thorough and holistic approach to ensure the legal basics are right.
- These projects are likely to run for many years. Over this time, the legal and political regimes in many countries could change substantially, and impact the original agreements. This is important to factor into your planning.

Second, you should understand your risk exposure before signing up to a BRI project.

- On both the sponsor and lending sides, parties need to understand their allocation of risk. Until operations begin, Chinese developers have traditionally assumed most risk, offering completion guarantees to lenders that can be called in should a project not prove to be commercially viable. In the more international setting of the BRI, it is necessary to approach all negotiations with a more commercial mindset.
- Banks can mitigate risk through syndicating their loans and commercial banks can co-fund with multilateral development banks like AIIB and ADB to reduce their exposure.
- Bribery and corruption is perceived to be high in many jurisdictions along the Belt and Road. Developers and lenders must carry out adequate due diligence at the outset and as part of ongoing supply chain management throughout the life of the project to mitigate bribery and corruption risks.

Lastly, despite best intentions and thorough planning, disputes are inevitable in complex multi-party infrastructure projects. It is essential to include an effective dispute resolution mechanism.

International arbitration is often regarded as a good choice with many benefits, including confidentiality and easy enforcement in over 150 countries. Combining arbitration with mediation or another alternative dispute resolution (ADR) process may be even better. This allows parties to reach a negotiated settlement earlier on, in a more consensual and commercial setting, with arbitration as a backstop, should ADR fail.

- If you cannot get 'home court' advantage, choose an appropriate neutral venue. Hong Kong, by virtue of the 'one country, two systems' doctrine, enjoys a unique position. It has an established rule of law and experienced practitioners, judges, arbitrators and mediators. Singapore is regarded in a similar way.
- It is vital to choose an appropriate governing law to resolve your dispute. Established jurisprudence, such as England and Wales and Hong Kong, alongside Chinese law, are popular choices.
- Dovetailing project documentation, funding and dispute resolution across a myriad of contracts requires specialist legal input.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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