

THE PROS AND CONS OF CHINA'S 'FLEXIBLE APPROACH' TO BELT AND ROAD

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The Belt and Road Initiative has an ambitious scale and timetable. So it is hardly surprising that a development initiative involving 130 countries and 30 international organisations has sought a highly flexible approach.

Indeed, the BRI Action Plan explicitly states that the Belt and Road is a "highly flexible" process of cooperation that "does not seek conformity."

This approach makes sense given the deep variations in economics, politics and laws of the numerous countries involved in Belt and Road, but it also leaves the initiative vulnerable in certain areas.

[Professor Heng Wang](#) of the [Herbert Smith Freehills CIBEL Centre](#) at the University of New South Wales has examined this issue in his latest research [paper](#).

"China's 'maximised flexibility' on the Belt and Road is a double-edged sword," said Professor Wang. "It allows a more versatile approach to such a complex cross-border project, but could create problems with consistency, coherence, predictability, risk management and transparency."

"The challenges faced by the current Belt and Road model do not suggest it is unsustainable but it does require that China face these challenges in a holistic sense," said Professor Wang.

As the Belt and Road has developed, China has largely relied on a framework of soft law such as MOUs, declarations, principles and agreements, existing institutions, and tried and tested measures such as free trade zones rather than the hard law and new institutions favoured by other large-scale economic development plans, notably the US' recent NAFTA replacement, the USMCA.

The lack of clarity around, and formal solutions for, thorny non-trade issues such as labour, environment and national security is one problem area identified by Professor Wang. "A more formal institutional and regulatory approach to these areas could increase trust in host states and communities and thereby reduce project risk," said Professor Wang.

Consistency and coherence is another area of concern, with Belt and Road creating an 'alphabet soup of commitments' as a vast number of organisations and parties create and control potentially

overlapping agreements.

"Without an overarching framework, older agreements may not prove compatible with newer initiatives," said Professor Wang. "With some of the larger cross-border projects, such as rail and road routes, ensuring the same standards of procedure, efficiency and safety will be essential once the infrastructure is operating across borders."

The lack of a single Belt and Road legal framework also affects predictability – for investors and other parties, and of the potential legal risks of a project or investment. "In particular, it remains to be seen how Belt and Road strikes a balance between market considerations, social values and political and security issues," said Professor Wang.

Lastly the reliance on soft law with weak enforcement mechanisms hampers risk management. "Not only does this model encourage opportunism and non-compliance, it may also discourage countries with more rigorous regulatory standards from participating in Belt and Road," said Professor Wang.

KEY CONTACTS

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



MAY TAI
MANAGING PARTNER,
GREATER CHINA, HONG
KONG
+852 21014031
may.tai@hsf.com



HEW KIAN HEONG
PARTNER, SHANGHAI
+86 21 2322 2150
kianheong.hew@hsf.com



ELLEN ZHANG
PARTNER, BEIJING
+86 10 6535 5030
ellen.zhang@hsf.com



MONICA SUN
PARTNER, BEIJING
+86 10 6535 5122
Monica.Sun@hsf.com

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