



# RESEARCH BRIEF

No. 13/2021

## City of London Law Firms Advising China's Belt and Road Initiative: A Study of Six Years of Engagement

Michael Yip, Peking University

November 4, 2021

### Key Points:

- The UK government expects the City of London to be a “natural partner” in facilitating the BRI, and City law firms have provided significant transactional support.
- Growth in BRI matters slowed during Covid-19, but had quintupled in 2015-16 and doubled in 2016-17.
- However, only 10% of BRI matters were undertaken by lawyers practising from London. Further, some firms with obvious “China strengths” declared zero BRI matters.

### Introduction

China's Belt and Road Initiative (BRI) evokes a broad range of responses from observers and participants, including that of caution. The response from UK public policymakers has been no exception. The same, however, should not be said of private sector law firms located in the City of London. Without exception, such firms, which possess not only a global reach, but also market-

leading expertise in commercial law spanning a range of transactional, advisory and contentious practice areas, have embraced the BRI. This Research Brief argues that they stand at the heart of facilitating the BRI, by playing a disproportionately and increasingly large role in concluding the transactions and dispute resolution work that the BRI brings.

### UK public policy dynamics

In recent years, the UK has demonstrated a cautious interest toward China's increasingly overt global development initiatives. On the one hand, the UK joined the Beijing-based Asian Infrastructure Investment Bank as a founding member in 2015.<sup>1</sup> Three years later, the UK described itself as a “natural partner” to facilitate BRI transactions, given the City of London's expertise in professional services, including in law.<sup>2</sup>

On the other hand, the UK has not signed a Memorandum of Understanding with China to formally join the BRI. When the UK last seemed likely to do so in 2018, then-Prime Minister Theresa May indicated that both governments

<sup>1</sup> Her Majesty's Treasury, *UK announces plans to join Asian Infrastructure Investment Bank*, <https://www.gov.uk/government/news/uk-announces-plans-to-join-asian-infrastructure-investment-bank> (last visited Oct. 4, 2021).

<sup>2</sup> Prime Minister's Office, *Prime Minister's press conference with Premier Li: 31 January 2018*, <https://www.gov.uk/government/speeches/prime-ministers-speech-in-china-31-january-2018>.

would “continue to work together to identify how best we can cooperate... and ensure [the BRI] meets international standards.”<sup>3</sup>

Now in 2021, Theresa May’s cautious approach has since given way to commitments made by Boris Johnson at the Carbis Bay G7 Summit towards instituting an alternative infrastructure financing initiative with a “values-led vision” and strong standards.<sup>4</sup> Some have viewed doing so as tantamount to setting-up a competing rival to the BRI.

### Legal capabilities in London

Although the UK’s policy signals fall short of decisive support for the BRI, this has not impeded the ability of London law firms to compete for, win and complete BRI-related work.

Such firms possess both depth and breadth in capability to provide commercial law solutions for complex, cross-border matters. For transactional matters, doing so involves structuring, negotiating and documenting agreements between contractual parties. Contentious matters, on the other hand, require managing, advising and making representations in court litigation, in arbitration cases or through other dispute resolution processes. Unsurprisingly, the law firms which have excelled in these practice areas typically feature in the Tier/Band 1 and Tier/Band 2 brackets of authoritative legal directories such as *Chambers and Partners* and *The Legal 500*. Common traits that such firms possess include a global reach, with lawyers stationed in Hong

Kong, Shanghai and Beijing – as well as in the local countries to which the BRI matter is linked.

### Volume and definition of BRI work

To date, analysis by the author indicates that City of London firms have undertaken 101 matters that they have self-reported as supporting the BRI.<sup>5</sup> That is no small number, even when recalling the relatively short time period in which they were undertaken – approximately six years. Such an observation, however, raises questions as to how one appropriately calibrates what a “BRI matter” means. When one refers to a “BRI matter”, is it clear what that term includes? And what it does not?

This is pertinent for two reasons. First, as is well-documented in commentary, the BRI is an expansive, amorphous and subjective concept with a range of variations on a single theme: the Green Silk Road, the Health Silk Road, the Polar Silk Road, the Digital Silk Road and others. The BRI itself can be difficult to pin down and define.

Second, law firms self-declare whether a piece of work is indeed a “BRI matter”, independently including some matters and excluding others from that category.<sup>6</sup> Thus there may be an inconsistent approach to declarations across the law firm sector. For instance, some firms may take the lead from how their clients view, publicise and speak about the matter; others may refer to whether the matter is situated in a country whose government has signed a BRI Memorandum of Understanding with China. Those wishing to promote their BRI

<sup>3</sup> *Id.*

<sup>4</sup> G7 Leaders, *Carbis Bay G7 Summit Communiqué: Our Shared Agenda for Global Action to Build Back Better*, (2021), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001128/Carbis\\_Bay\\_G7\\_Summit\\_Communique\\_PDF\\_430KB\\_25\\_pages\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001128/Carbis_Bay_G7_Summit_Communique_PDF_430KB_25_pages_.pdf).

<sup>5</sup> Analysis of English-language public statements issued on by 40 firms, including: “Magic Circle” firms (Allen & Overy; Clifford Chance; Freshfields Bruckhaus Deringer; Linklaters; Slaughter and May), US firms present in the City of London (Baker McKenzie; Cleary Gottlieb Steen & Hamilton; Debevoise & Plimpton; Jones Day; K&L Gates; Kirkland &

Ellis; Latham & Watkins; Mayer Brown; Milbank; Morgan, Lewis & Bockius; Paul Hastings; Reed Smith; Shearman & Sterling; Sidley Austin; Simpson Thacher & Bartlett; Skadden, Arps, Slate, Meagher & Flom; Squire Patton Boggs; Vinson & Elkins; Weil, Gotshal & Manges; White & Case) and other global City firms (Addleshaw Goddard; Ashurst; Bryan Cave Leighton Paisner; Clyde & Co; CMS; Dentons; DLA Piper; Eversheds Sutherland; Herbert Smith Freehills; Hogan Lovells; King & Wood Mallesons; Norton Rose Fulbright; Pinsent Masons; Simmons & Simmons; Stephenson Harwood).

<sup>6</sup> Confirmed from a textual analysis of their public statements.

credentials may simply err on the side of branding all China-related matters as BRI ones.

Meanwhile, a substantial number of firms (20%) were recorded in this study as having undertaken zero BRI matters. This, however, appears incongruent with the profile of firms in the sample: all 40 firms boast substantive China practices and would be capable of advising on a BRI matter. What this discrepancy implies is that such firms may indeed have advised on a BRI matter to date without declaring them as such. If correct, this raises legitimate questions as to whether purely relying on self-declarations risks adversely skewing discrete, statistical analyses of law firm take-up of BRI matters. This risk becomes more pronounced when the performance of one firm is compared against that of another.

So, how should the term “BRI matter” be defined? The view of this Research Brief is that, especially given the ambiguity of Chinese government pronouncements on what the BRI is, it is not possible to do so. Correspondingly, nor is it possible to draw an objective line between a “China matter” and a BRI-specific one. What this implies for the statistical findings (presented below) is that an under-reporting of BRI matters is likely. If true, the total of 101 BRI matters ought to be interpreted as a partial (but illustrative) sample of a wider body of BRI matters. Consequently, the data’s most valuable insights lie not in the discrete

figures themselves, but instead in the overall trend that it portrays – especially in terms of relative, year-on-year growth in the number of BRI matters undertaken.

### Growth in BRI work

The year-on-year growth in the number of matters undertaken between 2015 and 2021 is noteworthy. Figure 1 shows that growth rates peaked at the outset – when the BRI was still novel and interest was heightened – with BRI matters increasing by a factor of five following the first year and doubling after the second.<sup>7</sup>

Unsurprisingly, given the recent restrictions on business activity during the Covid-19 pandemic, growth in the number of BRI matters undertaken has slowed to a growth level of 12%. This is down by 22 percentage points from the previous year. Other extraneous factors – such as geopolitical dynamics, debt sustainability and climate change concerns – may extend the plateau in growth even as the effects of the pandemic begin to recede.

### Firm performances

As far as the firms driving the growth are concerned, Tier/Band 1 and Tier/Band 2 firms are leading the charge. Of the total 101 BRI matters analysed, 28% were undertaken by the Magic Circle; 23% by American law firms present in the City of London; and 49% by other global firms in the City.

**Figure 1: Growth in BRI matters advised by law firm grouping, 2015-21<sup>8</sup>**

	‘15	‘16	‘17	‘18	‘19	‘20	‘21
Magic circle	1	5	6	5	5	3	3
US law firm	0	4	3	2	2	2	1
Other City firm	2	4	11	6	10	3	1
<b>Yearly total</b>	<b>3</b>	<b>13</b>	<b>20</b>	<b>13</b>	<b>17</b>	<b>8</b>	<b>5</b>
Cumulative total	3	16	36	49	66	74	79
<b>YoY growth</b>	–	↑ 433%	↑ 125%	↑ 36%	↑ 34%	↑ 12%	↑ 6.7%
<b>Δ YoY growth<sup>9</sup></b>	–	+433%	-308%	-89%	-2%	-22%	-5.3%

<sup>7</sup> Some matters were listed as ongoing or did not have an ascertainable date and, therefore, were excluded from the analysis on growth rate.

<sup>8</sup> 22 matters did not have an ascertainable date, which is why the cumulative total for 2021 does not sum to 101 matters.

<sup>9</sup> Change in YoY growth is expressed as the difference in percentage points.

Behind these percentages, however, lie three exceptional, individual firm performances. Whereas a clear majority of firms (28 out of 40) undertook two or fewer BRI matters over the six-year window, Clifford Chance, Herbert Smith Freehills and Pinsent Masons each managed over ten matters. The trend-bucking endeavours of these three accounted for 38% of the total BRI workload. Meanwhile, White and Case was the top-performing US firm, having managed nine matters.

### Transactional or contentious?

The law firm data also serves to confirm conventional understandings of the type of legal work the BRI calls for. Unsurprisingly, for example, the vast majority (91%) of matters were transactions. They were large in value and involved the full gamut of corporate, M&A, banking and capital markets expertise. Representative examples include bond issuances, initial public offerings, acquisitions and disposals of shares, fund formations, joint ventures and bank lending (both for project-specific and general purposes).

However, only nine matters were contentious – and nearly all of those were heard or are expected to be heard in either the Hong Kong or Singapore International Arbitration Centres. Of the nine, only one – *DP World Djibouti v China Merchants Port Holdings* – is a live dispute to be litigated in the Hong Kong High Court.<sup>10</sup>

Although the data is reflective (and should therefore be used cautiously for forward-looking projections on future disputes), the gradual emergence of disputes at all may indicate that the BRI is advancing into a new phase. In that phase, the agreements that attract dispute receive judicial scrutiny, which – over the longer term – should serve to mature business and legal practice under the BRI.<sup>11</sup>

### Parties and geographic reach

The law firm data also supports common views on the typical parties to a BRI matter, as well as on geographical reach. Unsurprisingly, for instance, all matters analysed included either a Chinese party or a China-related consideration (e.g., a Hong Kong listing). Consistent with the BRI's aims to promote global connectivity, many matters also involved a cross-border element: a coal project within the China-Pakistan Economic Corridor; an acquisition target in Greece's maritime ports sector;<sup>12</sup> a stainless-steel plant on the Indonesian island of Sulawesi<sup>13</sup> – the list goes on, covering much of the world's geographies and jurisdictions. Where the financiers, corporates and sovereigns have ventured on the Belt and Road, the lawyers have evidently followed.

### UK – a “natural partner”

The data, however, raises questions as to whether the UK would be a “natural partner” to the BRI, given the prowess of its law firms. Is this true?

**Figure 2: Demonstrable UK link in BRI matters**

↑ Increasing link	A	<b>UK link:</b> <i>The London office advised on the matter</i>	10
	B	<b>UK link:</b> <i>The matter raised English law issues</i>	2
	C	<b>UK link:</b> <i>An English-qualified lawyer advised on the matter</i>	48
	D	<b>UK link:</b> <i>A lawyer on the matter previously practised in London</i>	1
↓ Decreasing link	E	<b>UK link:</b> <i>A lawyer on the matter was educated at a UK university</i>	2
	F	No indication of a “UK link”	21
	G	Inconclusive; no supporting details disclosed	17
<b>Total matters</b>			<b>101</b>

<sup>10</sup> Global Construction Review, *DP World sues China Merchants Ports, says it turned Djibouti against it*, (Feb. 13, 2019), <https://www.globalconstructionreview.com/dp-world-sues-china-merchants-ports-holdings-turni/>.

<sup>11</sup> OBOR Europe, *DP World suing China Merchants: a sign of good health for the BRI?* (Feb. 21, 2019), <https://www.obor-europe.com/en/dp-world-china-merchants/>.

Analysis from Figure 2 indicates that, of the 101 BRI matters, the overwhelming majority of them (74%) were undertaken and/or concluded by lawyers outside the City of London.<sup>14</sup> Rather, those lawyers were practising far away in the firms' Hong Kong, Shanghai or Beijing offices (and in tandem with local lawyers stationed in a third country). This makes sense, given that the majority of BRI matters include a Chinese party for whom instructing China-based lawyers would be more time-efficient and cost-effective, particularly when vis-à-vis instructing lawyers in London. Furthermore, comparatively fewer lawyers in London would possess the requisite cultural awareness or language skills, which are especially helpful if not instrumental in the context of advising Chinese parties on a BRI matter. From the institutional perspective of a law firm, this gives rise to two constraints on the UK to act as a "natural partner" to the BRI.

First, given that the geographic epicentre of BRI legal work is not in London, lawyers assigned with a BRI matter may practise from an entity that is legally unconnected to the firm in London, despite

being part of the same overarching brand. One example is Dentons, which is structured as a Swiss *verein* and includes multiple regionally-separate entities, such as "Dentons UK and Middle East LLP" and "北京大成律师事务所", its Chinese entity.<sup>15</sup> Arrangements such as the Swiss *verein* may give rise to separate compensation systems and regional profit pools.<sup>16</sup> In cases where such arrangements apply, one implication is that the costs and rewards of undertaking BRI matters may not necessarily accrue back to the UK entity of the firm or the City of London.

Second, owing to the general prohibition on foreign law firms (i) offering advice on points of Chinese law and (ii) advocating for clients in Chinese courts,<sup>17</sup> City law firms are therefore restricted to advising on foreign laws and, more ambiguously, on the "Chinese legal environment".<sup>18</sup> The consequences of this regulatory constraint on City firms are twofold. First, when giving advice on legal matters in China, City firms tend to do so "in coordination with Chinese local counsel or based on publicly available information".<sup>19, 20</sup> Second, when

<sup>12</sup> Paul Hastings, *COSCO Acquires Piraeus Port in Greece*, (Apr. 8, 2016), <https://www.paulhastings.com/news/news-cosco-acquires-piraeus-port-in-greece>.

<sup>13</sup> Pinsent Masons, *Pinsent Masons advises Bank of China on the project financing of an integrated stainless steel plant*, (Jan. 5, 2021), <https://www.pinsentmasons.com/about-us/announcements/bank-of-china-project-financing-integrated-steel-plant-largest-investment-china>.

<sup>14</sup> 74% is calculated from the addition of "B", "C", "D", "E" and "F" in Fig 2.

<sup>15</sup> Dentons, *Legal notices*, <https://www.dentons.com/en/legal-notices> (last visited Oct. 4, 2021).

<sup>16</sup> Tom Moore, *Dentons shakes up profit-sharing arrangement in China*, (Apr. 8, 2016), <https://www.legalbusiness.co.uk/blogs/dentons-shakes-up-profit-sharing-arrangement-in-china/>.

<sup>17</sup> That is, unless they practice from a free trade zone (e.g., Shanghai Free Trade Zone) under a "joint operation" with a PRC-authorized firm. Even in such a circumstance, the foreign law firm remains barred from conducting PRC litigation and advising on points of PRC law. See Dezan Shira & Associates, *Shanghai FTZ to Expand Liberalization of the Legal Services Industry in China*, (Mar. 26, 2014), <https://www.china-briefing.com/news/shanghai-ftz-expand->

<liberalization-legal-services-industry-china/>; Eric J. Jiang, *True Market Access to China's Legal Services: Possibilities Under China's New Regulatory Scheme* (last visited Oct. 4, 2021).

<sup>18</sup> Rachel E. Stern & Su Li, *The Outpost Office: How International Law Firms Approach the China Market*, 41(1) *Law & Social Inquiry* (2016).

<sup>19</sup> Special Counsel Blog, *Where Lawyers Can't Practice*, (Dec. 10, 2018), <https://blog.specialcounsel.com/ediscovery/restrictions-on-international-law-firms-china/>.

<sup>20</sup> In 2021, China promulgated its Anti-Foreign Sanctions Law (AFSL). AFSL raises questions as to whether domestic and foreign law firms in China could permissively continue to co-advise on BRI matters, if the foreign law firm were to be subject to retaliatory sanctions under AFSL. Specific implications of AFSL on law firms presently remain unclear, but China may yet "carve-out" seeking legal advice from the list of prohibitions applicable to a sanctioned entity. See Law.com, *China's Retaliatory Sanctions a Risk for Global Law Firms*, (Jul. 26, 2021), <https://www.law.com/international-edition/2021/07/26/chinas-retaliatory-sanctions-a-risk-for-global-law-firms/>; Clifford Chance, *China introduces Anti-Foreign Sanctions Law*, (July 2021), <https://www.clifford>

compared against their domestic Chinese competitors, City firms contend with an uneven playing field to establish themselves in China as “natural partners” to the BRI.

Given the constraints above, the data implies that the only “UK link” that touches all 101 matters is the link “by association” to a firm either present or headquartered in the City of London. This view is further emphasised by the composition of other types of “UK link”: qualification as an English solicitor (48%); a prior stint in London (1%); a UK university qualification (2%); or the presence of English law questions on the matter itself (2%). Only 10% of matters included a team of solicitors physically practising from the City of London.

What this observation underscores, therefore, is that in spite of the obvious and market-leading legal competences of City law firms to advise on high-complexity, high-value BRI matters, a host of geographic and regulatory realities inhibit the “natural partnership” espoused by Theresa May. Other, more measurable metrics – such as the prevalence of London-based teams, City experience, qualification as a solicitor, and university education – indicate that BRI matters, on the whole, do demonstrate a UK link, albeit of varying degrees. Ultimately, it is the link “by association” that is most prevalent and most ostensible.

### Thought leadership and legal education

It is important to adopt a more holistic view when assessing BRI involvement. For instance, analysis indicates that, as well as advising on transactions and disputes, City firms engage with the BRI

through a number of other fronts, most notably through legal thought leadership.

Prominent examples include Baker McKenzie’s work, in collaboration with Silk Road Associates and the Economist Intelligence Network, to produce forward-looking trends on the BRI.<sup>21</sup> CMS, meanwhile, has worked with research firm Acuris to survey over 500 senior executives in six regions on BRI sentiment.<sup>22</sup> Perhaps it is King & Wood Mallesons that has gone furthest by not only instituting a BRI-focused think tank,<sup>23</sup> but also co-launching, with Peking University, a legal and business executive programme with a dedicated BRI “stream”.<sup>24</sup> However, it is important to note that – as is the case for BRI matters – such thought leadership is not exclusively generated by lawyers practising from London. Many are also stationed in China and third countries that experience commercial BRI activity. Regardless, all of these endeavours go far to deepen our understanding of the key themes, concerns and opportunities that sit at the interplay between BRI and legal practice.

### Conclusion

This Research Brief reflects on data from the past six years in which City of London law firms have advised on over a hundred BRI-related matters. It concludes that these law firms have played a disproportionately and increasingly large role in completing transactions and shepherding disputes within the BRI to date. Growth in the number of disputes undertaken is now plateauing due, in part, to extraneous factors including Covid-19. The recent sanctioning of Essex Court Chambers also raises questions about both the facilitative and disruptive roles that English legal practice plays in China’s global development initiatives.<sup>25, 26</sup>

[chance.com/content/dam/cliffordchance/briefings/2021/07/China-Introduces-Anti-Foreign-Sanctions-Law-July2021.pdf](https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/07/China-Introduces-Anti-Foreign-Sanctions-Law-July2021.pdf).

<sup>21</sup> Baker McKenzie, *BRI and beyond*, <https://www.bakermckenzie.com/en/insight/topics/bri-and-beyond> (last visited Oct. 4, 2021).

<sup>22</sup> CMS, *A New View of the Belt and Road*, <https://cms.law/en/int/publication/belt-and-road-initiative> (last visited Oct. 4, 2021).

<sup>23</sup> King & Wood Mallesons, *KWM issues Think Tank Report: Law and Practice under the Belt & Road Initiative IV (2021)*,

<https://www.kwm.com/en/knowledge/downloads/kwm-issues-think-tank-report-law-and-practice-under-the-belt-road-20210429> (last visited Oct. 4, 2021).

<sup>24</sup> King & Wood Mallesons, *KWM partners with PKU Law School to launch innovative legal and business executive program*, <https://www.kwm.com/en/knowledge/news/kwm-partners-with-pku-law-school-to-launch-innovative-legal-and-business-exec-program-20170804> (last visited Oct. 4, 2021).

<sup>25</sup> Four barristers practising from Essex Court Chambers were sanctioned by the Chinese government for authoring a legal

The data also confirms commonly-held understandings of law and the BRI. For instance, that transactional work dominates but, as is to be expected, contentious matters have begun to emerge. Unsurprisingly, analysis shows that the matters combine a mixture of Chinese parties and cross-border elements involving local lawyers. Legal thought leadership and legal education with an explicit BRI focus have grown in prominence, too.

For scholars investigating this field, questions linger over how robustly an assessment of a given country's or law firm's engagement with BRI can be made – especially given the (i) multiple, separate identities of the modern firm and (ii) BRI's own definitional challenges.

---

Michael Yip FRSA  
Yenching Scholar  
Peking University

[LinkedIn](#)

---

opinion in relation to the treatment of Uyghurs in Xinjiang. This marks one of few instances (if any) in which the Chinese government has sanctioned UK lawyers. Essex Court Chambers, *Essex Court statement on sanctions imposed by Chinese Government*, (Mar. 26, 2021), <https://essexcourt.com/essex->

[court-chambers-statement-on-sanctions-imposed-by-chinese-government/](https://essexcourt.com/essex-court-chambers-statement-on-sanctions-imposed-by-chinese-government/).

<sup>26</sup> Primrose Riordan, Tabby Kinder & Jane Croft, *UK lawyers feel ripples of Chinese sanctions on Essex Court Chambers*, FINANCIAL TIMES, (Apr. 4, 2021), <https://www.ft.com/content/e6ab6819-6040-4b7f-b579-3a51658f7a4b>.