Faced with an economic downturn and a glut of construction materials, China has turned to infrastructure, domestically and abroad, to build a secure future. Alainna Wrigley reports

In mid-October, the National Bureau of Statistics announced that China’s gross domestic product had experienced 6.9% growth in the third quarter. The figure was lower than the 7% growth of the first half in a year that has already seen the lowest growth figures since 2009.

This was not unexpected. Target growth is set to 7% for the year, a more sober goal for a leadership which clearly recognizes the new economic normal.

President Xi Jinping was among the first to vocalize this plainly. “As an economy closely linked to international markets,
市场观察

基础设施建设

采访中这样回答路透社的提问，“中国经济发展有让我们担忧的问题，我们正在抓紧加以解决。”

在过去一年，中国也特别强调提高境内基本建设投资以稳定经济增长并支持后续发展。“可以看出，一方面基础设施建设作为全面加强国内基础设施投资，”安杰律师事务所驻北京合伙人陈斌说，“尤其是PPP模式的兴起，激起了国内基础设施建设的又一轮高潮。”

“在过去几年我看到一个积极趋势，基建投资已经提高对基建项目的效率及可持续性的关注，以求将其长期利益最大化，这个趋势将来可能会变得更显著，”国浩律师事务所执行合伙人王卫东说。“伴随对长远利益的关注，对于基建项目的相互关联性的关注也增多，这样就能在投资阶段考虑项目的长远影响。”

提高基建投资不仅是中国的目标，也是全世界期望的目标。在2014年发布的报告《2025年基础设施项目及投入展望》中，普华永道（PwC）估计全球基本工程项目以及基建支出将会在2025年超过每年9万亿美元。其中大部分的增长出现在新兴经济体——有一半预计会出现在亚洲。普华永道进一步估计，随着中国城市化的加速，在中国的基建支出将会每年上升大约10%。

中国自70年代末经济改革以来所出现的经济增长不少是由基建发展投资支撑起来的。现代公路、铁路以及资源设施为中国带来了现代文明以及稳定的生活，并让6亿人脱贫。

中国不断提升的经济实力以及其令人瞩目的经济增长历程，使其能参与到全球范围的计划中，特别是基建发展领域。对基建落后国家的设施进行更新改善并让各个国家更紧密地靠近中国市场已经成为关键政策。这体现在中国的“一带一路”倡议、对跨国发展银行及基金的参与等巨量货币承诺中。

达辉律师事务所驻北京合伙人张继达表示，“自从宣布了‘一带一路’，中国不能说三心二意，其对全球基础设施建设的影响力与日俱增。”

China cannot stay immune to the lacklustre performance of the global economy,” he told Reuters in an October interview. “We do have concerns about the Chinese economy, and we are working hard to address them.”

In the past year, China has placed strong emphasis on increasing investment into domestic infrastructure to stabilize growth and support continuing development. “Investment in domestic infrastructure is based in strengthening domestic infrastructure overall,” says Chen Bin, a partner of AnJie Law Firm based in Beijing. “The rise of the PPP [public-private partnership] model in particular has set off an additional upsurge in domestic infrastructure development.”

“One positive trend that I have observed over the past few years, and which will likely become even bigger, is that infrastructure investments have increased focus on the efficiency and sustainability of infrastructure projects so that their long-term benefits can be maximized”, says Wang Weidong, executive partner of Grandall Law Firm in Beijing. “In pace with the focus on long-term benefits, there has been increased attention on the interconnectedness of infrastructure projects so that even their far-reaching effects are considered during the investment process.”

Increasing investment in infrastructure is not only a goal of China, but one anticipated worldwide. In its 2014 report Capital project and infrastructure spending: Outlook to 2025, PricewaterhouseCoopers (PwC) estimated that global capital project and infrastructure spending will exceed US$9 trillion per year by 2025, with the majority of growth occurring in emerging economies – half of which are anticipated to be in Asia. PwC further estimates that infrastructure spending in China will grow by roughly 10% annually in pace with rising urbanization.

Much of China’s economic growth since the economic reforms of the late 1970s was supported by investing heavily in developing infrastructure. Modern roads, railways and resource facilities brought modern civilization and a stable livelihood to China, lifting more than 600 million people out of poverty.

China’s increasing economic power – and the attractive precedent of its own economic rise – has resulted in its becoming involved in global initiatives, particularly infrastructure development. Innovating and improving facilities in infrastructure-neglected states while bringing countries closer to the Chinese market has become a key policy point, reflecting in China’s immense monetary commitments such as the One Belt, One Road initiative and participation in multinational development banks and funds.

Zhang Jida, a partner of DaHui Lawyers based in Beijing, observes, “Since the announcement of the One Belt, One Road initiative, the Chinese government has begun to pay more attention to the promotion of infrastructure construction and development via financial levers. The Chinese government’s active campaigning for the establishment of the Asian Infrastructure Investment Bank is a perfect example of this shift in policy.”

The Asian Infrastructure Investment Bank (AIIB) was first proposed in 2013; in October 2014, the initiative was formally launched in Beijing along with delegates from more than 20 countries from the Asia-Pacific region. In November 2014, China announced that the

江西境内的高速公路。现代化设施支撑了中国的经济发展。

Highways in China's Jiangxi province. The construction of modern infrastructure, including new road networks, has supported China's economic growth.
一路”倡议，中国政府开始更关注通过发挥金融的杠杆作用去推进基础设施的建设及开发。中国政府积极地作为亚洲基础设施投资银行进行造就就是这个政策转变的最佳例子。"

倡议亚洲基础设施投资银行（亚投行）的倡议在2013年首次被提出。2014年10月，中国政府与来自亚太地区超过20多个国家的代表正式启动亚投行的倡议。2014年11月，中国宣布新成立的丝路基金将会与亚投行共同推进“一带一路”计划。

“这两项战略都是从国家顶层设计出发，积极寻求与周边国家和地区以及多边金融机构的合作。中国的对外基础设施投资战略实现了从以前主要以单打独斗向国家顶层统一规划的转变，同时配合国家的外交战略，贸易政策和对外援助等，将对外基础设施投资上升到国家战略的高度。”陈斌说。

随着决策者将最新的关注焦点放到了境内与全球的基建领域，中国投资者正对他们的号召做出回应，去构筑更光明的商路。

### 民间资本引入公共服务

在三月份的全国人民代表大会上，中国宣布用1.6万亿元人民币投入基建项目以促进经济增长。在之后的五月，国家发改委发布了一份涵盖1000多个PPP项目的清单，邀请民间投资者竞标。清单的总交易额超过1.97万亿美元，其中包括近30个省、自治区市交通、资源管理以及各项设施项目。

自2014年起，对于PPP项目的支持力度就在增强。2014年后期国家宣布了首批PPP示范项目，其中30项交易总投资额达1800亿元人民币，主要涉及基础设施项目。在9月发布的第二批示范项目中，每个示范项目的项目数量提升近7倍，超过200个项目，达到6600亿元人民币——其中很多是重要的交通及设施项目。紧接着在9月底，财政部宣布将有10个主要的国有银行创立近1800亿元人民币的基金来支持PPP项目。

王卫东指出，相较于外国投资者，目前中国投资者似乎更专注于参与其中。“有两个因素可以解释为什么外国投资者没有参与投资。首先，投资的性质，第二是投资市场的非常重视，因此在投资选择上非常谨慎。”

“推进城市建设管理创新，建立透明规范的城市建设投资机制是近年来中国基础设施建设方面的一大趋势，”上海市健伟律师事务所高级合伙人曹丽华说，“同时允许地方政府通过发行债券等多种方式拓宽城市建设融资渠道，允许社会资本通过 PPP等形式参与城市建设及运营。”

### 公共资金的私人资本

在三月份的全国人民代表大会上，中国宣布用1.6万亿元人民币投入基建项目以促进经济增长。在之后的五月，国家发改委发布了一份涵盖1000多个PPP项目的清单，邀请民间投资者竞标。清单的总交易额超过1.97万亿美元，其中包括近30个省、自治区市交通、资源管理以及各项设施项目。

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但是专家提醒这个法律框架还不算完整，而且一些立法和文件会与目前的立法相冲突。目前对于如何为 PPP 项目取得土地使用权没有专门的法规，而且现行的关于取得土地使用权的法律还不能满足 PPP 项目的需要。” 委员会律师事务所驻北京合伙人陈奇伟说。

陈奇伟领导者来自委员会为财政部撰写了《PPP 项目合同指南（试行）》，该指南已作为政策文件在今年一月颁布。他提出了一个急需解决的实际问题：“《行政诉讼法》规定，对于认为行政机关不依法履行或者不按照约定履行、或者违法变更、解除政府特许经营协议的诉讼，应该由人民法院受理。”

“但是财政部认为 PPP 合同是各方，政府以及投资者（或者项目公司）在平等基础上签署的合同，而且《PPP 项目合同指南》规定，PPP 合同各方可以通过协商将 PPP 合同引起的争议提交到人民法院或仲裁机构。”

输出专业知识

在希望通过更新、改善境内基建振兴经济的同时，中国也将其大量的经验以及过剩的建筑材料带到世界。

中国在世界不少发展中国家的基建发展中扮演了积极的角色。最近中国的不少海外投资都集中在新兴国家的基建领域中，而且，随着中国企业的成长以及对这些国家的兴趣增加而改变，在目标区域内改善基建对于民间投资者、国家投资者仍然是主要的目标。

中国政府申请的大量融资包括丝路基金（400 亿美元）、亚投行（300 亿美元）、欧盟和亚洲开发银行的亚洲基建基金（110 亿美元）以及其他很多项目，证明了中国支持区域以及全球基建发展的承诺。

中国过往的大量投资都用于获取关键资源以支撑国家经济快速发展，例如油气与重金属，而现在政策目标已经转向、以解决新的问题：生产。

在 2013 年底中金会的决定中，中共呼吁为解决产能过剩作出新的努力——例如钢铁、铝质、玻璃以及水泥等工业产品的过量生产问题。据报导，下一个五年计划将会在今年年底公布。有报

“建立透明规范的城市建设投融资机制是[近年来的]趋势

Establishing transparency standards for urban construction investment and financing have been the trends

曹珊
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上海
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"投资者，“他说。“The first is the nature of the investment, and the second is that investors abroad tend to be very mature investors and therefore very cautious in their investment choices.”

“Promoting innovation in the administration of urban construction and establishing transparency standards for urban construction investment and financing have been the trends in domestic infrastructure over the past three years,” says Cao Shan, deputy head and senior partner of City Development Law Firm in Shanghai. “At the same time, the financing channels have broadened, with local governments permitted to issue bonds and other means of financing, and private capital able to become involved in urban infrastructure through methods such as franchising.”

Local governments have looked to PPPs as one way to attract private investment after regulatory changes in the past year cut them off from their traditional financing vehicles. In the 2014 amendment of the Budget Law, effective January this year, the issuance of government debt came under strict control; local governments were permitted to sell bonds under the control of the legislature and central authorities. The law, along with other accompanying legislation and government documents, triggered massive changes in the structure of local government debt and financing mechanisms and their relationship with private capital.

It was quickly followed by what Zhang characterizes as one of the most influential pieces of legislation issued this year, the Measures for the Administration of Infrastructure and Public Utility Concession. Effective since 25 April, it is seen as the main legislation promoting PPP projects. "The administrative measures wholly embody the Chinese government’s determination to introduce private capital into the area of infrastructure investment," says Zhang.

Yet experts caution that the legal framework is not yet complete – and what legislation and documents there are can contradict other existing legislation. "There are so far no special regulations on how to obtain the right to use land in a PPP project and the existing laws on procuring the right to use land do not meet the needs for PPP projects," notes Helena Chen.

As a partner at Pinsent Masons’ Beijing office, she led the firm’s team to draft the PPP Contract Guidelines, released in January this year at the request of the MOF, and she gives a pressing example of the uncertainty. "The Administrative Litigation Law provides that the people’s court hear cases arising from complaints claiming that an administrative agency has failed to perform according to the law or as agreed upon, or illegally modified or rescinded a government concession agreement.

“However, the Ministry of Finance believes that a PPP contract is a contract signed by the parties, with the government and the investor (or project company) on equal footing. And yet the PPP Contract Guidelines provide that the parties to a PPP contract can agree to submit their disputes arising from the PPP contract to a people’s court or arbitration.”

Exporting expertise

While China hopes to revitalize growth through improving and innovating domestic infrastructure, it is also taking its vast experience – and excess construction products – global.

China has played an active role in developing infrastructure in many of the world’s developing economies. Much of China’s recent outbound direct investment has been in infrastructure in
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Over the past few decades, ZH&P has developed an outstanding track record and an excellent understanding of the nature of the construction projects implemented through the different laws in Egypt. This is due to the in-depth experience it has gained by being involved in most of the BOT projects and their derivatives since the enactment of sector specific laws and the Tender laws in the nineties to the PPP projects in its recent form since the launch of the PPP initiative in 2008. In particular, ZH&P advised on the three power plant projects, which were implemented in the late nineties by virtue of sector specific laws, the first BOT highway project in Egypt and a number of PPP projects following the launch of the PPP initiative in 2008 by the Government. Currently ZH&P is heavily involved in the new projects launched following the new governmental initiative to encourage private investment in electricity utilities, especially with respect to renewable energy to keep pace with growth in demand for electricity and maintain efficiency through a set of new legislations promulgated in the last quarter of 2014 and the year 2015 in this regard, ZH&P is now priviledged in being engaged with major Chinese clients in different EPC and Finance Projects, examples of which are high speed trains, power generation, port infrastructure, concession and container handling.

ZH&P's areas of practice
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或者支持地方政府在这些项目中安排融资，也就是所谓的 EPC+F 模式。”

但并不是所有国家都欢迎中国投资。“现今多数国家在本地成分要求上都非常强势，例如对雇用本地劳动力、本地所有权以及购买本地产品的要求，史密发斐尔律师事务所驻香港合伙人刘恺信说，”如果这些原则都在本地关于基建项目发展的发展规律中有所定。更复杂的是，在发展中国家，这些法律规章有时候处于灰色地带，进一步增加了投资者在这些项目上遇到的挑战。”

即使得到中国政府以及目标国家高层的支持，中国公司到海外基建投资还会遇到不可控制的问题。Qaeuitas 律师事务所驻阿拉木图合伙人 Nurlan Sholavan 说，“我们不断目睹的情况是，许多部门都要求公司进行登记，为拒绝登记寻找一些正式理由，并特别谨慎地处理这些公司组成文件的内容，” 因此，法律顾问在准备必要文件的时候需要特别注意。

“当地的政策发展也可能为投资者制造麻烦。刘恺信提到在欧洲国家的一个资源基项目。该项目是史密发斐尔全球多个团队的共同努力，在当地政府出现变化的时候也遇到了挑战。“我们成功与新政府就这项交易进行谈判，以确保我们客户的权益得到全面保护，”他说。

PLMJ 律师事务所驻澳门高级律师 Rita Assis Ferreira 同样提到 “中国经济放缓和境内决策程序的变化，安哥拉由于低油价和造成的经济不稳定、莫桑比克由于最近选举导致的政治不确定性”都是造成对葡语非洲国家基建投资兴趣减少的原因。但是，她也指出，对拉丁美洲投资有上升的迹象，相对来说，其稳定性吸引投资者。

同时，ENSafica 律师事务所董事长中国业务部主管居利维看到了这些区域之外的强大发展。“我们看到国有企业和私营公司在非洲各个区域的基建领域也变得非常活跃，很多项目都得到国家开发银行和中国进出口银行等中国政策性银行的支持。”

例如中国水电、中国铁路、国家电力、中国港湾建设等国公司在南非区域非常活跃，已经包揽不少数十亿美元的重要基建项目，”他说。

中国经济放缓[造成对葡语非洲国家基建投资兴趣的减少]
The economic slowdown ... in China [resulted in less interest in Portuguese-speaking African countries]

Rita Assis Ferreira
PLMJ律师事务所
高级律师
澳门
Senior Associate
PLMJ
Macau

现今多数国家在本地成分要求上都非常强势
Most countries these days are taking a very strong approach on local contents requirements

But not every country may be so welcoming. “Most countries these days are taking a very strong approach on local contents requirements such as using local labour, local ownership and local products,” says Hilary Lau, a partner at Herbert Smith Freehills Hong Kong office. “These principles are set out in the local laws and regulations relevant to development of infrastructure projects. To make things even trickier, for developing countries, these laws and regulations are sometimes grey and further increases the challenges for Chinese investors in these projects.”

And even with high-level support from the governments of China and the target countries, Chinese companies investing into infrastructure abroad can run into problems beyond their control, says Nurlan Sholavan, a partner in Qaeuitas Law Firm in Almaty. “We have repeatedly witnessed a situation where registration authorities were reluctant to register companies with Chinese participation, trying to find some formal grounds to deny registration and checking with special care the contents of such companies’ constituent documents.” Counsel thus should take great care when preparing the required documentation, he adds.

Local political developments can also prove troublesome for investors. Lau introduces a resources infrastructure project in an African country. An effort by lawyers from multiple teams across HSF’s global offices, the project encountered challenges when there was a change in the country’s government.

“We were able to successfully negotiate a deal with the new government to ensure that our client’s rights and benefits were fully protected,” he says.

Rita Assis Ferreira, a PLMJ senior associate based in Macau, similarly cites “the economic slowdown and changes in internal decision processes in China, together with the economic instability in Angola due to low oil prices, and political uncertainty in Mozambique due to the recent elections” as resulting in a slowing in interest in infrastructure investment into the Portuguese-speaking countries of Africa. However, she does note an uptick in investments in Latin America, where stability has been comparatively attractive to investors.

At the same time, Kenny Chiu, executive and head of the China practice group at ENSafica, sees strong developments
SOEs and private companies [are] becoming very active in infrastructure in all parts of Africa

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beyond these regions. “We are witnessing state-owned enterprises (SOEs) and private companies becoming very active in infrastructure in all parts of Africa, many of which are supported by Chinese policy banks such as the China Development Bank and the Export-Import Bank of China.”

Chinese SOEs like Sinohydro, China Railway, State Grid and China Harbour Engineering are very active in the Southern Africa region, ramping up a number of significant projects to the tune of billions of dollars,” he notes.

Targeting regional needs

The One Belt, One Road initiative is a development framework along the Silk Road “economic belt” stretching from China through central and west Asia to Europe, and the “maritime Silk Road” through countries along the South China Sea, South Pacific and Indian Ocean. The initiative aims to connect and increase cooperation between the countries, the majority of which are emerging economies with a relative poverty of infrastructure.

A recent report from the global financial firm UBS estimates that outward investment in programmes under the initiative to reach US$200 billion in the next three years. These projects include the Kunming-Singapore Railway, which, as part of the Trans-Asian Railway Network, will connect China and all of the ASEAN countries. The full network is expected to reach completion by 2020 with funding provided by the AIB, the latest link in Laos is poised to begin construction in the coming months. (For more on China’s investment in ASEAN infrastructure, see Opportunity flows in China Business Law Journal, September 2015.)

Outside ASEAN, one key starting point along belt and road is Kazakhstan. The eighth-largest oil reserve globally, Kazakhstan shares the largest border with China in Central Asia and is a key supplier of oil via the Kazakhstan-China oil pipeline co-owned by the two countries’ state-owned oil firms. The entry port for the Central Asia-China natural gas pipeline is along the Kazakhstani border. Extensive water-related agreements exist as well – the two countries share and extensively use two rivers.

In pace with the One Belt, One Road initiative, Kazakhstan announced the Bright Road (Nurly Zhол) initiative in late
“一带一路”倡议的宣布帮助达成了建设45个合营设施的协议

The One Belt, One Road initiative helped to achieve agreement on the establishment of 45 joint facilities

2014. “The Kazakhstani government is implementing several programmes of massive infrastructural development,” says Yerzhan Yoesimkhanov, a partner at GRAFA Law Firm in Almaty. The Bright Road initiative, he says, is aimed in large part at infrastructure facilities such as roads, pipelines, airports and production plants. “The majority of these projects is realized with participation of Chinese investments.”

Sholanov, from Aequitas Law Firm, says, “We believe that the announcement of the One Belt, One Road initiative helped to achieve agreement on the establishment of 45 joint facilities during the recent visit of the president of Kazakhstan to China. Agreements were signed for 25 of them, totalling US$23 billion.” Among many agreements signed during this visit included one between state-owned groups Baiterek, a Kazakhstani national holding company, and China’s CITIC to establish the Kazakhstan Infrastructure Fund to support investment of US$600 million.

But the greatest impact of the initiative may be the cohesion that it can potentially bring to the greater Eurasian region. “Beyond advances in the domestic infrastructure investment market, the promotion of [One Belt, One Road] will energize infrastructure development across East Asia and Europe, which will open up even more opportunities and occasions for advancement in the global investment market,” says Wang, from Grandoil. “By developing and strengthening interconnections, the initiative will have significant impact in raising and advancing the economic development of countries in the belt and road region.”