



POWER GENERATION ALONG THE "ONE BELT ONE ROAD"

“一带一路”沿线能源项目

The power sector as a key focus of China's "One Belt One Road" initiative
能源行业是中国“一带一路”战略的重点关注行业

Power and the power sector is a core focus of the One Belt One Road initiative. In March 2015 China's National Development and Reform Commission (NDRC), Ministry of Foreign Affairs and Ministry of Commerce jointly issued the *Visions and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road (Visions and Actions Plan)* for the One Belt One Road initiative. One of the priorities marked in the Visions and Actions Plan is to:

“promote cooperation in the connectivity of energy infrastructure ... build cross-border power supply networks and power-transmission routes, and cooperate in regional power grid upgrading and transformation.”

能源以及能源行业是一带一路战略的重点关注行业。2015年3月，中国国家发展和改革委员会、外交部和商务部就一带一路战略联合发布了《推动共建丝绸之路经济带和21世纪海上丝绸之路的愿景与行动》（“《**愿景与行动计划**》”），其中提出的一项合作重点就是：

“加强能源基础设施互联互通合作……积极开展区域电网升级改造合作。”

However, successfully implementing power projects along the One Belt One Road will not be without risks and challenges. Based on our experiences of international power investments, we have set out below some details on key issues companies may encounter in international power projects.

尽管如此，企业在“一带一路”沿线实施能源项目难免都会遇到风险和挑战，根据我们在国际能源投资领域的经验，以下是企业在国际能源项目中通常会面临的关键问题。

Ensuring successful implementation of One Belt One Road projects 确保一带一路项目的顺利实施

Power companies now have the opportunity to embrace the opportunities available by the One Belt One Road, with the Chinese Government actively advancing the implementation of the One Belt One Road policy, so as to lay a foundation for PRC companies' investment in power projects along route. However, successfully implementing projects along the One Belt One Road will not be without risks and challenges.

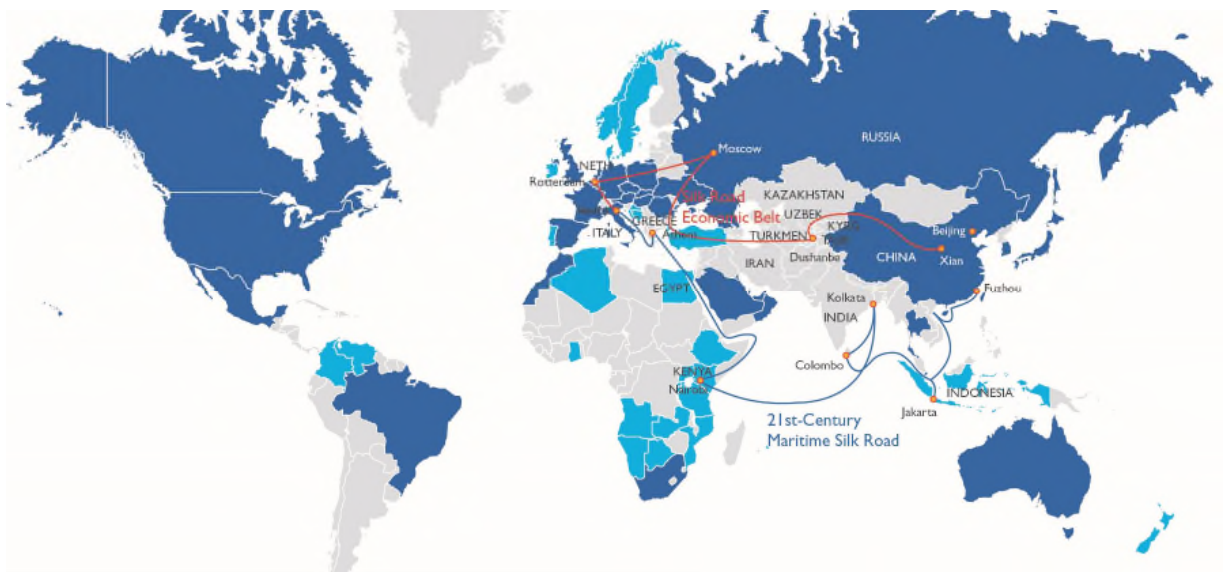
能源公司现在有机会能够利用“一带一路”政策的机遇：目前中国政府也已经积极在推动“一带一路”建设，为中国企业在“一带一路”周边的能源投资方面创造重要基础。但是，企业在“一带一路”沿线实施能源项目难免都会遇到风险和挑战。

Overcoming these risks will require thorough due diligence exercises and robust partnership and joint venture arrangements. More importantly, success will depend on enterprises finding the right partners and having the right support networks providing a thorough understanding of local conditions, regulators, market players and, generally “ways of doing business” in the foreign host jurisdictions.



This will be essential to be able to adequately identify, quantify and overcome risks and opportunities; to achieve this, an on the ground presence and knowledge of suitable partners and relevant contacts is of the utmost importance.

企业只有借助深入调查、准确把握项目情况、与合作方精诚协作，才能够克服风险，与合作方实现共赢。更重要的是，项目的成功很大程度上取决于企业是不是能找到合适的合作伙伴，以及是否有当地资源或平台来协助企业深入了解当地情况、监管机构、市场竞争对手，乃至东道国的行业惯例。事实上，这些信息对确定、量化和克服投资风险、把握投资机遇至关重要。可以说，找到一个可以在当地提供支持协助、分享相关知识经验并且有能力的合作伙伴和联系人至关重要。



Map showing the One Belt One Road route (both the 21st Century Maritime Silk Road and the New Silk Road Economic Belt).

“一带一路”沿线地图（21世纪海上丝绸之路和新丝绸之路经济带）

Key issues encountered in international power projects

国际能源项目中的关键问题

Our energy team has advised governments, sponsors, lenders and consortia on all facets of the energy sector. We have advised in relation to project structuring, land rights, environment issues, permitting, construction, supply arrangements, electric transmission and distribution, fuel transportation, fuel supply/storage, water supply and transportation, regulatory and financing.

我们的能源律师团队曾就能源业务各个方面的法律问题，向政府、项目发起方、贷款方和银团提供法律咨询服务。我们所解决的法律问题涵盖项目架构、土地权、环保、项目许可、工程建设、采购协议、电力输送和配给、燃料运输、燃料供应/存储、水源供应与输送、合规及融资等各个方面。

Based on our experiences of international power investments, we have set out below some details on key issues companies may encounter in international power projects.



根据我们在国际能源投资领域的经验，以下是企业在国际能源项目中通常会面临的关键问题。

- **Project Structuring** – establishing the appropriate corporate structures and joint venture arrangements is always critical for power projects. This is especially important when entering into partnership with local partners, as power projects are often structured for long term investments (e.g. 25 years). Therefore ensuring a robust project structure is essential to ensuring that parties’ rights are adequately protected for many years to come.

项目架构 - 对于能源项目而言，建立合适的公司架构以及合资合作安排至关重要，尤其是能源项目一般都属于长期投资（如 25 年），客户往往需要与当地企业建立合作关系。为确保各方权利在未来都能得到长期、充分的保护，需要构建稳定的项目结构。

- **Power Purchase Agreements** – power purchase agreements are key to any power project, underlying the viability of an entire project. We have advised sponsors and electricity boards on power purchase agreements, energy conversion agreements and tolling agreements across China, Asia, Europe, US, Caribbean, and Australia. These agreements are often based on local law precedents in the respective jurisdictions and Government purchasers may offer limited opportunity to negotiate these terms – therefore a highly focused approach to the negotiations is often required to ensure that key interests are protected.

电力购买协议 - 电力购买协议是保证项目整体可行性的基础，对任何能源项目都非常关键。我们曾就电力购买协议、能源转换协议以及设施使用协议，向中国、亚洲、欧洲、美国、加勒比地区以及澳大利亚等地的项目发起方以及供电机构提供法律咨询服务。这些协议通常基于当地现有的法律文本起草，且政府采购方往往会限制投资方就相关条款进行谈判的空间。因此，需要采用有侧重的谈判技巧，来保证客户的关键利益得到足够的保障。

- **Electric Transmission and Distribution arrangements** – effectively delivering generation capacity resolves only half the power challenge: ensuring connection with sufficient electricity transmission and distribution infrastructure to get power to customers is of equal importance. In some parts of the world, transmission infrastructure is old and insufficiently maintained and not able to deal with the growth of generation and significant energy losses continue to occur between sources of supply and points of distribution. Generators need to ensure that the risks in this regard are appropriately understood, allocated and documented in the electricity transmission and distribution agreements.

电力输送及分配统筹 - 仅仅具备高效的发电能力只能说是完成了电力项目所面临的一半挑战：确保与足够的电力输送及配电设施进行联接、确保完成向顾客的供电同样不可或缺。在一些国家，电力输送设施年久失修、维护较差，已经无法与日渐增长的发电能力保持同步，进而导致供应源与分配点之间不断出现重大电力流失。发电商需要确保项目各方能够充分理解这类风险，并通过签署电力输送和分配协议，使得该等风险由项目各方合理分担。

- **Fuel Supply** – advising sponsors in relation to fuel supply, transportation and storage arrangements involving different fuels (namely, coal, gas and oil and nuclear) requires a nuanced approach. For each different fuel type, consideration must be given to its unique characteristics, both now and into the future. Volatility of price for certain fuel types may lead a closer consideration of appropriate pricing benchmarks and/or including price re-opening clauses in the fuel supply agreements. Whilst for other fuel types, consideration of the changing global regulatory context (including considering appropriate risk allocation for future matters such as the price of carbon emissions) is important. Power projects along the One Belt One Road vary from hydro (such as in Laos and Nepal), nuclear (in countries such as Pakistan, the UK and France), wind (such as in India and Kenya), gas (such as in Africa) or coal (such as in Indonesia and Vietnam).



燃料供应 - 我们往往就燃料供应、输送以及存储安排（涉及不同燃料，即煤炭、油气和核能）等事宜，有针对性地向项目发起方提供法律咨询建议。针对每一种不同的燃料种类，都必须考虑其在当下及未来所具有的不同的特性。考虑到部分燃料种类的价格存在波动，可能会需要对定价基准作进一步考量，以及/或者考虑在燃料供应协议中加入重新定价条款。而对于其它燃料种类而言，需要考虑到全球监管环境的变化趋势（包括针对碳排放价格等未来可能发生变化的事宜），作出适当的风险分配。一带一路沿线的能源项目包括水电（比如老挝和尼泊尔）、核能（比如巴基斯坦、英国和法国）、风能（比如印度和肯尼亚）、天然气（比如非洲）或者煤炭（比如印度尼西亚和越南）。

- **EPC Agreements** – A technical understanding of the context of an EPC is crucial. Our team have detailed knowledge of the contracting and procurement industry in power projects globally, successfully negotiating EPCs (including split EPCs), LTSAs and O&M arrangements on numerous power projects. Our construction team has numerous lawyers with engineering experience and qualifications (civil engineering, electrical and mechanical). Additionally, it is crucial that the EPC contract is consistent with the entire project arrangements – for example, the consequences of a delay under the EPC contract should be considered in respect of the Power Purchase Agreement.

EPC 协议- 从事能源项目同时还要求和技术层面对项目的设计、采购和施工（EPC）事宜有足够的了解。我们团队对全球能源项目的承包和采购业务有着充分的了解，曾经在众多能源项目中参与并成功完成对项目的设计、采购、施工（不论其是否采用分割模式（Split EPC））、长期服务协议以及项目的运营和维护事宜的谈判。我们的建设工程团队拥有众多具有工程背景及（土木工程、电力和机械方面）相关资质的律师。另外，关键的一点是，EPC 合同条款需要与整个项目的安排保持一致，比如，在 EPC 合同下出现延迟的相关后果应当也适当反映在电力购买协议的对应规定中。

- **Regulatory** – our team has significant regulatory experience dealing with energy regulatory commissions and public utilities commissions while developing and operating independent power projects in the US, the Caribbean, Asia, Europe and Australia including the implementation of electricity regulation and licensing activities. We work closely with local offices around the world, to ensure that our China and international teams have a thorough understanding of the local power regulations in each respective market.

监管 - 我们团队在法律合规方面有着丰富的经验，我们在协助客户开发和运营美国、加勒比地区、亚洲、欧洲和澳大利亚的独立发电商项目时，也时常就诸如电力法规的实施和许可活动等事宜接触当地能源监管机构以及公共设施管理委员会。我们在全世界各地都设有办公室，并且能够在服务上与当地的同事达到无缝衔接，以确保我们的中国和全球各地的团队对各个市场的当地能源监管机制有着深入的了解。

- **Financing** – as part of the One Belt One Road initiative, the Chinese Government recently launched key funding institutions such as the \$100bn Asian Infrastructure Investment Bank (AIIB), the \$100 billion BRICS New Development Bank and the \$40 billion Silk Road Infrastructure Fund Silk Road Fund. These institutions offer companies unique opportunities to project finance their investments. Our team have advised sponsors and syndicates of international commercial banks in establishing financing and security arrangements related to power projects. Crucially the financing arrangements must work closely with the broader project structure to ensure that funding priorities and cash flows operate to the satisfaction of all parties.

融资 - 作为一带一路战略的一部分，中国政府近来发起筹建了一些大型融资机构，比如法定资本达 1000 亿美元的亚洲基础设施投资银行（AIIB），法定资本达 1000 亿美元的金砖国家新开发银行以及国家出资 400 亿美元设立的丝路基金。这些机构为企业的项目投融资提供了绝无仅有的机会。我们的团队曾就能源项目相关的融资和担保事宜为项目发起人和



国际商业银行组成的银团提供法律咨询服务。这其中很关键的一点是，要令融资安排与宏观上的项目结构相结合，以确保资金的分配以及现金流的运转情况让各方满意。

- **Renewables** – A thorough understanding of the local and international regulatory regime (including relevant rebates and concessions) is crucial for the successful implementation of renewable energy projects. We have advised on a range of renewable energy projects such as acquisitions and financings of wind farm, solar and waste to energy projects and accumulated a broad experience of such projects.

可再生能源 - 对项目当地及全球监管框架的深刻理解（包括相关补助及特许权）对成功实施可再生能源项目十分关键。我们曾为一系列可再生能源项目（比如风电厂，太阳能和废料转能源项目的收购以及融资）提供咨询服务，并在处理此类项目上积累了丰富的经验。

- **Avoiding and Resolving Disputes** – Our preference is to always help our clients avoid disputes in the first place! Our team focuses on assisting clients with risk management and dispute resolution strategies prior to starting a business relationship and taking decisive action should a dispute or investigation arise. Nevertheless, our specialist dispute resolution team have acted on some of the largest construction projects and complex disputes related to the power sector in the Middle East, across Asia, Africa and Europe and can help clients learn from these experiences.

避免争议及解决争议 - 一般情况下，我们更倾向于在一开始就帮助我们的客户避免引起争议。我们的团队致力于在客户缔结商务关系或就相关争议或审查采取行动之前，提早进行风险管理并制定争议解决策略。此外，我们专业的争议解决团队也曾就中东、亚洲、非洲和欧洲的一些大型工程建设项目和能源领域的复杂争议向客户提供法律服务，我们将利用这些经验，更好地帮助客户规避可能产生争议的风险。

- **Country specific due diligence investigations** – our team has undertaken due diligences on power assets across Asia, Middle East, Africa, Australia and elsewhere. Working closely with our local specialists on the ground in each jurisdiction we advise on country-specific matters and risks to ensure that clients are fully aware of all the issues relevant to their project.

为不同国家量身定制的尽职调查 - 我们的团队曾就亚洲、中东、非洲和澳大利亚等其他地方的能源资产进行过深入的尽职调查。我们与各国的当地法律专家紧密合作，就该国当地的相关事务及风险提供咨询服务，以确保我们的客户全面了解其项目的相关问题。

- **Understanding and responding to Governments requests for procurement programmes** – we have advised a number of governments in the Middle East on their procurement programs in the energy sector and the subsequent concession arrangements (in IWPPs and IPPs); we have also advised numerous Chinese and international power companies responding to these programmes. A thorough and detailed understanding of procurement processes and market expectations and standards is essential to ensure that our clients can make competitive bids.

理解并回应政府在采购项目上的要求 - 我们为中东的许多政府就其能源领域的采购项目以及后续特许权安排（采用独立水电发电商及独立发电商形式）提供过法律咨询服务。我们同时为许多希望参与该类项目竞标中国以及国际能源企业提供过法律咨询服务。我们对采购流程及市场预期和标准有着深入细致的了解，确保我们的客户能提出具有竞争力的投标方案。

Our on the ground team, coupled with the experience of our industry leading experts in China, South East Asia, Middle East, Africa, Central Asia, Russia and Europe, is recognised amongst the leading global practitioners for power projects and transactions. They combine their detailed legal knowledge of the sector with a commercial and technical awareness of the industry and previous working experience outside the legal services industry, which is unrivalled by our competitors.



我们在中国、东南亚、中东、非洲、中亚、俄罗斯以及欧洲有业界领先的法律专家提供支持，我们的能源团队在能源项目和交易领域业内得到了市场上的广泛认可，是国际上领先的服务团队。我们的律师具备能源领域的全面法律知识、对该领域的商务问题和技术问题有着深入的了解，同时结合在法律专业之外的其他工作经验，在行业内具有很高的竞争力。

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