

Structural Mechanisms of Cross-Border Risk Governance: Evidence from Chinese Firms in Kenya

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Abstract: Cross-border investment risks exhibit clear structural characteristics, reflected in transmission chains and stage-specific differentiation. Traditional approaches centered on compliance and ex post remedies are insufficient to address risks arising from institutional divergence, organisational governance, and stakeholder interactions. This study proposes the Cross-Border Risk Governance Framework (CBRGF), comprising four dimensions, structure, model, capability, and decision, forming an integrated analytical chain from risk identification and transmission mapping to capacity building and strategic decision-making under uncertainty. Applied to Chinese enterprises investing in Kenya, the framework demonstrates practical relevance in key risk areas, including labour, land tenure, tax compliance, and regulation. The findings suggest that cross-border risk governance should shift from case-based to structural, from static to dynamic, and from single-tool to integrated approaches. The CBRGF offers an interpretable, operational, and replicable framework, supporting the accumulation of cross-border capabilities as organizational assets.

Keywords: Cross-border risk governance structural theory; Chinese enterprises; Kenya; Structural risk; Governance logic

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1. Research background and problem statement

The pace of Chinese enterprises' investment in Africa has accelerated markedly alongside the continued deepening of the "Going Global" strategy. Among African countries, Kenya has gradually emerged as a key destination for Chinese investment owing to its strategic location and role as a regional hub. However, in the course of project implementation and operation, firms encounter a range of risks, including labour disputes, land tenure conflicts, tax compliance challenges, and tensions with government regulation, which do not arise as isolated incidents. Rather, they exhibit structural characteristics typified by mutual interdependence, stage-wise differentiation, and cumulative amplification. Such risks not only increase operational costs but also pose substantive constraints on firms' long-term sustainability.

Existing studies on cross-border risk management have largely focused on compliance or ex post remedial measures, with limited systematic attention to the structural mechanisms underlying risk formation and

transmission pathways. Conventional risk management paradigms tend to conceptualise risk as quantifiable and predictable events. Yet, cross-border investment contexts are characterised by significant forms of “incalculable uncertainty”, including institutional shifts, social conflict, and political contingencies, which cannot be effectively identified or managed through existing models. At the same time, extant theoretical frameworks remain underdeveloped in relation to the structural dimensions of risk governance, mechanisms of actor coordination, and decision-making logics.

In response to these empirical and theoretical gaps, this study proposes the Cross-Border Risk Governance Framework (CBRGF). The framework seeks to move beyond the traditional paradigm of “point-based compliance and ex post remediation” towards a systematic governance logic characterised by “structured identification, pathway-based analysis, and system-oriented governance”. Using Chinese enterprises’ cross-border investment in Kenya as the empirical setting, the CBRGF aims to provide an analytical framework that is interpretable, operationalisable, and replicable, thereby enhancing firms’ capacity for risk management and governance resilience within complex institutional environments.

2. Structural nature of risk: From isolated issues to interconnected systems

The difficulty of effectively governing risks in cross-border investment does not stem merely from their multiplicity or complexity of types, but rather from the inherently structural nature of their generative mechanisms. By “structural”, it is meant that risks are not isolated events; instead, they are chain outcomes jointly produced through the interaction of institutional differences, organisational governance, business processes, and external stakeholders. This proposition finds theoretical support in risk society theory. In “*Risk Society: Towards a New Modernity*”, Ulrich Beck argues that modern risks are characterised by transboundary scope, structural embeddedness, and spillover effects, whereby risks become integrated into the functioning of social systems and transcend the boundaries of traditional institutions. In this sense, risk is not an exogenous disturbance but an endogenous product of systemic operation.

In cross-border investment practice, the structural nature of risk is primarily manifested in two observable phenomena as follows:

- (1) Risks exhibit transmission chains: For instance, in the domain of labour relations, deficiencies in employment compliance may lead to violations of workers’ rights, which in turn trigger labour disputes. As such disputes escalate, they may invite union intervention and regulatory enforcement, ultimately resulting in operational disruptions or sustained cost increases. This transmission chain illustrates that terminal outcomes are typically the cumulative result of multiple interacting factors rather than a single causal source;
- (2) Risks display stage-specific variation: Across different phases, such as market entry, construction, operation and maintenance, and expansion or integration, the dominant risk types and their transmission pathways differ significantly. Entry stages are characterised by due diligence and structural design risks; construction stages by licensing compliance and community relations risks; and operational stages by internal control, auditing, and dispute prevention.

Such stage differentiation necessitates governance mechanisms with dynamic adaptive capacity.

From a systems-theoretical perspective, Niklas Luhmann conceptualises risk as the attribution of potential future loss to decisions, thereby underscoring the intrinsic linkage between risk and decision-making. In cross-border investment contexts, distinct decision nodes, such as whether to conduct comprehensive title verification

or establish local grievance mechanisms, generate divergent risk trajectories. Accordingly, the structural nature of risk is reflected not only in causal chains among events, but also in the ways organisational decision structures shape risk generation. Furthermore, a substantial proportion of issues in cross-border investment fall under “incalculable uncertainty” rather than measurable risk. Frank H. Knight’s classical distinction in “*Risk, Uncertainty, and Profit*” posits that risk is probabilistically calculable, whereas uncertainty resists quantification through statistical methods. In cross-border settings, sources of risk such as institutional change, social conflict, and political events often lack sufficient historical data and stable probability distributions, thereby constituting Knightian uncertainty. This distinction helps explain why probability-based risk management tools frequently prove inadequate in such contexts.

The “*International Organization for Standardization’s ISO 31000:2018 Risk Management Guidelines*” provides a methodological interface for the systematic governance of structural risk. The standard emphasises that risk management should encompass processes of identification, analysis, evaluation, treatment, monitoring, and communication, while being embedded within organisational activities and decision-making. However, ISO 31000 primarily focuses on general management processes and affords limited attention to the complexity of institutional divergence and actor coordination in cross-border contexts. Consequently, it is necessary to build upon such general standards by developing analytical frameworks capable of explicating the structural mechanisms of risk generation. In sum, the structural characteristics of risk necessitate a shift in governance logic from point-based responses to systemic identification. Only by situating risks within the interactive nexus of institutions, organisations, and decision-making processes can their points of embeddedness be identified, their transmission pathways traced, and a robust theoretical foundation established for subsequent governance design^[1,2].

3. CBRGF: Proposal of the cross-border risk governance framework

Building on the preceding analysis of the structural characteristics of risk, this study proposes the Cross-Border Risk Governance Framework (CBRGF). Rather than a single-point model, the framework is conceived as an integrated analytical structure designed to enable the systematic identification, pathway analysis, and governance integration of cross-border risks. Its core proposition is that the generation and diffusion of cross-border risks are jointly shaped by institutional differences, organisational governance structures, patterns of actor interaction, and decision-making mechanisms. Consequently, risk governance should not be confined to compliance checklists or ex post remediation, but must instead be elevated to a systemic level encompassing structure, mechanism, capability, and decision.

The analytical logic of the CBRGF can be summarised as follows: it employs four interrelated dimensions, structure, actors, capability, and decision, to explain how risks are embedded within organisational and institutional systems and subsequently transmitted, while a cyclical feedback mechanism enables continuous improvement of the governance loop. Specifically, “structure” focuses on the points of risk embeddedness within equity arrangements, managerial authorisation, and labour systems; “actors” emphasises that risk governance involves multiple stakeholders, including firms, state regulatory agencies, industry organisations, local communities, and civil society actors; “capability” refers to an organisation’s integrated capacity to identify, assess, respond to, and remediate risks; and “decision” concerns strategic choice-making under conditions of information incompleteness and uncertainty. These four dimensions do not constitute a simple parallel list, but rather form a causal chain extending from the governance foundation to governance action.

From the perspective of governance theory, the CBRGF is grounded in a multi-actor governance paradigm. Cross-border risks are not controllable by firms alone; rather, state regulators, industry rules, communities, and social organisations collectively participate in both the production and governance of risk ^[3].

In “*Governance Without Government*”, edited by James N. Rosenau, it is argued that even in the absence of a world government, governance persists in global politics through the coordination of diverse actors. Governance, in this sense, can emerge in domains without formal governmental authority through coordination, negotiation, and rule formation. This perspective provides a crucial theoretical foundation for understanding the formation of governance networks in cross-border investment contexts. In the case of Chinese enterprises in Kenya, for example, the resolution of labour disputes often involves firms, trade unions, the Ministry of Labour, local courts, and community representatives, constituting a paradigmatic instance of such “governance without government” networks.

In the field of risk governance, the framework developed by the International Risk Governance Council (IRGC) offers an important point of reference. The IRGC framework emphasises an integrated approach linking scientific assessment, socio-economic and cultural considerations, and stakeholder engagement, thereby providing a roadmap for addressing transboundary and global risks. It distinguishes between phases such as pre-assessment, risk appraisal, characterisation, and management, while underscoring the importance of interdisciplinary knowledge and public participation. The CBRGF is broadly aligned with the IRGC’s core orientation in shifting from “compliance” to “governance” and from “single instruments” to “multi-dimensional integration”. However, it differs in that it is more explicitly oriented towards firm-level operability, seeking to translate macro-level governance principles into an analytical tool applicable to Chinese enterprises in specific country contexts ^[4].

In addition, the formulation of the CBRGF is informed by the academic tradition of “*Governance without government*”. The “governance networks” theory proposed by R. A. W. Rhodes emphasises that in contemporary policy processes, government is no longer the sole centre of authority; instead, multiple actors form self-organising networks through resource interdependence and negotiation. In cross-border investment settings, firms engage with a heterogeneous set of actors, including host governments, local authorities, community leaders, non-governmental organisations, and industry associations, none of which occupy a hierarchical position of absolute authority. Rather, they generate an informal governance order through sustained interaction. The CBRGF incorporates this insight into its design, highlighting that firms should not focus exclusively on central government relations, but instead develop communication and coordination mechanisms that span multiple stakeholder groups.

In sum, the defining feature of the CBRGF lies in its reconceptualisation of cross-border risk from a “collection of compliance issues” into a “governance structural problem”, shifting from point-based responses to systemic identification, and from static rule implementation to dynamic closed-loop improvement. The value of this framework does not lie in providing a fixed operational manual, but in offering a transferable analytical perspective, namely, that across different country contexts and risk types, firms can achieve systematic risk governance through structural analysis, pathway modelling, capability assessment, and decision review ^[5].

4. Four-dimension framework: Structure, model, capability, and decision

The CBRGF is composed of four foundational dimensions: Structure, Model, Capability, and Decision. These are not treated as a parallel checklist, but rather as a causal chain extending from the governance foundation to

governance action. Structure determines the embedded points of risk, Model delineates the pathways of risk transmission, Capability defines the feasibility of governance, and Decision ultimately translates governance into concrete actions and outcomes. Each dimension is elaborated below with its conceptual content and theoretical grounding.

4.1. Structure: The organisational foundation of risk embeddedness

The structural dimension concerns how risks are generated and distributed within corporate governance systems. In Sino-Kenyan cross-border investment, structure is particularly reflected in three categories of embedded points: equity structure, management structure, and labour structure. Equity structure involves arrangements such as joint ventures, subsidiaries, and special purpose vehicles (SPVs), which directly determine the allocation of control rights and responsibility boundaries. Management structure concerns the configuration of authority between headquarters and subsidiaries, information transmission chains, and delegation mechanisms, thereby shaping the efficiency of risk identification and response. Labour structure relates to the proportion of local versus expatriate employees, contractual arrangements, and labour compliance mechanisms, which directly influence the probability and handling of labour disputes.

Corporate governance theory provides the classical theoretical foundation for this dimension. In *“The Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure”*, Michael C. Jensen and William H. Meckling argue that the separation of ownership and control generates agency costs, and that the design of monitoring and incentive mechanisms affects organisational efficiency in risk detection and response. In cross-border investment contexts, agency costs are not only observed between shareholders and managers, but also between headquarters and overseas subsidiaries. When subsidiary management possesses informational advantages while headquarters faces monitoring constraints, risks are more likely to accumulate and amplify within an “information black box”. Consequently, deficiencies in governance structure generate persistent agency costs and risk spillovers over time, making structural correction a fundamental pathway for risk governance^[6].

4.2. Model: Pathway representation of risk transmission

The model dimension aims to represent the generation and transmission mechanisms of risk through a pathway-based logic. Rather than pursuing mathematical precision, it constructs identifiable causal chains linking “triggering factors–key nodes–amplification mechanisms–outcomes”. In the field of labour relations, for example, the pathway can be expressed as: non-compliance in employment practices → violation of workers’ rights → emergence of labour disputes → union involvement and regulatory enforcement → increased operational costs or project disruption. In land acquisition and asset management, a similar pathway may be formulated as: insufficient due diligence → defective land tenure → third-party claims → project suspension → spillover of financing and contractual risks.

The core value of model-based representation lies in enabling firms to intervene at early stages of risk transmission rather than responding passively at terminal outcomes such as litigation, shutdowns, or penalties. This logic is consistent with the concept of “leverage points” in system dynamics. Jay W. Forrester, the founder of system dynamics, argues that within complex systems, certain nodes exert disproportionate influence on system behaviour, and that targeted intervention at these points can produce significant systemic change at relatively low cost. In cross-border risk governance, the model dimension serves precisely to identify such leverage points.

From an institutional perspective, Kenya's labour system, anchored in the Employment Act (2007), provides a legal foundation for the "employment–dispute–regulation" pathway by defining contractual obligations, employment conditions, and labour rights. This implies that firms can establish compliance checkpoints at specific nodes, such as contract formation, wage payment, and working-hour management to interrupt risk transmission. Similarly, Kenya's environmental governance system, based on the Environmental Management and Coordination Act (EMCA), requires Environmental Impact Assessments (EIA) prior to project commencement. This makes the "project initiation stage" a critical regulatory gate within the risk model; if EIA and community consultation are delayed, risks may rapidly escalate along the pathway of "compliance gaps → complaints and enforcement → suspension and litigation".

4.3. Capability: Enabling conditions for governance execution

The capability dimension refers to an organisation's integrated capacity to identify, assess, respond to, and remediate risks in cross-border contexts. Such capability comprises at least four components: compliance capability (understanding and applying host-country regulations in labour, taxation, corporate, and sectoral domains), risk identification capability (mechanisms for assessment and classification), emergency response capability (resource mobilisation and strategy execution during incidents), and cross-cultural communication capability (reducing misunderstandings and conflicts in multicultural environments).

This capability construction aligns closely with the OECD concept of "due diligence". The OECD Guidelines for Responsible Business Conduct emphasise that enterprises should embed responsible business conduct into policies and management systems, identify and assess actual or potential adverse impacts, implement prevention and mitigation measures, monitor and communicate performance, and provide remediation, thereby forming a closed-loop governance system. Its six-step structure, policy formulation, risk identification, action implementation, performance tracking, communication, and remediation, provides an operational reference for capability development within the CBRGF. In addition, the UN Office of the High Commissioner for Human Rights (OHCHR), through its Guiding Principles on Business and Human Rights, identifies grievance mechanisms and access to remedy as essential corporate responsibilities. It emphasises that enterprises should not only avoid infringing human rights but also establish mechanisms through which affected individuals and communities can raise concerns and obtain remedies.

In Kenya, many community conflicts and labour disputes arise precisely from the absence or ineffectiveness of such grievance channels. From the perspective of enterprise capability theory, the dynamic capabilities framework further strengthens the theoretical foundation of cross-border risk governance capability. David Teece defines dynamic capability as the ability of firms to integrate, build, and reconfigure internal and external resources to address rapidly changing environments. In cross-border investment contexts, institutional conditions, policy trajectories, and social sentiments are continuously evolving. Firms, therefore, cannot rely solely on static compliance checklists, but must develop dynamic capabilities for environmental sensing, resource reconfiguration, and governance adjustment. The capability dimension of the CBRGF operationalises dynamic capability theory into concrete requirements for cross-border risk governance^[7].

4.4. Decision: Strategic choice under conditions of uncertainty

The decision dimension concerns the ultimate locus of risk governance: how firms make strategic choices under conditions of incomplete information and, in some cases, incalculable uncertainty. Key decision

domains include market entry, modes of entry, investment pacing, partner selection, and crisis response strategies such as continuation, adjustment, or exit. In the “*Enterprise Risk Management—Integrating with Strategy and Performance*” framework issued in 2017 by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), risk management is explicitly integrated with strategy formulation, performance management, governance, and organisational culture. The framework emphasises that risk should be incorporated into strategic planning and resource allocation, rather than being addressed through ad hoc, ex post “patching” once risk events occur. This integrative perspective is particularly salient for cross-border investment, where early-stage structural design, such as equity arrangements, contractual design, and insurance configuration, often represents the most cost-effective and impactful point of risk control.

Under conditions of extreme uncertainty, Nassim Nicholas Taleb’s “*Black Swan*” perspective offers important analytical insight. Taleb argues that rare but high-impact events can fundamentally reshape systems, while decision-makers tend to exhibit overconfidence and post-hoc rationalisation, thereby underestimating the likelihood of low-probability, high-impact events. In cross-border investment contexts, events such as regime change, major policy shifts, or social instability may be difficult to predict, but they are not beyond preparation. Taleb’s concept of “antifragility”, where systems not only withstand shocks but improve through them, provides a guiding principle for contingency planning and resilience building in international investment. Specifically, firms may enhance system robustness and adaptive capacity through strategies such as investment diversification, modular operations, redundancy design, and stress testing.

From the historical evolution of decision theory, Herbert A. Simon’s concept of “bounded rationality” provides a foundational framework for understanding the constraints of cross-border decision-making. Simon argues that decision-makers operate under conditions of incomplete information, cognitive limitations, and time constraints, and therefore cannot achieve fully rational optimisation, but instead pursue “satisfying” rather than optimal solutions. In cross-border investment settings, firms typically face informational asymmetries regarding institutional environments, cultural contexts, and latent risks in host countries, making bounded rationality particularly salient. The decision dimension of the CBRGF is thus grounded in the recognition of bounded rationality, and seeks to reduce informational gaps and cognitive biases through structural optimisation, model-based analysis, and capability enhancement.

In sum, the four dimensions of the CBRGF form a complete analytical chain extending from structural identification to decision implementation: structure determines where risks enter the system, the model reveals how risks are transmitted, capability determines whether effective intervention is feasible, and decision translates governance into concrete actions and outcomes. These dimensions are mutually reinforcing and dynamically interactive, together constituting a systematic analytical tool for cross-border risk governance. The following section applies this four-dimensional framework to empirical governance domains in Sino-Kenyan cross-border investment, focusing on four key areas, labour, land, taxation, and regulation, and further incorporates relevant institutional foundations and core literature^[8].

5. Governance entry points in the Sino-Kenyan context: Labour, land, taxation, and regulation

The application of the CBRGF to Sino-Kenyan cross-border investment requires translating the four analytical dimensions into actionable governance entry points for enterprises, rather than treating them as purely theoretical constructs. Based on Kenya’s institutional environment and the empirical risk exposure of Chinese

firms, four high-frequency and structurally significant risk domains can be identified: labour, land, taxation, and regulatory governance. The following sections examine each domain in turn and illustrate how the four dimensions, structure, model, capability, and decision, can be systematically operationalised.

5.1. Labour domain: From employment compliance to industrial relations governance

Kenya's labour law system is primarily anchored in the Employment Act (2007), supplemented by the Labour Relations Act and the Occupational Safety and Health Act, which collectively regulate employment contracts, working hours, wages, leave entitlements, dismissal procedures, and trade union rights. In practice, Chinese enterprises frequently encounter labour-related risks such as non-compliant employment contracts, inadequate work permits for expatriates, underpayment of overtime wages, procedural irregularities in dismissal, and absence of structured union negotiation mechanisms. These risks typically follow a transmission pathway of: compliance gaps → employee complaints → trade union intervention → labour inspection sanctions or litigation → operational disruption.

From the structural dimension of the CBRGF, labour risks are primarily embedded in employment structure and management structure. Employment structure refers to the ratio of local to expatriate staff, contract types (fixed-term versus permanent), and the use of subcontracting versus direct employment. Management structure concerns human resource authority hierarchies, grievance handling mechanisms, and the allocation of compliance responsibilities between headquarters and subsidiaries. These structural elements should be systematically reviewed prior to market entry to clarify compliance accountability and reporting lines for key positions.

From the model perspective, firms may construct a labour risk transmission model that identifies critical nodes, such as contract formation, wage disbursement, and dismissal decisions, and introduces upstream intervention mechanisms. For instance, legal review procedures may be embedded at the contract stage, monthly compliance audits introduced in wage management, and third-party mediation mechanisms incorporated into dismissal processes. The analytical value of the model lies in shifting governance from ex post remediation to ex ante interruption of transmission nodes.

From the capability dimension, firms must develop at least three core capabilities: accurate interpretation of Kenyan labour law (including case law and enforcement practice), cross-cultural communication and conflict mediation (particularly in engagement with trade unions and community representatives), and emergency response capability in the event of strikes or operational suspensions. The International Labour Organization's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy further stipulates that multinational enterprises should respect host-country labour legislation and, where domestic law is insufficient, refer to international labour standards. This provides an ethical benchmark that extends beyond minimal compliance.

From the decision dimension, firms must make explicit strategic choices at the entry stage regarding employment strategy: whether to adopt a high proportion of expatriate management or pursue deep localisation; whether to recognise trade unions and establish formal collective bargaining mechanisms. Such decisions fundamentally determine the degree and nature of subsequent risk exposure. Empirical evidence in Kenya suggests that firms refusing engagement with trade unions tend to experience rapid escalation of disputes, whereas those establishing joint consultation mechanisms demonstrate significantly lower operational disruption risk ^[9].

5.2. Land domain: Tenure clarity and community relations integration

Land tenure disputes constitute another high-frequency risk for Chinese enterprises in Kenya. The Kenyan land tenure system is characterised by historical complexity, encompassing public land, community land, and private land, alongside numerous unregistered claims and boundary disputes. Land acquisition methods include leasing, purchase, and government allocation, each associated with distinct due diligence requirements and approval procedures. The Land Act (2012) and Land Registration Act (2012) form the core legal framework; however, implementation challenges persist, including incomplete registration systems, forged title deeds, and the non-recognition of customary land rights. The risk transmission pathway can be summarised as: insufficient due diligence → undetected tenure defects → third-party claims by communities or adjacent landholders → project suspension → litigation and contractual financing default → reputational damage and cost overruns. The critical nodes in this pathway lie in pre-construction tenure verification and community engagement processes. The National Environment Management Authority (NEMA) requires Environmental Impact Assessment (EIA) reports to include land tenure and social impact assessments, making the EIA approval stage a critical regulatory “risk gate”. Failure to complete adequate tenure verification and community consultation at this stage may result in rapid risk amplification along the aforementioned pathway.

From the structural perspective, land risks are embedded in equity structure and project governance structure. For example, where land is held through a special purpose vehicle (SPV), shareholder responsibilities for tenure verification and compensation must be clearly defined. At the management level, dedicated responsibility should be assigned for land administration and community liaison, supported by structured reporting lines to headquarters. From the capability dimension, firms require: (i) the ability to commission competent local due diligence and title verification services; (ii) the capacity to engage in multi-stakeholder negotiation involving community leaders, local authorities, and land registry institutions; and (iii) the capability to activate alternative dispute resolution mechanisms such as mediation or arbitration in the event of tenure conflicts. The United Nations Guiding Principles on Business and Human Rights emphasise that enterprises should respect customary and indigenous land rights and ensure access to effective grievance and remedy mechanisms during land acquisition and land-use changes. This principle has direct relevance to community land governance in Kenya ^[10].

5.3. Taxation domain: Compliance architecture and dispute prevention

Kenya’s tax system is primarily governed by the Income Tax Act, the Value Added Tax (VAT) Act, and administrative regulations issued by the Kenya Revenue Authority (KRA). Common tax-related risks faced by Chinese enterprises include transfer pricing adjustments, non-compliance in withholding tax obligations, denial of input VAT credits, and interpretative disputes arising during tax audits. Tax risks are rarely isolated technical issues; rather, they are deeply intertwined with equity structures, contractual arrangements, and cross-border financial flows. From the structural dimension of the CBRGF, tax risks are embedded in equity and transaction structures. For instance, whether Kenyan assets are held through an intermediate holding company, and whether cross-border arrangements such as service fees, royalties, or shareholder loans are employed, directly influence the KRA’s assessment of profit allocation and potential base erosion. Firms should therefore conduct comprehensive compliance reviews of their tax structures at the entry stage and ensure preparedness for transfer pricing scrutiny through adequate documentation ^[11].

5.4. Regulatory domain: From passive compliance to proactive governance

Beyond labour, land, and taxation, Chinese enterprises operating in Kenya must also navigate broader regulatory risks, including sector-specific regulation, environmental protection requirements, and foreign investment screening. Kenya's regulatory system is characterised by multi-agency oversight, complex licensing procedures, and a relatively wide scope for administrative discretion. Taking environmental regulation as an example, the National Environment Management Authority (NEMA) is responsible for the approval and supervision of Environmental Impact Assessments (EIA). Key compliance risks may arise at multiple stages, including the preparation of EIA reports, the fulfilment of public participation requirements, and the implementation of environmental management plans.

From the perspective of the CBRGF, regulatory risk fundamentally reflects the alignment (or misalignment) between corporate conduct and the host country's regulatory system. Structurally, firms should establish dedicated compliance functions and reporting lines within their governance architecture. From the model dimension, enterprises should map risk transmission pathways such as "licence application → approval delay → project commencement obstruction → contractual breach", identifying critical temporal nodes. From the capability dimension, firms must develop dynamic regulatory monitoring systems and government relations management capacities. From the decision dimension, enterprises are required to make strategic choices under regulatory uncertainty, specifically, whether to adopt a proactive compliance approach or a more adaptive "learn-and-adjust" strategy. From an institutional standpoint, the Kenyan government has in recent years pursued ongoing reforms to improve the business environment, including investment promotion and the simplification of licensing procedures. The Guidelines for Foreign Investment Cooperation by Country (Region): Kenya (2025 Edition), issued by the Ministry of Commerce of China provide a systematic overview of Kenya's foreign investment policies, sectoral access conditions, and regulatory requirements in labour and taxation ^[12]. While such official guidance offers a valuable informational baseline for structural identification and model construction, it cannot substitute for firm-specific due diligence and governance design. Enterprises must therefore build customised regulatory risk governance frameworks tailored to the specific characteristics of their investment projects.

6. From compliance logic to governance logic: Theoretical implications and practical insights

The defining theoretical contribution of the CBRGF lies in its reconceptualisation of cross-border risk from a "collection of compliance issues" to a "problem of governance structure". This shift in perspective implies that firms must systematically recalibrate the basic unit of analysis, the temporal dimension, and the configuration of governance instruments in risk management. Under traditional compliance logic, the unit of governance is typically the "case" or "event", with emphasis placed on remediation or sanction following the occurrence of a specific violation. However, in practice, the recurrence of similar disputes is rarely attributable to isolated operational errors; rather, it reflects unresolved structural deficiencies within the organization, such as illicit authorisation chains, weak oversight mechanisms, ambiguous compliance responsibilities, and ineffective external communication channels. As highlighted in Jensen and Meckling's agency theory, monitoring and incentive mechanisms are not costless institutional arrangements; deficiencies in governance structures generate persistent agency costs and risk spillovers over time. Accordingly, the unit of governance should be elevated from "cases" to "structures", replacing point-based remediation with structural diagnosis.

At the same time, cross-border risk governance must evolve from a static to a dynamic orientation. Across different investment phases, entry, construction, operation, and expansion, the dominant risk types and transmission pathways vary significantly. The entry phase prioritises due diligence and structural design; the construction phase emphasises licensing compliance and community engagement; the operational phase focuses on internal control, auditing, and dispute prevention; while the expansion phase centres on merger integration and supply chain compliance. This stage-specific variation necessitates governance mechanisms capable of dynamic adaptation, rather than reliance on a fixed and uniform rule set. The process-oriented and continuous improvement principles emphasised in ISO 31000 provide a methodological foundation for such dynamic governance. In practice, firms should develop phase-specific risk governance plans and conduct reassessments and adjustments during transitions between stages.

Furthermore, cross-border risk governance must move beyond reliance on single instruments towards multidimensional integration. Legal instruments (contracts, litigation, arbitration), financial instruments (insurance, guarantees, hedging), and organisational instruments (compliance systems, internal audit, grievance mechanisms) each possess distinct scopes of applicability and inherent limitations. The “*International Risk Governance Council (IRGC)*” framework explicitly advocates the integration of scientific assessment, economic considerations, socio-cultural factors, and stakeholder participation. This insight is particularly salient in cross-border contexts: labour disputes cannot be effectively resolved solely through legal provisions if community sentiments remain unaddressed; similarly, land tenure conflicts cannot be fully settled through formal title documentation where historical customary claims persist. Effective governance therefore requires the integration of legal rationality with social legitimacy.

The practical implications of the CBRGF for Chinese enterprises can be summarised across three interrelated dimensions as follows:

- (1) Prior to market entry, firms should conduct systematic “structural diagnostics” of risk embeddedness, examining equity arrangements, authorisation chains, information reporting mechanisms, and compliance responsibilities of key positions, rather than focusing narrowly on discrete compliance items. This approach is consistent with the requirements outlined in the Guidelines on Compliance Management for Overseas Operations of Enterprises issued by Chinese regulatory authorities;
- (2) In high-frequency risk domains, such as labour, land, taxation, and regulatory compliance, firms should develop project-specific pathway models that map risk transmission processes and assign accountability for key nodes to designated roles and individuals. This enables early detection and pre-emptive intervention, transforming risk management from reactive response to proactive governance;
- (3) Beyond internal capability building, firms should strengthen external professional support systems (including local legal counsel, compliance advisors, and industry associations) and institutionalise stakeholder engagement mechanisms involving community representatives, trade unions, and non-governmental organisations. Both the “*International Labour Organization’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*” and the “*United Nations Guiding Principles on Business and Human Rights*” emphasise the importance of effective grievance and communication mechanisms in host countries, not only as instruments of risk control but also as integral components of corporate social responsibility.

It should be emphasised that the CBRGF does not negate the value of compliance management; rather, it situates compliance as a foundational component within a broader governance framework. Compliance

constitutes the baseline, whereas governance represents a continuous process of optimisation beyond that baseline.

In the context of intensifying globalisation and geopolitical uncertainty, cross-border risks will not dissipate merely through cautious corporate behaviour. The viable pathway lies in embedding risk within a governance trajectory that is identifiable, controllable, and decision-oriented, and in transforming each risk event into an opportunity for structural refinement and capability enhancement. For Chinese enterprises, the significance of this framework lies not only in reducing disputes and losses, but also in building cross-border operational capabilities into replicable organisational assets, thereby enabling resilient and sustainable development in Kenya and across broader international contexts.^[14,15]

7. Conclusion

CBRGF is not a negation of the existing compliance management system, but takes compliance as a basic component of risk governance. Compliance is the bottom line, and governance is continuous improvement beyond the bottom line. The truly feasible path for cross-border investment compliance is to place risks on a governance track that is identifiable, controllable, and decidable, turning each risk event into an opportunity for structural repair and capacity improvement. The core value of CBRGF lies in translating the structural generation mechanism of risks into a four-dimensional analytical framework: structure identifies embedding points, model presents transmission paths, capability supports governance implementation, and decision-making achieves controllable choices under uncertainty, with closed-loop improvement in practice. For Chinese enterprises, this framework further helps build cross-border operational capacity into replicable organizational assets. Compliant cross-border operational capacity also helps enterprises win trust from international partners and support long-term development in overseas markets. In Kenya and broader African investment scenarios, institutional differences, social complexity, and policy volatility pose continuous challenges. Turning each risk event into an opportunity for structural repair and capacity improvement, rather than a passive response burden, is the key to long-term stable development. CBRGF provides a transferable analytical perspective: regardless of the market or risk type, enterprises can transform from compliance logic to governance logic through structural review, path modeling, capability assessment, and decision optimization.

Disclosure statement

The authors declare no conflict of interest.

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