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Belt and Road: Supporting the Resolution of Disputes

Mingchao Fan (ICC) and Briana Young, Anita Phillips (Herbert Smith Freehills) · Monday, April 16th, 2018

On 5 March 2018, the ICC Court announced the establishment of a commission to address dispute resolution in relation to China's Belt and Road Initiative. The commission will drive the development of ICC's existing dispute resolution procedures and infrastructure to support Belt and Road disputes.

The Belt and Road

The Belt and Road is China's ambitious infrastructure project spanning more than 70 countries, with an increasing number of non-Chinese investors, contractors and developers - including sovereign states - involved. The project aims to build connectivity and cooperation between China across the land-based Silk Road Economic Belt and the 21st Century Maritime Silk Road. It spans large parts of Asia, the Middle East, Africa and Europe.

A construction and infrastructure initiative on this scale will inevitably generate disputes. With an estimated US\$900bn in projects planned or already underway, the project gives rise to a multitude of actual and potential commercial disputes to consider. In response to this, Alexis Mourre, President of the ICC Court, announced the establishment of the commission during the ICC Court's working session last fall.

It is a competitive field, with numerous existing institutions vying for a share of the Belt and Road disputes market, and new courts and institutions being established specifically for the purpose. It seems clear that parties who adopt the right dispute resolution model in their contracts today will be in a better position to resolve disputes as and when they may arise.

Make-up of the Commission

Justin D'Agostino, Global Head of Disputes at Herbert Smith Freehills and Hong Kong's alternate member of the ICC Court, has been appointed commission chair. Dr Mingchao Fan, ICC Director for North Asia, will act as secretary. Other commission members are drawn from a range of sectors, representing jurisdictions including the PRC, Hong Kong and Singapore. A broader advisory board, representing other countries along the Belt and Road, is being considered.

ICC recognises the importance of engaging key stakeholders within both corporates and governments all along the Belt and Road, to ensure that it is offering the best possible service to parties on all sides.

Although the ICC Belt and Road Commission's main objective is to raise awareness of the ICC as a "go-to" institution for disputes arising out of China's Belt and Road Initiative, the commission has additional relevant aims:

- leveraging ICC's unparalleled international coverage with secretariats and/or national committees in over 100 jurisdictions to attract Belt and Road disputes;
- engaging with corporates, state-owned enterprises and governments across all Belt and Road territories; and
- highlighting Belt and Road dispute resolution at a series of events throughout the region, with the aim of promoting ICC's capabilities widely. Events are planned in locations as diverse as China, Paris, Kazakhstan, Kyrgyzstan, Nigeria, Southeast Asia, Japan and Hong Kong, with more to come.

In the Commission's view, the combination of the ICC's tried-and-tested, multi-process services, its unrivalled geographical footprint, and its established credibility and independence, place it in a strong position to resolve Belt and Road disputes.

Sector expertise

On average, construction and engineering disputes account for close to a quarter of all ICC arbitration cases, while the finance and insurance sector accounts for approximately 20%. As the world's leading arbitral institution, ICC is adept at handling complex multiparty cases as well as high-value, complex multi-party and multi-contract disputes (approximately half of all cases filed involve three or more parties). The introduction in 2017 of an expedited procedure also enables lower-value cases to be handled with greater time- and cost-efficiency.

Mediation matters too

There is no 'one-size-fits-all' method of resolving Belt and Road disputes. But there is a concerted effort, led and supported by the Chinese government, to encourage mediation clauses in Belt and Road agreements, with provision for arbitration if mediation fails. ICC is a world-leading arbitration and mediation provider, with tried and tested mechanisms and a strong pool of arbitrators and mediators. It is therefore well placed to provide appropriate, effective dispute resolution services to parties all along the New Silk Road. ICC's stated objective is to ensure that where disputes arise, they are resolved efficiently and with minimal damage to the parties' commercial relationships.

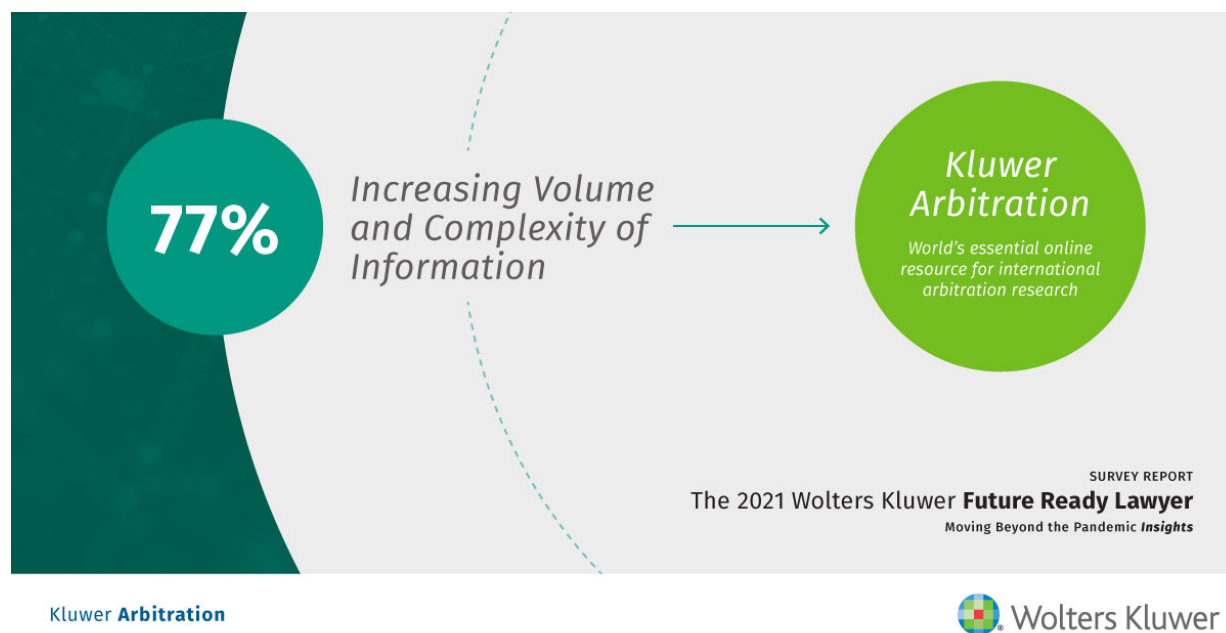
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