

HKIAC's New Belt and Road Programme: Does More Need to be Done?

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On 26 April 2018, HKIAC announced its new "Belt and Road Programme" which consists of an industry-focussed Belt and Road Advisory Committee and an online resource platform dedicated to Belt and Road disputes. This is a welcome development in light of the ICC Court's formation of their own Belt and Road Commission in March (see relevant blog post [here](#)), but could the capabilities of the HKIAC's online resource platform be improved in light of the HKIAC's premier role in the Belt and Road disputes arena?

By way of background, the Belt and Road Initiative is a push by the Chinese government to invest around US\$900 billion in infrastructure along the land-based "Silk Road Economic Belt" and the oceangoing "Maritime Silk Road", both of which consist of several routes from China through countries including Turkey and Kenya all the way to Italy and the United Kingdom. In total, the initiative will span over 60 countries and will generate investment in roads, railways, ports and other facilities. Chinese construction firms will be cooperating with other international firms in a variety of jurisdictions on a plethora of different contracts. The potential for dispute resolution work is great, and the arbitral institutions are already competing to be the best placed forum to secure their share of the pie.

In the commentaries, HKIAC is a firm favourite. Reasons for this include Hong Kong's proximity to China while being a separate administrative region; Hong Kong's stable and independent common law legal system and pro-arbitration judiciary; and Hong Kong being home to multilingual legal and commercial professionals who are familiar with foreign investments and working with Chinese companies. HKIAC itself reports that in 2017 it saw 55% of its arbitrations involving a Mainland Chinese party and one-third of its cases between a Mainland Chinese Party and a Belt and Road jurisdiction in 2017.

Therefore, it comes as no surprise that HKIAC is keen to put itself forward as the premier forum for the resolution of Belt and Road disputes. In line with this aim is the formation of a HKIAC Belt and Road Advisory Committee composed of experts from the finance, infrastructure, insurance, construction and maritime sectors. A full list of members can be found [here](#).

Nevertheless, it could be argued that HKIAC's new online resource platform might benefit from some improvements. A few suggestions are set out below:

1. Belt and Road Knowledge Database: Currently this is a list of links to publications broadly categorised under 'Investment and Trade Opportunities', 'Dispute Resolution', 'Regulatory & Compliance' and 'Useful Websites'. Although such broad categorisations may have been sufficient

when the resources were sparse, the list is now becoming a little cumbersome. A more user-friendly interface organised around the potential problems that practitioners may face, and which can be surveyed 'at a glance', would add value to this useful resource.

2. Model Clauses for Belt and Road Contracts: Currently the HKIAC model clauses for Belt and Road contracts refer disputes directly to arbitration, without recourse to mediation. It is possible that the model clauses on this site would gain greater traction if they included a 'hybrid' method combining both mediation and arbitration. In Asia, there is a longstanding culture of mediating disputes, especially when arbitration may still be perceived as expensive and detrimental to commercial relations. As Guiguo Wang, President of the International Academy of the Belt and Road, has put it, conciliation is an "Eastern value and tradition". Notably, the Supreme People's Court of China (SPC) is interested in promoting mediation for Belt and Road disputes, as evidenced by the SPC's endorsements at the September 2017 International Mediation Conference in Hangzhou, China. Further, the Hong Kong government has championed mediation for Belt and Road disputes, as can be seen in its development of an online mediation and arbitration tool, eBRAM.hk, and the discussion at the October 2017 Belt and Road Summit of model Belt and Road dispute resolution clauses that provide for mediation, then arbitration. Finally, the Hong Kong-based think tank, International Academy of the Belt and Road, has published a "Dispute Resolution Mechanism for the Belt and Road Initiative" that proposes a unified dispute resolution clause requiring negotiation and mediation before arbitration. Consistency where possible in relation to model clauses would be ideal for legal certainty in a multifarious legal landscape for Belt and Road disputes.

3. Belt and Road Events: Currently this is a list of events that HKIAC have hosted or will host in various jurisdictions with a very brief description of each. Perhaps each description would be improved by including links to meeting minutes, a video of the lecture or even a transcript, where appropriate. As it stands, it serves only as a log, where otherwise it could itself serve as a useful resource for Belt and Road practitioners across the jurisdictions who seek to stay in the know of how this premier arbitral institution views the various issues and challenges that the Belt and Road initiative presents.

Considering HKIAC's prime position as an arbitral institution for Belt and Road dispute resolution, its current efforts to support participants with its new Belt and Road Programme are to be welcomed. HKIAC should be encouraged to build on its resources, especially in relation to its database, model clause provision and record of Belt and Road events. It would be safe to say that for the disputes rolling through, the more equipped practitioners are now, the more streamlined resolution will be for Belt and Road disputes in the years to come.

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