

IS MIXED-MODE DISPUTE RESOLUTION THE ANSWER TO BELT AND ROAD DISPUTES?

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A trend to combine dispute resolution processes, typically mediation and arbitration, is gaining traction internationally. In Asia, the Belt and Road Initiative is driving this change.

With China at the heart of the Belt and Road, a more consensus-driven approach to dispute resolution, reflecting Asian values and promoting mediation, looks set to thrive. Traditionally, international commercial disputes play out to Western values and norms and have been adversarial in nature.

For some time, [mediation](#) has been discussed as a dispute resolution process suitable for Belt and Road disputes. As an adjunct to adjudicative processes like litigation and arbitration, [academics](#), [end-users](#) and [China's own court reforms](#) have highlighted the integral role mediation is likely to play as part of a multi-tier process.

2019 DEVELOPMENTS

Singapore and China started 2019 with a pro-mediation statement of intent. A memorandum of understanding was signed between the Singapore International Mediation Centre (SIMC) and the China Council for the Promotion of International Trade (CCPIT) in Beijing on 24 January. This announced the establishment of an international panel of mediators to handle disputes that may arise from BRI projects. Mediators will be drawn from a pool of dispute resolution specialists in China, Singapore and other countries and regions along the Belt and Road. Both parties plan to develop rules for case management and enforcement for BRI disputes submitted to mediation. As with other institutions and proposed online platforms, negotiation, mediation and – as a last resort – arbitration will be the combination of processes championed by SIMC and CCPIT.

The ICC too has just published [mediation guidance](#) for Belt and Road disputes, alongside appropriate clauses from its existing suite. These promote the use of mediation as either a standalone or mixed-mode process with arbitration.

"Belt and Road presents a rare opportunity to rethink how complex multi-party, international disputes are resolved," said Herbert Smith Freehills' Justin D'Agostino, chair of the ICC Court's Belt and Road Commission.

"For centuries, dispute resolution has been anchored to adversarial processes. With the Belt and Road's Asian nexus, a more consensual, efficient approach may evolve to resolve disputes. ICC has long offered mediation and arbitration services and is well placed to offer mixed-mode dispute resolution along the Belt and Road."

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