



# Construction, Engineering and Infrastructure Disputes

Infrastructure, energy and construction projects are technically complicated, strategically important and high value and often involve multiple parties from numerous jurisdictions. It is not unusual for such projects to experience disputes over delays, additional costs, liquidated damages, defects, professional negligence and termination.

When your project encounters a dispute, DLA Piper's Construction, Engineering and Infrastructure Disputes practice can help. We know that disputes do not take place in a vacuum, but are firmly rooted in cultural, political and economic environments, and we have enormous experience dealing with such disputes, both locally and internationally.

We address each dispute in its own context. Our vast geographical coverage means we are able to deliver cross-border teams to address major construction and infrastructure disputes on the local and the international levels. Through our global network of industry relationships, we are well used to working collaboratively with dedicated and on-the-ground specialist resources. We possess extensive local knowledge of the legal, business and cultural landscapes that inform disputes, across a large number of jurisdictions. All of this provides our clients with the assurance of not only around-the-clock responsiveness, but also the relevant knowledge that can prove critical to resolving controversies. Let us put our experience to work for you.

## CAPABILITIES

Our team of construction, engineering and infrastructure disputes lawyers is highly experienced in both dispute avoidance and, where that is not possible, resolution across a variety of sectors. We understand the unique nature of disputes that may arise on construction, engineering and infrastructure projects, as well as the characteristics of various parties – not just the participants in the dispute process, but also different forms of tribunal (including individuals), experts, financial institutions, counsel, third-party funders and document production specialists.

We have a proven track record of success in providing contractual, practical, operational and risk management advice on distressed, high-value or strategically critical projects. We bring continuity of advice at all stages of a project's lifecycle, from inception through construction and into the operational phase.

## Our sector focus

### CONTACTPERSONEN

#### Philip Chong

Partner  
Londen  
T:+44 (0)20 7153 7378  
philip.chong@dlapiper.com

#### Richard Edwards

Partner  
Perth  
T:+61 8 6467 6244  
richard.edwards@dlapiper.com

#### Paul Giles

Partner  
Manchester  
T:+44 161 235 4054  
paul.giles@dlapiper.com

#### Howard Krupat

Partner  
Toronto  
T:+1 416 365 3510  
howard.krupat@dlapiper.com

#### Anthony L. Meagher

Partner  
Baltimore (Mount  
Washington)  
T:+1 410 580 4214  
anthony.meagher@dlapiper.com

#### David Moss

Konsulent

Our team adopts a sector focus, tailoring our approach and the advice we provide to the specific nature of the issues which arise in the following industries:

- Infrastructure and transport
- Oil and gas
- Energy
- Commercial projects - Office, Retail, Hotels
- Stadia
- Ports/harbors
- Nuclear
- Water and utilities
- Chemicals and process plants
- Industrial engineering
- PPP/PFI
- Shipping and offshore
- Communications
- Defense
- EPC/FIDIC

Our experience in acting across the supply chain for procuring authorities and funders active in these sectors means our lawyers understand the commercial issues affecting these businesses. As a result, our team delivers consistently successful dispute avoidance and resolution strategies based on detailed industry knowledge.

## Our experience

When it comes to resolving construction and infrastructure disputes, our team has extensive experience in managing all aspects of a dispute, including:

- An understanding of all types of construction, engineering, project and infrastructure contracts, including extensive experience drafting and negotiating such contracts
- Advising on emerging problems, before the commencement of formal legal proceedings, to avoid escalation and obtain early resolution and to optimize negotiating leverage
- Addressing issues arising from delay and disruption, cost overruns, variations, professional negligence, defects and termination
- Conducting international arbitration through all of the major institutions as well as resolving disputes through other alternative channels, such as expert determination, mediation and adjudication
- Advising and assisting with claim preparation, document review, document management and electronic record management and disclosure
- Advising on sensible strategies for case management when the dispute necessitates analysis of a great volume of detail, including identifying priority issues and common themes
- Effectively marshalling technical and factual evidence, including working with factual and expert witnesses

## EXPERIENCE

---

### Infrastructure and Transport

- A European government in its defence of an ICC arbitration dispute concerning a multibillion-euro project to design and construct 70 kilometres of commuter railway, 40 new stations and associated infrastructure
- A global construction client in three mediations relating to significant road construction projects in Ontario, Canada
- A major communications PLC in a multimillion-pound ICC arbitration relating to communication systems failures on the London

Manchester  
T:+44 (0)20 7349 0296  
david.moss@dlapiper.com

### Simon Palmer

Konsulent  
Dubai  
T:+971 4 438 6251  
simon.palmer@dlapiper.com

### VERWANTE DIENSTEN

- Construction and Engineering
- International Arbitration
- Projects, Energy and Infrastructure

### VERWANTE SECTOREN

- Energie

underground rail network

- Acting for a contractor in two ICC arbitration proceedings, taking place in parallel, both seated in Doha, Qatar, in connection with disputes involving a perimeter security package at a new major international airport in the Middle East

## Oil and Gas

- A South Korean/Japanese joint venture main contractor in potential ICC proceedings (London) in a dispute concerning the construction of an oil refinery in Northeast Africa. The claims exceed US\$500 million and concern delay, concurrent delay and the application of liquidated damages versus the main contractor's entitlement to an extension of time
- A Russian oil company in an LCIA London seat arbitration concerning a US\$55 million dispute for drilling services
- A Chinese energy company in a US\$200 million ICC arbitration in Singapore against an Iranian contractor relating to the development of oil services facilities in Iran
- An incorporated JV operating company in respect of design deficiencies in an onshore processing facility in the Arctic on claims in excess of US\$950 million

## Energy

- A global energy company with respect to US\$500 million disputes arising out of the construction of power plants in China
- A Government in an investment treaty arbitration in London under the UNCITRAL Rules arising out of the construction and operation of a power station near Mumbai
- A South Korean conglomerate in ICC proceedings on delay and extensions of time claims regarding a coal-fired power plant in North Africa with a project value in excess of \$2 billion
- A US group company and its South Korean parent company, together a global engineering, procurement and construction company, in arbitration against a plant owner regarding significant cost overruns and scheduling delays resulting in an award of more than US\$51 million on its affirmative claims, which was offset by US\$22 million awarded to the opposing party on its counterclaims
- A Dominican power company with respect to US\$ 70 million in disputes arising out of the construction of a biomass facility in the Dominican Republic

## Commercial construction

- A Dubai-based developer on a UNICITRAL arbitration concerning a US\$500 million construction dispute relating to a large retail development in Dubai
- An Israeli company in proceedings before the Court of Arbitration at the Polish Chamber of Commerce in Warsaw in a construction dispute concerning damages connected with the improper conduct of a tender procedure. The amount of damages claimed was US\$16.3 million
- A developer of the World Trade Center site in New York following 9/11, including handling several arbitrations and litigation matters, among them a multibillion-dollar arbitration in Manhattan
- A developer on US\$100 million in claims for construction defects and water intrusion arising out of a 21-building apartment complex on Long Island, involving 20 parties, a separate insurance coverage case and tenant class actions
- A UK construction company on claims valued at £35 million arising out of the project to develop a high-specification sports complex, including stadiums, hotels, gyms and other facilities

## Stadia

- A Premier League football club on delay and disruption claims arising from a £110 million stadium extension

## Nuclear

- A state-owned nuclear power company in a succession of disputes with a value exceeding €150 million arising from the delayed temporary and permanent spent-fuel storage facilities at a nuclear power plant
- A UK contractor in a dispute concerning defects and quality assurance procedures in respect of works at the UK's Sellafield nuclear reprocessing plant

- A nuclear decommissioning company in relation to various complex decommissioning projects undertaken under NEC3 contract conditions
- A state-owned nuclear power company in UNCITRAL arbitration concerning liability for heavily damaged fuel rods

## Ports and harbors

- An employer in relation to defective works claims on a project involving refurbishment and expansion of submarine penstocks in Scotland
- A major defense contractor in relation to the design and construction of a £300 million facility required to build Successor-class submarines
- An employer on a major port extension project involving a new deepwater jetty, draft improvement dredging and refurbishment of existing port assets

## Water/Utilities

- The largest utility company in the Southeastern US with respect to disputes arising out of the construction of a solar facility in Texas
- A UK water company in relation to a £125 million claim relating to the design and construction of a BAFF plant
- A UK water company, defending against framework contractors in relation to the failure of blockwork in a series of nitrifying tertiary filter (NTF) plants across the water company's network
- A UK water company in relation to £70 million claims from a framework contractor, comprising 150,000 low-value repair and maintenance claims and significant delay and disruption, variation and defects claims relating to over 50 major projects

## Chemicals and process plants

- A UK subsidiary of a South Korean conglomerate in connection with a dispute with a German engineering company arising from the construction and delayed completion of a complex chemical process plant in the UK. This is an ICC arbitration subject to English law with a seat in Amsterdam. The sums in dispute are in excess of €45 million
- A large petrochemical company in several disputes resulting from the termination of contracts on the basis of force majeure events
- A global EPC contractor in a claim exceeding US\$100 million relating to the construction of a major chlorine plant in Houston
- An employer against the JV contractor in a dispute including issues arising from payments due, defective works and termination, in connection with the design and construction of an anaerobic digestion facility in Northern Ireland. The matter involves numerous challenging technical and legal issues, among them certification of payments, employer approvals, finance documents, ramp-up processes and termination

## Industrial Engineering

- A French engineering business in ICC arbitration proceedings in relation to the manufacture and sale of a €100 million transformer for a Siberian aluminium smelting operation
- An Indian energy company in disputes arising out of the construction and testing of prototype wind turbines

## PPP / PFI

- A consortium of global investors in multiple disputes arising from a £400 million bond-financed healthcare project facing claims exceeding £40 million
- A government authority regarding the construction of a major acute-care hospital with a contract sum in excess of £335 million, with initial total claims of £24 million prior to construction completion
- A government agency of a Central American sovereign in an ICC arbitration proceeding arising from a P3 project and involving ownership interests in geothermal generation facilities and defects in generation equipment
- A private corporation responsible for operating and maintaining an extensive public highway network under the P3 model in negotiations and an arbitration to determine appropriate increases in annual operation, maintenance and rehabilitation fees relating to the highway

## EPC / FIDIC

- The turnkey contractor in relation to an IWPP project in Fujairah, UAE in relation to extension of time, cost, delay and variations claims against the employer in an LCIA arbitration with a London seat under English law
- An EPC contractor in a major dispute in adjudication against a project owner in relation to a gas storage project based on IChemE Green Book conditions with target cost provisions
- A leading provider of electricity and energy-related services to the Polish rail industry and a leading contractor for railway construction and infrastructure modernization projects in disputes over investment projects carried out on the basis of the FIDIC terms of the contract for sums in excess of PLN3.5 billion
- An international construction company based in Germany in investment projects carried out on the basis of the FIDIC terms of the contract - construction of a ring road with a value exceeding PLN 908 million) and construction of a section of dual carriageway with a value exceeding PLN 1.1 trillion

## ACHTERGROND

---

### Publicities

#### 2020 Annual Sourcing and Commercial Contracts Case Law Round Up

1 February 2021

Welcome to our round up of key cases for sourcing and commercial contracts.

---

#### Liquidated damages

1 February 2021

A contractor and its sub-contractor fell out over the development of a biomass plant for the employer. The works were incomplete, the biomass plant was never built.

---

#### Episode 3: The Future of Construction

10 November 2020

#### [THE DLA PIPER INFRASTRUCTURE PODCAST](#)

In this episode, UK partners Paul Giles and Alison Fagan are joined by Suzannah Newbould in the UAE to talk about how COVID-19 is affecting the global construction sector.

---

## **DLA Piper Collaborative Contracting and Procurement Paper 2020**

22 October 2020

The construction industry has suffered for ages from contracts and procurement processes that crudely allocate various risks resulting in misaligned incentives and consequent disputation.

It was from a desire to overcome this misalignment of interests that 'collaborative contracting' was born.

Read more in our paper.

---

### **Episode 2: Sustainable Mobility**

12 October 2020

#### **[THE DLA PIPER INFRASTRUCTURE PODCAST](#)**

In this episode, DLA Piper partner Maria Pereira and legal director Steven Gray discuss the impact of COVID-19 on sustainable mobility.

---

### **Disputes arising “under” a construction contract: An adjudicator’s jurisdiction**

28 September 2020

Most of the analysis of *Bresco Electrical Services Ltd (In Liquidation) v Michael J Lonsdale (Electrical) Ltd [2020] UKSC 25* has deservedly been on how the UK Supreme Court reconciled the statutory regimes for construction adjudication and insolvency set-off.

---

### **Episode 1: Infrastructure in a post-COVID-19 world**

22 September 2020

#### **[THE DLA PIPER INFRASTRUCTURE PODCAST](#)**

In this episode, partners Martin Nelson-Jones, Colin Wilson and Howard Bassford discuss the future of infrastructure in a post-COVID-19 world.

---

---

## **The landscape after Bresco: John Doyle Construction Ltd v Erith Contractors Ltd**

21 September 2020

The Supreme Court's decision in *Bresco v Lonsdale* has been hailed by some as opening the floodgates to adjudications by insolvent companies. But as a series of recent judgments show, there remain a number of obstacles that will need to be overcome by insolvent entities seeking to enforce an adjudication award.

---

## **Construction Adjudication: The emergence of Low Value Dispute Resolution Schemes**

3 August

Adjudication is the cornerstone of dispute resolution in the construction industry and as a concept has been phenomenally successful. In December 2019 the Annual Report of the Adjudication Society reported a continuing trend of year-on-year growth in the number of referrals to adjudication through adjudicator nominating bodies (ANBs) in the UK.

---

## **Corona-crisis dwingt regionale overheden tot ingrijpen in het omgevingsrecht**

14 April 2020

Het coronavirus (COVID-19) laat ook het omgevingsrecht niet ongemoeid. De noodmaatregelen van de verschillende Belgische overheden hebben een belangrijke impact op o.m. lopende bouwwerken en vergunningsprocedures, een van de belangrijkste economische motoren van ons land.

---

## **Flexing PPPs**

10 February 2020

This paper considers how governments can manage this vulnerability when contracting under a PPP contract. It also considers whether alternative contractual models might provide government with better value for money over the longer term.

---

## **Novel coronavirus (2019-nCoV) – potential effects on international arbitration, sale of goods, shipping and shipbuilding (AsiaPac)**

10 February 2020

The current outbreak of novel coronavirus (2019-nCoV) is causing widespread concern. This article will discuss the potential impact on international arbitration, sales of goods, shipping and shipbuilding contracts.

---

## **Construction delays arising out of the Novel Coronavirus outbreak (AsiaPac)**

7 February 2020

---

Since the first case of coronavirus was confirmed in Hong Kong in early February 2020, the government has imposed various measures in an attempt to contain the spread of the coronavirus. The resulting impact of the novel coronavirus is far-reaching and affects every industry and business in Hong Kong. This alert considers some of the key issues that construction contractors and developers in Hong Kong may face. If you need any specific advice, please contact May Ng or Sandy Au for further details.

---

### **Gemeentewegen slaan nieuwe weg in vanaf 1 september**

2 September 2019

Op 3 mei 2019 heeft het Vlaams Parlement het voorstel van decreet houdende gemeentewegen bekrachtigd en afgekondigd. Het decreet gaat uit van een geïntegreerde benadering en werkt één uniforme regelgeving uit voor alle gemeentewegen. Alle gemeentewegen krijgen een vergelijkbaar statuut en uniforme procedures, wat zorgt voor meer eenduidigheid.

---

### **New Permitting Proceedings in Brussels as from 1 September**

2 September 2019

Last year, the Brussels Capital Region approved a major reform of the Brussels Code of Spatial Planning. A limited number of reforms immediately entered into force on 30 April 2018. Due to the lack of executing decrees, the implementation of the reforms relating to permitting was postponed until 1st September 2019.

---

### **Nieuwe vergunningsprocedure in Brussel vanaf 1 september**

2 September 2019

Vorig jaar keurde het Brussels Hoofdstedelijk Gewest een grote hervorming van het Brussels Wetboek van Ruimtelijke Ordening (BWRO) goed. Een beperkt aantal hervormingen (meer in het bijzonder deze m.b.t. planning) trad reeds in werking op 30 april 2018 (zie ook onze eerdere newsflash van 2 mei 2018 hierover). Het tweede deel van de hervormingen zou normaal op 20 april 2019 in werking treden. Omdat een deel van de uitvoeringsbesluiten niet tijdig klaar waren, traden slechts enkele wijzigingen in werking op die datum en stelde de Brusselse Hoofdstedelijke Regering de inwerkingtreding uit tot 1 september 2019.

---

## **NIEUWS**

---

### **DLA Piper advises lenders on the refinancing of the Warnow Tunnel in Germany**

26 February 2021

DLA Piper has advised the lenders on the EUR115 million refinancing of the Warnow Tunnel in Rostock (Germany), also known as the Warnow River Crossing (Warnowquerung).

---

### **DLA Piper advises Kölner Pensionskasse and Caritas Pensionskasse on their reorganization**

21 January 2021

DLA Piper hat die Kölner Pensionskasse und die Pensionskasse der Caritas aufsichtsrechtlich gegenüber der Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), bei der Gestaltung und Umsetzung des Sanierungskonzepts sowie bei dem damit verbundenen formellen Gang in den Status der Liquidation beraten.

---

### **DLA Piper advises Wipro Limited on the acquisition of METRO-NOM GmbH and METRO Systems Romania**



4 January 2020

DLA Piper has advised Wipro Limited, a leading global information technology, consulting, and business process services company, on the acquisition of METRO AG's IT units – METRO-NOM GmbH in Germany and METRO Systems Romania S.R.L.

---

### **DLA Piper advises Nemetschek on acquisition of DEXMA by subsidiary Spacewell**

18 December 2020

DLA Piper has advised the Nemetschek group, one of the world's leading software providers for the Architecture, Engineering, Construction and Owner-operated (AECO) industry, on the acquisition of 100% of the shares in DEXMA by its subsidiary Spacewell.

---

### **DLA Piper advises Stillfront Group on the acquisition of gaming company Sandbox Interactive**

18 December 2020

DLA Piper has advised Stillfront Group AB, a leading free-to-play gaming studios company, on the acquisition of Sandbox Interactive GmbH, a rapidly growing and highly profitable gaming company based in Berlin and developer and publisher of the popular cross-platform free-to-play sandbox MMORPG Albion Online. The sellers are the four co-founders of Sandbox.

---

### **DLA Piper wins TMT Finance M&A Global Telecom Deal of the Year**

8 December 2020

DLA Piper is pleased to announce that they have received the TMT Finance M&A Global Telecom Deal of the Year for their representation of T-Mobile and Deutsche Telekom in the T-Mobile-Sprint merger.

---

### **'Industry standard' for use of arbitration platforms moves a step closer as pan-firm collaboration receives support**

30 November 2020

Plans to standardise the approach to online case management in international arbitration are a step closer to reality, after a draft protocol received positive feedback from an industry-wide consultation.

---

### **DLA Piper advise Liverpool Football Club on sponsorship claim defence**

14 September 2020

DLA Piper has successfully represented The Liverpool Football Club and Athletics Grounds Limited (LFC) in defending a GBP1.13 million claim brought by sports intermediary Winlink Marketing Limited.

---

### **DLA Piper arbitration practice recognized as world leading by Global Arbitration Review**

14 July 2020

DLA Piper has been recognized once again as having one of the world's leading international arbitration practices.

---

## **Law firms collaborate on industry first to accelerate tech adoption in international arbitration**

2 July 2020

DLA Piper is amongst six international law firms which have developed a Protocol to help deliver a globally consistent approach to the use of online case management platforms in international arbitration.

---

## **DLA Piper announces partnership promotions for 2020**

30 April 2020

DLA Piper is proud to announce that 67 lawyers have been promoted to its partnership. The promotions are effective as of April 1, 2020 in the United States and May 1, 2020 for EMEA and Asia Pacific. The promotions have been made across many of the firm's practice areas in 35 different offices throughout 13 countries.

Across the firm's practices globally, Corporate saw the largest intake of new partners with 19 promotions, followed by Litigation and Regulatory with 15. Intellectual Property and Technology and Finance and Projects had ten and eight promotions respectively, while there were six in Real Estate. Tax and Employment both had four, and there was one in Restructuring.

---

## **DLA Piper lawyers named Acritas Stars**

10 March 2020

Acritas has named over 200 DLA Piper lawyers as 2020 Acritas Stars. Now in its fourth year, Acritas Stars highlights the stand-out lawyers in private practice as nominated by clients around the world. More than 3,000 senior in-house counsel feed into the nomination process to give a comprehensive view of highly recommended lawyers across the globe.

---

## **DLA Piper appoints Head of Global Government Affairs team**

6 March 2020

DLA Piper announces the strengthening of its Global Government Affairs team with the appointment of Richard Sterneberg who will head up the team in its Brussels office. Richard brings with him over 20 years of experience working in Brussels as a global government affairs expert.

---

## **DLA Piper launches its Global Litigation Guide**

3 December 2019

DLA Piper has launched its 'Global Litigation Guide', which covers aspects of civil litigation in 30 jurisdictions worldwide.

---

## **DLA Piper continues to boost CEE region capability with new hires in Poland**

5 September 2019

DLA Piper today announces the appointment of eight new lawyers in its Warsaw office into three key practice areas of Corporate, Finance & Projects (F&P) and Litigation & Regulatory. These hires follow the recent appointment of corporate partners Marek Sawicki and Jakub Marcinkowski from CMS.

---

## **DLA Piper announces launch of Artificial Intelligence practice**

14 MAY 2019

DLA Piper announced today the launch of its Artificial Intelligence practice, which will focus on assisting companies as they navigate the legal landscape of emerging and disruptive technologies, while helping them understand the legal and compliance risks arising from the creation and deployment of AI systems.

---

### **DLA Piper establishes Litigation Regulatory offering in Dublin with partner hire**

18 APR 2019

DLA Piper today announces the appointment of Caoimhe Clarkin as a Litigation & Regulatory partner in the firm's Dublin office. This is the seventh partner hire for DLA Piper in Dublin this year.

---

### **DLA Piper announces partnership promotions for 2019**

1 APR 2019

DLA Piper is proud to announce that 77 lawyers have been promoted to its partnership. The promotions are effective as of April 1, 2019 in the United States and May 1, 2019 for EMEA and Asia Pacific. The promotions were made across many of the firm's practice areas in 43 different offices throughout 20 countries.

---