



# 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.

## CAPABILITES

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

### Philip Chong

Partner  
London  
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

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

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

**Simon Palmer**  
Consultant  
Dubai  
T: +971 4 438 6251  
simon.palmer@dlapiper.com

### RELATED SERVICES

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

### RELATED SECTORS

- Energy and Natural Resources

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

## INSIGHTS

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### Publications

#### **The Law Commission’s review of the Arbitration Act 1996 - polishing “a gold standard”?**

27 September 2022

The Law Commission of England and Wales is undertaking a once in a generation review of the Arbitration Act 1996. A recently published Consultation Paper provides valuable insight into the Law Commission's initial views on areas of potential reform to the Act.

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#### **Litigation funding - An innovative solution to costly construction disputes**

21 September 2022

In summary, litigation funding can be an extremely helpful alternative source of financing for construction companies which either need financial assistance to pursue claims, or otherwise see the benefit both of offloading the downside risk of litigation and of using third party finance to fund outstanding claims, allowing them to use their own finance to invest in their core business. Given this, it is unsurprising that litigation funding plays an increasing role in the resolution of construction disputes. This is evidenced by the number of funders that are continuing to enter the market and provide innovative solutions to cost constrained companies. DLA Piper also launched an independent funding company (Aldersgate Funding Limited) to meet this need and offer clients access to GBP150 million for funding large-scale litigation and arbitration.

With that said, obtaining litigation funding for complex construction disputes (and particularly single cases) is, not a straightforward process. The funder has to have sufficient information to predict the outcome with a reasonable degree of certainty and to carry out a cost-benefit analysis, and this takes time and effort. It is key that claimants engage an experienced law firm which is able to navigate the funding process efficiently and negotiate the best terms for their clients. Often, experienced firms have strong relationships with funders, making every aspect of the process smoother.

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#### **Six ways the construction industry is innovating to deliver ESG demands**

21 March 2022

Following COP26, national governments are enacting legislation to combat the effect of the climate crisis. The world's industries, construction among them, are reflecting and assessing how they can adapt to deliver the environmental, sustainability and governance (ESG) demands of the marketplace.

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#### **Third time lucky: Triple Point in the Supreme Court**

20 July 2021

The Supreme Court has handed down its long awaited decision on the question of whether delay liquidated damages (LD) provisions survive termination. The case related to a dispute between the parties as to how delay LD provisions apply where an English law contract is terminated prior to its completion, and the interpretation of contractual wording seeking to limit liability.

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## **It's all about the money: key changes to the construction retentions regime**

18 June 2021

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## **Episode 5: How is technology disrupting the construction industry?**

2 June 2021

### **THE DLA PIPER INFRASTRUCTURE PODCAST**

In this episode, DLA Piper's Construction Disputes Partner, Suzannah Newbould is joined by Barry Lewis, Managing Director, Construction at ALEC, one of the UAE's leading construction groups and Petar Mladenovic, Enterprise Account Director from the construction tech company Disperse.

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## **The role of external construction counsel**

14 May 2021

A common reaction to hearing that someone is a "construction lawyer" is the assumption that this must be a very narrow and focused role. In this article written for the *Construction Law Letter*, Howard Krupat shows that often the opposite is true, and that the responsibilities of a construction lawyer are as varied as the range of projects within the construction industry and even the lifecycle of a particular project.

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## **A to Z of Construction Law in the UAE**

22 March 2021

The A-Z of Construction Law in the UAE aims to provide a useful guide to various key provisions of the UAE Civil Code which may be applicable in certain circumstances to the interpretation and operation of UAE law governed construction and engineering contracts.

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## **Alliance contracting in the UK infrastructure industry: An Australian perspective**

9 March 2021

Given a recent history of infrastructure projects that have exceeded budget and timelines, and with the potential for continuing cost overruns on government infrastructure projects, is it time for the UK to reconsider traditional forms of contracting for infrastructure projects? Is it time the UK took alliance contracting seriously?

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## **Building and Construction security of payment regime**

15 February 2021

In the recent decision of *Civil Contractors (Aust) Pty Ltd v Galaxy Developments Pty Ltd*, the Queensland Court of Appeal has provided important guidance to principals, contractors and adjudicators on the strict requirements of the security of payment regime, including the strict time limit that applies to the delivery of adjudicators' decisions. The decision may have serious practical consequences for adjudicators where decisions given late can be void on the basis of being out of time and therefore without jurisdiction, and in those

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instances adjudicators will not be entitled to their fees. The decision also serves as a useful reminder to contractors to be appropriately licenced and to understand the potential payment implications for licencing issues.

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## 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.

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### 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.

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### Arbitrator's Duty of Disclosure and Apparent Bias - "Justice must be seen to be done"

1 December 2020

In its much awaited judgment in *Halliburton v Chubb*, the English Supreme Court has considered issues which go to the core of the perceived fairness and integrity of international arbitration proceedings. The issues are of such importance that five different entities intervened in the proceedings, including the LCIA, ICC and the Chartered Institute of Arbitrators.

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### 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.

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### 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.

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### 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.

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### Events

#### Upcoming

##### Day 1: EMEA Conference

13 October 2022

[DLA PIPER GLOBAL CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE CONFERENCE 2022](#)

Dubai

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##### Day 2: Americas Conference

2 November 2022

[DLA PIPER GLOBAL CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE CONFERENCE 2022](#)

New York

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##### Day 3: APAC Conference

24 November 2022

[DLA PIPER GLOBAL CONSTRUCTION, ENGINEERING AND INFRASTRUCTURE CONFERENCE 2022](#)

Webinar

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### NEWS

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#### DLA Piper secures victory for the Republic of Guinea in multi-billion euro dispute with BSGR

26 May 2022

DLA Piper has obtained a significant win for the Republic of Guinea in its multi-billion euro investment arbitration against BSGR. The arbitration concerned development rights over the world's largest iron deposit, Simandou.

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