



# 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

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### 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

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### 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

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

3 August 2020

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.

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### **COVID-19 - Time and cost claims under construction contracts in the UK**

21 May 2020

On 10 May the UK Government announced a roadmap to ease the restrictions in place as a result of coronavirus, of particular relevance to the construction industry, the Government's guidance in relation to work has changed in emphasis. This article discusses the guidance aimed at the construction industry.

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### **Coronavirus: Impact on construction in Scotland**

15 April 2020

COVID-19 guidance recently issued by the Scottish Government has had significant consequences for the construction industry, with many major sites ceasing "non-essential" works with immediate effect. However, the legal force and effect of this guidance must be considered - has the Government imposed a lawful prohibition on such works? This raises an interesting question - when is the law the law?

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## 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.

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## 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.

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## 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.

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## Dramatic change ahead for the Ontario construction industry

5 SEP 2017

It is widely anticipated that the second reading of Bill 142, also known as the *Act to amend the Construction Lien Act*, will take place this fall. If implemented, Bill 142 will represent the most significant legislative reform seen in the Ontario construction industry since 1983, when the existing *Construction Lien Act* came into force.

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