

Readjusting Risks

CMS International Construction Survey 2021

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2020

50+
senior and legal management
responses

Figure 1: Geographical areas our survey respondents operate in

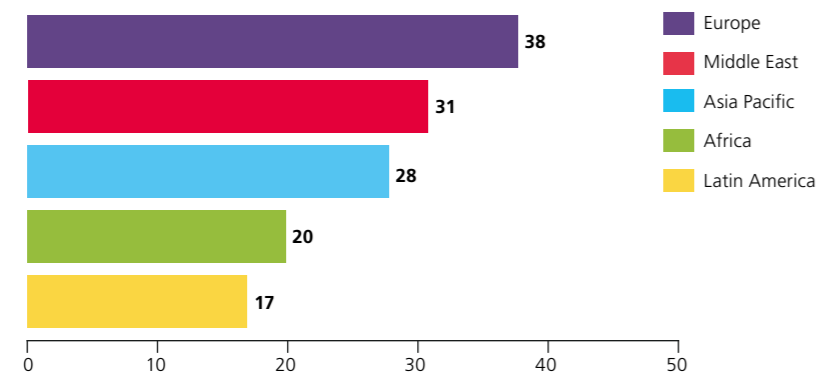
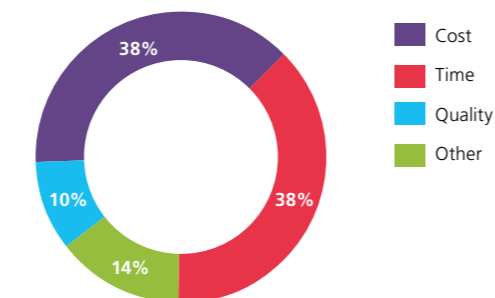
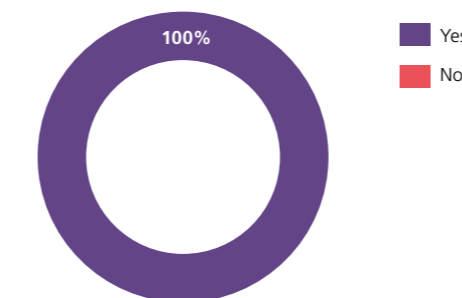


Figure 2: Factors most likely to cause conflict on projects



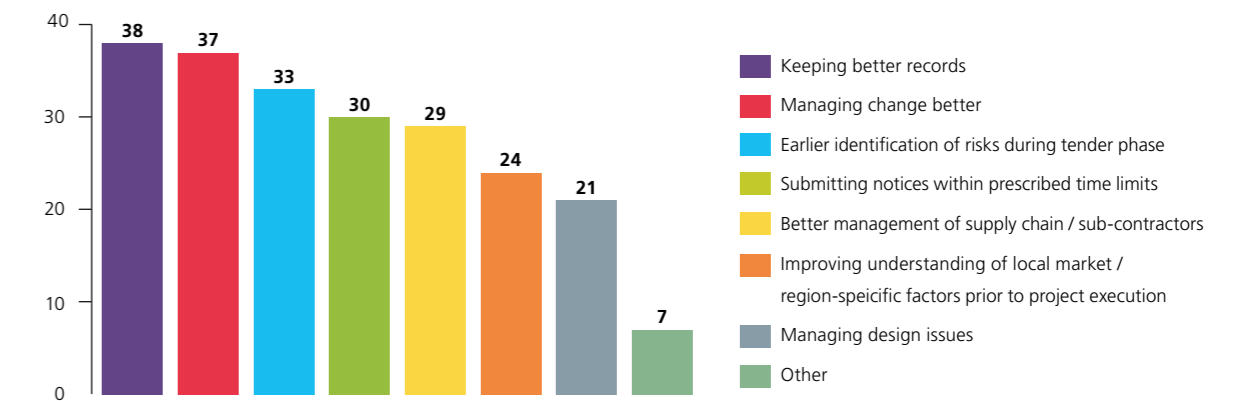
76% see 'cost' and 'time' as key risks on projects

Figure 3: Respondents who consider there to be room for improvement in how risks are managed on projects



100% consider there is room for improvement

Figure 4: Areas in which survey respondents think risk can be better managed



2021

Figure 1: Geographical areas our survey respondents operate in

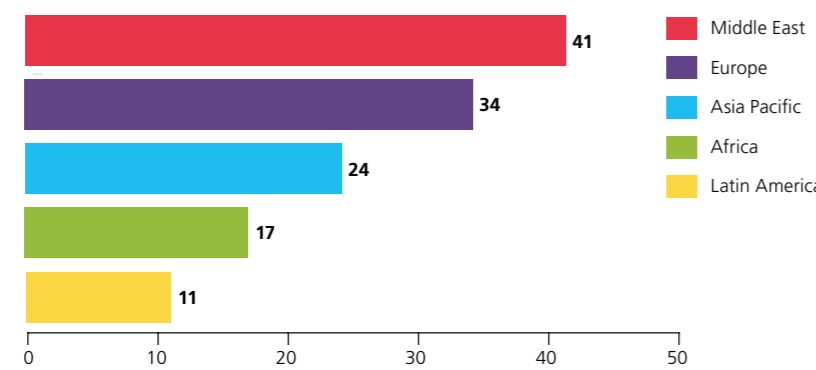
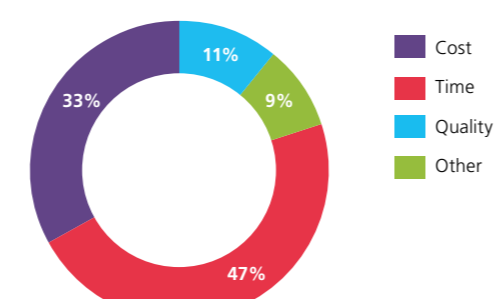
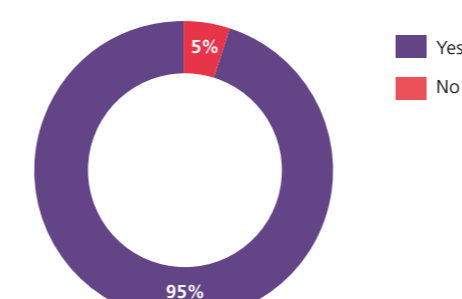


Figure 2: Factors most likely to cause conflict on projects



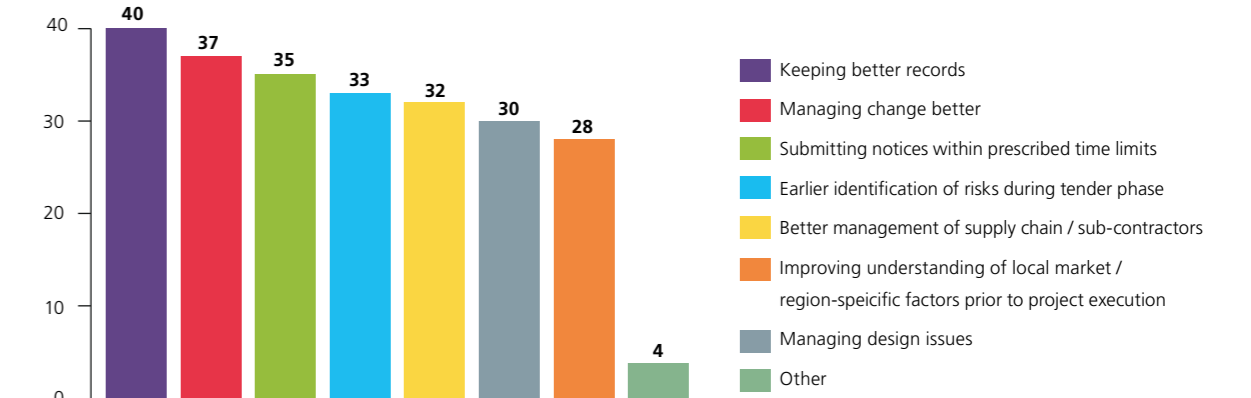
80% see 'cost' and 'time' as key risks on projects

Figure 3: Respondents who consider there to be room for improvement in how risks are managed on projects



95% consider there is room for improvement

Figure 4: Areas in which survey respondents think risk can be better managed





Key Overview

74%

agree resolving disputes separately during the course of a project results in a more successful outcome compared to 100% in 2020

76%

agree with the proposition of spending a small amount on legal advice during the course of the project can assist in achieving the early resolution of conflict points compared to 84% last year

73%

believe that keeping better records is a primary factor in managing risks during a project compared to 38% in 2020

51%

of survey respondents currently make a conscious effort to engage the internal legal/contract management team or external counsel at the outset compared to 56% last year

55%

of respondents favour mediation or other forms of alternative dispute resolution

Market views:



There are many ways for buyers to explore helping sub-contractors, including reinforcing advance payments. Nobody was really prepared for a black swan event like COVID-19.

William Zhang, Head of Legal and Contracts at Samsung C&T Corporation, Asia Pacific Regional Office



There's absolutely no question that keeping good records is fundamental. I think that the penny has dropped across the industry in recent years. It can prevent disputes from arising in the first place or at least enable you to put your best foot forward when in a full-on dispute process.

Roger Harwood, General Counsel at Bumi Armada Berhad



Record keeping is crucial in dealing with tensions and disputes, no matter how one intends to resolve those, but finding the right communication channel is key to amicable resolution. Contractors and clients should work together to form effective mechanisms to resolve disputes.

Kaan Aksu, Chief Legal Counsel (Foreign Legal Affairs) at ENKA İnşaat ve Sanayi A.Ş.

Introduction

The COVID-19 crisis is an extreme example of the many unexpected incidents that impact construction projects, resulting in heightened tensions and disputes amongst stakeholders. The pandemic has accentuated many of the typical frictions that occur in the construction industry, as well as highlight new challenges. No matter how experienced or astute the parties to a project are, when negotiating and concluding contracts, there is always the potential for an unforeseen event to cause major disruption, resulting in commercial pressures and financial losses.





Key Findings

In this deep analysis of the construction market, CMS surveyed over 50 senior members of the industry and conducted interviews with leading figures that have key responsibilities for construction contracts, projects and the resolution of disputes. The survey drew in responses from across the world, especially Europe, Middle East, Africa, Asia and Latin America.

This report showcases the primary trends in the market, from the increasing enthusiasm for arbitration as a preferred form of dispute resolution, along with mounting preferences for mediation and other forms of alternative dispute resolution (ADR), to industry-wide recognition that keeping better records and managing change more effectively are vital to minimising tensions and potential disputes.

The value in predicting and constantly addressing risks and points of tension in “real-time” during the course of a project is outlined within this report. The majority of our survey respondents now either always or often consult internal legal/contract management or external counsel at the outset of a project to identify areas of risk and put strategies in place to mitigate these.

Our survey also shows that most participants will either always or often attempt to resolve issues during the course of the project rather than dealing with them collectively at the end. A significant proportion will also invest in legal advice during the course of a project to achieve early resolution of conflict points.

Our findings confirm that time and cost continue to be the cause of conflict points and disputes, with COVID-19 causing additional strain due to lockdowns, social distancing and other restrictions on the importation of materials and the like.

Nearly all our survey respondents acknowledge that there is further room for improvement in how risks are managed during the course of a project. The highest number of survey participants identify keeping better records as an important means of managing risk. Managing change better, submitting notices within the prescribed time limit, earlier identification of risk during the tender phase and better management of the supply chain/contractors are also thought to be areas where the management of risk can be improved.



Interview – Lynette Chew

Lynette Chew

Partner, Infrastructure
Construction and Energy
(ICE) Disputes Group at
CMS, Singapore Office



What is your view on seeking legal advice during the course of a project to prevent conflict points that might lead to a large dispute or major disputes at the end of the contract?

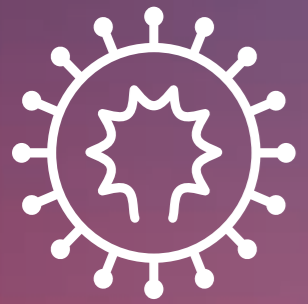
From experience, seeking legal advice at the onset of a dispute during the course of the project not only reduces the likelihood of the dispute at the end of the project, such legal advice also assists in the strategic decisions in the performance of the rest of the works under the contract, the strength of the case and thus the chances of success in a major dispute at the end of the contract. Often, when legal advice is sought only at the commencement of formal dispute, the legal team may have to navigate facts, decisions or positions taken during the project that may not be helpful to the outcome of dispute which is very time consuming and costly.

What is your view on arbitration as a form of dispute resolution? To what extent is the arbitration process more appealing to you than it used to be?

Having undertaken a recent hybrid virtual arbitration hearing with witnesses from Scotland, Spain, Dubai, Seoul and Singapore before an international Tribunal, I feel we achieved the same effectiveness as an in-person hearing with the effective use of technology and this has resulted in significant costs savings and time for parties involved. This has certainly made the arbitration process a lot more appealing than it used to be.

What other forms of dispute resolution are attractive to you and do you see newer resolution methods emerging?

In recent years, mediation is gaining ground as an effective form of dispute resolution with greater emphasis of the common interests of parties in reaching a win-win solution rather than an adjudicated outcome where either or both parties may not be totally happy with. The Singapore International Mediation Centre (SIMC) has accredited Specialist Mediators who specialises in the construction and engineering practice who are well placed to understand the complex issues of such disputes and to facilitate a settlement between parties.



Pandemic and pragmatism

Although unexpected events have always impacted construction projects, compounding the potential for full-scale disputes, the COVID-19 pandemic is an unprecedented global crisis affecting almost every single person on earth.

COVID-19 has had a tragic impact, but it has also resulted in positive changes, creating greater community and social engagement, and reinforcing Environmental, Social and Governance (ESG) principles. This is also true for the construction sector, where individual stakeholders in a project have developed deeper empathy for their business partners, particularly a recognition that contractors and sub-contractors have been hit especially hard by the events of 2020 and 2021 and that the supply chain requires support to ensure it remains in place for future projects.

Adrian Bell, co-head of the Infrastructure, Construction and Energy (ICE) Disputes Group at CMS says:

“The construction industry is pretty resilient. I think it found ways to get on with projects and find sensible ways to deal with the issues collaboratively.”

Our research indicates that industry players have become more attuned to fiscal and operational constraints of business partners, showing a greater willingness to be reasonable, such as providing advance payments where requested. Adrian Bell adds:

“I think COVID-19 has initiated a more collaborative approach. I think employers have realised that if they're too heavy handed, then the contractors will become insolvent or fall away. So it's really a question of being more pragmatic and kind of nursing projects over the line.”

Government support in most developed economies has also helped to sustain the construction sector. [Construction News](#) reported in February 2021 that UK insolvencies in the sector were at their lowest for a decade in 2020.

William Zhang, Head of Legal and Contracts, Samsung C&T Corporation, Asia Pacific Regional Office says:

“There are many ways for buyers to explore helping sub-contractors, including reinforcing advance payments. Nobody was really prepared for COVID-19.”



Tracking tension

Of course, while pragmatic responses to the effects of the COVID-19 crisis have calmed the turbulence (at least in the short term), they haven't completely hidden the points of tension in contracts and the difficulties that have percolated the industry. Delays to projects are the most obvious consequences of the lockdowns, social distancing and other restrictions that have been forced on states and governments. Our survey indicates that time is one of the primary risks for causing tension or a dispute in a construction project.

Some 47% of respondents identify time as the key risk, compared with only 38% in 2020. This is logical given the unique challenges the industry is facing during the crisis. Cost appears to be slightly less of a concern in 2021 than in 2020, with a 5% fall in respondents identifying this as a principal concern, almost certainly because time is now of higher importance. Further research has highlighted the importance of communication and understanding the counterparty, with interviewees pointing to the greater need to align expectations during this unique period.





Pre-empting conflict

Over the last decade, there have been increasing efforts within the industry to address potential points of conflict before or as they arise. This is largely thought to be more prudent than allowing tensions to escalate or to address multiple areas of dispute at the end of the contract. Consolidating disputes and addressing them later in the process is often more time consuming, emotionally charged and expensive than addressing each issue consecutively.

COVID-19 has of course become a complicating factor, with employers and their counterparts often adopting a 'wait and see' mentality in the hope that economic, political and regulatory uncertainty will diminish as the situation evolves.

Despite this, 74% of our survey respondents indicated that they would always or often seek to resolve issues separately during the course of a project. This is only slightly lower than the 76% of survey participants that provided the same answer in 2020.

Equally, our respondents are clear that engaging the internal legal or contract management team, along with external counsel, at the outset of a project, is shrewd in addressing areas of risk and to have the necessary strategies in place. This is especially true during the COVID-19 pandemic as contract management teams have become stretched in dealing with the sheer number of raised notices. New government policies and changes in the regulatory landscape have further accentuated the importance of obtaining internal and external guidance on contract terms and potential areas of risk.

A large 51% of survey respondents will often or always consult the internal legal/contract management team or external counsel at the outset of the project to identify areas of risk and put in place strategies to manage them. This is only slightly down on the 56% figure in the 2020 survey and must be explained by the uncertainty and 'wait and see' approach caused by the COVID-19 crisis. Another 40% of survey participants will sometimes take this approach, with the remaining 9% never taking this approach.

As the project progresses, our survey respondents also believe in spending small amounts on legal advice to ensure that it progresses as smoothly as possible. Our data shows that responses are in line with 2020. Out of 55 responses, 42 were in favour of the approach, only three disagreed, while another 10 believed that it was appropriate in some or most circumstances.



Interview – Kaan Aksu

Kaan Aksu

Chief Legal Counsel
(Foreign Legal Affairs) at
ENKA İnşaat ve Sanayi A.Ş



What effect has the COVID-19 pandemic had on the construction industry, particularly in relation to contractual tensions and disputes?

Restrictions on travel (including the issuance of visas) and interruptions in supply chains led to delays in many of our projects. I believe all international contractors faced similar difficulties over the past year.

Proving the existence of a force majeure event can sometimes be challenging, but that was not the case with COVID-19. However, it is always a big hurdle to quantify and agree on the impact of these events. Recoverability of additional costs is one of the common dispute areas.

How important has better communication between construction project stakeholders been in light of the difficulties created by the pandemic?

We had to monitor our construction projects closely to make sure that we issued timely written notifications to our clients and with the right content to preserve our rights under the respective contracts. We had to increase the number of virtual meetings as some of the personnel could not travel to the site. We could not meet with the other stakeholders as regularly as we did, which delayed resolution of some of the problems.

What kind of pressure has the COVID-19 crisis put on contract management and how have you responded to this in terms of seeking external/additional help, including legal advice?

We created notification templates for each of our projects taking into account the relevant provisions of their respective contracts and issued guidelines to the executive management for proper record keeping. I believe we managed to get things under control with the help of our in-house teams, with a few exceptions where local law advice was helpful in identifying our exact entitlements.



Interview – Kaan Aksu

In dealing with contract tensions and potential disputes, how can the industry improve?

Record keeping is crucial in dealing with tensions and disputes, no matter how one intends to resolve those, but finding the right communication channel is key to amicable resolution. Contractors and clients should work together to form effective mechanisms to resolve disputes. I find the most effective way to achieve this is to have a layered approach in dispute resolution clauses, where the parties to the dispute try to resolve it at the working level, and if that is not possible, at a management board level formed by the project executives and then at the senior management level. Assuming that both parties will act prudently, this layered approach will allow the parties to crystallise the dispute and then the parties will then be able to make an informed decision about whether they would want to further escalate the dispute.

What is your view on addressing points of contract tension or dispute during the course of a project, or dealing with them towards the end or at the end? How has this approach been affected by COVID-19 factors?

My view depends on several considerations such as the requirements of the relevant contract, the overall attitude of the client and the magnitude of the dispute. Some forms of contracts encourage parties to resolve their disputes as they arise by introducing hard deadlines and by forcing the parties to exchange documentation before the expiry of that deadline. This is not always helpful, as the impact of an excusable event may not always be quantified at once and the parties may need flexibility to assess the situation before making a big fuss. On the other end of the spectrum, there are clients who do not wish to be bothered by notifications at all, and this may lead to piling up of all claims towards the end of

a project and a major dispute. There is no catch-all approach when it comes to dealing with disputes and one should carefully consider the facts and find the best method in each case.

What is your preferred means of dispute resolution?

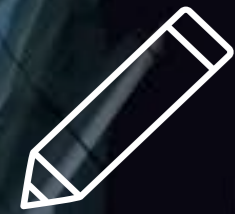
Arbitration, which provides us with a final and binding award, remains our choice. Based on which country we are operating in, or which client we are dealing with, we make an assessment about the enforceability of arbitral awards and we try to select the most appropriate forum for that particular case.

I am not convinced that dispute boards or mediation are effective ways of resolving a complex dispute under a major construction contract, unless the parties knowingly make the choice to resort to these options at the time when the dispute has already

arisen. It is not possible to know beforehand what kind of dispute may arise under a contract and having these alternative methods as mandatory steps in a dispute resolution process can potentially result in waste of time, effort and money.

What is your view on arbitration as a form of dispute resolution? To what extent is the arbitration process more appealing to you than it used to be?

I don't think there is any real alternative to arbitration for resolution of major construction disputes. Yes, it is costly, difficult to deal with and we avoid it as best as we can, but it also gives comfort to us to know that we can fully particularise and present our claims in an arbitration, and our case would be heard and understood by a tribunal, which consists of experienced persons, specialised in their fields.



Making improvements

Nearly all our survey respondents believe that improvements can be made to how risks are managed during the course of projects. Survey participants refer to a variety of key areas where these can be made, with keeping better records, managing change better and submitting notices within prescribed time limits viewed as the most effective methods.

A considerable 73% believe that keeping better records is a primary factor in managing risks during a project. This was consistently raised in our research, given its importance in resolving disputes whether through informal negotiations or more formal proceedings. *"For me, keeping better records is becoming even more important than ever, because arbitral tribunals are becoming much less interested in witness evidence,"* comments

Adrian Bell, Co-head of the Infrastructure, Construction and Energy (ICE) Disputes Group. *"They are much more keen to see what the parties were saying at the time that these issues were arising and the contemporaneous documentation. So if you're putting together a robust case, either to pursue or defend an arbitration, it really is going to succeed or not on the strength of the contemporaneous documents. It's always been important, but it's probably more so than ever."*

"There's absolutely no question that keeping good records is fundamental. I think that the penny has dropped across the industry in recent years. It can prevent disputes from arising in the first place or at least enable you to put your best foot forward when in a full-on dispute process." Roger Harwood, General Counsel at Bumi Armada Berhad.

Additionally, respondents also single out a range of other primary factors such as earlier indication of risks during the tender phase, better management of the supply chain/sub-contractors, and improving the understanding of the local market and region-specific factors prior to project execution.



Interview – Roger Harwood

Roger Harwood
General Counsel at
Bumi Armada Berhad



What effect has the COVID-19 pandemic had on the construction industry, particularly in relation contractual tensions and disputes?

Inevitably, it has led to some tensions and disputes (or potential disputes) arising as a result of delays to work and schedule. That in turn has resulted in a broad range of legal and contractual issues to manage and related risks to mitigate, from the likes of force majeure, liquidated damages and health and safety (for example the implementation and management of quarantine procedures for our large offshore workforce). It has impacted the entire supply chain, from the client down to all tiers of sub-contractors.

How important has better communication between construction project stakeholders been in light of the difficulties created by the pandemic?

Good communication has always been critical. Firstly in terms of developing a successful and

effective relationship with your counterparty, whether it's the client or your sub-contractor. And secondly, in terms of managing legal risk, where accurate information and understanding is key. It is interesting that communication has in some ways been made easier as a result of the pandemic, just by virtue of the ease and frequency with which we now have virtual meetings irrespective of where in the world we happen to be. That of course doesn't replace the benefit of having a meeting in person on occasion and it will be good to get back to having the ability to do that again, hopefully sooner rather than later.

What kind of pressure has the COVID-19 crisis put on contract management and how have you responded to this in terms of seeking external/additional help, including legal advice?

It has meant being extra alert to potential issues, being ahead of the game and anticipating what might be around the corner. And to that extent

seeking expert advice in certain cases has been useful. What I'm looking for are initial thoughts on the merits of our position, what the level of risk is, and what potential mitigations can be put in place to manage those risks. It helps me as general counsel to strategise in terms of what a good outcome might look like. This allows me to clearly articulate the level of risk and a plan of action to my management and board.

What additional value do you get from external legal advisers in these situations?

The value comes from dealing with someone who is well experienced in your particular sector, who knows the business and knows the players. It's having access to someone that can advise on the legal position, but who also understands the environment in which we're working and therefore can be commercial and work together with me in developing a realistic strategy and approach.



Interview – Roger Harwood

In dealing with contract tensions and potential disputes, how can the industry improve?

There's absolutely no question that keeping good records is fundamental. I think that penny has dropped across the industry in recent years. It can prevent disputes from arising in the first place or at least enable you to put your best foot forward when in a full-on dispute process. There's really no excuse today for not having a robust contract management system in place given recent advancements in technology and the plethora of IT products on the market. We have ourselves recently invested in and implemented an AI contract management solution.

What is your view on addressing points of contract tension or dispute during the course of a project, or dealing with them towards or at the end? How has this approach been affected by COVID-19 factors?

Dealing with things at the end of the contract may have worked back in the day when things were done

on a handshake. But volatility in oil prices over the years in particular have made things inevitably more litigious, right across the supply chain. I'd be surprised if there were many companies left that were willing to leave material legal or commercial issues to be resolved at the end of a project. It's a significant risk to take.

What is your view on seeking legal advice during the course of a project to prevent conflict points that might lead to a large dispute or major disputes at the end of the contract?

We use a range of external counsel on different matters based on their particular experience and depending on the type and governing law of the contract and where it is being performed. My approach is very much to instruct individuals based on their particular expertise. Throughout the course of a project, it can be very useful to have someone on the end of the phone with the right experience and commercial approach to act as a sounding board.

What is your view on arbitration as a form of dispute resolution? To what extent is the arbitration process more appealing to you than it used to be?

Arbitration continues to be a meaningful option depending on the nature of the contract and other variables. With some arbitration venues now offering expedited hearings or interim awards, it is arguably becoming even more of a preferred dispute resolution solution.

What other forms of dispute resolution are attractive to you and do you see newer resolution methods emerging?

There's definitely a place for alternative dispute resolution, again depending on the nature of the dispute. I have for example used expert determination in the past to bring about an early resolution of a dispute. It can be particularly effective when parties are prepared to take a step back and look at things more commercially.



Preferred dispute resolution methods

When it becomes clear that an early-stage resolution of a dispute is no longer feasible and cases need to be addressed through formal channels, a sizeable majority of our survey respondents single out arbitration as the most appropriate form of dispute resolution. While our research shows that mediation can also be effective when parties want to reach a 'commercial' or pragmatic solution, arbitration remains the most effective method when undertaking more formal proceedings.

Although arbitration has suffered from a perception that it is a long and expensive process, the main arbitration institutions have worked hard in recent years to make it more attractive to end users. These institutions are becoming more innovative, offering expedited proceedings, the availability of emergency arbitrators, and the ability to secure arbitral awards even faster. Market data supports this, with The Singapore International Arbitration Centre (SIAC) reporting a record 1,080 new case filings in 2020, more than double the figure for 2019.

Adrian Bell, Co-head of the Infrastructure, Construction and Energy (ICE) Disputes Group, believes that it is not just SIAC that is making arbitration even more appealing: *"Many of the key institutions have come up with expedited arbitration processes, a shorter form process that enables the parties to have a decision or award much quicker, at the expense of either streamlining or removing completely some of the traditional steps you would have in arbitration like witness statements, document production and other aspects. It is much easier to tailor the process to your needs."*





Interview – William Zhang

William Zhang

Head of Legal and
Contracts at Samsung
C&T Corporation, Asia
Pacific Regional Office



What effect has the COVID-19 pandemic had on the construction industry, particularly in relation contractual tensions and disputes?

I think the COVID-19 pandemic is really impacting cash flow and this often translates into contractual disputes, claims for additional payments and so on. We're seeing more and more disputes and difficulties, especially for smaller setups. So we do know that sub-contractors are suffering and sometimes you can only do so much as a collaborative partner to avoid matters escalating into contractual disputes and commercial disputes.

How important has better communication between construction project stakeholders been in light of the difficulties created by the pandemic?

Yes, we have found ourselves communicating more with sub-contractors, clients and consultants. There are many ways for buyers to explore helping sub-contractors, including reinforcing advance payments. Nobody was really prepared for a black swan event

like COVID-19. In Singapore, we had an outbreak in the first half of 2020 in the dormitories for construction sector migrant workers, so suddenly the sector as a whole is starved of manpower. So there had to be more dialogue and more checking in with our partners to see how they were doing.

What kind of pressure has the COVID-19 crisis put on contract management and how have you responded to this in terms of seeking external/additional help, including legal advice?

We've required assistance on more than just contract management. Governments are rolling out fiscal schemes and safe workplace measures to restart and keep construction businesses going, and it is an evolving situation. So we find it challenging to keep pace with these new measures. Conventional construction is becoming more of a regulated activity. So we also get external legal advice on how this impacts us. I would say that legal spend has definitely increased for regulatory compliance and contractual consultations.

How can the industry improve after COVID-19?

I think the pandemic has given us a new impetus, because the industry really hasn't incorporated technology into the construction process. When manpower was suddenly taken away, you really start to look at these issues. What can we do with less people? Can we be a little leaner, as an operation? I think now we have to be more critical about how we design the world in which we work.

Basically, we're looking at how we're doing the work and whether we can find better ways to secure productivity, and technology can definitely help there. For example, using technology to track people's movements and use it as a substitute for paper records, a contactless kind of technology.



Interview – William Zhang

What is your view on addressing points of contract tension or dispute during the course of a project, or dealing with them towards or at the end?

I think it is an accurate observation that in the past, pre-COVID-19, disputes tended to get shifted to the conclusion of a contract. We now see a change, as I said, having more dialogue and more conversations amongst the stakeholders early. I guess it's a natural response to the pandemic, because for clients, they want to make sure their contractors are able to deliver on the projects with safety, quality and timeliness.

And we want our sub-contractors to do the same and survive this situation. So we do check in on each other. The challenges are shared burdens, and I would say it is about bringing people closer.

What is your view on seeking legal advice during the course of a project to prevent conflict points that might lead to a large dispute or disputes at the end of the contract?

By and large, I think disputes are always going to be there. They do build up. I have noticed that usually there's a breakdown in the relationship, in terms of the people involved in the project. Then you'll find that you have to bring in some external legal advisers and expert consultants to try to deal with the problem. In my own personal experience, I prefer it if the sub-contractors involve legal advisers, because the legal professionals can offer an objective and balanced view to a dispute. That leads to constructive dialogue on relevant issues rather than parties being entrenched in subjective one-sided positions. It will promote conflict resolution.

What is your preferred means of dispute resolution?

I think arbitration is the preferred way of resolving major disputes. Mediation is appropriate only in certain circumstances. You need the parties to be flexible enough to think about compromising for mediation to work, but for major disputes I think mediation has limited use. There's also adjudication, that's always there. It's a fast-track process, but it's a kind of rough and ready justice and usually not satisfactory.

What is your view on arbitration as a form of dispute resolution?

I think it's getting more popular. I think Singapore saw a record number of cases in arbitrations here last year and that's not surprising at all. I think there's a concern about ongoing costs, but I think that you're still paying for value, especially if you have a pool of very experienced arbitrators like we have here in Singapore. With good rules, consistent application of the rule of law and legal principles, I think it is still the preferred dispute resolution method.

I do see efforts by institutions like SIAC to keep updating their rules. Even in a pandemic, you can see all the major institutions like ICC and SIAC, they update their rules for virtual hearings. I think Seoul has a protocol for fully virtual hearings. I would measure how responsive arbitration institutions are to its users, by how often it updates its rules. I think SIAC is leading in that with the most recent changes to allow the review of emergency arbitration awards.



Conclusion

The construction sector has a reputation for being tense and fractious, given the tight financial margins that many parties operate under, coupled with the many events that cannot be anticipated. The COVID-19 crisis is one such example, and it has further highlighted the need to prepare for and constantly address risk, to deal with tensions and disputes promptly, and to select the most appropriate processes for this to happen.

The pandemic, though, has also shown the industry's willingness to be pragmatic and considerate to the exceptional pressures that project counterparties and other stakeholders have faced.

With society in general developing a greater alertness and compassion towards those especially affected by the COVID-19 outbreak, these sentiments are also evident in the construction industry. A spirit of commercialism and pragmatism has filtered into the sector, although this does not mean that construction players are simply willing to stand back and not assert their rights under existing contractual arrangements. Time will also tell whether this pragmatism is here to last or whether the issues that the parties are dealing with commercially now will be the arbitrations of the future.

Nearly all those surveyed and interviewed said the industry could still do more to manage risks, notably by keeping better records, by managing change more effectively and by submitting notices within prescribed time limits, among other factors.

At the same time, the mechanisms for resolving disputes are constantly evolving. Our report shows that mediation and other forms of ADR have a real place in the market, and that arbitration is still gaining popularity thanks to efforts to expedite arbitral proceedings and make them less expensive. Like the rest of the economy where COVID-19 has supercharged certain industries and transformed working practices, it has accelerated change within the construction industry. The sector is certainly suffering from the pandemic, but it is responding positively.



About us

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