

Introduction to Construction Arbitration

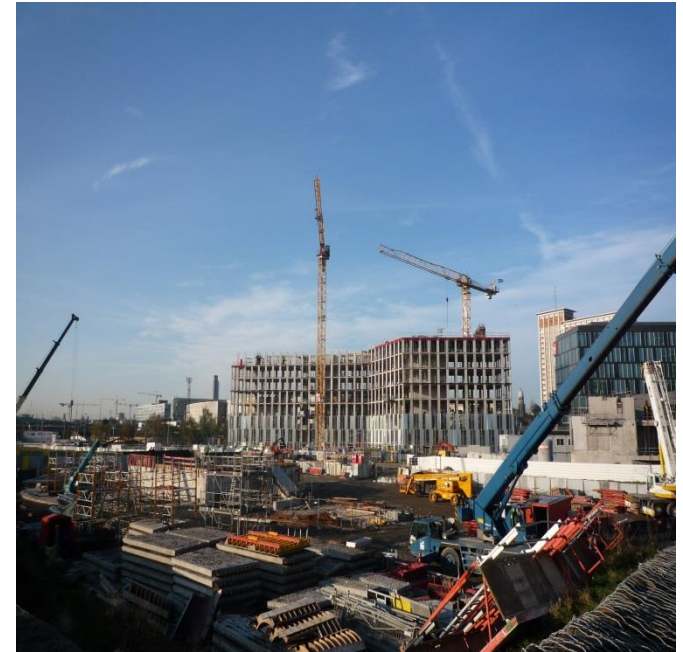
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Overview:

- I. How are construction projects organised?
- II. What are the typical issues and disputes?
- III. Is construction arbitration any different to arbitration in other sectors?



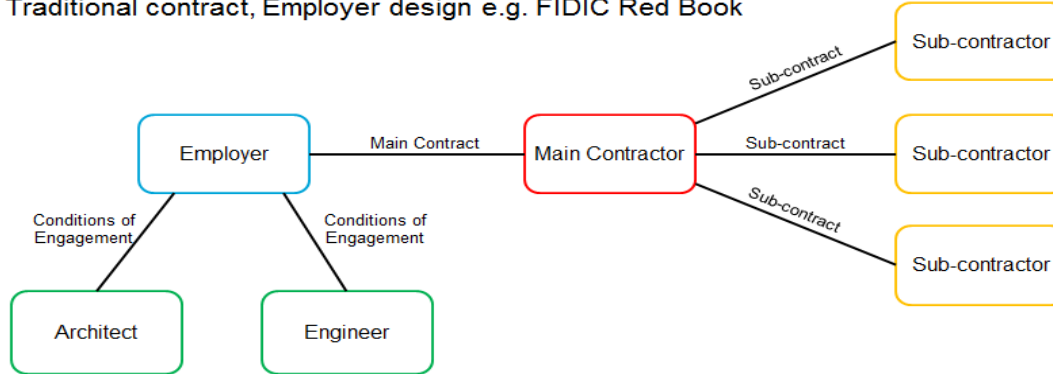
How are construction projects organised?

I. Parties

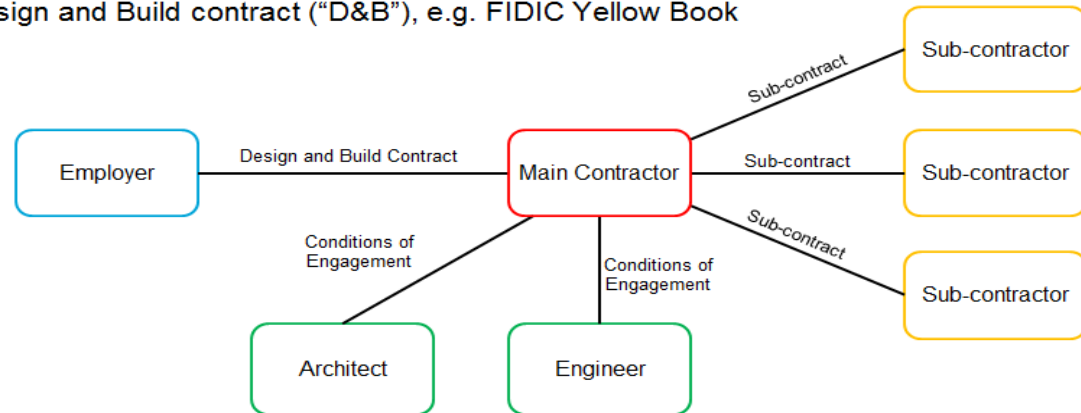
- ❑ Employer / owner
- ❑ Contractor / main contractor
- ❑ Subcontractors
- ❑ Contract administrator
- ❑ Consultants
- ❑ Funders and insurers

I. Parties (continued)

- Traditional contract, Employer design e.g. FIDIC Red Book



- Design and Build contract ("D&B"), e.g. FIDIC Yellow Book



II. FIDIC forms

Fédération Internationale Des Ingénieurs-Conseils (FIDIC):

- ❑ Widely used international standard forms of contract. Recommended for general use where tenders are invited on an international basis.
- ❑ Emphasis on dispute avoidance: Dispute Avoidance / Adjudication Boards (DABs / DAABs) and Amicable settlement.
- ❑ General Conditions contain an ICC arbitration clause.

What are the typical issues and disputes?

III. Typical Disputes

International construction disputes:

- ❑ Often concern **complex engineering projects** (e.g. hydro-power, nuclear power, airports, new cities) and technical engineering issues.
- ❑ **Significant sums of money.**
- ❑ Projects can be in **hostile local environments** - political tensions, conflicts zones and climatic difficulties can have an impact on contract execution.

III. Typical Disputes (continued)

- ❑ Employer / contractor
- ❑ Contractor / sub-contractor
- ❑ Employer / consultant

IV. Substance of Disputes (continued)

What are the disputes about?

- ❑ **Time** (liquidated damages, extensions of time)
- ❑ **Money** (additional payment for variations, delay, disruption)
- ❑ **Quality / Defects**



Is construction arbitration any different to arbitration in other sectors?

V. International construction arbitration

- ❑ Multiple parties / multiple contracts.
- ❑ Multi-tiered dispute resolution clauses - e.g. DAAB, amicable settlement.
Emphasis on dispute avoidance; therefore, disputes usually bitterly fought if they proceed to arbitration.
- ❑ Number of experts - technical project documents. Typically expert delay and quantum analysis.
- ❑ The tribunal - technical disputes, smaller pool of arbitrators who have the requisite experience. Engineers also act as tribunal members.

V. International construction arbitration

(continued)

- ❑ **Document heavy** – contemporaneous evidence can be voluminous.
- ❑ **Lengthy pleadings** – claims and sub-claims, particularly with respect to extension of time and Variation claims.
- ❑ **Lengthy proceedings** – sometimes spanning several years.
- ❑ **Multiple arbitrations** – projects are often split into several works packages.
Can be several arbitrations in respect of the same project.

Conclusions

- ❑ Almost all construction and engineering disputes concern time, cost and/or quality, which, collectively, underpin performance on any project.
- ❑ These disputes trigger specific considerations that may not be relevant in other commercial arbitrations, such as difficulties in isolating the chain of causation for specific heads of claim, technically complex factual scenarios and the types and volume of contemporaneous documents.

Thank you

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Rebecca is an associate in White & Case's Construction and Engineering Group and is based in London.

Rebecca advises owners and contractors on contentious international construction and engineering projects across a variety of industries, including oil and gas (exploration, drilling, processing (e.g. construction of refineries) and distribution), hydropower and solar thermal energy.

Rebecca is experienced in international arbitration and in alternative methods of dispute resolution. Her experience includes acting for clients in complex arbitrations under a variety of institutional rules, including ICC, LCIA and VIAC.