

Holman Fenwick Willan CONSTRUCTION CAPABILITY

WHY CHOOSE HFW FOR YOUR NEEDS IN CONSTRUCTION?

HFW's construction law team is one of the largest specialist international groups in the market. The partners in the team are amongst the most highly respected lawyers in this field with enormous experience of both procurement and disputes.

What we do

Our approach is to provide a 'cradle to grave' construction service advising on all aspects of the process, including procurement, risk assessment and management during the project. We also help resolve disputes if they arise. We act for a wide range of clients, including contractors, owners, operators, consultants, funders and insurers. We have worked on some of the largest and most technically complex projects in the world, in relation to a wide range of industries, in particular in the energy and infrastructure fields.

Our position is highly regarded by the independent directories that periodically review the legal market. For example, Chambers & Partners Directory 2012 states that *"The team is praised by market sources for its superb business acumen"* and its *"ability to link sophisticated scientific or engineering facts to the respective legal framework with lightning speed"*. The partners are recognised as experts in construction law and are the authors of the leading book on project change, Construction Contract Variations.

The team spans the globe, with particular hubs in London, Dubai, Hong Kong, Melbourne and Sydney; albeit we are able to resource projects from any of HFW's 13 international offices.

Procurement

We provide a full advice service on all aspects of procurement. This involves not only drafting and negotiating contracts, but also advising on all the associated commercial risks. So, for example, we advise our clients on how to mitigate or transfer the risks they take under a contract; such as by way of security documents or third party guarantees.

Our lawyers provide strategic advice on the procurement method to be adopted. This can involve discussing with the client such choices in relation to, for example, design and build risk, or target/guaranteed maximum price contracts. Our team can help ensure that the most appropriate and efficient risk allocation and procurement strategy is adopted for your project. HFW is also able to provide advice on project and concession agreements, project finance and associated commercial arrangements, such as off-take agreements.

We can advise on your company's tendering procedures, in order to ensure that they comply with the relevant legislation, whether this be public procurement rules or anti-corruption legislation. In conjunction with HFW's specialist competition lawyers, we act on behalf of parties concerned about whether tendering procedures have been followed, including where they are seeking to overturn a contract award.

We have considerable experience in drafting and negotiating the full range of construction contracts including all the commonly used standard forms. We have advised on all

the usual options, including traditional construction-only contracts, design and build, EPC and turnkey contracts, EPCM contracts, construction management, target price/guaranteed maximum price contracts, alliance contracts, and DBFO. We also prepare ancillary contract documentation including performance bonds, guarantees, undertakings, collateral warranties and letters of intent.

We also advise on the insurance requirements for projects. This includes advising on the coverage required as well as policy wordings and the negotiation of terms and conditions to ensure that contractual obligations and risks are catered for in the project insurance policies to minimise exposure.

Live project advice

A considerable amount of our work involves advising employers and contractors during the course of a project. Construction contracts are complex agreements and the profitability of a project will often be heavily dependent upon how it is managed. Whilst the contract will provide that the contractor has a right to additional money and time as a result of changes to the scope or unexpected site conditions, establishing entitlement will often not be straightforward.

The process of establishing which contract provision gives a right to compensation on the occurrence of a particular event will often be complex. It may be necessary to, not only serve notices, but also to ensure that adequate particulars are provided, in the form stipulated by the contract, in order to establish entitlement. We not only advise contractors, but also employers, on such issues relating to the operation of contracts and the entitlement to additional money and time that may arise.

For particular high value or problem projects we are able to second lawyers to our client, for a period of time, so as to provide practical legal support to the project team on the ground. This project monitoring service invariably proves to be a cost effective solution which pays for itself in terms of the overall financial outcome for a client.

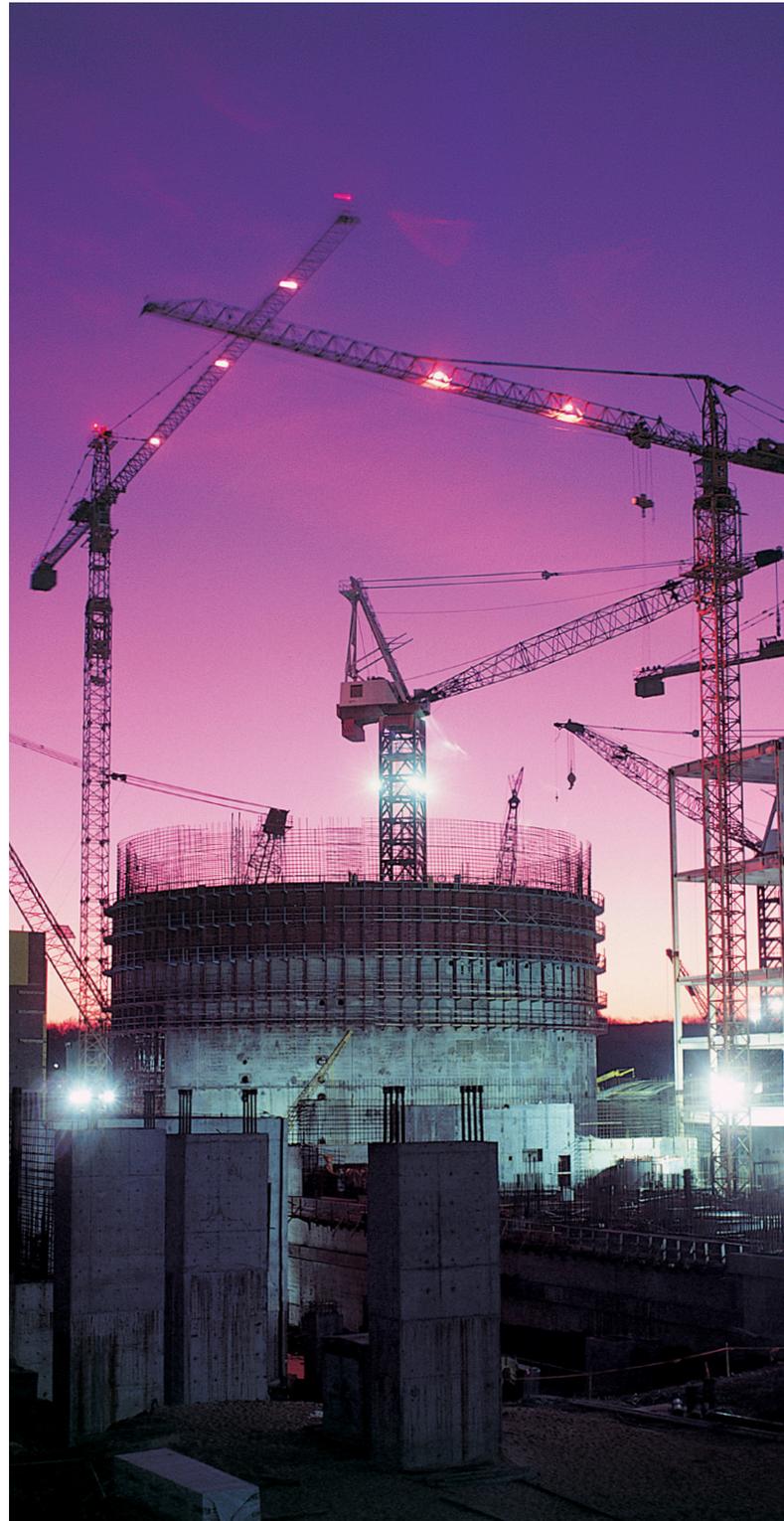
We are also often asked to advise clients as to whether they should continue working on a project or whether they should terminate the contract. This can be an issue for both parties to a contract, whether in terms of the contractor abandoning the project or the employer wanting to switch contractor. In either case, careful consideration of the legal implications is required.

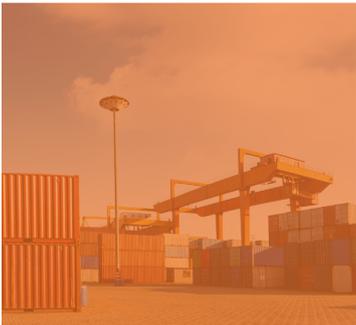
Dispute resolution

The construction process, by its very nature, can be contentious. Our work can involve, on the one hand, providing specific advice on particular limited points in dispute or, at the other extreme, providing an entire team to run a large claim. Ideally, we like to get involved in the early stages of a dispute, before positions have become entrenched. This will often allow us to help in the crucial early stages when a negotiated and cost effective settlement can often be more easily achieved, perhaps with the use of an ADR process such as mediation. We also run cases through formal contentious dispute procedures, such as adjudication, DAB, litigation or arbitration. We have considerable experience of running very heavy-weight cases, involving not only large sums of money, but also encompassing complex factual and technical issues.

We have acted on cases involving the entire range of substantive issues, including delay, disruption, variations, defects, termination and accidental loss.

In conjunction with our specialist insurance group, we act on claims arising out of professional negligence, or loss or damage caused by insured events. We have considerable experience of acting for both employers and contractors on claims concerning the coverage provided by insurance policies.





Experience

Our industry experience spans the whole range of major projects. Below is a list of representative projects and cases on which we have acted. We can, on request, provide more in-depth information as to our experience in any particular area of work.

- **Rail:** We have advised on a variety of rail, metro and tram projects around the globe. Our work has involved station redevelopments, track construction, as well as rolling stock. Recent experience includes procurement advice in relation to a £750 million European rail electrification project and disputes associated with a major project in Western Australia. We have also worked on metro schemes in the Middle East, MTRC projects in Hong Kong and tram projects in the UK.
- **Bridges:** We have acted for clients in relation to a number of long span bridge projects throughout the world, including in India, Hong Kong and Brunei. We have recently been involved in acting for a contractor on a US\$200 million arbitration in relation to a high profile scheme where the disputes concerned variations, delay and disruption.
- **Tunnelling:** We have advised clients on procurement issues and disputes in relation to a number of tunnelling projects in both Europe and South East Asia. These have included claims associated with unforeseen ground conditions and major tunnel collapses, as well as issues concerning the procurement and operation of tunnel boring machines.
- **Roads:** We have advised on the construction of a number of substantial road projects, in various parts of the world including Europe, West Africa, the Middle East and Asia. For example, we recently acted on a project in a Gulf state for an international contractor bringing delay and disruption claims in excess of US\$300 million.
- **Oil and gas:** Our work in this sector includes recent advice in relation to a 'state of the art' floating LNG production facility with a project value in excess of US\$2 billion. We have acted on a number of contractual oil and gas construction disputes including a £25 million delay, disruption and variations claim in relation to the construction of a FPSO.
- **Power plants:** We have extensive experience of advising on both procurement and disputes in connection with a variety of power plant projects, in particular in the Middle East, Asia, Australia and Europe. For example, we acted for an EPC contractor working on a combined cycle power plant in Oman where a US\$60 million claim was brought in an ICC arbitration. We have also worked on waste to energy facilities, including a £50 million UK adjudication relating to plant failures and performance shortfalls.
- **Offshore wind farms:** We have advised in relation to over half the wind farms constructed off the shores of the UK, including the world's largest offshore wind project. This work has involved us in advising in relation to both contract negotiation and also in relation to disputes, including one where the sum in dispute amounted to €200 million.

- **Hydroelectric schemes:** We recently acted for a contractor in relation to a £200 million dispute concerning a failure at a major hydroelectric scheme.
- **Nuclear:** We recently acted for a major EPC contractor, advising on the turnkey contracts for the construction of a 1,200MW reactor in Europe.
- **Industrial and process plant:** Our work includes acting for both owners and contractors in relation to a wide range of industrial plant such as gas production facilities, crushing plants and food manufacturing facilities. For example, we acted for a large international contractor in relation to a £10 million dispute concerning delays to the construction of a cement plant in Nigeria.
- **Water facilities:** We have worked on a number of projects for desalination and water treatment plants in the Middle East, the Philippines, Hong Kong and Europe. For example, we have recently advised in connection with a major claim for unforeseen ground conditions and delay in connection with the construction of a water treatment plant in Manila.
- **Airports:** We have acted in relation to the construction and maintenance of a number of airport and aerodrome facilities, advising on contractual issues concerning runway renewal and the construction of new terminal facilities. Our work in this area has included major airport development projects in the UK, Hong Kong and Africa.
- **Ports and terminals:** As one of the world's leading shipping law firms HFW acts for many port operators. We have one of the largest teams specialising in the development and operation of national and international ports and terminals. One recent highlight involved us advising a soft commodity company for a suite of contracts for a port facility in Australia.
- **Retail and leisure:** We have acted on a number of large development projects. For example, we recently advised on a major new leisure development in eastern Europe with a US\$1 billion project value.
- **Dredging and land reclamation:** The firm has not only acted for clients undertaking dredging as part of port development work but has also worked on land reclamation schemes, including a number of high profile projects in the Middle East as part of high end residential developments.
- **City developments:** We acted for a major international contractor on a multi-billion Middle East project involving the construction of a small town, designed to house approximately 20,000 people. The project involved not only the construction of residential space but also all the associated infrastructure, power and water facilities. Delays and changes led to the contractor bringing a complex claim for over €400 million.
- **Sports facilities:** We have acted for clients in relation to a number of high profile sports stadia and facilities. For example, we advised at the procurement stage in relation to one of the largest of the London 2012 Olympics projects.
- **Iconic and historic buildings:** We have worked on a number of high profile design-led developments, such as museum projects and the refurbishment of historic buildings. We recently worked for a heritage institution in relation to issues arising from the refurbishment of a historic castle which was the winner of a very prestigious architecture prize.
- **Hospitals:** The team has acted in relation to the construction of a range of medical facilities, for both contractors and hospital authorities. For example, we acted for an employer in relation to disputes concerning defects in the construction of a 1000 bed general hospital in the UK.
- **Office developments:** Our experience involves not only major one-off projects, but also advising major corporate occupiers on their suites of construction contracts for the procurement of development and refurbishment work for their international office portfolios.





Training

In our experience, organisations are increasingly focused on the need to ensure that their staff are fully equipped to deal with the challenging commercial environment in which they work. We therefore regularly provide training to our clients to ensure that their staff are up to date with important legal and contractual issues. Such training can involve presentations, or more informal workshops based around case studies which allow people to discuss the problems they are experiencing on current projects.

We maintain a list of training subjects, which includes specific types of contract, substantive issues such as delay and variations, as well as risk avoidance and dispute resolution. We are also sometimes asked to give presentations that are structured around the particular area of business a client is involved in, such as ports and terminals, oil and gas or offshore construction.

We organise regular seminars and conferences, to which we invite all our clients and industry contacts. Our quarterly Bulletin, containing topical articles on construction contracts and law, also provides an informative regular update.

Please contact anyone in our team for further information on any of our seminars, or to be added to our mailing list for events and publications.



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