Hogan Lovells

Construction and Engineering Global Review 2025

Contents

Introduction

Welcome to our Construction and Engineering Global Review 2025.

We hope that you find time as the new year begins to review 2025's most important construction and engineering legal and industry highlights from key jurisdictions around the world and think about the ways that they might affect how you and your commercial and in-house legal teams do business, whether you are involved with procurement, negotiating and drafting contracts, managing live projects day-to-day, or dealing with claims and disputes.

We've made the Review as accessible and digestible as possible by focusing on the issues that really matter to your business, covering each jurisdiction in just a few pages.

Please get in touch if you would like help incorporating any of these developments into the way you work. At the end of this Review, you will find the contact details of our global team of construction and engineering transactional, dispute resolution, and regulatory lawyers, listed alphabetically by region, then office location.

You may also wish to catch up on articles on our website that we've published this year that are relevant wherever your construction and engineering projects are located, such as on **managing delay and disruption claims arising out of extreme weather events**, **the use of AI in international arbitration**, and **current trends in construction contracts for energy transition projects**.

If you would like to be alerted whenever we publish construction and engineering-related content, please register your details **here**, select "Topics" in the "Preference center", tick the "Construction and Engineering" box under "Manufacturing and Industrials" in the list headed "Customize topics by industry", and save your changes.

Thank you for your support over the past twelve months. We would like to wish you and your colleagues, organizations, families and friends every success in 2026.

The Hogan Lovells Construction and Engineering Team

England and Wales

"Hogan Lovells is a phenomenal construction firm and a go-to law firm for major disputes."
Chambers UK, 2026

As well as the knowhow in articles you might have missed during the year (on the importance of proving causation of loss in professional negligence claims, the United Kingdom's new Arbitration Act 2025, the strict limits on non-party document production in London-seated arbitrations, guidance on the use of AI in court and arbitral proceedings, and UK Building Safety Act-related cases and developments, summarized in the Keeping it Real Estate: Building Safety Act podcast and showcased on our Building Safety Act Hub), it's worth noting the lessons and reminders below from the English courts in 2025, on topics such as good faith duties, interpreting limitation clauses and FIDIC 1999 termination provisions, the requirements for fulfilling conditions precedent, and priority of contract documents:

An express good faith duty in a joint venture agreement is likely to require honesty and loyalty to the joint venture and to prohibit conduct which undermines the joint venture's commercial purpose, but generally not to oblige a party to act against its own interests (***Matière SAS v ABM Precast Solutions Ltd*** [2025] EWHC 1434 (TCC))
A contractor bidding for a UK rail scheme tunnel project appointed Matière and ABM jointly to provide tunnelling consultancy services. Matière was responsible for designing and coordinating tunnel installation; ABM for manufacturing tunnel components. The consortium agreement governing Matière's and ABM's relationship obliged each party to "act in good faith toward the other and use reasonable endeavors to forward the interests of" the enterprise. Matière undermined ABM's proposal by criticizing ABM's factory location plans to the contractor and exploring alternative suppliers without ABM's knowledge. The contractor terminated its appointment with Matière/ABM, awarding the installation work to Matière and the manufacturing to a different supplier. ABM's claims for loss of chance and an account of profits due to losing out on the contract were dismissed. The court held that the core meaning of a good faith duty was "to act honestly", with bad faith comprising "conduct which would be regarded as commercially unacceptable to reasonable and honest people, even if not necessarily dishonest". Depending on the contractual and commercial context, the duty could also "extend to wide obligations of fidelity to the bargain which had been made", "prohibit cynical reliance on the black letter of the agreement" and, in appropriate cases only, "limit a party's freedom to act in its own best interests". Matière's actions were either dishonest or commercially unacceptable and demonstrated a lack of loyalty to the joint venture, but ABM's claim failed for lack of causation: the contractor had pre-existing concerns about the factory location and ABM's financial and technical performance.

As compensation following termination for convenience under FIDIC Yellow 1999 requires costs to be reasonably incurred, there is no automatic reimbursement of early financial commitments (*Water and Sewerage Authority of Trinidad and Tobago v Waterworks Ltd* [2025] UKPC 9)

In a rare English decision on the FIDIC standard forms (as most FIDIC disputes are arbitrated), WSATT engaged Waterworks under agreements based on FIDIC Yellow 1999 to design and construct water treatment plants. Relying on preliminary designs, Waterworks entered equipment supply contracts with a third party, containing cancellation charges of 30% of the price. WSATT exercised its right to terminate for convenience before designs were finalised or construction began. Were the cancellation costs "reasonably incurred by the Contractor in the expectation of completing the Works" (clause 19.6(c)) and thus compensable? The Privy Council unanimously upheld the view of the Trinidad and Tobago Court of Appeal Court that the commitments were premature and unreasonable given the project's early stage. While contractors should not be discouraged from progressing without delay, they must justify early financial commitments with clear evidence (reasonableness being inferred from the contract requirements, the nature of the cost or liability incurred, and the stage the project is at – not easy to do if much of the design is outstanding). Waterworks had provided insufficient documents and rationale for inferring that the cancellation charges were reasonable. In light of this case, parties using the FIDIC 1999 suite may wish to adopt FIDIC Yellow 2017's wording which permits wider recovery following termination for convenience in clause 15.6(b).

Limitations of liability must be expressed in clear language (*South East Water Ltd v Elster Water Metering Ltd* [2025] EWCA Civ 287)

Elster supplied SEW with water meters and meter reading units under a framework agreement. SEW alleged that the units failed because they allowed water ingress and did not have the specified battery life. SEW appealed on the grounds that the first instance judge wrongly construed schedule 11 as a limitation clause overriding the general conditions in schedule 2. SEW contended that the provisions were irreconcilable and that, on a plain and ordinary reading of the Framework Agreement, schedule 2 had priority. SEW also submitted that, having found pursuant to the Unfair Contract Terms Act 1977 that schedule 11 was a clause which limited Elster's liability, the judge had failed to apply the strict test for the construction of limitation clauses. The Court of Appeal allowed the appeal, holding that the schedule 11 limitation applied only where SEW **requested replacements for faulty units**, but not when there was no such request and replacement.

The term "anticipated profits" usually means the same as a "lost profits" in an exclusion clause, but is different from "wasted expenditure" (*EE Ltd v Virgin Mobile Telecoms Ltd* [2025] EWCA Civ 70)
EE agreed to allow Virgin's customers to access mobile services via EE's network; if a customer used 5G, Virgin could use an alternative to EE. EE claimed that Virgin had breached an exclusivity clause by migrating its non-5G customers to the alternative provider. Virgin sought to rely on an exclusion of its liability for "anticipated profits". EE argued that the diversion of customers fell outside the definition of anticipated profits as its claim was for lost profits, namely the revenue EE would have received, as clearly set out in the agreement, for services customers would have consumed had they remained on EE's network. The Court of Appeal by a majority dismissed EE's appeal, finding no difference between anticipated profits and lost profits. The meaning of an anticipated profits claim could not vary depending on whether the claim was brought before or after amounts of revenue set out in the contract were actually lost. The Court also ruled that this interpretation was not uncommercial as EE still had effective remedies in the form of contractual rights, readily enforceable by specific performance or injunction, and of damages for wasted expenditure.

For a condition precedent to a delay claim to be inferred, clear language and conditionality are required, but not express use of the term "condition precedent" (*Tata Consultancy Services Ltd v Disclosure and Barring Service* [2025] EWCA Civ 380)
DBS claimed delay payments from TCS under an IT contract, but TCS argued that DBS had no entitlement to relief because DBS had not first issued a non-conformance report that TCS maintained was a condition precedent. The first instance judge and Court of Appeal found there was a condition precedent, with Lord Justice Coulson setting out from previous authorities a non-exhaustive list of what is generally required to find a condition precedent: (1) use of normal contract interpretation rules (which look at the plain meaning of words in context); (2) clear words, but with phrases like "this is a condition precedent" being unnecessary; (3) the clause needing something making relief conditional upon the requirement; (4) linkage between two steps expressed in obligation-type language, with words like "shall" being important but not decisive; and (5) terms like "timely" or "promptly" (not precise time limits) being sufficient.

“The meaning of an anticipated profits claim could not vary depending on whether the claim was brought before or after amounts of revenue set out in the contract were actually lost.”

Conditions precedent are not deemed fulfilled by a party's own breach (*King Crude Carriers SA & Ors v Ridgebury November LLC & Ors* [2025] UKSC 39) The Supreme Court unanimously overturned the Court of Appeal and confirmed that where a party's non-fulfilment of a condition precedent, which would give rise to a debt being owed by that party if fulfilled, is caused by that party's own breach of contract, the condition precedent is not deemed fulfilled. In this case, this meant that a claim to recover a deposit from a party who failed to fulfil a condition precedent by its own breach of contract was not due as a debt but lay in damages. This aids certainty, accords with established principles of English contract law, and removes the need for additional drafting that the Court of Appeal's reasoning potentially made necessary.

The objective, plain meaning of unambiguous words in a signed contract determines risk allocation; on the facts, express contractual wording stating an alternative position can be construed as having been superseded
This statement sounds obvious, but, as illustrated by our next case, the way in which construction contracts are negotiated and assembled, often a mix of electronic and hard copy documents produced piecemeal at multiple sites by different teams using various devices over time and without anyone checking for discrepancies (especially any buried in annexes and appendices), means that it's important for us to summarize several of the construction contract formation cases that reach the courts every year and which highlight the importance of carefully verifying every contract document before signing so that all parties are clear about the exact contract terms they are bound by. Many construction projects that would otherwise have completed as planned still get delayed and embroiled in time consuming and costly disputes due to ambiguously drafted or inaccurately recorded contract terms.

In *John Sisk and Son Ltd v Capital & Centric (Rose) Ltd* [2025] EWHC 594 (TCC), C&C engaged Sisk under a modified JCT Design and Build Contract 2016. A dispute about existing structures risk arose. Typically, the risk would have resided with Sisk, but clause 2.42.4 created a carve-out, stating it was "subject to item 2 of the Clarifications". The **executed hard copy** of the contract contained a schedule titled "Contract Clarifications" designating the "Existing Structures Risk" as an "Employer Risk". However, an **electronic-only version** of the contract documents included an Excel worksheet titled "Tender Submission Clarifications". This document, which was **not included in the executed hard copy** (and was not initialed in the electronic version (unlike the "Contract Clarifications" which were initialed)), recorded an earlier stage of negotiations where C&C had expressly rejected taking on this risk. Sisk successfully argued that the plain words "Employer Risk" in the "Contract Clarifications" were conclusive. Clause 2.42.4 referred specifically and exclusively to the executed "Contract Clarifications" document. The words "Employer Risk" were unambiguous. The "Tender Submissions Clarifications", whilst part of the contract, was given minimal weight. It was not referred to in the contract documents schedule (even in the electronic form) and therefore recorded a negotiation position superseded by the "Contract Clarifications".

A construction contract can be formed by email and WhatsApp (*Jaevee Homes Ltd v Fincham (t/a Fincham Demolition*) [2025] EWHC 942 (TCC))
The parties exchanged emails discussing price, scope, duration and sequencing of demolition works to be carried out by Fincham, but no firm agreement was reached. The conversation moved to WhatsApp. The CEO of JHL replied "Yes" to Fincham's message asking, "Are we saying it's my job so I can start getting organized?" and emailed Fincham a zip file of documents, including a purchase order and a dated subcontract containing the contract sum and a monthly interim payment regime. Fincham never acknowledged or replied to the email either accepting or rejecting the subcontract terms. Fincham argued the contract was formed by the exchange of WhatsApp messages; JHL that it was based on the subcontract. When a dispute over four unpaid invoices was referred to adjudication, the adjudicator agreed that Fincham was entitled to the outstanding sums. JHL did not pay on enforcement and sought a declaration as to the contract terms. The court held that the communications exchanged by email and WhatsApp "whilst informal, evidenced and constituted a concluded contract". The parties had agreed the essentials for forming a contract such as scope, price and payment terms. Agreement on work duration and start date were not essential. Payment and other terms, such as standards of care, were implied by UK statute (such as the payment regime for construction contracts) or English common law. WhatsApp or email negotiations of course persist, even when risks associated with this type of approach are known (such as adverse inferences being drawn where key messages have been deleted and so can't be disclosed). Therefore, parties should:

- take care to enter into formal written contracts that contain all the agreed terms and meet formalities requirements for contract signature. Having one written contract (admittedly made up of several documents for most projects) will make managing the project throughout its life simpler and more cost effective too; and
- consider entire agreement and no oral modification clauses and avoid inserting imprecise and conflict-generating "contract clarifications" at the eleventh hour.

Germany

2025 has been a year of significant change for Germany's construction and engineering legal landscape. Alongside the new federal government and its ambitious infrastructure program (The first blooms of spring and a new coalition agreement in Germany; The German Grant Procurement Law – How private companies can benefit and what needs to be considered when realizing projects), there have been some notable decisions bolstering the country's support for international arbitration. Furthermore, the enactment of the Act to Strengthen Germany as a Judicial Location by Introducing Commercial Courts and English as a Court Language in Civil Proceedings shows that Germany is taking bold steps to align with international standards. Below, we summarize these developments and highlight the opportunities and insights they offer:

Arbitration and public policy: an obligation prohibited under EU sanctions law cannot be enforced

The Higher Regional Court of Stuttgart ruled in May that a foreign arbitral award cannot currently be declared enforceable if its enforcement would violate public policy (that is, the fundamental principles and core values of a legal system that cannot be violated, even in the enforcement of foreign judgments or arbitral awards). Enforcement was refused because compliance with the award would have required an act prohibited under EU law: in this case, the repayment of advance payments to a Russian company, which falls under EU sanctions. The underlying arbitration took place before the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in Moscow. The claimant, a Russian company, had purchased machinery from a German respondent under a contract concluded prior to the war in Ukraine and had made partial advance payments. After the outbreak of the war, the respondent ceased delivery because the goods could be used in the production of bullet casings, and their export was prohibited under EU law. The claimant then rescinded the contract and obtained an arbitral award ordering repayment of the purchase price plus interest. The Higher Regional Court Stuttgart court refused to declare the award enforceable on the grounds that such repayment would breach EU sanctions law and thus contravene fundamental principles of public policy.

“The Hogan Lovells team has extensive experience in the industry and brings both legal expertise and industry knowledge to the prosecution.”

Legal 500 (Germany), 2025

Arbitration in German is now more attractive for construction and engineering parties

In a January 2025 decision, Germany's Federal Court of Justice clarified important principles regarding the admissibility of arbitration proceedings and the role of German law on general terms and conditions (§§ 305–310 BGB) in the context of enforcing arbitral awards. These provisions aim to prevent one party from being unfairly disadvantaged by pre-formulated contractual clauses. They often render standard clauses invalid – even in business-to-business contracts – if they unduly shift the balance of interests. This decision enhances legal certainty for companies that choose arbitration to avoid the strict requirements of German law on general terms and conditions. The Court's ruling emphasized three key points:

1. A motion to declare an arbitration proceeding inadmissible (§ 1032(2) ZPO) may be filed with state courts even if the applicant has already initiated arbitration. The decisive factor is solely whether the arbitral tribunal has been constituted. Commencing arbitration does not amount to a waiver of the right to seek judicial review of admissibility.
2. The invalidity of procedural agreements ("how" the arbitration is to be carried out) does not affect the validity of the arbitration agreement itself ("whether" arbitration takes place). In particular, choice of law clauses that exclude the application of German law on general terms and conditions do not impair the enforceability of the arbitration clause.
3. To declare an arbitral award enforceable, the decisive question is whether its outcome violates public policy (§ 1059(2)(2)(b) ZPO). The Court expressly left open the question as to whether German law on general terms and conditions forms part of public policy but stressed that the focus should be on the result, not on whether the rules of German law on general terms and conditions were applied. A violation of public policy exists only where contractual clauses can no longer be regarded as an expression of party autonomy or lead to consequences that are manifestly intolerable. Accordingly, it is still possible to exclude German law on general terms and conditions through choice of law clauses, provided the outcome does not violate public policy.

A contract for the delivery and installation of a standard photovoltaic system qualifies as a contract of sale and not as a contract for work

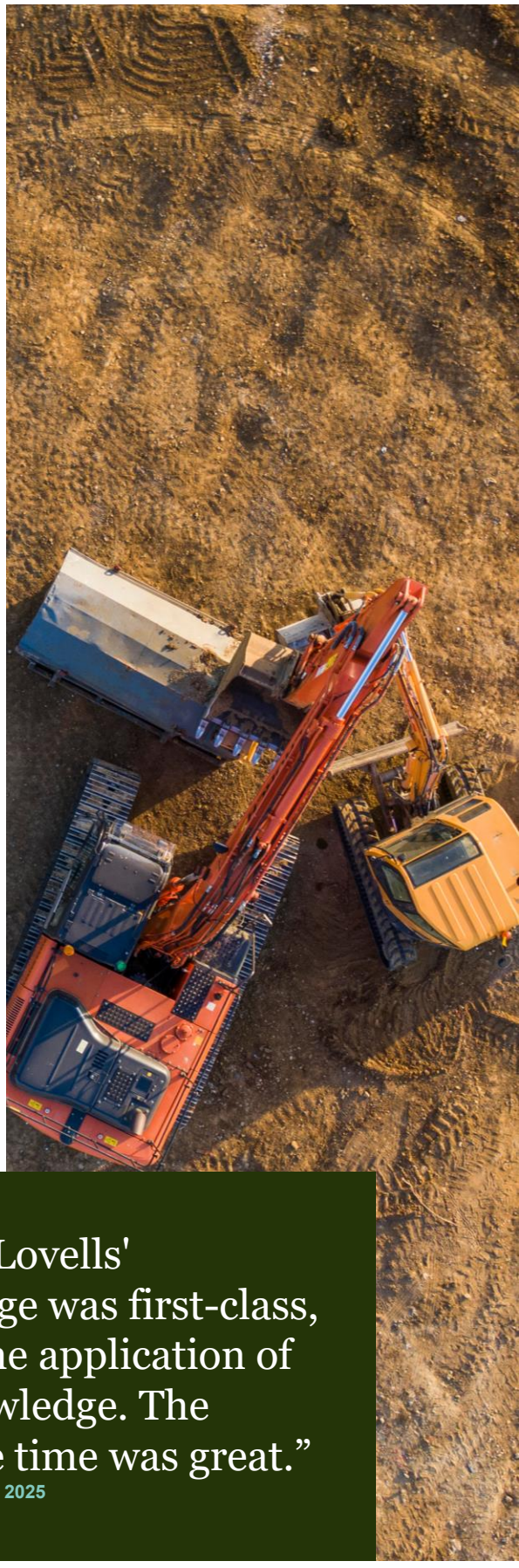
A June advisory decision of the Higher Regional Court of Brandenburg (subsequently relied upon to dismiss the appeal) confirmed that a contract for the delivery and installation of a photovoltaic system including a home battery storage unit is governed by sales law and does not qualify as a contract for work. The court emphasized that the system consists of pre-manufactured standard components and that the installation obligation is clearly secondary to the delivery obligation. This position aligns with previous case law. The classification depends on the predominant purpose of the contract, assessed in light of all circumstances. Key factors include:

- the nature of the goods to be supplied;
- the value ratio between delivery and installation; and
- whether the transfer of ownership and possession is the primary objective or whether individual customer specifications prevail. Here the distinction is critical and has practical implications for businesses, such as determining the commencement and duration of limitation periods and triggering the buyer's duty in commercial transactions to inspect the goods promptly upon delivery and to notify any defects without delay. Failure to comply with these inspection and notification obligations can significantly restrict claims for damages.

Proceedings before English-speaking Commercial Courts: a new option for international disputes

From 1 April 2025, Germany began to offer an attractive new feature for international businesses: proceedings before the newly established Commercial Courts can now be conducted not only more efficiently but, if the parties so agree, entirely in English. This reform aims to strengthen Germany's position as a forum for cross-border commercial litigation. Commercial Courts have been set up at selected Higher Regional Courts and have jurisdiction over certain commercial disputes valued at EUR500,000 or more, provided the parties have agreed that such courts should have jurisdiction. Some of these courts have introduced specialist construction and architectural law panels, such as the Berlin Court of Appeal (Kammergericht), the Higher Regional Court of Düsseldorf, and the Higher Regional Court of Hamburg.

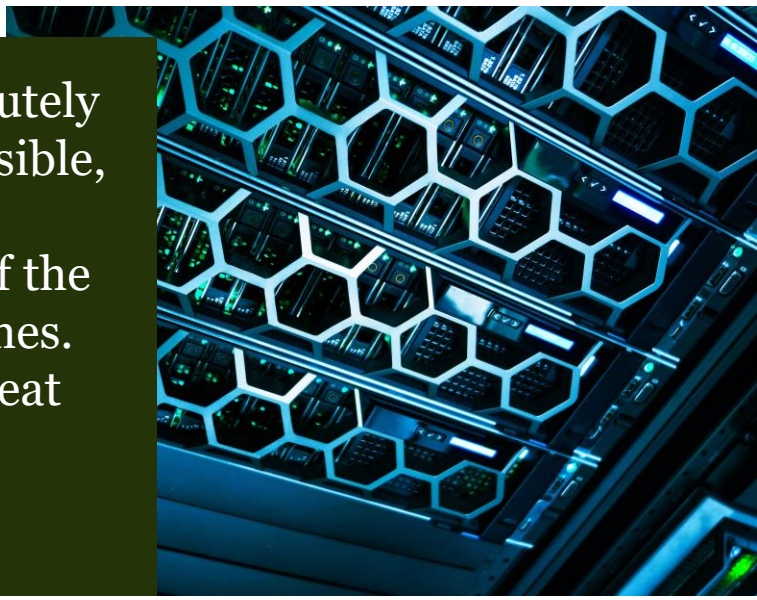
As well as proceedings conducted entirely in English, the appellate structure of these courts is streamlined with the option of appealing directly to the Federal Court of Justice. An early case management conference ensures efficient planning of the proceedings, and the panels are composed of highly specialized judges, giving these courts a procedural character that closely resembles arbitration. For businesses, this means that future contract negotiations should take into account the option of agreeing on the jurisdiction of a Commercial Court. In addition to the traditional choice between state courts and arbitration, there is now a third option – a state court with many of the advantages previously associated with arbitration: efficiency, international accessibility, and judicial expertise.



“Hogan Lovells' knowledge was first-class, as was the application of this knowledge. The response time was great.”

Chambers Global, 2025

Spain



"Hogan Lovells has an absolutely fantastic team. It is an accessible, efficient team, with great experience and knowledge of the sector. Punctual with deadlines. Able to take on tasks with great difficulty and tackle them successfully."

Chambers Global (Spain), 2024

Your projects in Spain and the European Union may be affected by the following legislative changes:

Carbon footprint

On 12 June 2025, Royal Decree 214/2025 of 18 March came into force in Spain, updating and replacing the previous framework for the Spanish state's registry relating to carbon footprint, carbon offsetting and carbon dioxide absorption projects. The legislation also introduced obligations relating to how carbon footprint is calculated and how to prepare and publish plans for reducing greenhouse gas emissions. This Royal Decree implements Law 7/2021 on climate change and energy transition, strengthening the regulatory framework for climate action and imposing specific obligations on companies and public entities. Compliance is mandatory from 2026 and will be based on 2025 data. This national regulation complements and reinforces European requirements on climate reporting and emissions reduction, such as those which oblige large companies to report environmental impacts, including their carbon footprint.

Data centers

The Government of Spain is processing a Royal Decree to regulate data centers, requiring transparency in their energy and water consumption and promoting the reuse of residual heat, in line with European directives. A draft was published in August 2025 for public consultation (which ended in September 2025). It proposed that centers with an electrical demand greater than 500 KW must report data annually (energy, water, employment). In addition, those above 1 MW must submit plans for residual heat recovery as a prerequisite for access to electricity networks.

Construction products

The updated EU Construction Products Regulation (Regulation (EU) 2024/3110), effective since 7 January 2025, marks one of the most significant changes to construction sector rules in over a decade. It harmonizes requirements for safety, performance, and environmental sustainability of construction products across the EU Single Market, introducing measures such as enhanced CE marking, digital product passports, and mandatory environmental reporting to support the objectives of the European Green Deal, the EU's comprehensive growth strategy launched in 2019 to make Europe the first climate-neutral continent by 2050.

Turkey

Recent regulatory changes that contractors working on projects in Turkey need to understand
Turkey's high seismic risk makes urban transformation a national priority. The urban transformation process starts with identifying risky structures and continues with amending zoning plans to enable the construction of safer, modern buildings. Since 2012, the Law on the Transformation of Areas Under Disaster Risk (Law No. 6306) has regulated the procedures for identifying risky buildings and determined which administrative bodies are authorised to manage revenues generated through urban transformation.

The main public authorities responsible for implementing urban transformation are the Ministry of Environment, Urbanization and Climate Change and the Housing Development Administration (TOKİ). While TOKİ carries out major housing and urban renewal projects, it has insufficient resources to meet the extensive demand. As a result, private contractors play an increasingly important role in these projects. This shift is also paving the way for international contractors to engage in urban development projects via joint ventures with local partners.

Urban transformation is a fast-evolving field, with frequent regulatory updates. For this reason, contractors involved in this market need to monitor legislative developments closely. A recent example is the Regulation on the Implementation of Value Increase Share Arising from Zoning Plan Amendments published on 22 November 2025 which sets out how the value generated by zoning plan amendments is calculated and distributed. It gives rise to the following considerations for contractors:

- **significant value share must be passed to public entities:** The regime requires that 90% of the value increase from urban transformation projects be transferred to public entities (the relevant municipality and the authority approving the zoning plan). This sharply reduces project profit margins and is an important factor for contractors to consider before committing to a project. However, some projects are exempt, for example if they are in areas already designated as risky, which provides some relief for contractors working in those zones; and
- **strict payment and permit conditions to ensure compliance:** The Regulation introduces strict measures to ensure full payment of the value increase share. Until all instalments are paid, no sale, transfer, donation, or owner-initiated legal action can be carried out in relation to the property, and no documents required for a construction permit, including the permit itself, may be issued.

From a contractor's perspective, the value-increase share effectively eliminates the use of pre-sale contracts, a common financing tool where units are sold early to fund ongoing construction. Under the Regulation, pre-sales are no longer feasible as no unit can be sold and no construction permit can be issued until the share is fully paid.

Due to the ongoing need for large scale urban renewal projects in Turkey, contractors must stay alert to regulatory developments and factor these changing requirements into their project planning and financial models.

“Contractors must stay alert to regulatory developments and factor these changing requirements into their project planning and financial models.”

United States

In the United States, the construction industry enters 2026 at a moment of profound transition, shaped by forces that are simultaneously accelerating opportunity and complicating risk. This section explores four of the most consequential developments reshaping the landscape: the rapid rise of **AI, data center construction and battery storage needs**, the renewed momentum behind **nuclear energy and related construction projects,** the growing strain between owners and contractors caused by **tariffs and risk-shifting dynamics**, and the far-reaching tax and accounting changes introduced by the **One Big Beautiful Bill Act**. Together, these issues form the framework for understanding where the industry is headed and how owners, contractors, engineers, developers, and other stakeholders can position themselves for what comes next.

AI, data centers and battery storage

Federal courts and agencies have addressed issues involving solar battery storage facilities, commercial real estate transactions, and infrastructure requirements for projects in these sectors.

In *Solar Energy Indus. Ass'n v. FERC*, 154 F.4th 863 (D.C. Cir. 2025), the U.S. Court of Appeals for the District of Columbia Circuit held that the solar energy facility is a qualifying facility under the Public Utilities Regulatory Policies Act (PURPA) and that the power that the facility stored in battery form could not be included in calculating the facility's maximum power production capacity. The Court found the facility's "power production capacity" refers to its maximum net output of alternating current (AC) power to the electrical grid at any given point in time, rather than the maximum amount of direct current (DC) power that the facility can create. The facility has a solar array capable of generating up to 160 MW of DC power and a battery capable of storing up to 50 MW, but its inverters can only send out 80 MW of alternating current AC power to the grid at any given time. The Court emphasized that only the power that can be sent out to the grid at any given time is relevant, not the potential power stored for later use. The case will impact how solar energy facilities are evaluated for qualification under PURPA.

In July 2025, the President of the United States issued an Executive Order **Accelerating Federal Permitting of Data Center Infrastructure** to fast track construction of large scale AI data centers and infrastructure, including the associated infrastructure such as high voltage transmission lines, substations, semiconductor manufacturing, networking gear, and power supply systems. It contemplates using federal lands, "brownfield", or previously used sites, to speed construction of AI data centers. The goal is to remove regulatory bottlenecks that have previously slowed or blocked such projects by creating new categorical exclusions under the National Environmental Policy Act for routine data center-related construction, exploring the need for a nationwide Clean Water Act (CWA) Section 404 permit for data centers to remove pre-construction delays, and streamlining the permit application process or reducing regulations under the CWA, Clean Air Act, and Comprehensive Environmental Response, Compensation, and Liability Act.

In May 2025, the **Environmental Protection Agency** (EPA) clarified and provided specific guidance to help ensure data centers and power companies have reliable power to maintain America's lead on AI. The EPA provided a regulatory interpretation of the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (RICE), while evaluating more substantive changes. The EPA determined that certain engines can operate for up to 50 hours per year in non-emergency conditions to supply power for the United States grid and maintain reliable service as part of a financial arrangement with another entity. Reciprocating Internal Combustion Engines (RICE) are used in a variety of applications from generating electricity to powering pumps and compressors in power and manufacturing plants. The engines are also used in emergencies and natural disasters, such as fires and floods.

Battery-energy storage is critical to the development of AI, data centers, and other infrastructure projects, and has evolved significantly over the past seven years, particularly regarding the potential fire and other safety hazards they present and the related standards of care that engineers and contractors must follow. In January 2025, the Moss Landing 300 MW Battery-Energy Storage and Data Facility Project in California caught fire and burned to the ground, demonstrating some of the **safety risks** associated with these projects. The improvements in engineering practices in the past few years mean that battery-energy storage is moving away from large warehouse-type structures and into (essentially fireproof) individual storage containers connected by cables.

“They work on the most groundbreaking and complex deals and are a force to be reckoned with.”

Legal 500 (USA), 2023

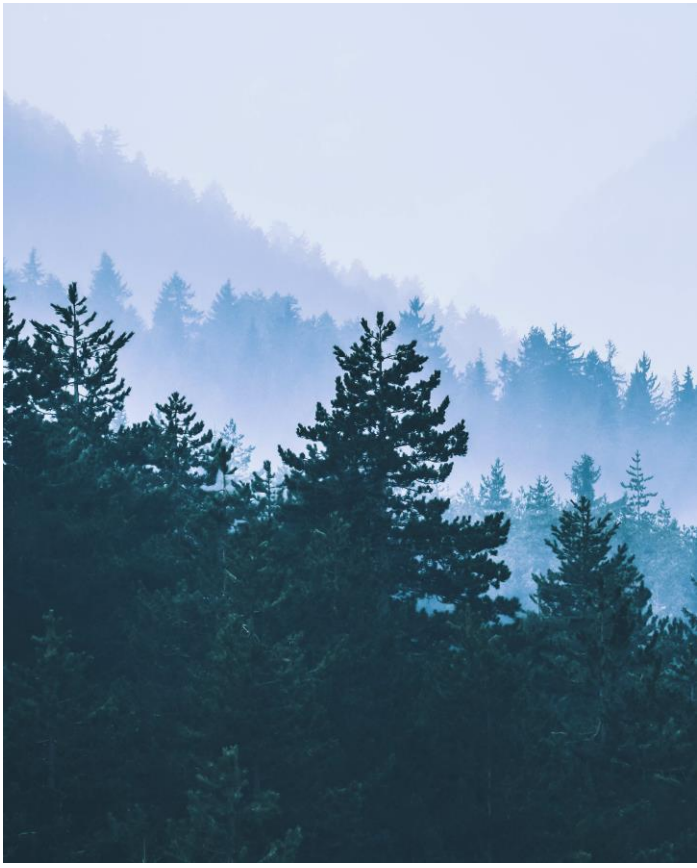
Nuclear energy

Construction of nuclear power plants has been sparse in the United States over the past few decades. As a recent article we authored shows, this trend is quickly changing, again due to the enormous energy demands presented by AI. To date, federal courts have primarily addressed issues surrounding federal preemption of state regulation, the Nuclear Regulatory Commission's licensure authority, and indemnification rights for radioactive material contamination. We anticipate that the case law will evolve as additional, small-scale nuclear energy projects enter their design and construction phases.

In *Holtec Int'l v. New York*, 2025 WL 2721020 (S.D.N.Y. Sept. 24, 2025), the Southern District of New York addressed whether New York's Environmental Conservation Law prohibiting discharge of radiological substances into the Hudson River was preempted by federal law during nuclear facility decommissioning. The Court held that federal preemption applies irrespective of whether a nuclear facility is operational or being decommissioned. The Court found it "inconsequential to the pre-emption analysis whether the nuclear facility is operational or decommissioned" because the presence of radiation hazards is sufficient to give rise to the NRC's exclusive jurisdiction. The case confirms federal supremacy in regulating nuclear safety and waste disposal.

In *Nuclear Regulatory Commission v. Texas*, 605 U.S. 665 (2025), the Supreme Court reversed the U.S. Court of Appeals for the Fifth Circuit's decision to vacate a license granted by the Nuclear Regulatory Commission. Texas and a private company challenged the granting of a license to Interim Storage Partners to build and operate an off-site spent nuclear fuel storage facility in West Texas, arguing the Commission lacked statutory authority to grant the license. The Supreme Court reversed the Fifth Circuit's decision vacating the license being granted, holding that Texas and the private party were not "parties aggrieved" and did not successfully intervene in the NRC's licensing proceeding and ultimately could not seek judicial review of the NRC's decision.

In *Cotter Corp., N.S.L. v. United States*, 127 F.4th 1353 (Fed. Cir. 2025), the U.S. Court of Appeals for the Federal Circuit reversed the Claims Court decision and found that the plaintiff had plausibly alleged entitlement to statutory indemnification under the Price-Anderson Act because the public liability arose out of or in connection with the contract activity of the contract. The Court also held that the plaintiff plausibly alleged it was an intended third-party beneficiary of the indemnification agreement and that the government breached the contract by refusing to indemnify the plaintiff. The Price-Anderson Act amended the Atomic Energy Act to provide indemnification for contractors and other persons liable for public liability arising from nuclear incidents. The plaintiff sought over US$14 million in compensation for costs incurred in defending and settling a prior public liability action related to a nuclear incident involving radioactive materials originally produced under an Atomic Energy Commission contract.



Tariffs and risk mitigation
A major theme of construction contracting in the United States has been the heightened and shifting tariff regime, apparent since the current Presidential administration's "Liberation Day" on 2 April 2025. The uneven and, often, unforeseeable laws, regulations, and application of tariffs has created confusion and tension among owners and contractors throughout all sectors of the construction industry.

As a general premise, owners demand price and schedule certainty in their construction contracts to protect budgets, secure financing, and plan operationally. At the same time, contractors, who potentially bear the brunt of fluctuating material and supply-chain costs, seek contract terms that support their efforts to reduce or mitigate those risks. This natural tension widens when tariffs introduce sudden, unpredictable price spikes in key materials, including steel, lumber, equipment, and transportation. With tariffs changing rapidly and unpredictably, contractors fear being locked into fixed prices that could become financially ruinous, while owners worry that too much flexibility undermines cost control and may lead to change order exposures. The result is a heightened negotiation struggle as both sides try to balance financial predictability with realistic allocation of fluctuating market risks.

One Big Beautiful Act (OBBA)
Changes in the One Big Beautiful Act of 2025 have notably affected the United States construction industry. Examples include:

- the redefinition of the exception of percentage-of-completion accounting. Before the OBBA, the exception applied to "home construction contracts" which enabled residential builders to avoid percentage-of-completion accounting and instead use more favorable methods, such as completed contract accounting, allowing builders to defer their income until a project is complete, thus saving cash flow until later in the project's life. Under OBBA, the exception is expanded to apply to "residential construction contracts", a broader category including apartments and condominiums. The expansion will allow a larger pool of projects to be eligible for percentage-of-completion accounting, which will benefit developers and contractors who seek greater flexibility when building non-single-family residential projects; and
- the reinstatement of 100% bonus depreciation for qualified property placed in service on or after 19 January 2025. In practice, this will allow construction companies to deduct 100% of the costs immediately for most equipment purchases which will result in large tax savings in the first year. The 100% bonus depreciation will also result in better cash flow for construction companies, allowing more working capital to be used to hire workers, buy materials, and finance growth.

Mexico

Reform of the federal Public Works Law
If you are involved in public works projects in Mexico, a key development in 2025 was the reform of the federal Public Works Law, which became effective in April (although not every aspect of the reform applies to contracts signed before it entered into force).

The reform makes significant changes to modernize public contracting processes and strengthen the transparency and oversight of public works. Some of the key amendments that contractors and public bodies and agencies will need to adapt to are:

A new centralized procurement platform
The Digital Platform of Public Procurement will be the sole platform (with limited exceptions) for procurement procedures related to public works and related services, and for the execution and management of public works contracts. The platform will be free to consult and host information related to public works contract procurement such as invitations to tender and notes of clarifications, details about how to submit proposals and contracts awarded, a list of sanctioned contractors, and notices of procurement process challenges.

Digitization of the construction logbook
The construction logbook, already mandatory in every public works and services contract, is to be digitized so that it can be managed and updated electronically. However, use of the electronic logbook will not be required if:

- there are technological difficulties at the works site;
- the works performed arise out of force majeure events;
- its use would compromise national security; or
- public bodies perform works and services on an ad hoc basis.

The relevant government ministry and other authorities can consult the logbook when carrying out their inspection and control duties.

The creation of the role of resident engineer
The area manager responsible for carrying out the work must designate a public servant to act as resident engineer, taking into account his or her knowledge of works and services like those to be undertaken, skills, experience in administering construction works, and capacity to supervise, monitor, control, and review work. The resident engineer may be assigned to a site management office ("residencia") depending on the characteristics, magnitude, and complexity of the works or services. Such engineers will be directly responsible for the supervision, monitoring, control and review of the work, including the approval of work estimates submitted by contractors.

The supervisor is jointly and severally liable with the resident engineer(s) for the scope of the subject matter of the contract, including authorizing estimates for the parts of the contract that they supervise.

Regular estimates of work performed
Estimates of the work performed, calculated using unit prices, must be made at intervals of no more than one month. For lump sum contracts, the parties may elect either payment at regular intervals or on completion of each main activity.

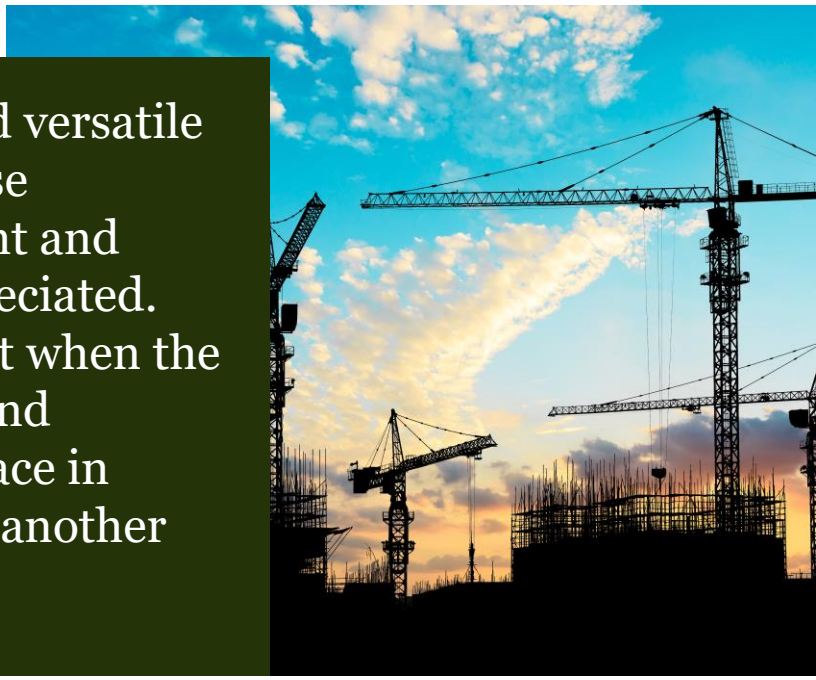
Estimated payments authorized by the site management office do not constitute full and final acceptance of the execution of or payment for the work, as either can be reviewed later (when public bodies have the right to claim either excess payments, or reimbursement for missing or poorly executed work).

Stricter rules on prices changes
The original prices used by the bidder must be those prevailing at the time of submission and may not be modified or replaced by variations occurring between the date of submission of the proposal (or notification of acceptance of the quotation) and the last day of the month in which the proposal was submitted (or notification accepted).

If justifiable, public bodies who are party to contracts containing unit prices may allow the prices to be revised if work starts more than sixty days from the date of submission of the proposal or notification of acceptance of the quotation.

Rules on appointment of replacement contractors following termination
If a contract is terminated, the public body may award a new contract to the bidder best able to continue and complete the outstanding works or services, as set out in a detailed termination report.

> “A very well-prepared and versatile team. Above all, their close relationship with the client and their availability are appreciated. This is even more relevant when the client is a multinational and decision-making takes place in another country, even on another continent.”
>
> **Legal 500 (Mexico), 2025**



Rules on variations, additional work and price fluctuations

When more work than originally planned is required, public bodies may authorize the payment of estimates for the additional work to be performed and then amend the contract accordingly, ensuring that such estimates do not exceed the budget authorized in the contract.

Additional quantities are to be paid at the unit prices originally agreed upon; in the case of items not included in the contract, their unit prices must be reconciled and authorized prior to payment.

When the modification to the contract involves an increase or reduction of more than fifty percent of the original contract amount or the execution period, or both, the contractor may, within fifteen calendar days from the date of physical acceptance of the work, request an adjustment to the indirect costs and financing. During that same period, the public body counterparty may also ask for indirect costs to be adjusted. Once the fifteen days have elapsed, there is no further entitlement for indirect costs and financing to be adjusted.

An exception to the general rule that lump sum contracts have limited mechanisms for adjusting costs is where circumstances beyond the control of the parties arise, such as currency exchange rate changes and fluctuations in national or international prices that could not have been reflected in the proposal on which the award of the contract was based.

United Arab Emirates

As well as browsing the report on our first Middle East and North Africa Arbitration Survey, conducted in conjunction with Middlesex University Dubai and capturing key trends, preferences, and challenges in commercial, construction and energy arbitration practices across the region, two other developments from 2025 and how you should respond to them are:

1. **A recent decision of the Abu Dhabi Court of Cassation addressed the following two issues, typical in Middle East construction projects which feature supply chains engaged under contracts containing back-to-back provisions:**

a) **A "pay-when-paid" clause can disappear with the contract**

"Pay-when-paid" clauses (intended to protect a contractor from paying a subcontractor unless the contractor has itself been paid by the employer for that subcontractor's work) are common in back-to-back contracting arrangements. In the event of termination, the Court confirmed that such clauses, valid at the start, can become unenforceable if the head contract is terminated.

In this case, a subcontractor sought payment from the main contractor after the employer's contract had been terminated. The Court agreed with the lower court that the back-to-back clause had effectively expired when the main contract ended, deeming payment to the subcontractor obligatory despite the unpaid upstream funds. In this regard, Article 894 of the UAE Civil Code entitled the subcontractor to be paid regardless of the pay-when-paid clause, placing liability squarely on the main contractor (not the owner).

Therefore, in contracts governed by UAE law, a main contractor cannot hide behind a terminated head contract to avoid paying subcontractors.

b) **Unjust enrichment claims can succeed even where there is a contract**

The judgment also reinvigorated unjust enrichment claims in the construction context when contracts are terminated.

Normally, the UAE courts will not entertain unjust enrichment claims where a contract governs the relationship. Here, however, the Court carved out an exception: because the subcontract had effectively ended due to the main contract's termination, the subcontractor was allowed to claim unjust enrichment for the value of its work. This was true even though the main contractor had not been paid by the developer.

As a result of this case, in contracts governed by UAE law, a main contractor should beware of placing too much confidence in a vanilla pay-when-paid clause. If significant issues arise on a project and the main contract is terminated, the main contractor may end up having to pay subcontractors out of its own pocket. To mitigate this risk, main contractors should consider express terms addressing contract termination scenarios; for instance, stipulations on partial payments or subcontractor fees being held in escrow if the main contract ends.

However, given the Court's approach, even the best drafting may not override the subcontractor's statutory right to payment once the primary contract vanishes. Main contractors should therefore seek to strengthen their position through active negotiation with subcontractors or the obtaining of performance bonds and guarantees when an upstream contract falters.

2. Ten-year liability has now come of age

As the UAE's construction boom enters its mature phase, the Civil Code's decennial liability provisions are being tested in court.

Under UAE law, contractors and designers bear a strict ten-year liability for major structural defects or collapse, regardless of fault. This "decennial" guarantee means that if, even a decade after handover, a building shows serious structural issues, the original contractor and consultant can be liable.

We are now seeing projects completed in the mid-2010s hitting that ten-year mark and, with them, a wave of claims. In one case, a residential tower had to be demolished due to foundational failures; the Federal Supreme Court of the UAE held that the contractual ten-year liability applied, and importantly, that the statutory three-year limitation for decennial claims runs from the date of actual knowledge of the defect and responsible parties, not the time of handover. This precedent gives claimants, typically owners, a clear avenue for recourse, as they will not be liable for latent defects that only surface (or are understood) several years following completion.

The UAE courts have been reluctant to dilute decennial liability. Since this liability is rooted in public safety, contracts seeking to exclude or reduce the ten-year period would be void on the grounds of being contrary to public policy.

Judges in the UAE have been consistent in finding that contractors and consultants are jointly liable for the integrity of the structure. Even arguments about force majeure or owner interference typically will not excuse a failure that leads to collapse or serious defects within the ten-year period.

Establishing when a claimant knew of a structural problem is therefore critical. The courts rely heavily on technical expert reports to establish the causes of defects and the point at which those causes became known. If an owner's own modifications or extreme weather events (such as unprecedented flooding) caused the damage, those factors could be litigated or arbitrated, although even a once-in-50-year storm may not absolve a contractor if design shortcomings exacerbated the damage.

In response, contractors and design engineers are heightening their efforts in relation to quality control and document retention. Contractors maintain complete project records and handover documentation long after completion. Designers too archive calculation notes and any changes instructed by owners.

To mitigate the risks further, decennial liability insurance is increasingly in focus. The UAE has been exploring mandatory decennial insurance for certain projects, and even where not mandated, contractors now often secure insurance to cover this ten-year risk. Notably, regular professional indemnity policies might not cover decennial claims because they impose no-fault, strict liability. Special decennial insurance or project-specific latent defect cover can fill that gap.

Finally, some contractors can agree clauses in which decennial liability risk is shared. For example, owners may be required to notify defects within a reasonable time after discovery to prevent surprise, last-minute claims, and contractors might even be obliged to collaborate with employers on maintenance regimes to reduce the chance of major defects occurring. While such provisions cannot override the ten-year liability period, they can foster transparency and lead to a more collaborative, and potentially less expensive, solution (in terms of legal costs), if defects emerge.

Georgia

How Georgia's spatial planning reform will affect your projects
Georgia is launching a bold reform to strengthen its construction and development sector, which may unlock new opportunities for construction and infrastructure projects, making processes clearer, faster, and more predictable for all stakeholders.

Last year, more than 80% of the country's territory lacked approved spatial planning documentation, potentially holding back long-term investment. The Government of Georgia is tackling this through comprehensive reforms that will bring clarity and replace fragmented approaches with a unified framework. Amendments to the Code on Spatial Planning, Architectural and Construction Activities aim to create a more coherent and sustainable system for managing territorial growth. Key highlights of the reform are:

- **extended planning deadlines:** To reflect the scale and complexity of preparing spatial planning documentation, municipalities now have until December 2035 (extended from January 2028) to complete spatial plans. This extension will allow more thought to be given to strategies that balance development needs with cultural and historical preservation.
- **transitional guidance:** A key innovation is the introduction of the basic-thematic plan – a transitional tool designed to guide development during the interim period. This practical tool bridges the gap until full municipal plans are approved, setting out essential guidelines for land use, construction zones, geo-hazard considerations, and development priorities, ensuring that projects can move forward.
- **stricter oversight and standards:** The new framework introduces stricter oversight of municipal plans, specialized rules for significant areas, and aesthetic standards that could affect design choices.
- **full digitalization:** The reform accelerates full digitalization of construction-related processes. Soon, all applications for development plans and building permits will be submitted electronically, integrated into a unified system, and displayed on public maps. This digital shift promises the simplification of procedures, faster approvals, and greater transparency for all stakeholders. Digital archiving and automated document management will further streamline workflows, making compliance easier and more efficient for businesses.

The reform has received strong backing in parliamentary committees, where there is broad agreement that extended timelines and higher standards will enable municipalities to make more robust and informed decisions.

With these reforms, Georgia is opening the door to a more transparent, efficient, and investor-friendly environment.

“Georgia is opening the door to a more transparent, efficient, and investor-friendly environment.”

Georgian tax transparency reforms could lead to delays and higher costs on projects

In February 2025, Georgia introduced a major change in the taxation of individual entrepreneurs in the construction industry.

For years, individual entrepreneurs benefited from a preferential regime that imposed only a **1% tax on turnover**. This regime originally intended to promote self-employment and reduce administrative burdens. While effective in encouraging entrepreneurship, it also led some companies to classify workers as independent contractors rather than employees, to avoid payroll taxes and social contributions.

Tax authorities and businesses often disagreed on whether a relationship constituted genuine service provision or disguised employment, leading to frequent reclassification of transactions and substantial fines for construction companies.

The recent reform directly addressed these issues by raising the tax rate on construction services provided to companies from **1% to 20%**, eliminating the incentive for misclassification and aligning legal status with economic reality. The 1% small business tax rate will continue to apply to construction services only when provided to private individuals. If the client is a company, organization, or "entrepreneurial individual", the rate will be 20%.

The reform goes beyond targeting sham arrangements. Many genuine contractors are likely to face significant challenges. A twentyfold increase in tax liability may sharply reduce profit margins, making some projects unviable. The broader market impact will be substantial: higher taxes will force small contractors to raise prices, driving up construction costs, especially for projects reliant on subcontracting.

Large infrastructure projects, such as roads, energy facilities, and utilities may be particularly exposed, as they depend on subcontractor networks. Some may internalize labor to maintain compliance, leading to budget revisions and potential project delays.

While the reform aims to create a more transparent and professional sector in the long run, short-term disruptions and cost escalations are likely.

Hong Kong

Introduction of the Construction Industry Security of Payment Ordinance
In late August 2025, the Construction Industry Security of Payment Ordinance came into force in Hong Kong, with the aim of curbing improper payment practices in the construction industry, and strengthening protections for all stakeholders in construction supply chains. The legislation enhances the fairness of contractual payment arrangements, by requiring the prohibition of certain terms, and introduces an adjudication mechanism to resolve disputes relating to payments efficiently.

This development brings Hong Kong's construction industry practices in line with overseas standards, mirroring similar legislation such as the UK's Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009) and Singapore's Building and Construction Industry Security of Payment Act 2004.

The Ordinance applies to both public and private contracts entered into **on or after 28 August 2025**. It covers main contracts for construction works valued at HK$5 million or more and for the supply of goods or services valued at HK$500,000 or more, as well as their related subcontracts. However, the Ordinance **does not** extend to contracts for works or the supply of goods and services carried out outside Hong Kong, works on existing private residential buildings, or minor works on existing private non-residential buildings.
The main notable features of the Security of Payment Ordinance include:

- **prohibition of conditional payment terms:** all "pay when paid" clauses or any other clauses with the same effect will be rendered unenforceable;
- **default payment provisions:** where the contract fails to specify how and where progress payments are to be made, the Ordinance provides that the claiming party is entitled to make monthly payment claims;
- **mandatory time limit for serving a payment response and making payment:** a paying party served with a payment notice must respond by the date specified in the contract or 30 days after a payment claim is validly made (whichever is earlier). If the claim amount is admitted, payment must be made by the contractual date or 60 days from service of the claim (whichever is earlier). A payment dispute will arise if the paying party does not respond within the specified time, if the claimed amount is disputed, or if the admitted amount is not paid within the specified time;
- **adjudication mechanism:** upon occurrence of a payment dispute, the Ordinance allows the claiming party to initiate adjudication proceedings; and
- **right to suspend or slow down work:** the Ordinance entitles the claiming party to suspend or slow down work if there has been non-payment of the admitted amount or there has been non-payment of the adjudicated amount.

Currently, given the recent implementation of the Ordinance, the impacts are yet to be seen. However, employers, contractors and subcontractors engaging in the relevant contract works in Hong Kong should review their current standard contractual provisions to ensure compliance with the Ordinance and be cautious of the potential adjudication claims that may arise. We anticipate that the following changes would be required:

- all references in contracts to "pay when paid" clauses should be removed;
- contracts should include specific timeframes (for example, 30 days for payment responses and 60 days for payment of admitted amounts) for making payments. This is to avoid the default position of the claiming party claiming monthly;
- employers and contractors should implement payment tracking and managing systems to ensure all payments are processed in a timely manner; and
- companies should encourage and educate staff to familiarise themselves with the adjudication process, as well as the consequences of failing to comply with various steps in the process.

Singapore

Articles our Singapore office published during 2025 that you might have missed:

- 30 years of the Singapore International Arbitration Act
- Key updates to the SIAC Rules: A welcome step towards achieving efficiency in arbitration proceedings
- SIAC introduces the new Restructuring and Insolvency Protocol
- Energy Buzz: Trends in construction contracts for energy transition projects

Other important legal developments in Singapore to be aware of are:

Introduction of the PSSCOC-Lite and increasing use of collaborative contracting

March 2025 saw the publication of the PSSCOC-Lite for Construction Works, a streamlined version of Singapore's Public Sector Standard Conditions of Contract designed for smaller public sector projects and agencies with lighter procurement footprints. The Lite form preserves the familiar structure of the full PSSCOC but pares it down for usability, with simplified administrative requirements, consolidated clauses, and more accessible risk allocation. Notably, the Lite form incorporates payment processes aligned tightly with Singapore's Building and Construction Industry Security of Payment Act 2004 (SOPA), including clearer definitions of Payment Claims and Payment Responses, making compliance more intuitive for smaller contractors and project teams. It also embeds progressive wage compliance, digital submission expectations and updated definitions.

In parallel, for larger and more complex public projects, agencies are increasingly adopting the Collaborative Contracting Option Module under the full PSSCOC. This reflects a deliberate policy shift away from traditional adversarial contracting and towards joint risk management, early contractor involvement, and open book practices. Option Module E establishes structured mechanisms such as shared risk registers, early warning processes, co-located project teams, and governance boards to support "best-for-project" decision making. While not suitable for small works (and therefore not included in PSSCOC-Lite), the collaborative module is gaining traction for major public service works like MRT packages, large public buildings, aviation works, utilities and complex engineering interfaces. Taken together, these developments signal that Singapore's public sector is diversifying its contracting approaches, embracing both simplification for smaller schemes and more integrated delivery methods for major infrastructure.

Contractors working in the Singapore market should familiarize themselves with the Lite form's simplified SOPA-linked payment machinery, and larger contractors should expect more tenders adopting collaborative modules where early design input and transparent cost/risk sharing will increasingly be prerequisites for award.

Clarification of the boundary between interim orders and final arbitration awards

DLS v DLT [2025] SGHC 61 is now a leading authority on distinguishing interim orders from final awards under Singapore's International Arbitration Act (IAA), a distinction that frequently arises in construction arbitrations where parties seek early cashflow relief pending final determination. The tribunal had styled its decision as a "First Partial Award" comprising (i) a monthly payment order designed to keep the subcontractor operational, and (ii) a lump-sum VAT refund determination. The High Court held that the nomenclature used by the tribunal was not conclusive in determining whether the decision was a partial or final award. The correct test is whether the decision finally and conclusively disposes of the substantive issue before the tribunal.

Applying this test, the Court held that the monthly payment direction was not a final award but merely an interim measure because it was designed to be temporary, subject to security, and did not conclusively resolve the underlying entitlement. Accordingly, this part of the decision could not be challenged by way of a setting-aside application. By contrast, the VAT refund determination was a true partial award because it finally disposed of a discrete claim and was therefore susceptible to challenge under the IAA (although the challenge ultimately failed). The Court also took the opportunity to reiterate (i) the strictness of statutory time limits for setting-aside applications and (ii) the high threshold for alleging apparent bias, particularly where non-disclosure relates to remote or tangential past appointments.

This case contains valuable guidance when seeking interim monetary relief in arbitrations: careful framing as an interim measure without finally disposing of the issue may reduce challenge risk. Conversely, parties resisting such relief must be alive to whether a decision is truly provisional. The decision also underscores the importance of early action on setting-aside deadlines.

On demand or on default? Precise drafting of construction performance bonds is essential – wording such as "indemnification for loss" introduces ambiguity

Tradesmen Pte Ltd v Ten-League Corporations [2025] SGHC 114 revisits a perennial issue in construction projects: whether a performance bond operates as an on demand bond (which allows the employer to call without proving breach) or as a conditional bond (which requires breach and loss to be established). Although the wording of the bond in question contained features commonly associated with an on demand instrument ("unconditionally undertakes to pay on demand"), other provisions referenced indemnification for losses, creating ambiguity. The Court examined the text of the bond and the wider contractual context, including the fact that the bond had been furnished in lieu of retention under a contract based on the Real Estate Developers' Association of Singapore (REDAS) standard form. As retention under the contract was intended to cover the employer's actual loss, and because the parties had not adopted the unambiguously on demand specimen bond in the REDAS appendices, the Court held that the instrument was properly construed as a conditional bond.

As a result, the employer's call, made without identifying any specific breach or quantifying loss, was invalid. The Court granted an injunction restraining the call. Importantly, the Court went on to observe that even if the bond had been on demand, the contractor had not shown fraud or unconscionability, reinforcing that the bar for restraining on demand calls remains high. The case therefore clarifies both the importance of bond drafting precision and the continued robustness of Singapore's pro-beneficiary approach to true on demand instruments.

Contractors must review performance bonds carefully to ensure the intended risk profile is reflected. Employers should ensure bond calls comply strictly with the bond's conditions. The decision confirms that context matters and reinforces the need for parties to avoid boilerplate "on demand" labels that may be undermined by inconsistent indemnification wording.

> “The Hogan Lovells team took care of the strict timetable and proceedings of the court, and always responded promptly. We were alerted with legal analysis when critical decisions had to be made.”
>
> **Chambers Global, 2025**

An intention to cure or repair defects is neither a prerequisite for the award of the cost of cure or repair as damages, nor does such an intention generally carry significant weight in assessing whether it is reasonable to grant the cost of cure or repair

The significant appellate decision ***Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd*** [2025] SGHC(A) 4 made clear when the Singapore courts will award "cost-of-cure" damages for defective construction works. The dispute concerned alleged defects in the installation of solar-mounting structures, where the employer sought substantial rectification costs, even though it had not actually carried out any rectification works. The contractor argued this meant the employer should not be entitled to cost of cure damages. The Appellate Division of the High Court disagreed. The Court held that two issues need to be considered and should not be conflated: first, whether any loss has arisen from a breach of contract at the time of the breach; and, thereafter, the measure of damages that should be awarded, taking into account reasonableness and proportionality.

On the second issue, the Court held that a claimant does not need to intend to carry out the remedial works cost-of-cure damages to be recovered; intention is merely **one** factor in a wider reasonableness and proportionality assessment. Other factors to be considered include the seriousness of the defect, the benefit of cure, structural or safety risk, and the contractual purpose of the works. On the facts, the Court found the defects minor and risk minimal, so a full cost-of-cure award was disproportionate, and only nominal damages were granted.

The decision confirms that cost-of-cure remains an available remedy even where the owner does not plan immediate rectification, but courts will scrutinize whether such an award is reasonable, proportionate and aligned with the project's actual needs. Strong expert evidence on risk, compliance, and the practical impact of the defect will be critical for a successful claim.

Vietnam

Decree 175 on the management of construction activities
Decree No. 175/2024/ND-CP (effective from 30 December 2024) removes several licensing burdens in the construction sector:

- notably, it abolishes the requirements for contractors to obtain certificates of construction activity capability, for contractors' personnel to hold construction practicing certificates, and for foreign contractors to establish an executive office in Vietnam when providing certain construction-related services;
- exemptions for feasibility study reports that would otherwise require appraisal by specialized construction authorities are expanded; and
- the need to provide documents and information available on the national database system on construction activities and the land information system is removed, provided that these systems have been updated or are connected for sharing.

Decree 175 also clarifies that rooftop solar equipment is not considered as "power construction works", and is further supported by Official Letter No. 1389/SXD-QLXDCT dated 29 May 2025 of the Construction Department of Ho Chi Minh City, which provides that the installation of rooftop solar equipment may be exempt from construction permits if it does not affect the safety of the load-bearing structure of the works, and complies with construction planning, fire and environmental requirements.

Consultation on draft Construction Law designed to promote investment and certainty
The draft Construction Law has been published for collecting public opinions since August 2025, and is available online at: https://vibonline.com.vn/du_thao/du-thao-luat-xay-dung-thay.

The most prominent change is on the classification of investment projects, which would no longer be based on capital sources but on the form of investment (for example, public investment projects, projects using state budget funds, projects implemented under a public private partnership (PPP) model, and business investment projects). This approach helps to distinguish two stages of project development (investment and construction), while ensuring consistency in scope and implementation with Vietnam's Public Investment Law, PPP Law, and Investment Law.

The draft Construction Law would also remove several licensing burdens in the construction sector. It would require neither preliminary feasibility study reports for business investment projects nor the appraisal of construction-related designs by specialized construction authorities after completion of the feasibility study report, and would simplify and shorten the procedures and requirements to obtain construction permits.

The draft also provides a detailed force majeure and hardship provision applicable to construction activities, which would provide greater legal certainty than the more general provisions currently found in legislation and the Civil Code.

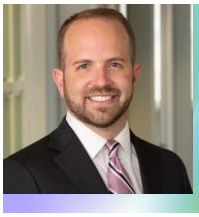
Draft Case Law Precedent No. 06/2024 of the Council of Judges of the Supreme People's Court of Vietnam
If adopted, the Draft Case Law Precedent No. 06/2024 would clarify that construction contracts are civil contracts primarily governed by the Construction Law and, where the Construction Law is silent, by the Civil Code, and are not governed by the Commercial Law. This reflects the specialized nature of construction contracting and would typically provide for a more favorable statute of limitations for claimants (namely, three years under the Civil Code instead of two years under the Commercial Law). Another implication would be that payment obligations under construction contracts must comply with the Civil Code's provisions on interest rates and calculation methods for late payments. The draft precedent has not yet been officially adopted, but provides insight into the recent deliberations of the Supreme People's Court on these issues, in the context of Vietnam facing several investor-state arbitration claims relating to construction projects.

Our global team

Americas

Brian Chappell

Senior Counsel Emeritus, Baltimore
Infrastructure, Energy, Resources, and Projects
+1 410 659 2770
brian.chappell@hoganlovells.com

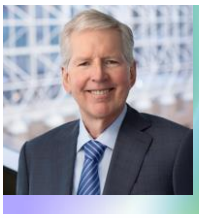


Joseph L. Lambert ("United States" section author)

Partner, Colorado Springs
International Arbitration, Construction and Engineering
+1 719 448 5914
joseph.lambert@hoganlovells.com

Bruno Ciuffetelli

Partner, Houston
Infrastructure, Energy, Resources, and Projects
+1 713 632 1468
bruno.ciuffetelli@hoganlovells.com

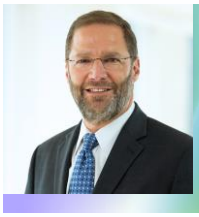


Bruce D. Oakley

Partner, Houston
Litigation, Construction and Engineering Disputes
+1 713 632 1420
bruce.oakley@hoganlovells.com

Omar Guerrero Rodríguez

Partner, Mexico City
International Arbitration, Construction and Engineering Disputes
+52 55 5091 0162
omar.guerrero@hoganlovells.com



Mark R. Cheskin

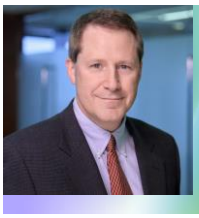
Partner, Miami
International Arbitration, Construction and Engineering Disputes
+1 305 459 6625
mark.cheskin@hoganlovells.com

Jeffrey S. George

Partner, Colorado Springs
International Arbitration, Construction and Engineering
+1 719 448 5907
jeffrey.george@hoganlovells.com

Eric Andalman ("United States" section author)

Partner, Denver
Real Estate
+1 303 899 7300
eric.andalman@hoganlovells.com



David W. Locascio

Partner, Houston
Infrastructure, Energy, Resources, and Projects
+1 713 632 1430
dave.locascio@hoganlovells.com

Luis Enrique Graham ("Mexico" section author)

Partner, Mexico City
International Arbitration, Construction and Engineering Disputes
+52 55 5091 0137
luis.graham@hoganlovells.com

Orlando F. Cabrera C. ("Mexico" section author)

Senior Associate, Mexico City
International Arbitration, Construction and Engineering Disputes
+52 55 5091 0137
orlando.cabrera@hoganlovells.com

Jorge Diaz-Silveira

Office Managing Partner, Miami
Infrastructure, Energy, Resources, and Projects
+1 305 459 6645
jorge.diaz-silveira@hoganlovells.com

Americas

Daniel E. González

Partner, Miami
International Arbitration, Construction and Engineering Disputes
+1 305 459 6649
daniel.gonzalez@hoganlovells.com

Alvin F. Lindsay

Partner, Miami
International Arbitration, Construction and Engineering Disputes
+1 305 459 6633
alvin.lindsay@hoganlovells.com

Richard C. Lorenzo

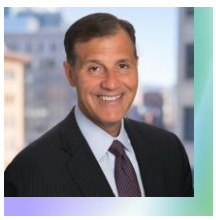
Partner, Miami
International Arbitration, Construction and Engineering Disputes
+1 305 459 6652
richard.lorenzo@hoganlovells.com

Maria E. Ramirez

Partner, Miami
International Arbitration, Construction and Engineering Disputes
+1 305 459 6542
maria.ramirez@hoganlovells.com

Alejandro Garcia González

Partner, Monterrey
International Arbitration, Construction and Engineering Disputes
+52 81 8220 1500
alejandro.garcia.gonzalez@hoganlovells.com



Oliver (Ollie) J. Armas

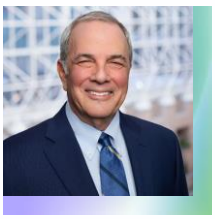
Partner, New York
International Arbitration, Construction and Engineering Disputes
+1 212 918 3020
oliver.armas@hoganlovells.com

Samuel L. Zimmerman

Partner, New York
International Arbitration, Construction and Engineering Disputes
+1 212 918 3241
samuel.zimmerman@hoganlovells.com

Michael Bonsignore

Partner, Washington, D.C.
Infrastructure, Energy, Resources, and Projects
+1 202 637 6415
michael.bonsignore@hoganlovells.com



Adam Kushner

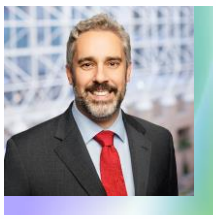
Partner, Washington, D.C.
Global Regulatory
+1 202 637 5724
adam.kushner@hoganlovells.com

Amy Roma

Partner, Washington, D.C.
Global Regulatory, Nuclear Energy
+1 202 637 6831
amy.roma@hoganlovells.com

Mary Anne Sullivan

Senior Counsel, Washington, D.C.
Global Regulatory
+1 202 637 3695
maryanne.sullivan@hoganlovells.com



Stewart Forbes

Counsel, Washington, D.C.
Global Regulatory, Nuclear Energy
+1 202 637 7154
stewart.forbes@hoganlovells.com

APAC

Janice Cheng ("Hong Kong" section author)

Partner, Hong Kong
International Arbitration, Construction and Engineering Disputes
+852 2840 5010
janice.cheng@hoganlovells.com

Joyce Leung

Counsel, Hong Kong
International Arbitration, Construction and Engineering Disputes
+852 2840 5078
joyce.leung@hoganlovells.com

Matt Bubb

Head of IERP for Asia-Pacific, Singapore
Infrastructure, Energy, Resources, and Projects
+65 6302 2454
matt.bubb@hoganlovells.com

David Rho

Counsel, Singapore
Infrastructure, Energy, Resources, and Projects
+65 6302 7139
david.rho@hoganlovells.com

Damon So

Partner, Hong Kong
International Arbitration, Construction and Engineering Disputes
+852 2840 5018
damon.so@hoganlovells.com

Chalid Heyder

Office Managing Partner, Jakarta
International Arbitration, Construction and Engineering Disputes
+62 21 2788 7911
chalid.heyder@hoganlovells.com

Rob Palmer ("Singapore" and "Vietnam" sections author)

Partner, Singapore
International Arbitration, Construction and Engineering Disputes
+65 6302 2456
rob.palmer@hoganlovells.com

Mark Lee ("Singapore" and "Vietnam" sections author)

Senior Associate, Singapore
International Arbitration, Construction and Engineering Disputes
+65 6302 2562
mark.lee@hoganlovells.com

EMEA

Manon Cordewener

Partner, Amsterdam
International Arbitration, Construction and Engineering Disputes
+31 20 55 33 691
manon.cordewener@hoganlovells.com

Fabian Bonke ("Germany" section author)

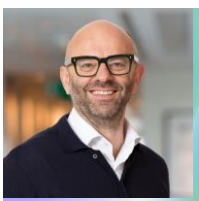
Partner, Frankfurt
Infrastructure, Energy, Resources, and Projects, Construction and Engineering Disputes
+49 69 96 23 6 0
fabian.bonke@hoganlovells.com

Christian Knütel

Partner, Hamburg
Infrastructure, Energy, Resources, and Projects
+49 40 419 93 167
christian.knuetel@hoganlovells.com

Charles Brasted

Partner, London
Global Regulatory
+44 20 7296 5025
charles.brasted@hoganlovells.com



Emerson Holmes

Partner, London
International Arbitration, Construction and Engineering Disputes
+44 20 7296 2000
emerson.holmes@hoganlovells.com

Malcolm Parry

Partner, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 2568
malcolm.parry@hoganlovells.com

Randall Walker ("Middle East" section author)

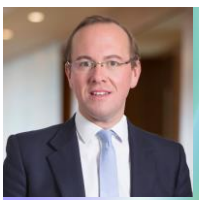
Partner, Dubai
International Arbitration, Construction and Engineering Disputes
+971 4 377 9377
randall.walker@hoganlovells.com

Tobias Faber

Partner, Frankfurt
Infrastructure, Energy, Resources, and Projects
+49 69 962 36 161
tobias.faber@hoganlovells.com

Carla Luh

Partner, Hamburg
Infrastructure, Energy, Resources, and Projects
+49 40 419 93 330
carla.luh@hoganlovells.com



Robert Gardener

Director of Government Affairs, London
Global Regulatory
+44 20 7296 7123
robert.gardener@hoganlovells.com

Rita Hunter

Partner, London
Global Regulatory
+44 20 7296 2931
rita.hunter@hoganlovells.com

Jamie Rogers

Partner, London
Construction Insurance
+44 20 7296 5795
jamie.rogers@hoganlovells.com

EMEA

Andrew Shaw

Partner, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 2747
andrew.shaw@hoganlovells.com

Rupert Sydenham

Partner, London
International Arbitration, Construction and Engineering Disputes
+44 20 7296 2117
rupert.sydenham@hoganlovells.com

Scott Tindall

Partner, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 5647
scott.tindall@hoganlovells.com

Arun Velusami

Partner, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 2135
arun.velusami@hoganlovells.com

Charles Ford

Counsel, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 2178
charles.ford@hoganlovells.com

Rosemary Miller

Counsel, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 5904
rosemary.miller@hoganlovells.com

Tom Smith

Partner, London
International Arbitration, Construction and Engineering Disputes
+44 20 7296 5195
tom.smith@hoganlovells.com

Gillian Thomas

Partner, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 2000
gillian.thomas@hoganlovells.com

Paul Tonkin

Partner, London
Real Estate Disputes
+44 20 7296 2456
paul.tonkin@hoganlovells.com

Adrian Walker

Partner, London
Infrastructure, Energy, Resources, and Projects
+44 20 7296 5566
adrian.walker@hoganlovells.com

Anne Littlewood

Counsel, London
International Arbitration, Construction and Engineering Disputes
+44 20 7296 2607
anne.littlewood@hoganlovells.com

Mark Crossley ("England and Wales" section author)

Counsel Knowledge Lawyer, London
International Arbitration, Construction and Engineering
+44 20 7296 2173
mark.crossley@hoganlovells.com

EMEA

Gonzalo Ardila

Partner, Madrid
International Arbitration, Construction and Engineering Disputes
+34 91 349 82 66
gonzalo.ardila@hoganlovells.com

Silvia Martínez ("Spain" section author)

Partner, Madrid
International Arbitration, Construction and Engineering Disputes
+34 91 349 8164
silvia.martinez@hoganlovells.com

Dr. Detlef Haß

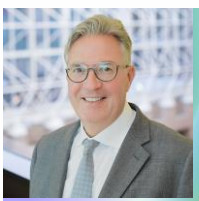
Managing Partner for Germany, Munich
International Arbitration, Construction and Engineering Disputes
+49 89 290 12 215
detlef.hass@hoganlovells.com

Nata Ghibradze ("Georgia" and "Turkey" sections author)

Counsel, Munich
International Arbitration, Construction and Engineering Disputes
+49 89 290 12 161
nata.ghibradze@hoganlovells.com

Aline Doussin

Partner, Paris
Global Regulatory, Sanctions
+33 1 53 67 47 47
aline.doussin@hoganlovells.com

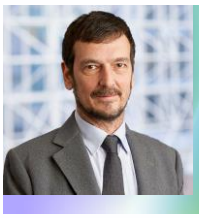


Jeremy Brittenden

Partner, Riyadh
Infrastructure, Energy, Resources, and Projects
+966 50 214 2274
jeremy.brittenden@hoganlovells.com

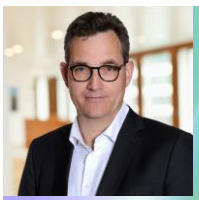
Jon Aurrekoetxea

Partner, Madrid
International Arbitration, Construction and Engineering Disputes
+4 91 349 82 00
jon.aurrekoetxea@hoganlovells.com



Carlo Massini

Partner, Milan
Infrastructure, Energy, Resources, and Projects
+39 02 7202521
carlo.massini@hoganlovells.com

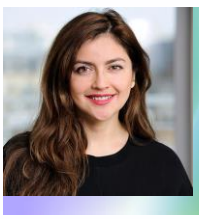


Karl Pörnbacher ("Georgia" and "Turkey" sections author)

Partner, Munich
International Arbitration, Construction and Engineering Disputes
+49 89 290 12 0
karl.poernbacher@hoganlovells.com

Bruno Cantier

Partner, Paris
Infrastructure, Energy, Resources, and Projects
+33 1 53 67 16 35
bruno.cantier@hoganlovells.com

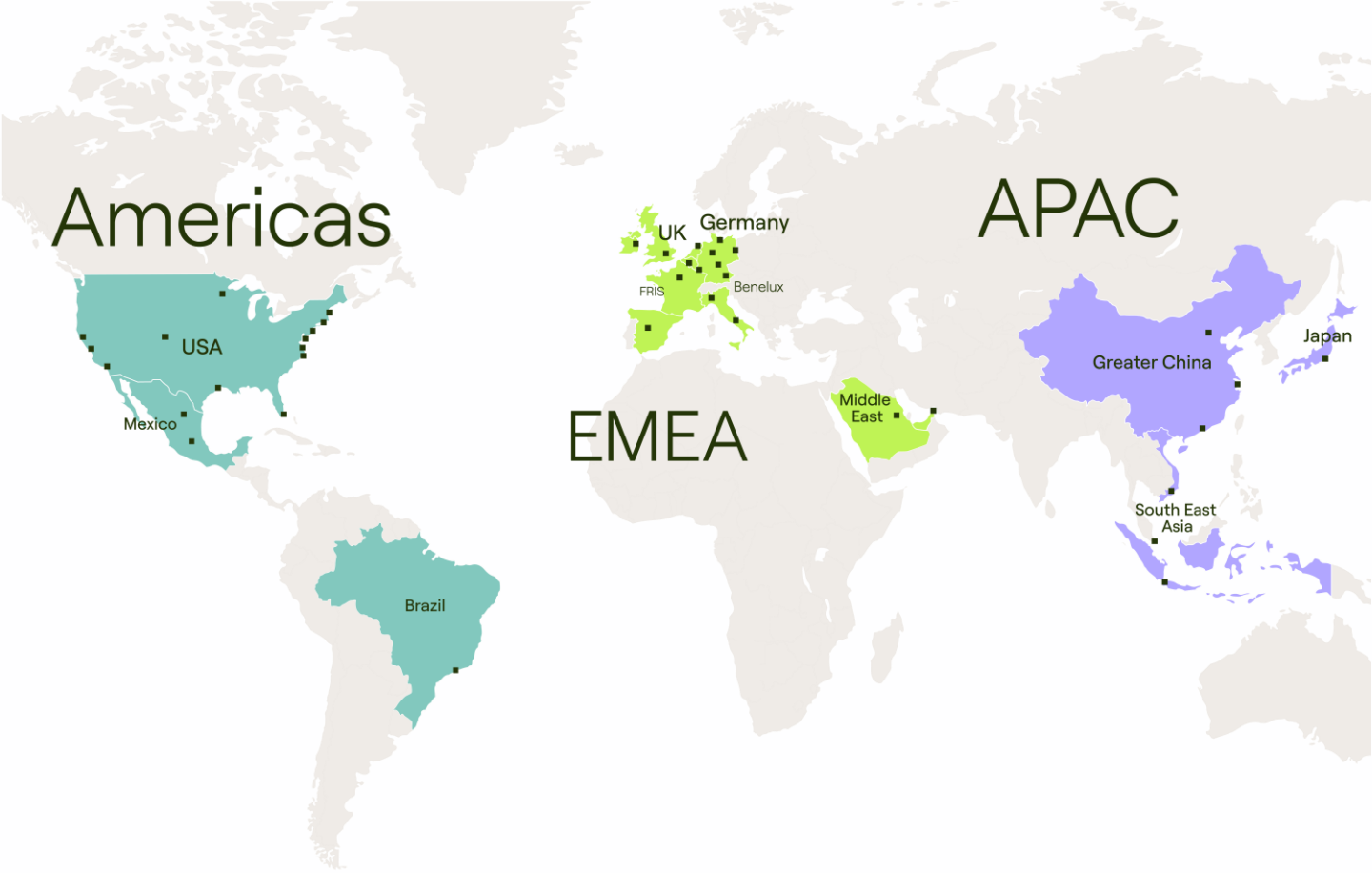


Melissa Ordonez

Partner, Paris
International Arbitration, Construction and Engineering Disputes
+33 1 53 67 47 47
melissa.ordonez@hoganlovells.com

Andrea Atteritano

Partner, Rome
International Arbitration, Construction and Engineering Disputes
+39 06 6758 23 1
andrea.atteritano@hoganlovells.com



Americas

- **Boston**
- **Denver**
- **Greater Washington, D.C.**
  - Baltimore
  - Washington, D.C. and Northern Virginia
- **Houston**
- **Los Angeles**
- **Miami**
- **Minneapolis**
- **New York**
- **Philadelphia**
- **Northern California**
  - San Francisco
  - Silicon Valley
- **Latin America**
  - Brazil
  - Mexico

Europe, Middle East and Africa

- **Amsterdam**
- **Brussels**
- **Dublin**
- **Germany**
  - Berlin
  - Düsseldorf
  - Frankfurt
  - Hamburg
  - Munich
- **London**
- **Luxembourg**
- **Madrid**
- **Milan**
- **Rome**
- **Paris**
- **Middle East**
  - Dubai
  - Riyadh

Asia Pacific

- **Greater China**
  - Beijing
  - Hong Kong
  - Shanghai
- **South East Asia**
  - Ho Chi Minh City
  - Jakarta
  - Singapore
- **Tokyo**

hoganlovells.com