

**Disputes in the construction industry are fact of life. It is a combination of many factors that may lead to disagreement and construction business is never easy. Construction projects are usually long-term with some degree of uncertainty and complexity and it is very difficult to predict all difficulties that may arise during the project life.**

# Construction Disputes

The construction dispute may arise on various grounds and most common is the financial reason or contractual problems – variations, delays or quality. We briefly describe the possible reasons for conflicts that may occur during the construction project and available methods to resolve them.

## Tender and procurement process

Mistakes in the estimation of project's cost or the evaluation of the scope of works may lead to severe cost implications. The proper analysis of plans and specification and adequate quotation, method of statement or risk assessment help to avoid financial risks associated with undervalued contracts. Disputes on the basis of the procurement process are also possible.

## Delays and extension of time

Disputes often arise due to delayed realisation of the project. Most contracts include the schedules of realisation, deadlines and make provisions for extending the time for works completion. Overrun of the project may be due to unforeseen circumstances, supplier delays, changes in specification and plans, alternation in the scope of work made by the client. Inevitably delays have financial impacts and often lead to problems between the client and the contractor. To avoid disputes arising on the delays basis, it is recommended that contractor issues the relevant notice about the possible delays, their reasons and cost implication as soon as possible. In that scenario, contractor should not lose any rights to extend the time of completion or to issue of any payments arising from additional works. The client has the right to damages so all delays have to be reasonable.

## Deficiencies in design

Errors and adjustments in plans and specifications often lead to delays and additional costs, what is not often understood by the client. The common is also the situation in which contractor is left with inadequate specifications and deficiencies in the plans what requires additional time on site. To avoid such problems, it is recommended to

- properly estimate the project cost based on the available specification, pricing preliminaries
- ensure the contractual right to extend the time of realisation and costs in case of any changes made by client or architect or due to deficiencies in specification
- ensure to issue relevant notice in case of additional works required due to changes in design or specification

## Project complexity

The long-term and complicated projects may require the risk assessment. Inflation, adverse weather conditions, changes in building regulations, changes in VAT rates and all other factors may influence the project lifespan. Risk assessment before entering the contract is rarely done but may avoid disputes due to the delay and additional costs the contractor may incur and due to the owner's right to claim damages for delay.

## Quality

Often in construction contracts, problems arise due to questioned poor workmanship by the client. Disputes on works not done in accordance with the project specification or in the unacceptable standard are very common. It is difficult to resolve such disagreements as each party may have a different point of view



on whether the quality is acceptable. The deficiencies in specifications about the standard of materials may also add to the problems. In such case, the contractor may ask for the contractual right to claim for additional costs. To avoid disputes based on quality factors, it is recommended to collect at various stages the written acceptance of the architect and client before proceeding with further works. It is always recommended to try and make defects good if they are contractor's responsibility, however in the case of dispute it is worth to employ an independent surveyor who can assess the works' standard.

#### Site conditions

If the contract does not specify who is responsible for the site conditions, what is often the case

in small construction projects, dispute may arise for instance:

- due to ground conditions revealed by the contractor, which requires additional machinery or even changes in plans and specifications
- due to delays caused by the blocked access for materials supply
- due to costs associated with site clearance

In the case when the responsibilities are not properly stated in the contract, often the client may be responsible for all additional costs what may lead to dispute.

#### Variations and final account

Variations are the most common cause of the dispute. What's more, variations occur in most of the

construction projects. Problems arise when there are significant numbers of variations, variations impact on the partly or fully completed works, variations increase the projects costs beyond the acceptable level, variations are issued just near the project completion. The nature and number of variations can transform a relatively straightforward project into one of unmanageable complexity. Disagreements at the stage of the final account calculation are very common.

#### Value engineering

Value engineering means the identifying and proposing the alternative solutions or materials, plant, equipment. The dispute may arise if the saving in respect of the choices of supply the materials or installation technology is to be shared between the contractor and the client.

#### Disputes on the supply chain

Problems may arise due to different and not compatible commitments and goals of subcontractors co-working on site. Moreover, problems with workers' behaviour often cause disputes in construction projects. This is why the construction standards have to be broadened through various training.

#### Termination of the contract

Contract termination by client or contractor due to various reasons may cause disagreements.

#### Payment of retention

Retention is money held by the Client as a safeguard against defects which may subsequently develop and which the Contractor may fail to make good. It is usually set as between 2.5% to 5% of the value of works. This percentage is then deducted from all the interim payments made to the main contractor who then

deducts it from all his sub-contractors. The first half of retention monies is paid out at the completion stage if all remedial work is done. The second payment is after the defects liability period is between 6 and 12 months if all applicable defects are made good. Problems occur if retention is not released.

#### Culture

Construction firms employ workers from various backgrounds, nationalities and cultures. Forming a teamwork across culture may be difficult as each has its own values.

#### Co-ordination

Conflicts often arise because works during the project are not properly coordinated. Delays in one field cause delays and costs in the other what leads to conflict during installation which is often costly and time-consuming to resolve, with each party blaming the other for problems.

#### Acceleration

Clients often insist on the acceleration of project, especially in last phases of works. This is often caused by the need to occupy the property or sale the property. In larger commercial projects the construction costs associated with acceleration are likely to be less than the commercial risk the developer may face if key dates are missed. Here disputes arise once the contractor has carried out accelerative measures and incurred additional costs but the client refuses to pay.

#### Methods of resolving the dispute

In the UK, there are few methods for resolving the disputes in construction projects contracts. All disputes and businesses are different, so it is advised to consult with the solicitor the best possible solution for a particular case.

**Mediation** - in the first instance the cheapest and quickest way to resolve some construction conflicts is to ask the third party, often Contract Administrator, who is named in the contract, for a decision. Typically Contract Administrator is an Architect, Employer or a Surveyor. Not all disputes could be resolved in such way as often an Architect or Employer is in the centre of conflict too. The contract states the powers of decisions made by the Contract Administrator, but in most cases they are not binding and might be overturned in legal proceedings. Mediation can

maintain existing business relationships as the parties are aided towards a settlement.

**Negotiations** - quick and cheap solution, when parties have some degree of influence on the outcome. Negotiations are usually expressed to be 'without prejudice' which means that any admissions, or offers and counter-offers, made in them cannot be mentioned in later proceedings. Their effectiveness depends on the case complexity and parties bargaining power. It may not be effective unless parties have the same power, typically a sub-contractor is in a worse financial position to the main contractor and therefore not have much room for manoeuvre.

**Adjudication** - all parties involved in construction contract have a statutory right to an adjudication. It is a temporarily determinative form of resolution, swift interim dispute resolution. Compulsory adjudication provisions would apply to the vast majority of construction contracts. The process is administered by an appointed adjudicator and it can be commenced at any time, even while the project is still proceeding, and usually requires the adjudicator to make a decision within 28 days. It is convenient if the contractor or subcontractor can and wish to continue the works. The adjudicator must act impartially but does not usually go into nearly as much detail as an arbitrator or court would do. Decisions are binding if not referred to arbitration or litigation. Legal costs are awarded by the adjudicator.

**Litigation** - the dispute is referred to the court for legal proceedings. It is slower and more expensive than other options but with the binding decision. In the process multiple parties may be involved. It requires the full disclosure of documents, evidence from witnesses. The complexity and value of dispute should be taken into account before entering the litigation process.

**Arbitration** - it is the formal system of the dispute resolution which final decision is binding on the parties and the appeal is difficult. Procedures are similar to those adopted by the court, but arbitrations are private, cheaper and quicker than court. Arbitration features convenience and privacy. The process is administered by an appointed arbitrator subject to any relevant contractual rules and subject to the statutory, regulatory framework applied by the domestic courts. There are only limited rights of appeal and legal costs are usually awarded to the successful party.



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