



Keeping you connected

International construction and engineering - our work in EPC contracts

Our expertise

At Eversheds we have one of the largest teams of construction and engineering lawyers in the world. We advise on the full range of legal issues arising on EPC projects, from drafting and negotiation of contracts and financing documentation, to providing live project support (dispute avoidance), to advising on dispute resolution through ADR methods and, if necessary, in local tribunals and international arbitration forums.

Our team also has significant experience of advising on EPC contracts across a wide variety of jurisdictions and sectors. We work out of 50 worldwide offices, and our outstanding global coverage means we understand the local market conditions and pressures which may be relevant to a project. So we can provide expert and culturally-sensitive legal and commercial advice for our clients – wherever in the world they are working. The sectors we cover include:

- Oil and gas
- Water and wastewater
- Road and rail
- Power generation and transmission
- Renewable energy

We understand the industry specific challenges faced by clients operating in these sectors – and many of our lawyers have spent long periods of their working life in industry. We act for purchaser clients, EPC contractors and supply chain companies, so have a full comprehension of the legal issues and risks involved with a project, regardless of our client's position.

Clients seek our input on EPC Projects in three key areas:

Front end advisory

We work closely with clients' technical and commercial teams and their other external advisors on the selection and development of the appropriate value-for-money EPC model, incentivisation regime and risk allocation (whether bespoke or tailoring an industry standard form such as the FIDIC, ICC or IChemE forms). Our extensive experience means we can give clients expert practical legal guidance on how best to reflect their commercial objectives for the project into the EPC contract and other arrangements (including operating and maintenance contracts).

"The lawyers are approachable and responsible, and their advice is sound, flexible and accessible."

Chambers

Case study 1: Port development in Sierra Leone

Our client was a bio-ethanol producer in Sierra Leone. The only export route from the country was a 50-year-old jetty, deemed increasingly unsafe by tanker operators having to dock there. Our client entered into a 20-year concession agreement with the government of Sierra Leone to design, build and operate a new hydrocarbon jetty. This provided the means to export bio-ethanol safely and efficiently, but also to import fuel on agreed tariffs – thus providing energy security for the country. Working with our client's technical project team, we drafted and negotiated the FIDIC-based EPC contract for the design and completion of the new jetty and the associated dolphins, piping and safety systems. This involved significant step-down and harmonisation of the FIDIC terms to dovetail with the bespoke development obligation and limitations in the concession agreement.

We have "swift advisors, who can anticipate issues, adapt and resolve problems"

Chambers

Project support/dispute avoidance

After an EPC contract has been concluded, all parties will be focused on delivering the project in accordance with the time, cost and quality targets agreed. However, in sophisticated and complex projects, change management can be challenging and can lead to cost overruns and delays.

Traditionally, claims arising from change were dealt with as part of a final account negotiation – and with legal advice supplied on merits and prospects. However, the forms of contract typically used for modern engineering projects (including most bespoke EPC Contracts and standard form approaches, such as FIDIC) require the proactive and timely management of change, and the claims associated with it, during the lifetime of the project. These claims are no less complex than before, and often require specialist legal advice to be sought whilst the project is ongoing.

Our team understands the value of efficient change management and rapid resolution of issues. We have extensive experience of supporting our clients as they work to keep projects on track whilst dealing with multiple problems. Our aim is simple – to protect our client's position, avoid unnecessary disputes and costs, and ensure that the programme or project proceeds as intended.

Case study 2: A pipeline project in the UK

Our client was a leading water and sewerage company which let a turnkey contract for the design and construction of a clean water pipeline to facilitate the movement of water supply between two major cities. During the course of the project, the contractor claimed its programme was affected by significant difficulties with ground conditions, environmental issues, horizontal and vertical alignment and route changes. In order to be entitled to increased costs or timeline extensions as a result of these factors, the contractor had to serve timely notices. During the final year of the project, our team worked alongside the purchaser's project team in managing and mitigating cost increases and schedule slippage, providing daily support to the project team dealing with volumes of correspondence and claims from the contractor. Ultimately, we helped our client close the project £20 million below the anticipated outturn cost when we first became involved. The claims were settled in mediation.

"They understand that they become part of our team and our organisation. They do not come across as external lawyers who quote the law and leave us to do what we want with that information.... Their relationship management and interaction with our non-legal staff is second to none. ... They understand us as a client, and they not only talk a good story, but they actually do it."

Head of Litigation, Major Utilities Company

Dispute resolution and international arbitration

On certain projects, disputes between the parties will arise and need to be resolved. We advise our clients on resolution, in the first instance through advising on merits and prospects of their position and, if necessary, through formal contract procedures. We have teams of experts who specialise in construction engineering disputes, and have worked on major multi-million dollar claims resolved through various forums – ranging from dispute review boards and mediation to institutional and ad hoc arbitrations.

Case study 3: Advising on disputes over a CHP plant construction in South Africa

We acted for a US-based EPC contractor in relation to disputes arising during the construction of a new power and process plant in South Africa. The project had been suffering from delays and cost increases, which became the subject of claims and counter claims between the contractor and the purchaser.

In addition to the delays and cost disputes, the purchaser alleged that there were numerous defects in the design and construction of the plant. Key allegations related to the pipe work – in particular, the materials specification, performance and quality of the vessels – the weld procedure requirements and the inspection regime implemented during construction.

In partnership with a local law firm, we advised on the performance obligations in each contract, on which matters the client should focus its defence and whether or not our client should commence claims against the supply chain. We assembled a core group of technical advisors, including metallurgical, chemical and structural experts to work alongside our client's team. The claim was resolved to our client's satisfaction through an ICC arbitration, settled in mediation.

Case study 4: Nuclear Decommissioning Project, UK

Our client was a decommissioning/reprocessing company in the UK, operating under a strictly regulated licence arrangement. Our client entered into a lump sum EPC contract with a specialist contractor for an encapsulated product store designed for increasing capacity at a decommissioning site. During the lifetime of the project, we advised our client on entitlement to a number of extension of time and variation claims relating to changes in the specification put forward by the contractor. Following a mediation, these claims were compromised in a settlement agreement. Within the settlement the parties agreed how entitlement to future claims would be addressed for the remainder of the project. Further extension of time claims were put forward after this agreement and we also advised our client on the correct interpretation of the compromises previously reached, the law on concurrent delay, technical aspects of the specification changes and the best strategy for a successful, on budget, final account settlement.

Highlights of our other experience includes acting for:

- A major defence contractor in relation to the design and construction of a £300m facility required to build Successor class submarines.
- A main works contractor relating to delay/disruption claims on the expansion of a dry dock facility.
- An employer client in relation to defective works claims on a project involving refurbishment and expansion of submarine penstocks in Scotland.
- A specialist contractor on subsidence claims at a RoRo facility in Humberside.
- Acting for one of the world's largest utilities in multimillion pound gas pipeline litigation concerning assets critical to a nationally significant energy infrastructure project which related to the construction of two new LNG terminals. The issues included pipeline failure analysis, as well as programming and quantum analysis, health and safety matters and confidentiality issues.

- An incorporated JV operating company in Russia in relation to design deficiencies in an Onshore Processing Facility in an Arctic region on claims in excess of \$950m. Claims involved process engineering, HSE engineering, M&E defects, civil engineering and legal issues such as jurisdiction, joinder of proceedings and limitation.
- An EPC contractor on an arbitration under UNCITRAL Rules in which claims were made against it for its work under FEED and EPC contracts for an Adriatic LNG terminal.
- A water company in a TCC litigation against a multinational designer and a specialist UK contractor on a £100m+ claim in relation to the design and construction of a BAFF plant.
- A water company on two multi-million pound projects concerning the design and construction of two new clean water tunnels and pipelines.

Global construction and engineering contacts:



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