

C/M/S

Law . Tax

# Construction across Europe: one industry, many legal systems

The CMS Construction Group



# One Europe, many legal approaches

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Major construction projects have a lot in common, wherever you are in Europe, as do many facets of construction law. Some legislation affecting the industry applies across the European Union, with that relating to public procurement being just one example.

Despite this, major differences can often arise between the approaches adopted by individual legal systems. This can lead to legal results which are surprising to construction professionals from another jurisdiction. The following are a few examples:

- In the Ukraine, a developer may have to pay up to 10% of the estimated value of the project as a contribution to the cost of the infrastructure development.
- Courts in the United Kingdom rarely enforce agreements to agree. As a result, problems can often arise when a contractor starts work in reliance on a developer's letter of intent expressing an intention to conclude a contract in the future.
- German law relating to standard terms and conditions is so stringent that it outlaws many standard terms seeking to limit liability in FIDIC and other international contract forms. This even applies when the parties involved are major companies.
- Russian construction law imposes a specific legal framework in which each party in the construction process (the developer, the construction company, the design and engineering company) is assigned a particular role. In this regard, when FIDIC standard forms of construction contracts are used in Russia, they require significant amendments to ensure they are compliant with Russian law.
- In France, a subcontractor can under certain circumstances pursue a claim for payment directly against the employer, whether or not the main contractor is insolvent.
- The Polish Civil Code provides that, under certain circumstances, an investor and a general contractor are jointly liable for payment towards a subcontractor, and that a subcontractor may demand payment from either of them as a result.
- In Spain, if the contractor becomes insolvent the employer is not entitled to terminate the agreement, whatever its terms. The court must reach any decision regarding termination.
- In the Netherlands, a contractor cannot be held liable for defects which are apparent when the development is taken over but which are not mentioned in the taking over certificate.

# European coverage, local expertise

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To be successful across Europe, the construction industry needs to take both local conditions and local laws into consideration. At CMS, we provide Europe-wide multi-disciplinary legal services for the international construction industry.

What makes us the market leader in Europe?

- Coverage. We operate in 41 cities across Europe and a total of 54 locations throughout the world, and have over 595 partners, more than 2,800 legal and tax advisers and a total staff numbering over 5,000 people.
- Know-how. Construction law is now recognised throughout Europe as a specialist field. Our lawyers are able to act quickly and expertly to give commercial advice, assist in drafting and negotiating contracts, and resolve disputes as and when they arise.
- Experience. We have wide experience of construction law and a proven track record built up over many years. This includes drafting and advising on FIDIC and other international forms of contract. We also have extensive experience of dispute resolution, not only in Europe's national courts but also in domestic and international arbitration, including proceedings under the ICC, LCIA and UNCITRAL rules.
- Consistency and local knowledge. Our clients can expect a seamless service from CMS, no matter which office they use, together with a single point of contact in the client's home or operating country. This is combined with a level of local knowledge which can only be gained from a presence on the ground.
- One-stop service. Construction clients have legal needs beyond construction law itself; a major project may raise issues involving tax or employment law, for example. We offer a full range of commercial law services to meet all such needs.
- Commercial focus. Perhaps most importantly, our approach is rooted in knowledge of the industry and is geared towards achieving the desired commercial result for our clients, quickly and cost-effectively.

# Some of our experience ...

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Every day, lawyers from the CMS construction group advise clients across Europe on a wide range of projects and disputes in the construction and engineering field. These have included advising:

- the General Contractor in complex public procurement, design-related and construction matters arising from the National Stadium in Warsaw for the purposes of the EURO 2012 football championships;
- architectural master planners and bidding consortia in relation to the 2012 Olympic Games in London;
- an Italian contractor on disputes totaling USD 50 million arising out of the construction of an office development in Moscow for US owners;
- Arise Technologies Corporation on setting up a solar cell factory in one of Germany's new Federal States including establishing a subsidiary, in particular advice on the purchase of real property, financing and the construction and planning agreements;
- HOCHTIEF Solutions AG as general contractor on the construction of EUR 400 million Hamburg Elbphilharmonie in strategic issues, including technical change orders and additional claims owing to considerable extension to the construction period;
- Van Oord Dredging and Marine Contractors BV, a member of multinational consortium on property, construction and dispute resolution issues in relation to the tender for development of breakwater for the sea port in Świnoujście;
- Dutch developers in relation to all aspects of a 120 megawatt wind farm project off the Netherlands coast;
- RWE in a cross-border dispute concerning a pipeline project in the North Sea, including successful proceedings in the courts of the Netherlands and Italy;
- the United Kingdom Government regarding all aspects of the Channel Tunnel Rail Link, including planning, procurement and dispute resolution;
- an engineering company in relation to disputes totalling approximately GBP 250 million arising from construction of the new Wembley Stadium in London;
- Tishman International on the EUR 250 million Sofia Airport Centre project, a multi-purpose mix of offices, logistics and storage facilities and hotel;
- Spanish multinational Iberdrola on a suite of construction contracts for the construction of a USD 1.6 billion power plant;
- the Berlin Airport Company (Flughafen Berlin-Schönefeld GmbH) on the construction of the new EUR 2 billion Berlin Airport;
- Bilfinger Berger in relation to the bidding procedure for the planning, construction, and operating of a new TGV-track in France (LGV SEA);
- the Serbian Government on the EUR 1.6bn dispute with an Austrian consortium over an infrastructure project in Serbia;
- Peugeot Citroen Automobiles S.A. on the concept, structuring, implementation and follow-up of a major production plant construction project in Russia; and
- AstraZeneca on the construction of a new pharmaceutical plant in Russia.

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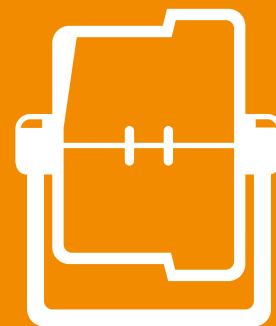
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