Linklaters

Public Infrastructure/PPP/Concession

Andrew Penfold – Linklaters LLP

Kofo Dosekun – Aluko & Oyebode

Satindar Dogra – Linklaters LLP

Teresa Laboucarié-Polak – Linklaters LLP

13 October 2020

Linklaters

Introduction

"To close the yawning infrastructure gap and, therefore, unlock our undoubted economic growth potential, massive investments must be made in the expansion of our infrastructure services well beyond the resources and capacity of government which has been solely responsible for the provision of such services."

"The [ICRC] has…developed the National Policy on PPP to provide clear and consistent process and procedure guides for all aspects of PPP projects development and implementation from project identification, evaluation, selection, to procurement, operation, maintenance and performance monitoring."

Foreword to the National Policy on PPP by HE Chief Ernest Shonekan, GCFR, CBE

Linklaters

Agenda

Methods of Delivering Public Infrastructure

- Public Infrastructure Delivery Structures
- Public Private Partnerships
- Structure of a PPP
- Key Roles and Documents
- Interests of the Parties in a PPP
- ABC
- Key Clauses and Risk Allocation
- Termination of a Concession Agreement

Dispute Resolution Mechanism

- Contractual Dispute Resolution Mechanisms
- International Investment Agreements
- Key Features of FIDIC Contract Disputes
- Damages Claims
- Case Study

Linklaters

Infrastructure Assets

- Key attributes:
  - Essential services – low volatility of demand
  - Monopoly / quasi-monopoly position
  - High barriers to entry
  - Stable cash flows
  - Dividend / yield, rather than exit, driven
  - Debt funding from private sector
- Large scale, high value often involving significant risk
- Importance of risk assessment, allocation and mitigation at the contracting stage

Linklaters

Overview of methods of delivering public infrastructure

- **Public Private Partnership**
- **Regulated revenue model**
- **Direct government procurement**

Linklaters

Key drivers for PPP

- New/improved large-scale infrastructure
- Reduction of public sector expenditure/ borrowing
- Access to private sector capital – shares risks between private investors, lenders and the government
- Provides certainty over revenue streams, encouraging stable international investment
- Availability of debt
- Access to private sector efficiency and innovation – innovative solutions to design issues
- “Risk transfer”
- Maximising of whole life cost effectiveness of projects
- Single point responsibility for integration

Linklaters

Sectors in which the PPP Model is Commonly Used

Principal Sectors:

- Power generation plants and transmission/distribution networks
- Transport infrastructure: roads, light and underground railways, airports, sea ports
- Gas and petroleum infrastructure: storage depots and distribution pipelines etc.
- Public buildings: schools, hospitals, prisons
- Water infrastructure: water supply, treatment and distribution systems
- Solid water management

Linklaters

Use of PPP model in Africa: Example of the Energy Sector

Sierra Leone
Addax Biomass Plant

Kenya
Thika Thermal Power Project

Rwanda
Kivu Watt

Tanzania
Symbion Rental
Ubungo Power Plant

Botswana
KSE Orapa and Mmashoro IPP

Zambia
Tata Itezhi-Tezhi HPP

7

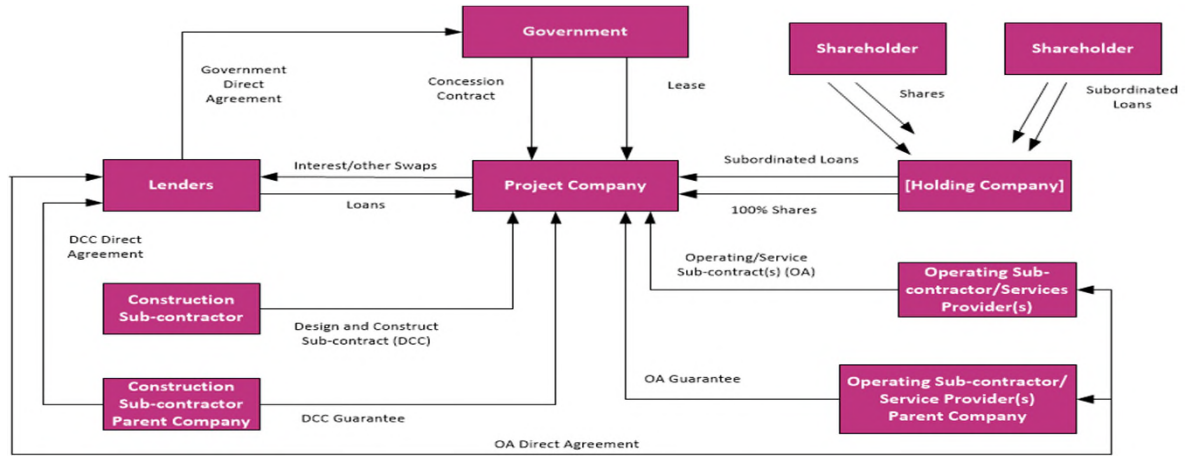
Linklaters

Need for PPP Projects in Africa and Nigeria

- African Development Bank (AfDB)'s Africa Infrastructure Report 2018 states that Africa has an infrastructure gap of between $68 billion to $108 billion financing gap.
- During a workshop organized by the World Bank Group in 2019, the Minister of Budget and National Planning in Nigeria, Mrs Zainab Ahmed, stated that Nigeria will require US$100 Billion annually for the next 30 years to effectively tackle Nigeria's infrastructure challenges.
- According to the World Economic Forum, every dollar spent on capital projects will stimulate growth and development across all sectors in Nigeria. At last published, in 2012, such economic return ranged from 5%-25%.
- But overall there has been a slow pace of PPPs in Africa.

Linklaters

Typical PFI/PPP Contractual Structure



Linklaters

Key Roles and Documents

Document	Government	Sponsors	Project Company	Lenders	Construction Contractor	O&M Contractor
Concession Agreement	✓		✓			
Shareholders' Agreement		✓				
Design and Construction Contract			✓		✓	
Operation & Maintenance Contract			✓			✓
Interface Agreement			✓		✓	✓
Loan Agreement(s)		✓	✓	✓		
Sponsor Support Arrangements		✓		✓		
Lender Direct Agreement(s)	✓		✓		✓	✓

10

Linklaters

Interest of the respective parties

Government	Sponsors
• Limiting exposure of the government's balance sheet • Achieving value for money for capex and opex • Ensuring a high quality of facilities and services • Ensuring timely completion	• Limiting recourse to project sponsors • Reducing capex and opex costs • Ensuring timely delivery in accordance with the financial model • Maximising availability and usage of the facility in accordance with the financial model • Maximising the rate of return • Allowing opportunities to divest • Ensuring regulatory and "host country risk" certainty • Might also have competing interests at the contractor level

11

11

Linklaters

Interest of the respective parties

Construction Contractor	O&M Contractor
• Maximising construction price (i.e. margin) • Minimising exposure to uncompensated cost overruns • Minimising exposure to uncompensated delays • Ensuring a clear handover of risks at completion • Ensuring a clear definition of scope • Limiting overall liability and minimising exposure to claims – particularly for matters outside its control or influence (e.g. force majeure, third parties, changes in law)	• Very similar to the construction contractor • Maximising the fee (i.e. margin) • Minimising exposure to uncompensated cost overruns and delays • Ensuring a clear definition of scope • Limiting overall liability and minimising exposure to claims – particularly for matters outside its control or influence (e.g. force majeure, third parties, changes in law)

Linklaters

Key issues for Investors

- **Government interference:** Bilateral investment treaties may provide a level of protection.
- **Expropriation of the Assets:** Appropriate legislative provisions can significantly mitigate this risk.
- **Enforcement and Security:** Enforcing security by financiers can also be costly and political.
- Significant high cost and time for perfecting security.
- Governmental support in the form of guarantees or other types of credit enhancement may be challenging to obtain.
- Appropriate legislative framework for a PPP procurement process, which also protects the rights of investors is critical.
- Ability of the state to meet its financial obligations especially termination payment.

Linklaters

Key issues for Investors

- Government support in procuring relevant consents, permits and waivers.
- Foreign exchange control and investment protection – A stable foreign exchange and investment climate is critical in attracting foreign investment in PPP projects.
- Availability of tax reliefs and incentives.
- Availability of an impartial dispute resolution mechanism.

Linklaters

ABC risks in infrastructure

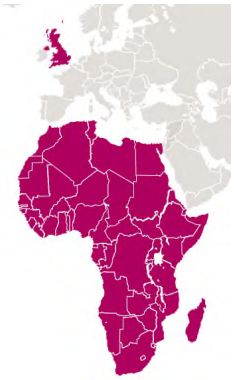
Infrastructure is a high-risk sector:

- Significant scale of projects
- Complexity of structure, contractual links and supply chains
- Reliance on local agents and third party intermediaries
- Different cultural attitudes to bribery
- Government involvement

Linklaters

International anti-corruption enforcement

- Gold standard set by UK, US and OECD rules
- Broad extra-territorial effect with significant corporate fines, e.g.
  - Standard Bank: ~US32M (UK)
  - Rolls-Royce: ~£510M (UK)
  - Airbus: ~€991M (UK); ~€2B (FRA); ~USD527M (US)
- Public contracts debarment risk globally
- Importance of adequate ABC procedures and accurate books and records



Linklaters

ABC risk mitigation

Initial engagement of third party

Due diligence and on-boarding
- Information gathering / risk assessment
- Screening
- Questionnaire and information requests
- Red flags?
- Enhanced DD if high risk, e.g. site visit / third party DD

Ongoing
- Ongoing monitoring commensurate to risk assessment
- Relationship management

Initial engagement | *Negotiations and due diligence* | *Post-signing*

Commercial considerations
- Market rate paid (and nothing "extra")
- Genuine services engaged and documented in an agreement

Terms for contractual negotiations
- ABC clauses
- Sign up to ABC policies or evidence adherence to equivalent standards
- Attend training or evidence training of an equivalent standard
- Consider audit rights, depending on risk profile
- Periodic self-certification of compliance

Linklaters

Key clauses and Risk Allocation

Why is it so important?

- Usually heavily negotiated documents due to the critical importance of risk allocation.
- Need to carefully provide for the entire life-cycle of the project.
- Risks should be explicitly identified and decisions should be made as to how each risk is to be managed.
- Risk allocation should be done by reference to the party/parties with most influence over each issue.

Linklaters

Key Project Risks

Procurement process challenges to the validity of the concession tender process

Access to land – ensuring the Project Company, Construction Contractor and Operator has access to the required parcels of land throughout the term of the concession

Design risks – ensuring that the project is designed to meet project specifications

Unforeseen sub-surface conditions – effect on project costs and timeline

Unexcused delays caused by construction contractors – consequence of delay and impact on guaranteed completion dates

Linklaters

Key Project Risks (continued)

- **Delay caused by Project Company** – consequences of delay and impact on guaranteed completion dates
- **Force majeure and other 'neutral delays'** – consequences of delay and impact on guaranteed completion dates
- **Failure to achieve project specifications** or failure to operate and maintain in accordance with project specifications
- **Changes in law** – impact on schedule, ability to achieve project specifications and operations
- **Mismatch between the contract terms**

Linklaters

Right to terminate at Common Law: "Repudiatory Breach"

- Consider termination rights that may be available at common law in addition to any contractual rights.
- What is **repudiatory breach**?
  - A breach of contract so fundamental that it gives the aggrieved party the right to choose to terminate (putting an end to all remaining obligations of both parties), as well as to sue for damages
- This includes:
  - Where it is clear (by virtue of express agreement, statute or implication of law) that any breach of the term in question will entitle the other to put an end to all remaining obligations of both parties – i.e. a breach of a condition
  - Where the breach in question is of such fundamental importance that it has the effect of depriving the aggrieved party of substantially the whole benefit of the contract, often described as a breach going to the root of the contract.
  - Renunciation
  - Impossibility

Linklaters

Repudiatory Breach: Breach of a condition

- What is a "**condition**"?
- Classification of a term as a condition:
  - Express agreement of the parties
  - Statute
  - Judicial precedent
- If none of the categories apply, it will be a matter for the Court's judgment: In general, favour classification as an intermediate/innominate term [*Grand China Logistics Holding (Group) Co Ltd v Spar Shipping AS* [2016] EWCA Civ 982]
- Belts and braces approach: make the consequences of the breach express

22

Linklaters

Repudiatory Breach: Substantial failure to perform

- Applies to **intermediate/innominate terms** of a contract
- Does the breach deprive the aggrieved party of substantially all the benefit the parties intended that party to get under the contract / does it go to the root of the contract?
- Requires an assessment of the benefit of full performance against:
  - What has already been received?
  - What loss has been caused thus far by the breach?
  - How it has affected the value of future performance?
  - What loss will be averted by termination?

  [*Telford Homes (Creekside) Ltd v Ampurius Nu Homes Holdings Ltd* [2013] EWCA Civ 577]
- Common infrastructure examples: Bad workmanship? Delay by the contractor where time is not of the essence? Failure by the employer to pay one or more instalments?

23

Linklaters

Repudiatory Breach: Renunciation and impossibility

- Renunciation
  - when one party, by words or conduct, shows an intention not to perform, or expressly declares that it will not perform its obligations under the contract in some essential respect
- Impossibility
  - where one party has, by its own act or default (which need not be deliberate), disabled itself from performing its contractual obligations in some essential respect, or prevented completion of the contract by the other party
- May occur at or during the time fixed for performance
- Court will assess whether it is sufficiently serious to justify termination

Linklaters

Anticipatory repudiation

- Occurs before performance is due
- Where a **party refuses (in advance) to perform an obligation (renunciation), or makes it impossible to perform (impossibility)**
- The aggrieved party is entitled to terminate at the time of anticipatory breach and does not have to wait until an actual breach has occurred
- The aggrieved party may take some time to decide whether to terminate or wait until the time fixed for performance, in the hope that the other party will change its mind and perform the contract, but, exercise caution….

Linklaters

Following a repudiatory breach

- A contract is, as a general rule, not automatically terminated by a party's repudiatory breach, the aggrieved party must elect to terminate
- An aggrieved party, faced with a repudiatory breach, can:
  - affirm the contract in a clear way; or
  - accept the repudiation and claim damages
- The risk of losing the right to terminate through affirmation: "*In my judgment, there is of course a middle ground between acceptance of a repudiation and affirmation of the contract, and that is the period when the innocent party is making up his mind what to do.* ***If he does nothing for too long, there may come a time when the law will treat him as having affirmed****. If he maintains the contract in being for the moment, while reserving his right to treat it as repudiated if his contract partner persists in his repudiation, then he has not yet elected" (Stocznia Gdanska SA v. Latvian Shipping Co [2002] 2 Lloyd's Ref 436, per Rix LJ*

Linklaters

Grounds for termination: Does it make a difference?

- Yes ...
- Termination on contractual grounds
  - easier to establish
  - usually aggrieved party's damages are limited to the loss suffered up to the date of termination
- Termination for repudiatory breach
  - often less clear whether a repudiatory breach has been committed
  - but generally entitles the aggrieved party to "loss of bargain" damages

Linklaters

But be careful…

- Risk that termination by a party, in error, for repudiatory breach could result in that party itself having committed a repudiatory breach *[Telford Homes (Creekside) Ltd v Ampurius Nu Homes Holdings Ltd [2013] EWCA Civ 577*
- Before acting, consider:
  - What is the breach? How likely is it to be considered repudiatory? What level of damages could be awarded?
- Retrospective validation:
  - *The Boston Deep Sea Fishing principle*: A party that has terminated a contract for an unjustified reason can avoid itself having committed repudiatory breach if there was a valid reason for termination at the time albeit unknown [*Boston Deep Sea Fishing & Ice Co v Ansell* (1888) 39 Ch D 339]
  - Unless: (i) the breach could have been rectified had that ground been relied upon at the time; or (ii) the party in question is estopped by conduct or otherwise from relying on a different ground

28

Linklaters

Termination of a Concession Agreement

- Usually addressed exhaustively given the potential for significant loss to lenders and investors
- Termination strategy – is the right to terminate beneficial? This depends on the perspective of the affected party
- Sponsors will be concerned to protect investment by limiting rights to terminate. Lenders will wish to protect repayment of debt
- Consider contractor and/or operator "flow down"
- Lender direct agreements may be affected

29

Linklaters

Termination of a Concession Agreement: Contractual Considerations

Project Company Default	Host Govt. Party Default	Common Termination Events
• Non-compliance other than as a result of supervening events • Materiality thresholds • Remedy periods	• "Political" Force Majeure • Discriminatory Change in Law • Payment default • Consider enforcement	• Prolonged Delay Event or Delayed Completion Event • "Natural" Force Majeure Event

Notice of termination:
- should be clear and unequivocal
- follow exact contract formalities

Linklaters

Consequences of Termination

- Consequences of termination as regards:
  - Compensation
  - Handover of project asset
- Lenders will be concerned to protect their loans to the Concessionaire
  - Level of concern will depend upon compensation regime – where protected will be less concerned
- If it does all go wrong, how much will the Government pay, if anything?
- Usually:
  - Lenders protected and "kept whole" (but consider Concessionaire "fault")
  - Concessionaire protected where not at fault
  - Concessionaire receives less where at fault
    - Rationale for payment even where at fault is that Government acquires asset

Linklaters

Termination Compensation – typical recoveries

Immediate Termination Event or Contractor Default	Government Default or Voluntary Termination
• "costs to complete" • principle that Authority should not suffer a loss but should also not benefit from a windfall	• full repayment of debt (including break costs) • subcontractor losses on capped basis • modelled return on equity
Prolonged Delay Event	**Force Majeure Event**
• full repayment of debt (including break costs) • subcontractor losses on a capped basis • return on equity on a capped basis	• full repayment of debt (including break costs) • no subcontractor losses • no return on equity

Linklaters

Summary

Do's

- Consider whether termination is the right choice – could the contract be varied or renegotiated?
- Consider the practical implications of termination
- Consider possible grounds for termination and any formalities
- Decide which grounds to rely upon in terminating
- Draft unequivocal notice stating you are terminating - be clear whether it's a repudiatory and/or contractual breach
- If multiple grounds are available, consider setting out all terminations in the alternative
- Set out the details of the breaches relied upon
- Take steps to mitigate your loss

Dont's

- Rush into serving a notice without considering the issues raised
- Specify only a contractual right to terminate if you wish to argue for repudiatory breach and "loss of bargain" damages
- Inadvertently affirm by indicating in the notice or through your conduct that you are prepared to allow the contract to continue

Linklaters

Contractual dispute resolution mechanism

Andrew Plump – Linklaters

Babatunde Fagbohunlu SAN – Aluko & Oyebode

Airlie Goodman – Linklaters

13 October 2020

Linklaters

Multi-tiered dispute resolution

Most contracts will have a multi-tiered dispute resolution clause where arbitration is generally envisaged as the final step

Advantages

- cost savings
- preserving ongoing commercial relationships

Potential disadvantages

- if the process is not well respected, depending on the “mandatory” wording of the clause, claim may be deemed inadmissible if the earlier phases have not been complied with
- different jurisdictions may have varying approaches to the question of whether a multi-step clause must be strictly adhered to when an early step would be “futile”

Linklaters

ADR step – negotiation and/or mediation

The first step in a multi-tiered dispute clause is likely to be negotiation, perhaps then progressing to mediation

Negotiation

- Preferable to specify that the negotiations be handled by people not directly involved in the dispute
- Agree on confidentiality of the negotiation

Mediation

- Consider use of institutional mediation rules
- Specify how to appoint the mediator
- Establish that the mediator will not be able to act thereafter as arbitrator unless agreed to by the parties
- Choose the place (city) of mediation and language to be used
- Agree on confidentiality of the mediation

Linklaters

Expert determination step

Certain disputes, particularly construction disputes, may be predominantly of a technical nature, so that determination of the disputed issues by an independent technical expert may settle the dispute or assist the parties in achieving a negotiated settlement

This will be subject to moving on to arbitration if the expert's determination is challenged or the dispute is otherwise not resolved

Caution:

- if questions of law and/or contract interpretation are likely to be intertwined with the technical issues that might be submitted to an expert, it may be more efficient to not include an expert determination step prior to arbitration
- contested expert determination proceedings can themselves be time-consuming and costly

Linklaters

Dispute Resolution Boards step

- A common step drafted into construction contracts
- Formal bodies composed of one or three members, not necessarily legal experts
- Typically provided for in a specific multi-tier dispute resolution clause and established upon signature or commencement of performance under the contract
- Different types of dispute boards:
  - Review Boards: issue non-binding recommendations followed by arbitration in case of a party's dissatisfaction with the recommendations
  - Adjudication Boards: issue binding decisions requiring compliance, followed by arbitration in case of a party's dissatisfaction with the decisions
  - Combined Dispute Boards: can issue recommendations and/or decisions, depending on the matter, followed by arbitration in case of dissatisfaction

Linklaters

FIDIC's Dispute Avoidance / Adjudication Board (DAAB)

Ad hoc or Standing Board?

- 1999 Ed. – Standing Board only for Construction (Red Book);
- 2017 Ed. – Standing Board for all three: Construction (Red), Plant and Design-Build (Yellow) and EPC/Turnkey (Silver)

Effect of decisions

- Final: (i) meaning; (ii) generally not final; (iii) final if neither party gives a NOD (2017 Ed. – cl.21.4.4)
- Binding: (i) parties to give effect to it, notwithstanding challenge; (ii) power of DAAB to order security for payments made in the interim (2017 Ed. – cl 21.4.3)

Dispute avoidance

- "Issues of disagreements during performance of contract"
- Wider concept of dispute avoidance – earlier stages of dispute avoidance – project planning, risk allocation:
  - PWC – "Business Case Approach" - https://www.pwc.com/gx/en/capital-projects-infrastructure/publications/assets/pdfs/pwc-resolving-capital-project-disputes.pdf
  - Federal Facilities Council – "changing adversarial culture" - https://download.nap.edu/cart/download.cgi?record_id=11846
- Potential pitfall? – *Glencot Development and Design Co Ltd v Ben Barrett & Son (Contractors) Limited* [2001] EWHC Technology 15 (13 February 2001)

Linklaters

Arbitration step: Advantages over litigation

- Neutrality
- No public hearings
- Flexibility to select:
  - Procedural rules
  - Governing law
  - Language
  - Arbitrators
- Confidentiality (if correctly provided for)
- Speed and costs?
- Binding and enforceable award (New York Convention 1958 facilitates international recognition and enforcement)

Linklaters

Arbitration: Potential disadvantages

- Under certain rules there is no provision for a default or summary judgment
- If arbitration is mandatory and binding, the parties waive their rights to access the courts and have a judge determine their dispute
- If, for any reason, your arbitration clause is defective, the process can be derailed or can take a very long time and prove more expensive – it becomes a “dispute about a dispute”
- There are limited avenues for appealing an arbitral award

Linklaters

The Arbitration Agreement

- Drafted into the underlying contract governing the Parties' relationship in relation to a project
- Provides for the adoption of arbitration as the method to resolve disputes
- Should have a broad scope to encompass all potential disputes arising out of the Parties' relationship

Linklaters

Key elements of the Arbitration Agreement: Institutional or ad hoc?

Ad hoc:

- DIY arbitration
- Ad hoc arbitration under UNCITRAL Arbitration Rules

Institutional:

- International Chamber of Commerce (ICC)
- London Court of International Arbitration (LCIA)
- Arbitration Institute of the Stockholm Chamber of Commerce (SCC)
- Lagos Chamber of Commerce International Arbitration Centre (LACIAC)
- Singapore International Arbitration Centre (SIAC)

Linklaters

Key elements of the Arbitration Agreement: Seat and venue

Seat of arbitration provides the legal framework for the proceedings

Determines:

- Extent to which assistance from local courts is available
- Rights of recourse against the award
- National court judges of the arbitration seat may have a role to play in conservatory measures

Normally, the arbitration law of the seat governs certain aspects of the arbitral procedure (as distinct from the law governing the merits of any dispute). The choice of seat may therefore affect:

- Powers of the arbitral tribunal
- Formal requirements for an award
- Availability and choice of arbitrators
- Choice of counsel (due to local bar restrictions)
- Confidentiality of the arbitration
- Document production

Linklaters

Key elements of the Arbitration Agreement: Seat and venue

In any event, for the choice of seat, consider:

- Country of the seat should be a party to the New York Convention 1958
- Seat's legal regime should be arbitration-friendly

Seat of arbitration does not necessarily need to be the place where hearings are held (i.e. the venue)

- Logistical issues may play a role in choosing a venue for a hearing (which does not need to be specified in the arbitration clause and may be agreed later with the arbitral tribunal):
  - Location of witnesses
  - Availability of support services
  - Site visits to the project (if applicable)

Linklaters

Key elements of the Arbitration Agreement: Composition of the Tribunal

- Usually addressed in institutional rules, subject to a different agreement by the parties
- Uneven number of arbitrators, usually 1 or 3
  - where appropriate, this may be left to be determined by the institution, based on the amount in dispute and complexity of the case
- If it is clear that the amounts in dispute are not likely to be high, can save costs by agreeing to a sole arbitrator
- Often best not to stipulate qualifications or other requirements for arbitrators in the arbitration agreement in advance of a dispute arising
- If any qualifications or characteristics are specified, avoid overly specific/limiting requirements

Linklaters

Key elements of the Arbitration Agreement: Multi-party / multi-contract disputes

Once a dispute is pending, it may also be beneficial to add parties and/or claims:

- joinder = adding parties
- consolidation = adding claims/disputes

Examples where it may arise:

- differing parties, but compatible arbitration agreements and contracts
- the same parties and compatible arbitration agreements, but different contracts
- the same parties and contracts, but inconsistent arbitration agreements

Linklaters

Multi-party/multi-contract disputes: Joinder

ICC Rules Art. 7 – Joinder of Additional Parties:

- Refers to a situation where there is already an arbitration pending under ICC Rules and one of the parties to that arbitration seeks to add a new party to the arbitration.

Procedure under ICC Rules Art. 7 and 8:

- A party wishing to join an additional party shall submit a Request for Joinder against the additional party to the ICC Secretariat. Unless the parties agreed otherwise, such Requests must be submitted before the appointment or confirmation of any arbitrator by the ICC Court.
- Any party against which a Request for Joinder is made automatically becomes a party to the arbitration upon the submission of that Request, subject to decision on any objection to joinder by the ICC Court (if referred by the ICC's Secretary General) and/or by the arbitral tribunal.
- Claims may be made by any party, including a joined party, against any other party in the arbitration.

Linklaters

Multi-party/multi-contract disputes: Consolidation

The ICC Court, the LCIA and the SCC Board have the power to consolidate multiple proceedings in circumstances where:

- the parties expressly agree to such consolidation; or
- all of the claims in the arbitrations are made under the same arbitration agreement; or
- where the claims in the arbitrations are made under more than one arbitration agreement, the said arbitration agreements are compatible; and:
  - ICC Art. 10: are between the same parties, and arise out of the same legal relationship; or
  - LCIA Art. 22A: are between the same parties, or arising out of the same transaction or series of related transactions provided no other tribunal has yet been formed or, if formed, is composed of the same arbitrators; or
  - SCC Art. 15: the relief sought arises out of the same transaction/series of transactions and if consolidation fosters the efficiency and expeditiousness of the proceedings

Multi-party/multi-contract disputes: Common issues

The main challenges are to ensure that:

- All parties sign up to the same, or at least consistent, dispute resolution procedures
- The dispute resolution provisions do not overlap or, if they do, it should be clear which is to prevail where both are potentially engaged
- There is a mechanism for consolidation of proceedings or joinder of third parties
- Principles of equal treatment are observed

Construction of Public Infrastructure (including PPPs & Concession Arrangements)

Topic 11: Sovereign Immunity

Matthew Weiniger QC, Partner – Linklaters

13 October 2020

Overview

1. Sovereign immunity
2. The English law perspective
   - State Immunity Act 1978
3. Case study
4. Practical considerations

Sovereign immunity

- What is it?
- International perspective – absolute v restrictive immunity
- Why does it matter?

The English law perspective (i): Framework

Basic instruments:

- The European Convention on State Immunity 1972
- State Immunity Act 1978
- UN Convention on Jurisdictional Immunities of States and their Property 2004

Basic concepts from the SIA

- "State" / "separate entity" / "central bank"
- Immunity from adjudication and enforcement/execution
- Exceptions

The English law perspective (ii): Immunity from adjudication

- States enjoy immunity except where one of a number of listed exceptions apply (State Immunity Act 1978, section 1)

Waiver	• **"submission to jurisdiction" – section 2**
"Commercial Transaction"	• **proceedings relating to a "commercial transaction" entered into by a State – section 3(1)(a)**
Contractual obligation	• **proceedings relating to a contractual obligation on the State to be performed wholly or partly in the UK – section 3(1)(b)**
Arbitration	• **where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration - section 9(1)**

Linklaters

The English law perspective (iii): Immunity from enforcement/execution

- State property is immune from enforcement/execution unless exception applies (section 13(2))
- Two principal exceptions:

Waiver	• **"written consent" (section 13(3))** • has the State expressly waived its immunity from enforcement/execution?

Commercial purposes	• **Property in use or intended for use for "commercial purposes" (section 13(4))**
	  • any contract for the supply of goods or services
	  • any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation
	  • any other transaction or activity into which a State enters otherwise than in the exercise of sovereign authority

Linklaters

Case study: What are commercial purposes? (i)

***SerVaas v Rafidian Bank* [2012] UKSC 40**

Facts	• SerVaas enforcing judgment v Iraq in UK • Applied for 3rd party debt order v Rafidian Bank (in liquidation) • Certificate created presumption that funds were for sovereign purposes • Dividends received by administrators to be paid to Development Fund for Iraq
Decision	• SerVaas could not rebut the presumption • Origin of debt not relevant; just present and future use • Assets not divisible

Linklaters

Case study: What are commercial purposes? (ii)

***SerVaas v Rafidian Bank* [2012] UKSC 40**

Impact

- Narrowed scope of exception
- Need to earmark the asset for commercial purposes
- Can it be shown that the property is in use for commercial purpose?

Elsewhere?

- Absolute doctrine in some jurisdictions e.g. China/Hong Kong
- Others construe commercial assets/transactions more broadly

Linklaters

Practical considerations (i)

- Consider whether there are any State or SOE parties involved when structuring a transaction – e.g. would particular contracting entities benefit from sovereign immunity unless an exception applies? Which parties should strategically be party to the transaction documents?
- Check the position on sovereign immunity in all relevant jurisdictions (e.g. jurisdiction of State/State parties; seat; any other jurisdictions in which enforcement is likely) – consult local counsel
- Ensure to include a clear waiver of immunity from adjudication ("submission to jurisdiction") or an arbitration clause
- Ensure to include a clear waiver of immunity from enforcement – ideally against both commercial and non-commercial assets
- Ensure that injunctive/interim relief is provided for in the clause:
  - Consider any restrictions in jurisdictions where injunctive relief may be required
  - In England, you need a waiver, even if you can identify commercial assets (SIA 1978 section 13(2)(a)); *ETI Euro Telecom v. Republic of Bolivia* [2008] EWCA Civ 880

Practical considerations (ii)

- Check whether the waivers are enforceable in all relevant jurisdictions
- Make sure that appropriate clauses are included in all transaction documents including State parties
- Consider extent of risk in dealing with a State and additional protective measures which can be taken – e.g. stabilisation clauses; investment structuring to access treaty protections; political risk insurance
- Provide for any arbitration to be seated in a jurisdiction that is party to the New York Convention
- …consider how the overall strategy changes when acting for a State party!

Construction of Public Infrastructure (including PPPs & Concession Arrangements)

Topic 12: Potential recourse under investment agreements

Matthew Weiniger QC, Partner – Linklaters

Teresa Laboucarié-Polak, Partner – Linklaters

13 October 2020

Linklaters

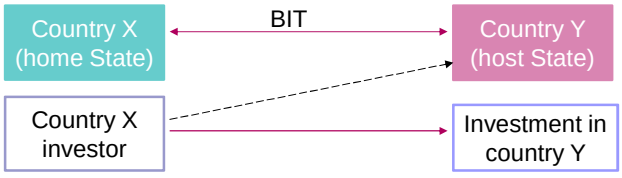
Investment arbitration – Encouraging foreign investment

- Investment involves medium or long-term exposure to a host State's less familiar environment and political landscape
- Risks can include foreign exchange, legal, political, taxation, and exclusivity and regulatory interference
- Investment treaties providing for ISDS encourage foreign direct investment by lowering such risks for investors
- Types of investment treaties: Bilateral; Multi-lateral and Investment Chapters

Linklaters

Investment arbitration – Action directly against the State

- Mechanism for private parties to enforce rights directly against a State
- Give a private investor recourse (subject to meeting the necessary conditions) directly against the host state in which their investment has been made in a neutral forum based on **the State's consent to arbitrate** contained in a treaty.



- Strong commitment to investment arbitration across Africa

Linklaters

Who is protected (i.e. who is a qualifying "investor")?

Investor / Claimant must be a "national" / "investor" of a Contracting State to the BIT or multilateral treaty in order to invoke protection

Nationality of natural persons determined by:

- domestic citizenship laws of the relevant Contracting State
- e.g. "national" means "*natural person who is a national of that Party under its applicable laws*" (US model BIT)

Nationality of companies may be determined by:

- Usually determined by the company's place of incorporation or registration
- Note, however, higher standards imposed by some treaties by reference to:
  - the place of effective management / principal place of business
  - state where controlling shareholder domiciled
- *Barcelona Traction, Light and Power Company Limited v Spain* (New Application: 1962) (Belgium v. Spain) (1962-1970)

30

30

Linklaters

What is protected (i.e. what is a qualifying "investment")?

- Definition of "investment" (can vary widely between treaties, but is often broad), generally:
  - A wide inclusive phrase such as "*every kind of asset*" or "*every kind of investment*"
  - Followed by non-exhaustive list of asset types
  - Exclusions?
- ICSID arbitration – additional requirement under Article 25(1) that the "*legal dispute*" arises "*directly out of an investment*"
- Case law not consistent as to whether *Salini* criteria / some variation of those criteria must be satisfied
- Legality requirement – "*investments*" must be made "*in accordance with*" the laws and regulations of the host State

31

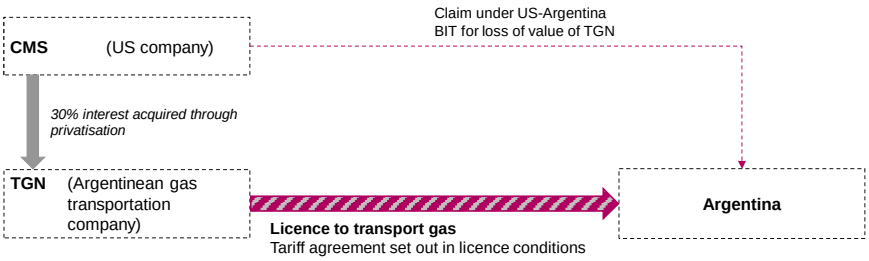
31

Claims through shareholdings

- Party which brings the investment treaty claim may not directly own the investment themselves, but own it through another interest or shareholding
- Shares generally accepted as a type of investment
- **Indirect shareholdings**: Even where there are several subsidiaries intervening between the claimant and the ultimate investment, tribunals have still allowed claims to be brought by the parent company in relation to damage inflicted on that investment, e.g. *Azurix Corp. v Argentina; Tza Yap Shum v Peru*
- **Minority shareholdings**: Similarly, there is no requirement (unless expressly incorporated in the treaty) for the shareholding to be a majority/controlling one e.g. *CMS v Argentina*
- Impact = Ability for companies further up the chain to take advantage of any applicable treaty protections

Simple example – Claim through a shareholding

CMS Gas Transmission Company v Argentina (ICSID Case No. ARB/01/8)



…what if the US company was owned by an Argentinian entity? Depends on wording of treaty, but dominant approach is to look at formal nationality

Linklaters

So what about shell companies?

- Can mailbox/shell companies qualify for protection? Under many treaties, yes, e.g. *Yukos Universal Ltd (Isle of Man) v Russian Federation*; *Tokios Tokelės v Ukraine*
- But note more stringent definitions / "denial of benefits" provisions in some treaties to prevent this

See for example the BIT between the USA and Bolivia:

> "*Each Party reserves the right to deny to a company of the other Party the benefits of this Treaty if nationals of a third country own or control the company and: (a) the denying Party* ***does not maintain normal economic relations with the third country****; or (b) the company has* ***no substantial business*** *activities in the territory of the Party under whose laws it is constituted or organized"*

Linklaters

Corporate structuring and forum shopping

- Careful investment structuring to access investment protections can assist in minimising political risk (e.g. by creating leverage for negotiations, providing direct recourse to neutral dispute resolution outside the host State)
- There is nothing wrong with prudent planning / corporate structuring per se: In *Aguas del Tunari SA v Republic of Bolivia*, the tribunal rejected Bolivia's objection that the 'availability of the BIT was the result of strategic changes in the corporate structure', noting:

> *[I]t is not uncommon in practice, and – absent a particular limitation – not illegal to locate one's operations in a jurisdiction perceived to provide a beneficial regulatory and legal environment in terms, for examples, of taxation or the substantive law of the jurisdiction, including the availability of a BIT.*

- ….but timing is key: *Philip Morris Asia Ltd v Australia*

35

Linklaters

Corporate structuring and forum shopping (cont'd)

- Treaty claim brought in response to tobacco plain packaging legislation
- Australia announced measures in 2010; in 2011 Philip Morris transferred its Australian business to a Hong Kong subsidiary. No US-Australia BIT but there is a Hong Kong-Australia BIT
- Philip Morris lost and had to pay Australia's legal costs
- Key finding: "*the initiation of this arbitration constitutes an abuse of rights, as the corporate restructuring by which the Claimant acquired the Australian subsidiaries occurred at a time when there was a reasonable prospect that the dispute would materialise and as it was carried out for the principal, if not sole, purpose of gaining Treaty protection*…" (588)

Linklaters

Substantive protections

- **Absolute / non-contingent protections:**
  - No expropriation without full compensation
  - Fair and equitable treatment
  - Full protection and security
  - Free transfer of funds
- **Relative / contingent protections:**
  - National treatment
  - Most Favoured Nation
- Umbrella clauses (can you elevate a breach of contract to a breach of treaty?)

Linklaters

Expropriation – what is it?

No single recognised definition

Coercive acquisition of private property by the State

By means of administrative or judicial measures, or forcible taking

Tangible and intangible assets (including some contractual rights)

Linklaters

Expropriation – what forms can it take?

Direct expropriation

Indirect (or "creeping") expropriation and measures having equivalent effect

- Tribunals have struggled to define indirect expropriation – fine line between non-compensable regulatory acts and compensable indirect expropriation
- "Creeping" expropriation – a series of measures can constitute expropriation
- Has the State substantially deprived the investor of the benefit of its investment?

Linklaters

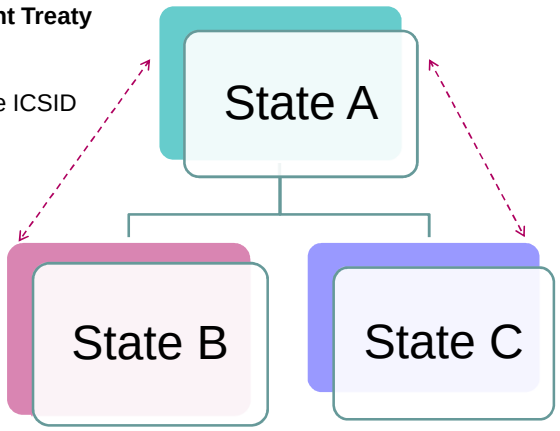
Fair and Equitable Treatment ("**FET**")

- One of the most widely invoked protections – broad and flexible standard of protection in respect of judicial, executive and / or administrative decision-making
- Types of treatment which may constitute a breach of FET standard?
  - Denial of justice (treatment of investors by courts of host State)
  - Executive / administrative decision making
    - Lack of procedural fairness due process
    - Infringement of investor's legitimate expectations (stability of legal and business framework / specific assurances)
      - …but stability does not mean freezing the legal system or making it impossible for State to reform laws and other regulations in force at the time investor made their investment
      - …and investors need to do their DD before investing

Linklaters

Most Favoured Nation ("**MFN**")

Bilateral Investment Treaty
- Broad FET
- No negotiation or notification before ICSID claim



Bilateral Investment Treaty
- Narrow FET
- Year litigated in local courts before ICSID claim
- MFN clause

So, if acting for an investor from State C considering a potential claim against State A, you should consider whether there are more favourable protections in other treaties (e.g. the treaty between State A and State B)

Linklaters

Key considerations for handling FIDIC construction projects and disputes

Maria Mitaeva, Raquel Galvão Silva - Linklaters LLP

Tunde Fagbohunlu SAN, Ngo-Martins Okonmah – Aluko & Oyebode

13 October 2020

Linklaters

Key considerations for handling FIDIC construction projects and disputes

1. The role and importance of contractual notice provisions
2. Best practices for managing FIDIC construction projects
3. Practical tips for arbitration of claims

Linklaters

FIDIC – Silver Book 1999 – Clause 20.1

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or additional payment, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a clam within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of the Sub-Clause shall apply.

– FIDIC Silver Book 1999, clause 20.1

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

(a) This fully detailed claim shall be considered as interim;
(b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require;
(c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

– FIDIC Silver Book 1999, clause 20.1

Linklaters

FIDIC – Silver Book 1999 – Clause 20.1 Continuing effect

Event
For which the Contractor considers himself to be entitled to any extension of the Time for Completion and/or additional payment

Max. 42 days
The Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed

Max. 28 days after the end of the effects
The Contractor shall send a final claim

As soon as possible to max. 28 days
The Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim
-> **Interim claim**

Monthly intervals
The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require

Linklaters

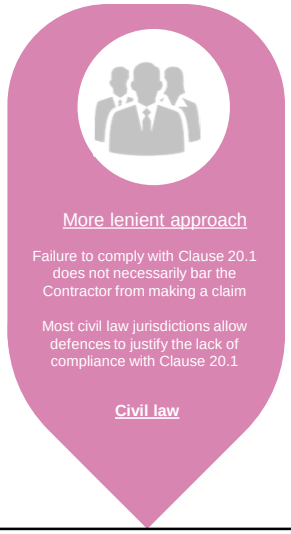
Contractual notices & time bar – Main differences between common and civil law

Strict approach

Compliance with Clause 20.1 is a condition precedent

If the Contractor does not comply with Clause 20.1, he is barred from claiming any extension of time or additional payment.

Common law



More lenient approach

Failure to comply with Clause 20.1 does not necessarily bar the Contractor from making a claim

Most civil law jurisdictions allow defences to justify the lack of compliance with Clause 20.1

Civil law

46

Linklaters

Contractual notice & time bar – Main differences between common and civil law : the Obrascon case

- Under common law, Clause 20.1 is usually considered to be a condition precedent.
- When does the 28-day notice period start running? *Obrascon Huarte Lain SA v A-G for Gibraltar*
  - *I see no reason why this clause should be construed strictly against the Contractor and can see reason why it should be construed reasonably broadly, given its serious effect on what could otherwise be good claims for instance for breach of contract by the Employer.*
  - Based on the combined reading of Clause 20.1 and Clause 8.4, the 28-day notice period starts to run:
    - When it is clear that there will be a delay (prospective delay); or
    - When the delay has started to be incurred (retrospective delay).
- Let's look at a hypothetical example…

47

Linklaters

Notice requirements under FIDIC – Silver Book 2017

> *The **claiming Party shall give a Notice to the other Party**, describing the event or circumstance giving rise to the cost, loss, delay or extension of DNP for which the Claim is made as soon as practicable, and no later than 28 days after the claiming Party became aware, or should have become aware, of the event or circumstance (the "Notice of Claim" in these Conditions).*
>
> ***If the claiming Party fails to give a Notice of Claim within this period of 28 days**, **the claiming Party shall not be entitled to any additional payment, the Contract Price shall not be reduced (in the case of the Employer as the claiming Party), the Time for Completion (in the case of the Contractor as the claiming Party) or the DNP (in the case of the Employer as the claiming Party) shall not be extended, and the other Party shall be discharged from any liability** in connection with the event or circumstance giving rise to the Claim.*
>
> *– FIDIC Silver Book 2017, clause 20.2.1*

Linklaters

Key considerations for handling FIDIC construction projects and disputes

1. The role and importance of contractual notice provisions
2. Best practices for managing FIDIC construction projects
3. Practical tips for arbitration of claims

Linklaters

Best practices for managing FIDIC construction projects

Importance of keeping contemporaneous records

- To avoid losing entitlement to extra time and cost in respect of an otherwise valid claim (Clause 20.1!)
- Projects records (incl. photographic and video records) are the most powerful form of contemporaneous evidence
- Discharging the burden of proof
- FIDIC requirements

50

Linklaters

Best practices for managing FIDIC construction projects

51

Linklaters

Best practices for managing FIDIC construction projects

Handling of claims by the respective parties

Do:

- ✓ Familiarise yourself with the contractual requirements from the start of the Project and keep an organized record of all relevant documents and communications
- ✓ Consider investing in an electronic document management software and appointing a claim manager
- ✓ Submit your claims on time and in accordance with contractual requirements
- ✓ Remember that the inter-partes correspondence may be assessed one day by an Arbitral Tribunal – keep it factual and avoid any impression of unreasonableness

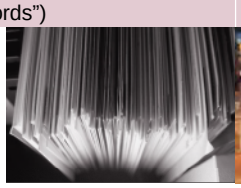
52

52

Linklaters

Issues for Project Sponsors, Project SPV and Project Financiers

Documentation	Issues for lenders
• Relevance of Points 1 and 2 ("Handling of claims by respective parties") to Project Owners • FIDIC Silver Book sub-clause 20.2.3 ("contemporary records")	• Involvement of lenders • Step-in provisions

53

53

Linklaters

Key considerations for handling FIDIC construction projects and disputes

1. The role and importance of contractual notice provisions
2. Best practices for managing FIDIC construction projects
3. Practical tips for arbitration of claims

Linklaters

Practical tips for arbitration of claims
Expert witnesses

- Expert evidence: delay, quantum, technical
- Finding, selecting and instructing the expert witness
- Tips for preparing the expert reports
- Joint expert reports

Linklaters

Practical tips for arbitration of claims
Factual witnesses

- Factual witness evidence will be key to supplement gaps in contemporaneous documentary records or to help interpret such records
- Identify the key and most suitable witnesses for the various technical aspects of the claims (civil, M&E engineering etc.), define role and content of witness statements
- Reserve sufficient time to work with the witnesses – remember that they have a job outside the arbitration world
- Keep the witness statements factual – a challenging task

Linklaters

Practical tips for arbitration of claims
Written submissions

1. **Set the scene – the importance of the bird's eye view**: provide the Arbitral Tribunal with a clear narrative before delving into the detail of the claims
2. **Articulate a clear position**: provide a clear and succinct summary of the parties' positions on each claim item
3. **Manage the volume of documents**:
   (a) Present the most compelling evidence in the simplest way possible
   (b) IT solutions can drastically improve management and use of numerous exhibits

Linklaters

Damages and common claims under construction contracts

Andrew Plump
Raquel Silva
Antonia Adebambo

Linklaters LLP

13 October 2020

Linklaters

Common claims – delay

- Express provision for completion of works by a certain date
- Risk allocation provisions for timely completion under the contract – specific risk events
- Extension of time
- Consequences of delay – what are the parties entitled to?
- Loss and expense claims – compensable delay and “”time no money” rule
- Delay analysis and identifying the cause of delay; critical and non-critical delays
- Prevention principle and time at large
- Concurrent delay as a strategic defence
- If failure to complete works on time is contractor’s own fault > damages or termination

Linklaters

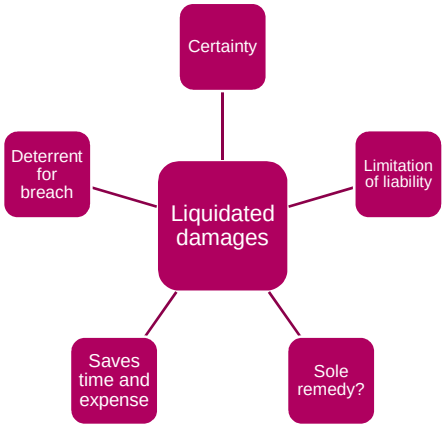
Common claims - disruption

- Different from delay – disturbance of the contractor's regular and economic progress and/or delay to a non-critical activity
  - Often small delay to ultimate completion or none at all
- Employer's fault
- Difficult to establish claim. Contractor must show:
  - Disruption of its activities
  - Disruption caused by a matter which attracts liability under contract or by a breach of contract
  - How much disruption was caused
  - Sum required for compensation – either contractual sum or as damages for breach of contract
- Challenging gathering evidence, can be costly

Linklaters

Liquidated damages – key principles

Parties often contractually agree that a liquidated (i.e. fixed and agreed) sum shall be paid by a party as damages in the event of its failure to meet a contractual obligation.



Liquidated damages – key principles

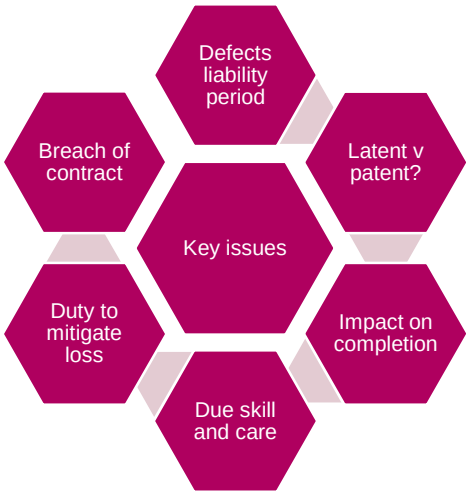
Benefits of liquidated damages for employer:

- No requirement to prove causation of the breach, or quantum of the loss suffered
- Liquidated damages payable once a trigger event occurs, irrespective of whether the claimant has suffered any loss at all
- No duty to mitigate its loss

Liquidated damages clause must be a genuine pre-estimate of loss, otherwise it is an unenforceable penalty clause

Employer may still have the right to pursue a claim for unliquidated damages (or rely on its claim for the penalty).

Common claims – defective work



Making contact.
Linklaters

Disputes Management in Africa Infrastructure Projects Training – Key contacts

Matthew Weiniger
Partner, London
Tel: +44 20 7456 5523
matthew.weiniger@linklaters.com

Matthew is Linklaters' Global Chair of International Arbitration. He is a specialist in international arbitration, public and private international law. He also advises on non-contentious matters involving the protection of investments under public international law. Over recent years much of his practice has involved investment treaty arbitrations.

Matthew lectures on matters connected to arbitration and public international law. He is co-author, together with Professor Campbell McLachlan QC and Laurence Shore, of the world's leading investment arbitration text - International Investment Arbitration: Substantive Principles published by Oxford University Press (second edition 2017).

Matthew spent 5 years as Chair of the sub-committee of the UK ICC National Committee responsible for appointing arbitrators in certain ICC disputes and has much experience of how the ICC Secretariat carries out its duties.

Matthew is recommended for public international law, international arbitration and project/energy disputes in Legal 500, Chambers UK, Chambers Global and other legal expert directories.

Andrew Penfold
Partner, London
Tel: +44 20 7456 5935
andrew.penfold@linklaters.com

Andrew Penfold is a Partner in Linklaters' Energy & Infrastructure practice and is the head of our major projects construction practice. He has over 15 years' experience advising sponsors, lenders and contractors on large-scale oil & gas, power and infrastructure projects.

Andrew regularly works with clients at the inception of a project to structure the procurement of construction, operations and maintenance activities so that they are fully coordinated with the intended funding and commercial strategy.

Andrew has extensive experience in drafting and negotiating contracts across the full range of construction structures, including EPC, EPCM, FEED, multi-contractor structures, onshore/offshore structures and partnering and alliance agreements. He is fully familiar with all the major suites of standard-form documents, including FIDIC, IChemE, LOGIC and NEC and the typical amendments and negotiation points related to them.

Teresa Laboucarié-Polak
Partner, London
Tel: +44 20 7456 3415
teresa.laboucarie-polak@linklaters.com

Teresa is a Partner and Solicitor Advocate with over 12 years' experience in the field of international commercial arbitration and litigation.

Teresa advises on cross-jurisdictional contentious matters with a particular focus on international arbitration and disputes in the energy, construction and infrastructure sectors. She has experience acting in arbitrations under all the major institutional rules (including International Chamber of Commerce (ICC), London Court of International Arbitration (LCIA), United Nations Commission on International Trade Law (UNCITRAL), Stockholm Chamber of Commerce (SCC) and Hong Kong International Arbitration Centre (HKIAC) rules), as well as on ad hoc arbitrations.

Teresa has previously been seconded to BP's Dispute Resolution team and spent two years on secondment to Linklaters' Hong Kong office.

Teresa has acted for clients on a number of significant, high value, construction disputes in the energy sector, including in relation to power plants, semi-submersible rigs and chemical plants.

Andrew Plump
Counsel, Paris
Tel: +33 1 56 43 59 11
andrew.plump@linklaters.com

Raquel Galvão Silva
Managing Associate, Lisbon
Tel: +35 1 21 864 0096
raquel.silva@linklaters.com

Maria Mitaeva
Managing Associate, Paris
Tel: +33 1 56 43 56 18
maria.mitaeva@linklaters.com

Antonia Adebambo
Associate, London
Tel: +44 20 7456 2736
antonia.adebambo@linklaters.com

For insights, updates and news from Linklaters' arbitration experts across the globe, sign up to receive blog posts via this link.

linklaters.com

GC21081_F/10.20