

CICID 10th Anniversary Conference



Construction Delivery and Integration

New Directions in Construction Dispute Resolution

Ir Prof. Gary Soo

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Date: 31/05/2013 @ HKU

Gary Soo

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LLM (Peking), LLB & BSc

FHKI Arb, FCI Arb, FIoD, CQP, MI StructE, MICE, MHKIE, MASCE

- Arbitration and litigation involving commercial and construction disputes with Mainland China parties and legal issues
- Listed on various panels of arbitrators / mediators / panelists
- Adjunct Professor at University of Hong Kong
- Authors of various books and articles

Overview

- ***New Approaches to Contracting***
- ***New Methods for Dispute Resolution***
- ***New Legal Aspects and Issues***

NEW APPROACHES TO CONTRACTING

Approaches

- Collaborative practices / mechanisms (e.g. HKCIC Code of Conduct for Personnel in the Construction Industry)
- Partnering
- RIVANS
- NEC3

NEW METHODS FOR DISPUTE RESOLUTION

“It is preferable to settle disputes *as early as possible* as resolution of disputes can be expensive and time-consuming and sometimes causing significant negative impact on a company. When disputes have arisen, they should firstly be handled in a *constructive and collaborative* way in order to reach early and effective settlements. The traditional post-completion arbitration and litigation approaches should remain as *last resort* solutions.”

NEW METHODS FOR DISPUTE RESOLUTION

Spectrum of Options *and* Choosing them

- Dispute Avoidance Measure --- DRA
- DRA Report / Recommendation
- Mediation
- Adjudication
- *Independent Expert Certifier Review*
- *Expert Determination*
- *Short Form Arbitration*
- Post-Completion Arbitration
- Litigation

NEW LEGAL ASPECTS AND ISSUES

Obligations under New Contractual Setting

- Interpretation of obligations
 - *RWE Npower Renewables Ltd v J N Bentley Ltd*
[Whether completion of a section of works in a hydro system included the intake and penstock pipeline in the light of the ‘order of precedence’ provided under NEC3]

NEW LEGAL ASPECTS AND ISSUES

Obligations under New Contractual Setting

- Good faith clauses
 - *Costain Ltd v Bechtel Ltd* [2005] EWHC 1018 [Role of project manager to act in the spirit of mutual trust and co-operation?]
 - But, *Automasters Australia v Bruness* [2002] WASC 286 [Whether a party could not exercise rights capriciously or unreasonably if with good faith obligation? What about *Lafarge (Aggregates) Ltd v Newham LBC* [2005] EWHC 1337?]

NEW LEGAL ASPECTS AND ISSUES

Obligations under New Contractual Setting

- Enforcement of adjudicators' decisions
 - *SGL Carbon Fibers Ltd v RBG Ltd* 2011 SLT 417
[*Whether using own knowledge and experience of adjudicator in breach of natural justice?*]
 - *SW Global Resourcing Ltd v Morris & Spottiswood Ltd* [2012] CSOH 200 [*Whether internal contradictions in an adjudicator's decision justified court intervention?*]

Questions & Answers



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