REPRINT

SHIFTING DYNAMICS IN INFRASTRUCTURE DISPUTES

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KASOWITZ

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WORLDWATCH

SHIFTING DYNAMICS IN INFRASTRUCTURE DISPUTES

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UNITED ARAB EMIRATES

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Mahmoud Abougabal is a partner in PwC's forensics practice, based in Dubai, United Arab Emirates. He has extensive experience across the Gulf Cooperation Council, dating back to 2008, with a particular focus on construction disputes, delay analysis and project controls. He is a recognised testifying expert in construction delay analysis and has given evidence internationally in both English and Arabic. His experience includes proceedings before the courts of Abu Dhabi, Dubai and Riyadh, as well as DIAC and ICC arbitrations. He has advised on disputes arising from some of the region's most complex and high-profile projects.

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Elliott Geisinger is head of Schellenberg Wittmer Ltd's international arbitration practice. Since 1995, he has acted as counsel and arbitrator in multiple and complex cases, focusing on international construction and engineering and investor-state matters, as well as contract management for employers or contractors in the course of projects. He was president of the Swiss Arbitration Association from 2014 to 2020 and is currently honorary president.

CD: How would you characterise the evolution of infrastructure disputes over the past few years in terms of key risks, challenges and opportunities? What do you see as the most significant drivers behind these changes across different jurisdictions?

SPAIN

Benito Sancho: In recent years, the key risks triggering infrastructure disputes have shifted from isolated design errors toward more complex realities, such as geopolitical instability, inflationary pressures, supply chain bottlenecks and skilled labour shortages. Additionally, the acceleration of the energy transition process has likewise generated tensions – arising from the implementation of technologies that are neither fully established nor entirely calculated. As a result, infrastructure disputes have evolved from traditional delay claims into more complex matters – litigation driven by geopolitical instability, macroeconomic volatility and, in certain jurisdictions, regulatory changes. On the flip side, this creates an opportunity to promote more collaborative contractual models.

UNITED STATES

Franco: Infrastructure disputes have evolved from site-specific engineering issues to complex, systemic macroeconomic events. Key risks now include geopolitical shocks, inflation and regulatory volatility, especially environmental, social and governance (ESG), and permitting. The main challenge is allocating macro risks that were never fully priced, while the opportunity lies in early risk mapping and collaborative contracting rather than rigid fixed-price models. Drivers vary by jurisdiction. Europe faces energy transition and sanctions, the Middle East handles aggressive mega-project schedules, and emerging markets face currency volatility and sovereign fiscal stress. In the US, unprecedented federal investment through the Infrastructure Investment and Jobs Act, the Inflation Reduction Act and the CHIPS and Science Act has accelerated infrastructure delivery, while increasing pressure on labour availability, domestic sourcing requirements, permitting timelines and supply chains. These pressures have generated disputes involving schedule impacts, escalation and compliance with evolving regulatory requirements. Ultimately, the unifying driver is the collision of massive government stimulus with constrained global supply chains, shifting disputes toward those that bear the consequences of unpriced market and policy shocks.

MEXICO

Rodríguez: The infrastructure dispute landscape has changed materially. In Mexico, disputes now arise not only from cost overruns, delays and variations, but also from regulatory change, greater state participation, social and environmental requirements, supply chain disruption and financing pressure. Similar dynamics occur across jurisdictions, with their impact depending on political stability, contracting models and the degree of public sector involvement. Mexico illustrates both risk and opportunity. Its 'Infrastructure Investment Plan 2026-30' projects MXN5.6 trillion across energy, railways, ports and other sectors, but these projects will be delivered through evolving legal frameworks and complex public, private and mixed investment structures. This is likely to generate disputes over risk allocation, regulatory change, project interfaces and performance. Businesses that adopt realistic risk matrices, early warning procedures, dispute boards, tiered resolution clauses and disciplined contemporaneous records will be better placed to prevent disagreements from escalating while preserving the long-term relationships on which major projects depend.

SWITZERLAND

Geisinger: In recent times, perhaps the main key set of risks in infrastructure disputes derives from the international political instability and frequency of armed conflict in the years after the pandemic. This has directly impacted infrastructure projects in manifold ways: inflation, force majeure claims, supply chain disruption due to insecure supply routes, and increased insurance and transportation costs, among others. International sanctions have also had a significant impact, for example by prohibiting trade with targeted countries or parties in certain sectors, by requiring licences for certain transactions involving plant and materials used in infrastructure projects and, importantly, by disrupting payments in certain currencies or payments to and from certain jurisdictions. Obviously, these developments represent challenges but also opportunities. For example, contractual risk-allocation clauses such as force majeure clauses and price adjustment clauses have become more sophisticated and tailored to individual projects,

> **"One major challenge, the importance of which will certainly expand with the use of AI, is the extensive use of software at all stages of projects."**
>
> *Elliott Geisinger,*
> *Schellenberg Wittmer Ltd*

whereas they had largely been rather unhelpful 'boilerplate' clauses in the past.

CANADA

West: What we are seeing across Canada's most populous jurisdictions is a real shift in when disputes get resolved. Infrastructure disputes used to be managed after the project was built. They are now actively managed during construction, and most of the files we run are started and finished inside the project schedule, with only the larger mandates carrying into the post-project period. Two developments drive that. The first is the complex, multi-phase dispute resolution machinery now built into provincial standard form infrastructure contracts. The second is the continued rollout of statutory prompt payment and adjudication rights, which began in Ontario and Alberta and now reach most other major provinces, Quebec and the federal government, including government procurement agreements. As in the UK and Australia, which went first, uptake using these 'new' statutory tools is slow but steady, as contractors and subcontractors in particular acclimatise.

UNITED ARAB EMIRATES

Abougabal: Over the past few years, infrastructure disputes have become increasingly complex, both technically and commercially. In my experience, the key risks continue to arise from delay, disruption, cost escalation, design development, scope changes and weak project governance and controls. These issues have been further intensified by supply-chain constraints due to geopolitical events and increasingly compressed delivery programmes. The main drivers vary between jurisdictions but generally include the scale and pace of infrastructure investment, the allocation of risk under the contract, the maturity of project governance and controls, the reliability of records and the approach taken by employers and contractors to claims management. In the Middle East, the volume and ambition of major projects create significant delivery challenges. With such challenges there is a growing need for governance and project controls, earlier expert involvement, better use of contemporaneous data, increasingly supported by artificial intelligence (AI)-enabled analytics, and more robust delay and quantum analyses to support informed decision making and reduce the likelihood of issues escalating into formal disputes.

UNITED KINGDOM

Taylor: The impact of global geopolitical events has had significant impact on disputes. The pandemic, the war in Ukraine and events in the Middle East have all materially impacted infrastructure projects and highlighted the fragility of global supply chains. The UK is also still feeling the impact of Brexit on supply chain capacity, and that fragility has been felt acutely in the UK with a number of high-profile insolvencies. This creates a shifting dynamic in how disputes are approached. Where previously a client with a distressed project may have aggressively enforced delay damages, we now often see more nuanced approaches as the time and cost risk of contractor insolvency can make clients more cautious. Strongly capitalised contractors, with a good supply chain, may benefit from this disruption, both in terms of winning new work and riding out difficult projects.

CD: To what extent are cost overruns, supply chain disruption and project delays continuing to shape the nature of disputes? How are parties adapting their claims strategies and evidential approaches in response?

UNITED STATES

Franco: Cost overruns, supply chain disruptions and delays have become increasingly common features of major infrastructure projects and the core of modern disputes. Because critical components face massive delays, tribunals have become increasingly sceptical of global or total cost claims, and generally require detailed contemporaneous evidence establishing causation. In response, parties are adapting their evidentiary approaches by leveraging real-time, data-driven project management. They utilise massive datasets, including building information modelling, drone footage, digital site diaries and AI-powered monitoring to prove exact impacts on the critical path. Furthermore, claims strategies now focus heavily on proving foreseeability and mitigation efforts, tying specific cost increases to contractual risk buckets. Sophisticated parties are also seeking interim relief – such as emergency arbitration – to maintain cash flow and embed automatic price adjustment mechanisms directly into contracts to prevent disputes.

MEXICO

Rodríguez: Cost overruns, supply chain disruption and delay remain the main drivers of infrastructure disputes. Large projects in energy, railways and ports face inflation, foreign exchange volatility, procurement bottlenecks, and tariff and trade-policy uncertainty. The resulting disputes commonly engage price adjustment, force majeure, hardship and change in law provisions. The decisive issue is often not whether disruption occurred, but which party assumed the risk and whether causation, critical delay and loss can be demonstrated. Sponsors and contractors are engaging cost and delay experts earlier, using real-time project monitoring and maintaining event-specific records. Notices, updated programmes, procurement documents and cost ledgers should establish a clear chain between the disruptive event, contractual entitlement, impact on the critical path, and the amount claimed. Evidential discipline before positions harden is far more effective than reconstructing a claim after completion.

SWITZERLAND

Geisinger: One cannot say that there is a significant increase or decrease in disputes involving these issues. They are, and will always remain, among the 'usual suspects' in any construction dispute. One challenge when making claims in the course of a project or later in arbitration or litigation is the degree of proof of quantum that one can expect a party to adduce in support of their quantification of claims arising from supply chain disruption or delay. Similarly, legal issues such as foreseeability of possible causes of cost overruns can be complicated for the claiming party. The increasing sophistication of quantification models and of expert evidence frequently leads to an 'overdose' of conflicting evidence, which makes the task of dispute boards (DBs) and arbitrators more, not less difficult. The use of AI may aggravate this trend. The challenge is therefore to strike the proper balance in the volume of evidence.

CANADA

West: These dispute types are perennial and remain the core of what we see and what we do. Whether projects are truly larger than they used to be is arguable, but complexity, change events and the frequency of change orders are all clearly increasing. In my experience they tend to originate the same way: the project starts without complete design, carries immovable milestones and proceeds without critical conceptual information, such as where the station sits, which neighbourhoods the track runs through, or who the end-use operator will be. That information arrives mid-project from the planning office, a late lease or political intervention. What has changed is the response. Owners and contractors now retain scheduling and quantum

> **"The increasing number of stakeholders involved in infrastructure projects has made disputes more difficult to structure and resolve."**
>
> *Mahmoud Abougabal, PwC*

experts while the project runs and track impacts in real time, at real cost in a tight labour market where construction and energy compete for the same trades. Active contract and evidence management pays dividends.

UNITED ARAB EMIRATES

Abougabal: Cost overruns, supply-chain disruption and project delays continue to be among the main drivers of infrastructure disputes. These issues are often interrelated, as late design information, material shortages, procurement delays and labour constraints can affect both the completion date and the cost of delivery. The pandemic proved to be a significant shock to the system, particularly in relation to delay and supply chain disruption, and initially exposed weaknesses in how the construction industry recorded and substantiated the resulting impacts. Since then, many claimants have become more sophisticated in preparing and supporting their claims. The focus is no longer only on the size of the claim, but also on the depth and quality of the records and analysis used to support it. Several industry stakeholders are also using AI-enabled analytics and other data-processing tools to review large volumes of project information, identify relevant records and develop more focused evidential strategies. However, the underlying analysis must still establish a clear link between the relevant event, its impact on the critical path and the resulting loss. Where market-wide events give rise to claims across multiple projects, a growing number of stakeholders are looking beyond the circumstances of individual disputes, by benchmarking their position against the broader market, calibrating their strategy and drawing on approaches that have been effective elsewhere in the region.

> **"Statutory frameworks still lag, although there are notable efforts, such as the major projects office, toward more unified approval and dispute management processes."**
>
> *Bryan G. West, McCarthy Tétrault LLP*

UNITED KINGDOM

Taylor: Cost and programme certainty will always be key for clients and for project success. The relative strength or weakness of a supply chain is just one factor in achieving that certainty. The nature of the infrastructure being delivered is definitely shaping the disputes we see. With data centres, for example, the end user may well have the strongest bargaining power, which creates a different dynamic. Parties can be exposed to very high delay damages, which drives a behaviour where programme is the most important thing. In turn, parties become less contractual with the supply chain and are more inclined to settle claims if they can buy programme certainty. In terms of evidence, the use of AI to generate notices and correspondence has increased dramatically. That can be a real advantage to a sophisticated and well-organised contractor.

SPAIN

Benito Sancho: While the root cause of disputes has frequently shifted toward systemic disruptions in the global supply chain, cost overruns and cumulative delays remain at the heart of most infrastructure controversies. In any case, the level of sophistication and rigour applied to dispute management and claims strategies continues to rise. Global claims are giving way to more specific and rigorous impact analyses to substantiate delays or productivity losses. From an evidentiary standpoint, traditional paper records are yielding to advanced digital evidence, with AI increasingly leveraged to streamline document review and forensic analysis in arbitral proceedings – a shift that, in turn, demands the engagement of technical and forensic experts from the earliest stages of a dispute.

CD: With infrastructure projects increasingly involving multiple stakeholders – sponsors, contractors, lenders and state entities – how is this complexity influencing dispute structuring, liability allocation and resolution strategy?

UNITED KINGDOM

Taylor: The relative weakness of supply chain balance sheets compared to project size, complexity and value has seen an increase in JVs and alliancing. From a company perspective, this can mean they adopt a different approach to claims than if they had a contractor as a single point of responsibility. Liability is likely to be joint across the JV alliance, with parties looking to pick off individual claims or seek to exploit tensions between supply chain partners. From a supply chain perspective, the use of JV alliances can mean disputes not just with a company or subcontractor, but between the JV partners. These disputes are often some of the most complicated and hard fought. Not only are parties dealing with the primary claim, but also how liability is apportioned between JV alliance partners where relationships have broken down.

MEXICO

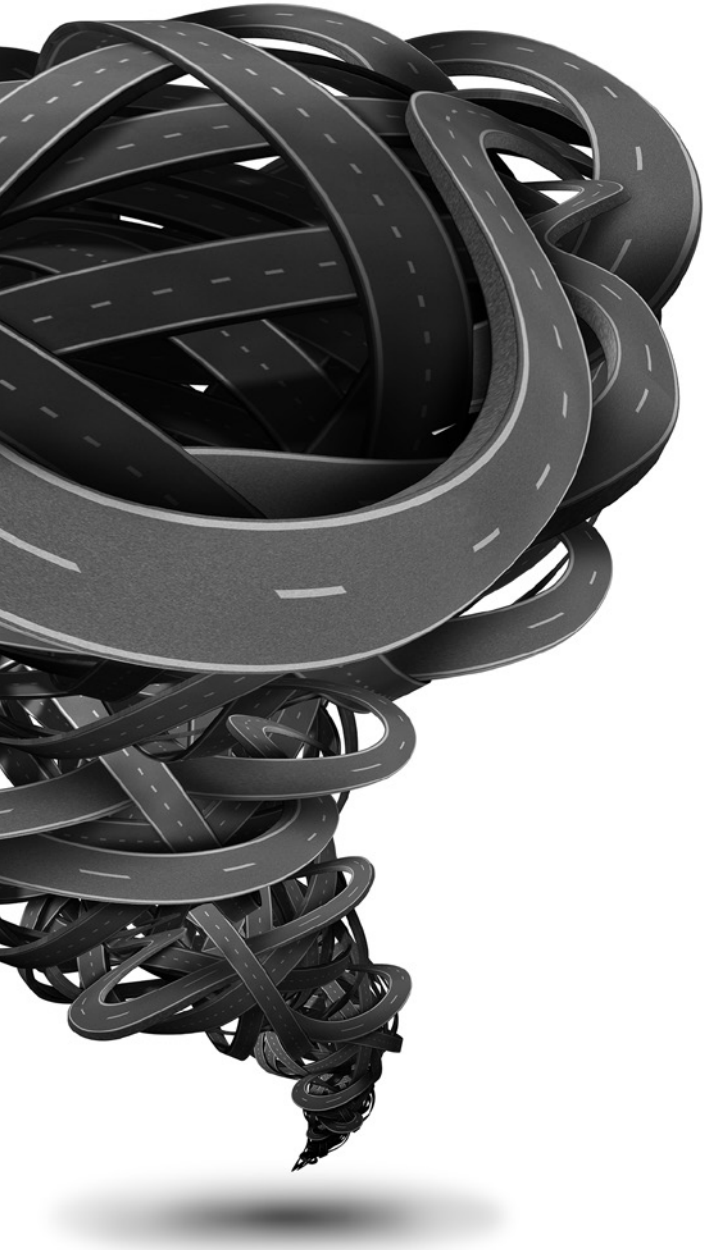
Rodríguez: Infrastructure projects bring together sponsors, energy, procurement and construction contractors, subcontractors, lenders, insurers and public authorities – each operating under different contracts, liability standards and priorities. In Mexico, the public law framework and public service mandates applicable to the Comisión Federal de Electricidad and Petróleos Mexicanos introduce public law considerations into relationships that may remain commercial in nature. Energy projects must also obtain social impact authorisation and, where applicable, undergo consultation processes involving potentially affected indigenous communities. These interfaces can create gaps between the party that bears a risk and the party able to control it. The dispute resolution framework must therefore be designed across the contractual chain. Compatible arbitration clauses, joinder and consolidation mechanisms, coordinated notice provisions and clear interface matrices are essential. Liability caps and indemnities must likewise be assessed across that chain. Where a state entity is involved, parties should also consider public-law constraints, available remedies and the practical enforceability of any decision or award.

SWITZERLAND

Geisinger: Increasingly, contractual risk allocation clauses factor into the balance the individual role of various stakeholders, while this was an exception rather than a rule only a decade or two ago. Likewise, dispute-resolution clauses increasingly take account of the need to resolve disputes that can affect multiple stakeholders in one single forum, or at least give the parties the option of achieving that result. Where this is not dealt with contractually, there is a growing tendency of parties to attempt to extend arbitration agreements to non-signatories, for example to the employer in disputes between the main contractor and subcontractors or suppliers, or vice-versa, or even to entirely third parties that intervene in the course of a project, for example funders. Finally, there is an increasing tendency to bring investor-state arbitration in cases of alleged undue interference by the state or its agencies in the course of a project.

CANADA

West: The most interesting change, to my mind, is who now counts as a stakeholder. Almost all modern infrastructure is built where people live,



in or close to communities, residents and industry who understand their rights, are empowered by education, technology and media, and can pull innumerable financial, political and social levers to assert them. Indigenous communities are also increasingly a significant participant on almost every Canadian project of material scale. The responses we see are practical and structural. Practically, project buy-in, long lead engagement and early management of likely stakeholders and bottlenecks pays dividends. Structurally, successful delivery models funnel disputes inside the project superstructure toward a single point of determination, rather than leaving multiple angles of attack through, for example the permitting process, planning and environmental agencies, and the courts. Statutory frameworks still lag, although there are notable efforts, such as the major projects office, toward more unified approval and dispute management processes.

UNITED ARAB EMIRATES

Abougabal: The increasing number of stakeholders involved in infrastructure projects has made disputes more difficult to structure and resolve. Responsibility for delay and cost overruns is often spread across sponsors, employers, contractors, joint venture (JV) partners, designers, lenders and government entities, which can complicate both liability allocation and the presentation of a coherent claim. In JVs and consortium arrangements, it may also be more difficult to bring a claim forward, as one or more members may oppose the commencement of a formal dispute due to different commercial interests, risk appetites or wider relationships with the employer. This is particularly relevant in the Middle East, where government entities remain among the largest employers. Many contractors are still cautious about adopting an adversarial position against such entities, particularly where future work is at stake. However, this stance is gradually changing, with stakeholders becoming more willing to pursue formal claims where financial exposure crosses what claimants may consider to be acceptable thresholds.

SPAIN

Benito Sancho: The proliferation of stakeholders in infrastructure projects – by dispersing risk allocation – introduces significant complexities into dispute resolution that even back-to-back contractual structures cannot fully mitigate. When a dispute arises, certain misalignments are, in this context, inevitable. This demands a strategic approach to disputes from the very outset when drafting dispute resolution clauses – with an increasing adoption of multiparty and multi-contract arbitration clauses that allow for the consolidation of proceedings or the joinder of third parties – a trend likewise reflected in institutional rules. We are also witnessing a prioritisation of dispute resolution through DBs, which aim to prevent the triggering of events of default that could block project financing.

UNITED STATES

Franco: Modern megaprojects involve complex networks of stakeholders – sponsors, lenders, multiple contractors and state entities – which makes the traditional relationship between the owner and contractor more complex. This fragmentation creates 'liability gaps', contractual misalignment and multidirectional finger pointing. To manage this complexity, dispute structuring now requires strategic procedural architecture. Practitioners fight for multiparty arbitration clauses, consolidation provisions and clear liability waterfalls during contract formation to avoid inconsistent arbitral awards, or court judgments, and double liability. Resolution strategies increasingly emphasise early coordination among project participants and careful alignment of contractual dispute resolution mechanisms. Well-drafted multiparty arbitration clauses, consolidation provisions and consistent governing law and forum selection can reduce the risk of parallel proceedings and inconsistent outcomes. Equally important is preserving effective contractual pathways for pass-through claims and ensuring that dispute resolution mechanisms reflect the commercial realities of complex infrastructure projects.

CD: How are dispute resolution mechanisms evolving in practice, particularly the use of international arbitration and hybrid processes? What are the key challenges when it comes to cross-border enforcement of outcomes?

UNITED ARAB EMIRATES

Abougabal: We continue to see international arbitration used frequently for major infrastructure disputes, particularly where projects involve parties, contracts and assets across multiple jurisdictions. In practice, many parties are also using hybrid processes, including DBs, expert determination and, to a lesser extent, mediation, either to resolve discrete issues or narrow the matters ultimately referred to arbitration. The main challenge remains the enforcement of outcomes across borders. While arbitral awards generally benefit from an established international enforcement framework, practical difficulties may still arise from local court procedures, public policy objections, sovereign immunity, the location of assets and parallel proceedings.

UNITED KINGDOM

Taylor: Tiered dispute resolution mechanisms are standard. Typically, this starts with direct negotiations and then escalates to some form of alternative dispute resolution or adjudication, and, ultimately, to arbitration or court. Arbitration is less common on UK projects. However, where there is a mix of UK and international parties, or where there is sensitivity about the project, and the parties want to keep any disputes private, then arbitration does get used. Enforcement against entities outside the jurisdiction will always be a concern and should be a key consideration before commencing a claim. It is no good getting a favourable decision and then finding out the other side does not have any assets or has assets in jurisdictions where enforcement is difficult.

> **"Cost overruns, supply chain disruptions and delays have become increasingly common features of major infrastructure projects and the core of modern disputes."**
>
> *Francisco Franco, Kasowitz LLP*

The framework for enforcing arbitral awards is often easier than enforcing a court decision and will be a factor in the choice of dispute resolution mechanism where parties are from different jurisdictions.

UNITED STATES

Franco: While international arbitration remains the default for cross-border disputes, it is increasingly criticised for being bloated, slow and expensive. Consequently, there is a massive shift toward hybrid and step-clause processes. Multi-tier clauses and mandatory standing DBs are becoming standard, resolving smaller issues in real-time before they escalate. Arb-med-arb and technology-assisted resolutions are also gaining traction. Cross-border enforcement remains a significant challenge, particularly against sovereign states and state-owned entities. Key hurdles include sovereign immunity, local protectionism and state courts using public policy exceptions or anti-suit injunctions to block enforcement. To adapt, practitioners must map out enforcement logistics – such as offshore asset tracing, securing political risk insurance and leveraging diplomatic or reputational pressure – before even selecting the arbitration seat or filing a claim.

SPAIN

Benito Sancho: International arbitration remains, inevitably, the most widely used dispute resolution mechanism in cross-border projects. However, high costs and – not infrequently – the excessive duration of arbitral proceedings encourage the use of hybrid mechanisms, including the mandatory pre-arbitral adoption of DBs, mediation or early determination procedures. As for cross-border enforcement, significant obstacles persist, such as claims of immunity from execution by state entities, the expansive reliance on public policy exceptions or interference by local courts in certain jurisdictions through interim relief such as anti-arbitration or anti-enforcement injunctions. In the European context, the greatest challenge stems from the stance of the Court of Justice of the European Union – namely, the

> **“Evidential discipline before positions harden is far more effective than reconstructing a claim after completion.”**
>
> *Juan Arturo Dueñas Rodríguez, Hogan Lovells Cadwalader*

Achmea and Komstroy doctrine – which has resulted in the systematic refusal to enforce intra-European Union (EU) awards in sectors such as energy and infrastructure due to incompatibility with EU law and state aid rules, forcing parties to seek enforcement in non-EU jurisdictions.

CANADA

West: Arbitration remains the preferred route on major projects for many reasons, including confidentiality, procedural and evidentiary flexibility, and access to and choice of decision makers who understand construction. For all those reasons it is comparatively streamlined against traditional court processes, and international arbitration remains the default where the parties come from different jurisdictions, given enforcement under the New York Convention. Keeping arbitration effective means avoiding devolvement into an application and contested motion-driven process, a key driver of delay and expense creep in classic court litigation. Domestically, enforceability is rarely the issue. The harder problem is managing related claims across several contracts where the consolidation and joinder provisions were not drafted with the project structure in mind. Cross-border, the genuine obstacles are sovereign immunity, restrictions on attaching state assets and political resistance to payment. Parties are likely to address those issues in the contract documents while goodwill remains.

SWITZERLAND

Geisinger: Arbitration remains the main dispute-resolution mechanism in international matters. In Swiss domestic matters, dispute resolution boards are increasingly successful for major projects, especially for state-funded projects. That said, in international matters, pre-arbitral dispute resolution mechanisms such as dispute-avoidance processes and dispute resolution boards have also become a standard feature. Problems arise where one party systematically declares itself dissatisfied with the decisions of DBs, in which case arbitration becomes unavoidable and the costs of the pre-arbitral process are for naught. While this is not a generally observed trend, it is becoming more frequent, especially where one party is a state or a state agency. One emerging trend is for parties to submit discrete parts of a potential dispute to expert determination. This can relate, for example, to the existence or causes of an alleged defect, to remedial actions in case of a defect or to quantification of claims.

MEXICO

Rodríguez: International arbitration remains central to high-value, cross-border infrastructure disputes, within a layered process. Negotiation, dispute boards, expert determination and mediation can resolve issues during project execution, with arbitration as the backstop. For commercial arbitration, the New York Convention provides the framework for cross-border recognition and enforcement of awards. Mexico's ratification of the International Centre for Settlement of Investment Disputes (ICSID) Convention in 2018 made ICSID arbitration available where Mexico has consented through a treaty or contract. Ratification alone does not establish jurisdiction. Under the United States-Mexico-Canada Agreement (USMCA), investments involving qualifying government contracts in specified sectors receive broader protection under annex 14-E, while annex 14-D provides a narrower route for US-Mexico investments. Enforcement remains challenging where an award intersects with mandatory public-law rules, annulment proceedings, insolvency or assets subject to immunity or statutory restrictions on execution. Parties should therefore consider enforceability at contract formation, including the counterparty, arbitral seat, governing law, any immunity waivers and location of assets.

CD: Looking ahead, how do you expect infrastructure disputes to evolve in light of geopolitical uncertainty, regulatory change and the energy transition? What implications will this have for contract design, risk allocation and dispute prevention?

SWITZERLAND

Geisinger: These issues are and will remain among the most important factors that trigger disputes and that, accordingly, have recently resulted in generally better contract drafting. Also, these issues tend increasingly to trigger investor-state claims. One major challenge, the importance of which will certainly expand with the use of AI, is the extensive use of software at all stages of projects. This, as such, is not new. What is new is the increasingly proprietary nature of the software used. This generates serious difficulties where a party needs to have works completed or defects remedied by third parties and where the holder of the necessary software does not cooperate. More generally, the increasing specialisation in the engineering sector often leads to employers or main contractors becoming the 'captives' of single, non-interchangeable providers of equipment or services. Standard contracts and national legislation currently do not address this issue adequately, if at all.

UNITED STATES

Franco: Future disputes will be driven by the convergence of geopolitical fragmentation, rapid regulatory changes and the energy transition. The shift to renewable energy introduces unprecedented technology and integration risks, leading to stranded asset claims and performance shortfalls. Meanwhile, sanctions, export controls and evolving

ESG mandates will continue to disrupt projects. Consequently, traditional lump sum engineering, procurement and construction models are under increasing pressure on projects exposed to significant macroeconomic uncertainty. Contract design must shift toward dynamic risk allocation, featuring economic hardship provisions, price reopeners and flexible scheduling. The industry must embrace alliancing and collaborative contracting models that share risks and rewards. Dispute prevention will become paramount, relying on embedded governance, real-time data monitoring and standing DBs. Ultimately, success will depend on designing flexible contracts that can adapt to macroeconomic and technological shifts without breaking.

"It is no good getting a favourable decision and then finding out the other side does not have any assets or has assets in jurisdictions where enforcement is difficult."

Matthew Taylor,
CMS Cameron McKenna Nabarro Olswang LLP

SPAIN

Benito Sancho: The landscape in which infrastructure disputes will continue to unfold is characterised by ongoing geopolitical volatility, uncertainties derived from the energy transition process, and, depending on the jurisdiction, regulatory changes. This macro environment is further complicated by the realignment of supply chains toward friend-shoring and the rising prevalence of trade sanctions. In this context, the broader adoption of contractual structures that move away from aggressive lump-sum schemes will be inevitable, favouring more collaborative models that incorporate flexible price-adjustment mechanisms, hardship clauses and an equitable allocation of unforeseen risks. From a dispute prevention and resolution standpoint, the deployment of standing boards from the time of contract execution will become increasingly prominent, with the goal of minimising the escalation of controversies into formal litigation.

CANADA

West: My prediction is more disputes, arriving earlier in the project. The energy transition is broad, spanning nuclear, renewables, transmission, storage, carbon capture and hydrogen, alongside a general need for more energy and infrastructure in more places, funded by markets and governments alike. There is more money, but the labour, supply and expertise constraints remain largely unaddressed. That demand is drawing in counterparties less familiar with large construction projects, including critical subcontractors and material suppliers unaccustomed to the contract management and regulatory discipline these projects require. Add the re-emergence of tariffs and trade wars, local preferences that keep international project management expertise out, and more frequent weather events affecting local performance and international supply, and the conditions exist for delay and cost events to multiply. Technology cuts both ways, letting honest brokers surface deviations early and bad actors build disputes on immaterial errors. Challenging years lie ahead.

UNITED KINGDOM

Taylor: Continuing geopolitical uncertainty will continue to impact global supply chains. Where supply chains are disrupted, it is almost inevitable that delays and cost increases follow. Unsurprisingly, we are seeing contractors pushing back on fixed price – turnkey contracting such that, for example, the impacts of inflation, geopolitical events and tariffs are for the account of the employer. The UK government knows that planning for critical national infrastructure is slow and fragmented. But even with changes to the planning system, it is unlikely that planning challenges will stop. The tension between delivering infrastructure and net-zero commitments is also likely to result in protestor action and disruption to controversial projects. The size and complexity of projects, and concerns over the financial strength of the supply chain, will make clients carefully consider procurement routes and risk allocation. There is little point having high levels of delay damages and uncapped liabilities if the supply chain cannot sustain those losses. It would not be a surprise to see publicly funded infrastructure projects look at more collaborative

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> *Ernesto Benito Sancho, Cases Lacambra*

procurement, with shared ownership of risk, to try and improve cost and programme certainty.

MEXICO

Rodríguez: Three forces will shape infrastructure disputes. First, the US decision not to confirm an extension of the USMCA at the 2026 joint review triggered annual reviews unless and until the parties agree on an extension. The agreement remains in force, but the process creates commercial uncertainty. Second, Mexico's energy transition will require investment in generation, transmission and storage within a regulatory model giving the state a leading role. This may generate disputes concerning permits, grid access, project sequencing and the treatment of existing investments. Third, nearshoring creates opportunities while tariffs, trade restrictions and foreign investment policies complicate procurement and project economics. Contracts must anticipate change. Provisions should address regulatory change, tariffs, price adjustment, alternative sourcing and measurable performance standards. Risks should be allocated to the party best able to control or price them. That allocation should be supported by early-warning procedures and structured escalation mechanisms.

UNITED ARAB EMIRATES

Abougabal: Looking ahead, infrastructure disputes are likely to become more complex as geopolitical uncertainty, regulatory change and the energy transition place additional pressure on cost, programme and procurement. This will require more precise contract drafting, particularly in relation to change in law, sanctions, supply chain disruption, price escalation, force majeure and the allocation of risks associated with new technologies. Stakeholders will also need to place greater emphasis on dispute prevention through stronger project governance and controls, timely decision making and more effective escalation mechanisms. Notwithstanding this, disputes may remain unavoidable on major projects. Many parties, experts and arbitrators are also becoming increasingly sophisticated and better informed, making the preparation of precise, well-supported claims even more important. Claims should be assessed and determined fairly, based on the contract and contemporaneous evidence. This is essential to maintaining a sustainable market, particularly in the Middle East, where construction remains one of the principal drivers of economic growth and long-term development. CD