

ADVANTAGES OF RESOLVING CONSTRUCTION DISPUTES IN ARBITRATION PROCEEDINGS

As per rule, an average court proceeding involving complex disputes is inadequately long (some cases taking 10+ years to reach a final decision). Having the same courts hear a complex construction dispute involving dozens or hundreds of claims is hard to imagine.

The length of such a proceeding would be just the tip of the iceberg. Establishment of facts of the case and a deep understanding of technical issues of a construction project are also essential. These aspects are achievable in commercial arbitration which results in issuance of a final and binding arbitral award.

The following sections will briefly focus on several reasons why resolving construction disputes in arbitration proceedings is much more convenient.

EFFICIENCY OF ARBITRATION PROCEEDINGS

Parties to the dispute in arbitration are the real masters of the proceedings. This cornerstone principle of arbitration allows for parties to affect efficiency in arbitration proceedings.

First of all, parties may agree upon the seat of arbitration and application of procedural rules which would be viable in terms of speed and efficiency of arbitration proceedings.

Furthermore, the parties may together stipulate effective procedural measures including procedural timetable (thus, the length of an arbitration proceeding would be foreseeable from the beginning).

Fast and effective dispute resolution is one of the key elements for successful completion of construction projects.

QUALITY OF FINAL AWARD

To ensure that the decision in a construction dispute is of good quality, the authors of such a decision



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should be sufficiently qualified in legal and technical matters. The fact that parties may have an impact on the composition of the arbitral tribunal is one of the greatest pros of arbitration. In the process of creating an arbitral tribunal, the parties shall ensure that the tribunal will be comprised of both experts in legal and construction fields of practice.

The outcome of arbitration is further significantly impacted by the establishment of facts in the process of taking evidence. In this regard, arbitration preserves further specific advantages.

In order to succeed in a construction dispute, it is usually very important to prove facts by documentary evidence. Complex construction projects involve thousands of documents. Some of these documents are frequently not in possession of both parties. It is possible to obtain such missing documents within a regulated process of documents production in arbitration proceedings and to subsequently prove alleged facts.

Complex technical issues in construction disputes often require the involvement of experts who produce detailed

expert reports (on e.g., delay, quantum, defects, etc.). Experts from leading expert international organizations are frequently appointed in complex construction arbitrations. It is important that the legal representatives of parties as well as arbitrators understand the content of highly qualified technical expert reports for the sake of conducting proper evidence (including cross-examination of factual and expert witnesses).

Site visits are another tool which allows the arbitral tribunal, experts and other parties involved in the dispute to better understand technical and factual aspects of the case. The possibility to see the construction site for themselves helps the arbitral tribunal to understand the facts of the case in an expedient manner, eventually leading to a fair and widely-accepted award (parties are always advised to consider the suitability of a site visit in a case at hand).

The above-mentioned specifics of arbitration proceedings are intended to significantly improve the quality of final awards rendered in construction disputes.

ADDITIONAL ADVANTAGES FOR CROSS-BORDER CONSTRUCTION DISPUTES

Being able to choose the language of proceed-

ings is a convenient option especially for large construction projects involving stakeholders of different origins. It also allows for the appointment of foreign arbitrators, experts and use of documentary evidence without the need for translation.

Furthermore, the parties may agree on remote virtual hearings or documents-only arbitration. These options significantly reduce procedural costs and do not require the physical presence of persons from different parts of the world (unlike in standard court hearings).

Last but not least, recognition and enforcement of arbitral awards is generally much easier in comparison to judicial awards. Since one of the parties to complex construction disputes is often based abroad, the aspect of recognition and enforcement may also be material.

FINAL RECOMMENDATION

Based on our experience with significant Slovak construction arbitration cases (D4/R7 motorway/expressway and D1 Lietavská Lúčka – Višňové - Dubná Skala motorway project), we highly recommend electing for arbitration proceedings for the resolution of disputes in complex construction projects.

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