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Construction across Europe: One industry, many legal systems

The CMS Construction Group

One Europe, many legal approaches

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

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

- In the Ukraine, a developer may have to pay up to 25% of the estimated value of the project as a contribution to the cost of the infrastructure development in the locality concerned.
- Courts in the United Kingdom rarely enforce agreements to agree. As a result, problems can often arise when a contractor starts work in reliance on a developer's letter of intent expressing an intention to conclude a contract in the future.
- German law relating to standard terms and conditions is so stringent that it outlaws many standard terms seeking to limit liability in FIDIC and other international contract forms. This even applies when the parties involved are major companies.
- Under Russian law, a contractor may exercise a lien over the project he has constructed and other property of the client in his possession if he is not paid in full.
- In France, a subcontractor can under certain circumstances pursue a claim for payment directly against the employer, whether or not the main contractor is insolvent
- The Polish Civil Code provides that, under certain circumstances, an investor and a general contractor are jointly liable for payment towards a subcontractor, and that a subcontractor may demand payment from either of them as a result.
- In Spain, if the contractor becomes insolvent the employer is not entitled to terminate the agreement, whatever its terms. The Court must reach any decision regarding termination.
- In the Netherlands, a contractor cannot be held liable for defects which are apparent when the development is taken over but which are not mentioned in the taking over certificate.

European coverage, local expertise

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

What makes us the market leader in Europe?

- Coverage. We operate in 48 cities across Europe and a total of 56 locations throughout the world, and have over 595 partners, more than 2,200 legal and tax advisers and a total staff numbering over 4,600 people.
- Know-how. Construction law is now recognised throughout Europe as a specialist field. Our lawyers are able to act quickly and expertly to give commercial advice, assist in drafting and negotiating contracts, and resolve disputes as and when they arise.
- Experience. We have wide experience of construction law and a proven track record built up over many years. This includes drafting and advising on FIDIC and other international forms of contract. We also have extensive experience of dispute resolution, not only in Europe's national courts but also in domestic and international arbitration, including proceedings under the ICC, LCIA and UNCITRAL rules.
- Consistency and local knowledge. Our clients can expect a seamless service from CMS, no matter which office they use, together with a single point of contact in the client's home or operating country. This is combined with a level of local knowledge which can only be gained from a presence on the ground.
- One-stop service. Construction clients have legal needs beyond construction law itself; a major project may raise issues involving tax or employment law, for example. We offer a full range of commercial law services to meet all such needs.
- Commercial focus. Perhaps most importantly, our approach is rooted in knowledge of the industry and is geared towards achieving the desired commercial result for our clients, quickly and cost-effectively.

“For me CMS leads the field for construction law. The CMS lawyers I have worked with across Europe and beyond, over the last 7 years, have combined industry knowledge, legal expertise and a can-do spirit the like of which I haven't seen in other firms.”

Group Legal Counsel,
European multinational investor and developer

Some of our experience...

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

- Contractors on procurement issues relating to the UEFA Euro 2012 Championships in Poland and Ukraine
- Architectural master planners and bidding consortia in relation to the 2012 Olympic Games in London
- An Italian contractor on disputes totalling US\$50 million arising out of the construction of an office development in Moscow for US owners
- Infraserb GmbH & Co. Höchst KG on development of a substitute fuel power plant, including financing and tax issues, negotiation of a general turnkey agreement with a Japanese plant manufacturer and advice during the construction phase
- The Hochtief/Max Bögl joint venture on construction of the U55 U-Bahn shuttle in Berlin
- A Polish city in ICC arbitration proceedings with a Turkish contractor in Prague relating to a new transport system
- Dutch developers in relation to all aspects of a 120 megawatt wind farm project off the Netherlands coast
- RWE in a cross-border dispute concerning a pipeline project in the North Sea, including successful proceedings in the courts of the Netherlands and Italy
- The United Kingdom Government regarding all aspects of the Channel Tunnel Rail Link, including planning, procurement and dispute resolution
- An engineering company in relation to disputes totaling approximately £250 million arising from construction of the new Wembley Stadium in London
- Tishman International on the € 250 million Sofia Airport Centre project, a multi-purpose mix of offices, logistics and storage facilities and hotel
- Spanish multinational Iberdrola on a suite of construction contracts for the construction of a US\$1.6 billion power plant

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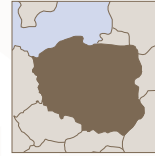
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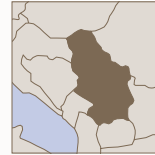
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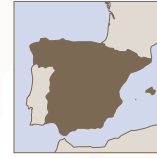
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CMS is the organisation of independent European law and tax firms of choice for organisations based in, or looking to move into, Europe. CMS provides a deep local understanding of legal, tax and business issues and delivers client-focused services through a joint strategy executed locally across 28 jurisdictions with 56 offices in Western and Central Europe and beyond. CMS was established in 1999 and today comprises nine CMS firms, employing over 2,200 lawyers and is headquartered in Frankfurt, Germany.

CMS nine member firms are: CMS Adonnino Ascoli & Cavasola Scamoni (Italy); CMS Albiñana & Suárez de Lezo (Spain); CMS Bureau Francis Lefebvre (France); CMS Cameron McKenna LLP (UK); CMS DeBacker (Belgium); CMS Derks Star Busmann (Netherlands); CMS von Erlach Henrici (Switzerland); CMS Hasche Sigle (Germany) and CMS Reich-Rohrwig Hainz (Austria).

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The members of CMS are in association with The Levant Lawyers with offices in Beirut, Abu Dhabi, Dubai and Kuwait.