



Richard Smellie

Partner

rsmellie@fenwickelliott.com

Richard is widely experienced in the resolution of disputes in the construction, energy and infrastructure sectors, both internationally and in the United Kingdom, having successfully led the resolution of numerous substantial disputes. Richard comes recommended as “a key figure” in dispute resolution in *The Legal 500* guide, and *Chambers and Partners UK* describes Richard as “everything you would need in a solicitor” and a “very effective operator”, whilst his clients praise him as being “dogged in achieving our aims”; “excellent legal counsel in terms of presenting his analysis and conclusions and the options available to the clients” and “very quick to pick up on the key issues in a dispute”. According to *The Who’s Who Legal Construction Guide* Richard is “first class”.

Richard is “an excellent strategic thinker and brilliant at managing large teams on big cases”, a “fantastic strategic thinker and team manager” and comes very highly recommended: “second to none”, with “huge experience of international arbitration, and a sure touch with tribunals”.

Richard has considerable experience of a range of standard and bespoke project documentation, including both standard and bespoke forms used regularly in construction, energy and infrastructure projects. Richard’s experience ranges from projects procured using complex turnkey/design and build project documentation with layered EPC arrangements and contracts for the operation and maintenance of facilities, to complex PFI arrangements, innovative alliance agreements (and subsidiary documentation), and standard form contracts including the FIDIC, NEC, ICE and JCT forms.

Richard is also experienced in oil and gas operations agreements, “take or pay” hydrocarbon sale and purchase agreements, and government/developer project agreements (including intergovernmental agreements, “host government” agreements and related project documentation).

Specialist expertise

Richard has more than 30 years’ experience in the resolution of substantial, complicated disputes arising from complex projects and interrelated project documentation.

In the United Kingdom, he has a wealth of experience in resolving disputes through mediation, adjudication, arbitration, and through the courts - in particular the Technology and Construction Court, the division of the High Court which hears construction disputes. His practice usually concerns complex, heavyweight, high-value disputes.

Internationally, Richard is very experienced in international arbitration, specialising in sizeable, complex disputes in the oil and gas, power and construction sectors where the sums in dispute run to many millions of USD/GBP. He has experience in many of the recognised sets of arbitration rules, including those of the ICC, LCIA, UCAC, SCC and ICSID, and Dispute Adjudication Board rules (particularly those found in the FIDIC standard form), and has experience of Dispute Review Boards. He is also experienced in the provision of rolling legal advice to clients as a project progresses, assisting with key correspondence and tactical positioning for dispute avoidance.

Richard is very used to working closely with the client, other external consultants and experts and, where appropriate, in-house counsel - and internationally, local counsel - for the successful resolution of disputes.

Examples of Richard's expertise include:

- acting for a joint venture including one of the largest construction companies in the US, and one of the middle east's largest construction companies, on complex disputes arising out of a major metro development in the Middle East. Issues concerning change orders and delay, and design issues. Includes ICC arbitration proceedings concerning several hundreds of millions of US dollars.
- acting for one of China's largest construction companies in ICC arbitration proceedings concerning major infrastructure works in the Middle East (the development of a new city). Delay, variations (including design changes) and local authority requirements are central issues. Heavy civils works and design/M&E works and design. Amount in dispute exceed USD1 billion;
- acting for the parent company of one China's largest design house contractors in relation to VIAC (Vietnam International Arbitration Centre) arbitration proceedings concerning a hydro power project in Vietnam. Delay, disruption, variations (including design changes), TBM issues. Amount in dispute exceeds USD80 million;
- acting for Chinese contractor in two ICC arbitrations (consolidated under ICC Rules) in relation to road projects in Pakistan. Delay, disruption, late design in issue. Amount in dispute USD30m;
- acting for Danish contractor in an LCIA arbitration proceedings concerning an offshore wind farm in the UK. Design, defects specification (including defects in standard specification) in issue. Amount in dispute in excess of GBP70 million;
- acting for a state owned enterprise in two ICC arbitrations concerning the construction of pump stations for a substantial oil pipeline. Amount in dispute in excess of USD100m;
- acting for an American contractor/supplier in an ICC Arbitration concerning the supply and installation of substantial equipment for the largest solar power station in the Middle East. Design, defects and specification issues. Amount in dispute USD75million;
- acting in two ICC arbitrations for a state road authority in East Africa. Disputes arising from road/highways works and concerned VAT. Amount in dispute USD15 million;
- advising on a gas pricing arbitration under the SCC Arbitration Rules (Stockholm Chamber of Commerce or a Caspian region state enterprise);
- acting for the Design and Build/Turnkey Main Contractor for the construction of the Baku-Tbilisi-Ceyhan Crude Oil Pipeline Project, Turkey, including leading the legal team in the negotiation of claims for the close-out of four US\$100m EPC contracts whilst protecting the client's position up the line against the Employer and advising on the allocation of risks amongst the various responsible parties, and leading the legal team responsible for successfully obtaining a settlement of several hundreds of millions of dollars in his client's favour from the Employer, and arbitrating two complex EPC contract disputes each for more than US\$100m (ICC Arbitration Ruler);
- advising on and leading a legal team responsible for the successful resolution of issues worth several billions of dollars to the operator of a substantial crude oil facility in the Caspian region, including conducting arbitration proceedings for disputes for several hundred million dollars (ICC Arbitration Ruler);

- drafting and advising on the suite of project documentation for a US\$8 billion refinery in Northern India, including design and build/EPC contracts;
- advising on multimillion-dollar claims for Kazakhstan's largest oil and gas contractor, including resolving issues where the client is caught between the employer and its own subcontractors;
- advising a government institution in the oil and gas sector in Turkmenistan on claims issues with a Russian oil and gas corporation, and on documentation for gas sale and purchase agreements;
- drafting, advising upon and negotiating bespoke documentation for a substantial proposed European energy infrastructure project;
- drafting and advising upon contract documentation (target cost and alliance) in the power sector for the procurement of works in the UK by a US corporate client;
- advising a Malaysian client on disputes of over US\$100m arising out of the construction of a crude oil pipeline and related works in Northern Africa;
- advising on BOT, BOOT and BOO projects in the power sector in Pakistan;
- advising on various multimillion-dollar disputes in the power sector in the UK and in Jordan.

Richard's memberships/positions include:

- member of the Society for Construction Law;
- member of the Dispute Resolution Board Foundation.