



Future areas of dispute and the arbitration landscape

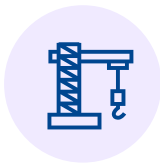
An Irish perspective



In recent years, there has been a noticeable increase in the number of cases being referred to major arbitration institutions around the world for dispute resolution.

There are multiple factors contributing to this increase, the fall-out from the COVID-19 pandemic being a key driver. It remains to be seen if this uptick in referrals will last but the severity of recent global events and the widespread disruption caused to people's lives, industries and international commerce, means that business leaders, including those in Ireland, will likely need to contend with the consequences of conflicts and disputes for years to come.

In this article, we consider certain industries where arbitral disputes have been increasing and assess potential future developments from an Irish perspective.



Construction-related disputes

A noticeable new trend is an increase in construction-related disputes. This is evident in the reported number of new construction-related disputes being referred to the International Centre for Settlement of Investment Disputes (ICSID), which has more than doubled in five years to 2022.¹ More global construction-related disputes are anticipated as the industry has been particularly affected by complications arising from the COVID-19 pandemic and a global supply crisis exasperated by Russia's war in Ukraine which resulted in adopted sanctions and rising energy costs. Another driver of this increase is the complex nature of new construction projects as governments around the world invest in major infrastructure projects, which only adds to the already technical nature of this type of dispute.

In Ireland, a similar trend exists, albeit on a local scale, as the number of cases referred to the Construction Contracts Adjudication Service (CCAS) has more than quadrupled since 2018.² In terms of state-sponsored infrastructure projects, the Irish Government is commissioning hundreds of construction projects associated with its Project Ireland 2040 plan and investing in major energy infrastructure such as the Celtic Interconnector.^{3,4} Market commentators observed that Ireland continues to recover after the shock of COVID-19 but the country still faces challenges, one of which is '*Difficult contractual and legal conditions*', reflecting the current market issues of inflation and managing cost risk share amongst suppliers and contractors.⁵ It is also worth mentioning that although the CCAS can provide contractors and other parties with a practical and timely means of resolving payment related disputes, adjudication can sometimes lead to an escalation in adversity between the parties and lead to arbitration or court proceedings.

It is increasingly likely that construction-related disputes will continue to be a feature in Ireland. As larger infrastructure projects break ground, the nature of the dispute may become more complex and may become more complex and be referred to an arbitral forum.

1 <https://icsid.worldbank.org/resources/publications/icsid-caseload-statistics>

2 <https://enterprise.gov.ie/en/construction-contracts-adjudication-service/annual-report/>

3 <https://www.gov.ie/pdf/?file=https://assets.gov.ie/231038/16bcc482-07e3-4f66-afce-cef62e3f3c2a.pdf#page=null>

4 <https://www.eirgridgroup.com/the-grid/projects/celtic-interconnector/the-project/>

5 https://www.turnerandtownsend.com/media/6202/roimi-q3-2022-autumn_final_spreads.pdf



Energy-related disputes

The energy sector is one of the more common sources of disputes referred to international arbitration. The International Chamber of Commerce (ICC), a leading institution for international arbitration, reports that disputes arising from the construction/engineering and energy sectors generate the largest number of ICC cases.⁶ Further, the latest case statistics from another leading institution, the London Centre for International Arbitration (LCIA), show that over a quarter of its cases relate to the energy sector.⁷ This pattern is unlikely to change any time soon. Market commentators observe that price volatility in the gas sector and supply uncertainty is putting pressure on existing contractual arrangements, which is leading to conflict between the relevant parties and potential arbitration proceedings.⁸ Meanwhile, the sector is continuing its shift towards cleaner energy sources which is also causing friction between market participants due to the uncertainty and risks associated with this transition.⁹

Ireland is trying to achieve its own energy objectives which is causing significant change in the sector. Under the government's Climate Action Plan, Ireland is seeking to achieve net-zero carbon emissions by 2050 and provide 80% of electricity via renewable sources by 2030 while simultaneously increasing capacity to support an expected doubling of electricity demand.¹⁰ To achieve these goals, new infrastructure will need to be constructed, new technologies will be developed and implemented, old technology and buildings will need to be adapted and the state will likely play a bigger role by introducing more investment incentives. These demands increase the risk of dispute between all parties, including the government, investors, companies developing the technology, construction contractors and other stakeholders.

⁶ <https://cdn.iccwbo.org/content/uploads/sites/3/2019/11/cc-arbitration-adr-commission-report-on-resolving-climate-change-related-disputes-english-version.pdf>

⁷ <https://www.lcia.org/News/lcia-news-annual-report-on-2021-lcia-court-updates-and-tylney.aspx>

⁸ [LNG disputes gather on the horizon amid market volatility | Freshfields Bruckhaus Deringer](#)

⁹ [Energy Arbitration Trends 2023 \(cliffordchance.com\)](#)

¹⁰ [gov.ie - Climate Action Plan 2023 \(www.gov.ie\)](#)



Disputes in the life science industry

Another area that has experienced a recent uptick in arbitration cases is the life science industry. The ICC reported that health and pharmaceutical disputes have more than doubled between 2015 and 2020. The impact of the COVID-19 pandemic is an obvious contributor to this increase, but the international and collaborative nature of the industry means there are many complex contractual agreements between partners which provides fertile ground for conflicts. Additionally, industry participants are attracted to the option of arbitration as the confidential nature of proceedings allows parties to protect commercially sensitive information such as intellectual property.

Ireland is well positioned to assist with resolving these disputes, as it is one of the largest global hubs for pharmaceutical companies. It is home to over 85 pharmaceutical companies, including some of the world's largest 'Big Pharma' companies, and boasts a depth of industry expertise and resources that can be leveraged to help resolve these often complex and highly technical disputes. Ireland also boasts an array of talented legal professionals who can provide specialist legal advice in this field.

¹¹ [Arbitration's role protecting intellectual property rights in life sciences disputes - Allen & Overy \(allenoverly.com\)](#)

¹² [Updated-Pharma-Brochure.pdf \(idaireland.com\)](#)

Maximising the prospects of success

A key factor in maximising the prospects of success when arbitral disputes do arise is finding the right mix of professional expertise. Legal expertise is obviously a crucial component and relevant industry experience can play a vital role. Other professional expertise includes the use of forensic accountants, who can play a valuable role by not only quantifying loss but also by addressing matters relating to liability and causation.

Our team of forensic accountants are experienced in supporting counsel in these high-stakes and multifaceted disputes. My own experience of complex commercial disputes includes first-hand experience of LCIA, ICC and ICSID proceedings. My work involved assisting clients from the energy and financial sectors, addressing critical issues relating to both causation and quantum.

We understand the unique issues that arise in arbitration matters and this experience goes a long way in enhancing the outcome for our clients.

The only certainty in an uncertain world is that businesses, both local and international, will continue to face disruption and will need to deal with the fallout from inevitable conflict and disputes. Arbitration is increasingly being used around the world and provides one of the best platforms to resolve these disputes. Ireland has the industry knowledge and professional expertise to assist.



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Produced by: KPMG's Creative Services. Publication Date: September 2023. (9653)