HAWKSWELL KILVINGTON
Specialist Construction Solicitors

Construction Law Update

International Construction Arbitration in 2025: Horizon Scanning and Hot Topics

International construction arbitration continues to evolve in 2025, with much happening. The legal and procedural implications of the energy transition are giving the arbitration community much to think about, as is the adoption of AI into arbitral practice. There is greater focus of expert evidence in arbitration proceedings, geopolitical risks are shifting the ground, and there are updates to arbitration frameworks — most notably the English Arbitration Act 2025.

The trend that ties many of these issues together is the surge in data centre projects. These complex, high-value developments sit at the intersection of rising energy demand, technology innovation and the need for robust infrastructure. They bring unique challenges around speed, scale, regulation and risk allocation, and are becoming a real focal point for both disputes and strategic planning in the sector.

Sharp Rise in Energy Transition Disputes

At-a-glance:

- Energy disputes are increasing as the power sector shifts away from fossil fuels.
- Most disputes relate to project design and construction and commercial issues.
- New technologies, players and regulations are bringing fresh challenges, and the faster project pace is causing more risk reassessments and contractual variations for everyone to navigate.

The term ‘energy transition’ covers just about everything being done to move away from fossil fuels and rethink energy production. The main strategies are electrification, decarbonisation, energy efficiency, and carbon capture, utilisation and storage (CCSU). In practice, this means a push into renewables, energy storage, decommissioning, hydrogen, bioenergy, low-carbon tech, and green buildings — all while global energy demand keeps rising.

Disputes in this space generally fall into three interlinked categories: investment treaty disputes, climate change litigation, and project disputes. Project disputes are the broadest, covering not just the design, construction and operation of new facilities (or decommissioning old ones), but also commercial issues like financing and power purchase agreements.

While many disputes will look familiar, disputes about meeting sustainability targets are relatively new territory for many. Several common themes are emerging as the energy transition gathers pace:

- Projects are moving faster, resulting in more changes / variations and risk reassessment after contract execution.
- New technologies and industrial scaling of prototypes often lead to manufacturing and commissioning complications, and more potential for defects.
- Non-traditional clients, like data centre owners, ports, mining and commodities companies and industrial facilities are getting involved in energy projects.
- Private financing is influencing how contractual risks are shared.
- Regulation is evolving rapidly, especially in areas like nuclear and small modular reactors.
- Supply chain challenges are growing, including demand for rare-earth materials.
- Geopolitical risks are always present.

Energy sector professionals involved in procurement and construction will do well to align with strategically focused specialists like Hawkswell Kilvington to stay

HAWKSWELL KILVINGTON LIMITED

2nd Floor, 3150 Century Way, Thorpe Park, Leeds LS15 8ZB | 28 Queen Street, London EC4R 1BB
Tel: 0113 543 6700 | Fax: 0113 543 6720 | enquiries@hklegal.co.uk | www.hklegal.co.uk

ahead of this fast-evolving landscape. Knowledge is, after all, power.

Geopolitical Risks Weighing Heavily on Construction Projects

At-a-glance:

- Government decisions, international relations and regional instability are triggering challenges for international construction projects.
- These risks can drive up costs, cause delays and disrupt contract performance, especially in emerging markets.
- Tightly worded contracts and early advice are key to managing these challenges.

Geopolitical factors heavily influence the successful execution of international construction contracts. Large projects offer plenty of opportunities, but they are also exposed to a range of risks that can substantially raise costs, extend timelines, and make it harder to deliver on contract obligations. This is especially true in emerging markets or regions with political volatility, where risks include sudden regulatory changes, tariffs, sanctions, war, civil unrest, terrorism, government instability, regime changes and currency swings.

Government decisions in one region can spawn myriad issues elsewhere. For example, a shift in government policy might bring new taxes, changes to permit requirements, price swings or shortages of people and materials — sometimes right in the middle of a build.

The contractual picture

Risks can be mitigated by thorough due diligence, engaging local counsel where necessary, and tightly worded contracts. Key clauses include:

- Change in law clauses, which set out who pays if local laws change mid-project.
- Price adjustments options for labour or materials.
- Force majeure provisions to protect against unforeseeable events (war, natural disasters etc.).
- Dispute resolution clauses, including arbitration, to manage disputes confidentially and impartially.

Political risk insurance may also protect against losses caused by government action or instability.

It also pays to stay flexible and proactive during planning and risk / project management. When issues arise mid-project, reviewing the contract to understand where risk sits — and who's responsible — can make all the difference. The sooner the parties engage and collaborate, the greater the chances of finding a commercial solution that avoids costly delays, disputes or even project abandonment.

With so many moving parts, having advisers who understand both the legal landscape and the realities on the ground can make all the difference when unexpected political shifts threaten to derail a project.

Expert Evidence Holds Its Pivotal Role in Construction and Engineering Arbitration

At-a-glance:

- Government decisions, international relations and regional instability are triggering challenges for international construction projects.
- These risks can drive up costs, cause delays and disrupt contract performance, especially in emerging markets.
- Tightly worded contracts and early advice are key to managing these challenges.

HAWKSWELL KILVINGTON LIMITED

2nd Floor, 3150 Century Way, Thorpe Park, Leeds LS15 8ZB | 28 Queen Street, London EC4R 1BB
Tel: 0113 543 6700 | Fax: 0113 543 6720 | enquiries@hklegal.co.uk | www.hklegal.co.uk

Procedural efficiency and cost-effectiveness have become central themes in international arbitration. This focus has prompted updates to institutional rules and national legislation, such as the Arbitration Act 2025 (see below). These reforms have introduced new tools like emergency arbitrators, expedited procedures, and summary disposal, all aimed at making arbitration faster and more cost-effective.

While these changes are welcome, they don't always address the unique technical challenges that come with construction and engineering disputes. What really sets these cases apart is how central expert evidence is to resolving the complex technical questions that often arise. As a result, both users and practitioners are paying much closer attention to how expert evidence is managed in international construction arbitration. Among the many questions:

- **How early is too early to involve experts?** Getting experts on board early can help shape claims and technical strategy, but it also raises questions about timing, cost and the scope of their involvement.
- **Should parties use co-experts and joint reports?** There's a growing trend towards jointly presented expert evidence which can bring benefits also practical and procedural challenges.
- **How do you find the right expert—and avoid conflicts of interest?** Identifying suitable experts isn't always straightforward, and managing potential conflicts can be tricky.
- **What role should the tribunal play in managing experts?** Arbitral tribunals are becoming more active in overseeing the expert process to ensure evidence is presented efficiently and fairly.
- **How can technology support expert collaboration?** Digital tools are increasingly used for expert analysis, joint reports, and even virtual hearings, especially in cross-border disputes.
- **What are the best ways to set procedures for expert evidence?** Clear, practical procedures are needed so everyone knows what to expect.

For anyone facing a construction or engineering dispute, the way expert evidence is handled can be the difference between a straightforward resolution and a drawn-out battle. It's worth investing time up front to get the expert process right, because it can save a lot of time, money and stress later on.

Embracing AI's Potential in Arbitration

At-a-glance:

- AI is moving from theory to real use in arbitration, especially for document-heavy tasks.
- New technologies bring both opportunities and practical concerns around confidentiality, fairness and transparency.
- Guidance from leading institutions is starting to shape best practices for AI in arbitration.

For years, much of the talk about AI in arbitration was hypothetical — a solution searching for a problem. But the rapid rise of generative AI tools like ChatGPT, Copilot, Gemini, Llama and Grok has shifted the conversation. These tools, and the trial management platforms built on them, are now being used in real arbitrations, especially to help with document production, review and management. Gen AI is the logical next step from earlier disclosure-supporting technology like machine learning and predictive coding, but the scale and potential are much greater.

Of course, new technology brings new challenges. Confidentiality remains a top concern, especially with open generative AI tools. While solutions like ring-fencing data, adopting strict security practices, and preventing sensitive information from being used to train large language models are available, these

steps don't answer the wider practical and ethical questions that AI raises in arbitration. For example:

- Should the use of AI be addressed in procedural orders?
- Is it ever appropriate for arbitrators to use generative AI when preparing an award?
- Should parties have to disclose if they've used AI in their submissions?
- What training and safeguards are needed to ensure AI is used responsibly?
- Might one party's access to AI create an unfair advantage, or could it actually help level the playing field by reducing costs?

With so much changing so quickly, guidance from arbitration institutions and industry bodies is starting to emerge. The Silicon Valley Arbitration & Mediation Center published one of the first sets of guidelines in April 2024, followed by the Stockholm Chamber of Commerce and, more recently, the Chartered Institute of Arbitrators (CIArb). The CIArb guideline aims to help parties and tribunals make the most of AI's benefits, while also managing risks to fairness, process integrity, and the enforceability of any ensuing award.

The winds of change are only blowing in one direction and, as AI becomes a practical tool in arbitration, clients will need advice that balances innovation with caution. We stay close to these developments to ensure that AI's efficiency gains don't come at the expense of confidentiality or fairness.

New English Arbitration Act 2025 Makes London a Stronger Choice for International Construction Arbitration

At-a-glance:

- The Arbitration Act 2025 modernises English arbitration law and aims to keep the UK a leading seat for international disputes.
- The Act introduces practical changes on governing law, summary disposal, emergency arbitrators, disclosure, immunity and court powers.
- These reforms clarify areas of uncertainty created by recent Supreme Court decisions and also codify established guidance, bringing greater clarity, efficiency and fairness for parties choosing London or other UK seats for arbitration.

The English Arbitration Act 2025 received Royal Assent on 24 February 2025 and came into force on 1 August 2025. The Act follows a detailed review by the Law Commission and updates, rather than replaces, the Arbitration Act 1996. The purpose of this exercise was one of modernisation, to ensure England, Wales and Northern Ireland remain attractive and competitive forums to resolve commercial disputes, especially as other global arbitration hubs like Singapore, Hong Kong and Dubai continue to grow.

The new Act introduces a series of targeted reforms, many responding to recent case law and international best practice. In summary:

1. **Governing law of arbitration agreements**: By default, the law of the seat of arbitration will govern the arbitration agreement, unless the parties expressly agree otherwise. This change removes the uncertainty that followed the Supreme Court's decision in Enka v Chubb [2020] UKSC 38.
2. **Power of summary disposal**: Arbitrators now have the express power to dispose of claims or defences that have "no real prospect of succeeding." This is aimed at saving time and costs by filtering out weak arguments early.
3. **Emergency arbitrators**: The Act formally recognises emergency arbitrators and gives them the same powers as the main tribunal in certain circumstances. This aligns English law with international norms and provides faster interim relief when needed.

4. **Arbitrator's impartiality disclosure**: The Act codifies the ongoing duty for arbitrators to disclose any circumstances that might raise doubts about their impartiality, reflecting the Supreme Court's guidance in Halliburton v Chubb [2020] UKSC 48.
5. **Arbitrator immunity**: Arbitrators are now better protected from liability for costs in removal proceedings (unless acting in bad faith) and for resigning (unless the resignation was unreasonable).
6. **Jurisdictional challenges under section 67**: If a tribunal has already ruled on its own jurisdiction, any court challenge will now be more like an appeal, rather than a full rehearing. This change is designed to reduce costs and delays.
7. **Court powers and third parties**: The Act clarifies that courts can make orders in support of arbitration (such as preserving evidence) not just against parties to the arbitration, but also against third parties.

With these reforms now in place, anyone negotiating contracts with London-seated arbitration should review their standard clauses and make sure they reflect the latest changes. Hawkswell Kilvington can help you navigate the new rules and keep your contracts, and your projects, on the front foot.