

# Management of Contracts and Contract Claims

## INTRODUCTION

- While the object of international contracting is to write and manage contracts so as to minimize disputes, some disagreements are inevitable. These can arise from failures by one of the parties, but also often arise from misunderstandings as to obligations under the contract.
- This Management of Contracts and Contract Claims training course will look at how claims (and counter claims) arise, how they can be reduced or avoided by good contracts management, how they should be evaluated when received, or prepared when being delivered and how to resolve disputes arising from such claims. It will also, and most importantly, look at ways of avoiding disputed claims in the first place.

The training course will deal with commercial disputes arising from Contracts written in the English language and will use techniques which have wide application to the resolution of many different types of disputes. In particular, this training course will address:

- The causes of claims and disputes
- How to improve contracts management leading to fewer disputes and more rapid resolution of those that do arise
- Negotiation skills, which will be useful tools in all types of negotiating
- Some of the available methods of resolving disputes, beyond courts and arbitration
- The impact of foreign legal systems
- The management of the dispute resolution processes

## **PROGRAMME OBJECTIVES**

This Management of Contracts and Contract Claims training course aims to enable participants to achieve the following objectives:

- Provide an understanding of how and why claims and counterclaims arise
- Explain the differences between claims and counterclaims
- Identify common causes of claims and disputes, and how to avoid them
- Discuss how to develop contracts management procedures to avoid disputes over claims and counterclaims, while resisting unjustified claims
- Enhance understanding of basic negotiation techniques to be used when resolving disputes
- Provide an understanding of some of the main methods of dispute resolution involving third parties
- Develop an understanding of Traditional and Alternative Dispute Resolution techniques, including different ways of resolving disputes without recourse to courts or arbitration
- Provide strategies and tactics for negotiating during disputes
- Explain how to use contract provisions to reduce the risk of claims and disputes

## **WHO SHOULD ATTEND?**

- Contracts Analysis
- Contract Engineers
- Cost / Planning Engineers
- Individuals involved in tendering /contracting functions
- Project Managers
- Contract Administrators
- Contracting Unit Supervisors
- Claims Managers and Business Audit Officers
- Contract Strategists
- General Managers involved in contract negotiation and disputes
- Commercial Managers
- Legal Department staff looking for new techniques and an international approach
- Anyone involved in the strategy and management of disputes

## **TRAINING METHODOLOGY**

- This training course will involve a high level of interaction and delegate participation. The intention is that the trainer will explain issues using real examples, many from the trainer's personal experience, but will then involve the delegates in discussion, using the information provided. There will also be role play sessions on negotiating, where delegates will work as teams to seek to agree disputes in realistic scenarios.
- Delegates are encouraged to bring real problem examples with them, for discussion on a confidential basis, and to share their experience of particular issues in their company or industry. Time will be allowed for general discussions and for one-to-one discussion with the trainer.

## PROGRAMME SUMMARY

- This Management of Contracts and Contract Claims training course will address how claims arise, and how they can best be avoided or managed. Participants will be introduced to some of the latest international practices in dispute resolution and shown how to build such practices into their contract documents.

## PROGRAM OUTLINE

### How Claims and Counter Claims Arise

- Causes of Typical Claims
- Poor Drafting of Requirements
- Lack of Clarity in Scope of Work / Services
- Misunderstanding of Legal or Technical Obligations
- By Client
- By Contractor / Supplier
- Deliberate “misunderstanding”
- Counter Claims – how they differ from claims
- Rights of set-off
- Overview of main contractual provisions relevant to claims and counter claims
- Obligation to Perform Work
- Standards
- Programme
- Acceleration
- Variations
- Extension of time
- Force Majeure

### Types of Claims and Counter Claims

- Types of claims, in construction and other areas – and their distinctive features
- Re-measure disputes
- Variations – disputes on valuation
- Variations – disputes as to whether there is change
- Breaches of Contract
- Quality of Workmanship
- Re-work
- Rejection of Goods
- Full rejection
- Partial rejection
- Liquidated Damages and Penalties
- Warranty Claims
- Special Issues with EPC / Turnkey Contracts
- Interface Problems – are these always the Contractor’s responsibility?

## Presenting and Evaluating Claims and Counter Claims

- Requirements for Claim Presentation
- Notices
- Timing, and Time Limits
- Are time limits binding?
- Format
- Information
- Supporting documents
- Defining Features of Claims Evaluation and Management
- Recognising the causes of claims
- Warning signs of disputes
- Recording claims
- Reviewing claims
- Requesting further information
- Realistic appraisal
- When to make admissions – and denials
- Offers of settlement
- Independent review
- Cumulative effects
- Managing claims quickly and effectively to avoid disputes
- Managing claims and disputes
- Involving lawyers
- Managing the legal process
- Setting goals
- Decision trees
- Controlling costs – and including them in your thinking

## Dispute Resolution

- What is a dispute?
- Introduction to dispute resolution methods and techniques
- Stage negotiation – setting up internal dispute resolution within the contract
- Measures of success – win-win negotiation
- Understanding what constitutes a “win” for you
- What will be a “win” for the other party?
- Mirror negotiation / red teams
- Negotiating “without prejudice”
- Making offers
- Compromise
- Bargaining
- Interest-based negotiations
- Moving away from rights-based thinking
- Making the cake bigger – settling other issues
- Non-financial solutions
- Long-term business relationships
- Conflict and its Resolution
- Defusing conflict

- Personality clashes and how to avoid them
- Dealing with disputes as they arise – not letting them fester
- Traditional dispute resolution
- Litigation
- Use of foreign courts
- Enforcement
- Arbitration
- Domestic
- International
- Single or Panel
- Enforcement
- Issues with evidence and production of documents
- Differences between alternative dispute resolution methods
- Mediation
- Med / Arb and Arb / Med
- Adjudication
- Expert determination
- Early Neutral Evaluation
- Mini-Arbitration
- Dispute Review Boards
- Pendulum Arbitration

## Ethics and How to Avoid Disputes

- Ethical Concerns
- Audit trails
- Avoiding the suspicion of unethical behaviour
- Problems with settlements based on interests, not rights
- Applying the same anti-corruption systems to claims as to tendering
- Avoidance is better than resolution
- Avoiding claims and counter claims
- Avoiding disputes
- Avoiding litigation and arbitration
- Practical Application of Techniques
- Opportunities to role play a few straightforward negotiation scenarios involving typical contractual claims, counter claims and disputes