

PANORAMIC

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# United Kingdom - England & Wales

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## LOCAL MARKET

### Foreign pursuit of the local market

- 1 If a foreign designer or contractor wanted to set up an operation to pursue the local market, what are the key concerns they should consider before taking such a step?

When setting up construction operations in England & Wales, a foreign designer or contractor should be aware of various legislative, regulatory and general business requirements. The construction industry in England & Wales does not have a single regulatory body, but there are certain key laws and regulations to consider including (but not limited to):

- Defective Premises Act 1972 (as amended): requires professional consultants, contractors and property developers working on a dwelling to work in a professional or workmanlike manner and use proper materials to ensure that completed dwellings are fit for habitation;
- Building Act 1984 (as amended): sets out standards for building construction and maintenance aimed at protecting health, safety, and welfare, and is supported by the Building Regulations;
- Housing Grants, Construction & Regeneration Act 1996 (HGCRA 1996) (as amended): governs payment provisions within construction contracts and introduces statutory rights for adjudication in disputes and the right to suspend work for non-payment; supported by associated Statutory Instruments such as the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649);
- Construction (Design and Management) Regulations (CDM) 2015: regulates health and safety throughout the lifecycle of construction projects, forming a key part of health and safety legislation along with other legislation like the Health and Safety at Work etc Act 1974;
- Construction Products Regulation 2013: provides guidelines for placing construction products on the market;
- Building Safety Act 2022: among other things, introduced enhanced safety measures including a new regime for regulation of high-rise residential buildings and established a Building Safety Regulator (BSR); and
- Contracts (Rights of Third Parties) Act 1999: allows third parties to enforce terms in professional appointments or building contracts if expressly stipulated.

Additionally, a foreign designer or contractor entering the market should consider and familiarise themselves with the local tax regime (including

corporate tax, value added tax (VAT), and other applicable taxes), employment and pension requirements, availability of local labour and restrictions for visas for certain categories of workers, compulsory insurance requirements, and intellectual property and copyright registrations.

## REGULATION AND COMPLIANCE

### Licensing procedures

- 2 Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?

There is no general requirement for a foreign designer or contractor to be licensed to work in England & Wales. However, a range of licenses or consents may be needed for specific activities. For example, consent is often required (for local and foreign companies alike), for Building Regulations approval. Works on higher-risk buildings (which include buildings over a certain height) will also require approval from the Building Safety Regulator. Licences may also be required for certain activities, for example working with asbestos requires a licence from the Health and Safety Executive. Certain professional qualifications may also need to be recognised by the relevant UK professional bodies, such as architects or engineers. Adequate insurance coverage will usually be a condition for permits. A foreign company may also be required to register with Companies House if it carries out significant business activities, with His Majesty's Revenue and Customs (HMRC) for tax, value added tax (VAT), pay as you earn (PAYE) and with the Construction Industry Scheme that governs payments to subcontractors.

### Competition

- 3 Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

No.

### Competition protections

- 4 What legal protections exist to ensure fair and open competition to secure contracts with public entities, and to prevent bid rigging or other anticompetitive behaviour?

Procurement of goods, works or services above specified thresholds by public authorities is regulated by the Procurement Act 2023. The Act also applies to utilities contracts entered into by public undertakings and private utilities. The Act came into force in February 2025, replacing several regulations which had implemented EU public procurement Directives in England & Wales.

Various obligations are imposed on contracting authorities where the Act applies. These include:

- the publication of public notices at pre-tender stage, following the award of the contract and during its performance;
- carrying out the procurement process in accordance with one of the procedures permitted under the Act; and
- awarding the contract to the most advantageous tenderer.

There are also a number of general objectives to which the contracting authority must have regard, including delivering value for money, acting with integrity and treating suppliers equally.

The Act provides certain remedies where an unsuccessful bidder establishes that there has been a breach of the procurement rules, which can include setting the contract aside if it has already been entered into and certain criteria are met.

## Bribery

- 5 | If a contractor has illegally obtained the award of a contract, for example, by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?**

In addition to any terms of the contract itself, under general principles of law in England & Wales, a contract obtained corruptly is regarded as voidable and may be set aside via civil court proceedings initiated by the innocent party. The case will be assessed to the civil standard (on the balance of probabilities) and it is not necessary for a criminal offence to have been committed in order for a contract to be set aside.

Offering, promising or giving a bribe to another person amounts to a criminal offence under section 1 of the UK Bribery Act 2010 (UKBA). Section 6 of the UKBA also specifically criminalises bribery of foreign public officials. Requesting, agreeing to receive or accepting a bribe is a criminal offence under section 2 of the UKBA. An individual found guilty of an offence under section 1, 2 or 6 of the UKBA may face a penalty of up to 10 years' imprisonment and/or an unlimited fine.

A corporate entity may also be prosecuted where a senior manager, acting within the actual or apparent scope of their authority, commits an offence under sections 1, 2 or 6. A corporate entity can additionally be prosecuted for failing to prevent bribery by a person associated with it (section 7 of the UKBA) and may face an unlimited fine if found guilty of such an offence.

In the UK, facilitation payments are treated as bribes and are not permitted. In official guidance, the government and the UK's prosecution agencies make clear that the UKBA provides no exemption for facilitation payments.

## Reporting bribery

- 6 | Under local law, must employees of the project team members report suspicion or knowledge of bribery of government employees and, if so, what are the penalties for failure to report?**

Under UK law, there is no general obligation to report suspected or actual criminal offences. Failure to self-report bribery issues may, however, make it more difficult for a corporate entity to negotiate a resolution to avoid prosecution (a Deferred Prosecution Agreement) should a law enforcement investigation arise in future.

In addition to any disclosure and reporting duties imposed by contract, firms doing business in the regulated sector (often financial gatekeepers such as banks, law firms, auditors or estate agents) are obliged to report knowledge or suspicion of money laundering to the UK Financial Intelligence Unit. They may also be subject to further obligations imposed by their regulator.

## Political contributions

- 7 | Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?**

In the UK, private individuals and companies may make contributions to political parties (although charities are prohibited from making political donations). Giving financial support to political candidates or parties is not in itself illegal and there are no financial limits on donations to a political party or individual politician. However, any payment made with the intention to influence a person to perform a function improperly could amount to a criminal offence under the UKBA.

Making political contributions is noted as a potential high-risk factor in the official government guidance to the UKBA, and as such should be considered as part of a company's bribery risk assessment and other bribery prevention procedures (such as policies and training programmes).

The Political Parties, Elections and Referendums Act 2000 sets limits on financial contributions that political parties can accept. Some donations and loans must be reported to The Electoral Commission by the party.

Civil servants (individuals employed by the State) are subject to the Civil Service Code, which expects political impartiality as one of its Standards. The Civil Service Management Code (CSMC) sets out general rules governing national political activities. The CSMC makes clear that civil servants in 'industrial and non-office grades' must be given the freedom to take part in all political activities. Senior civil servants are likely to fall under the 'politically restricted' category. Other civil servants may be permitted to take part in local or national political activities at the discretion of their department or agency. Making financial contributions is not specifically mentioned under the CSMC, however.

The Procurement Regulations 2024 govern procurement activities carried out by public sector bodies in England and Wales (the Public Contracts Regulations 2015 may apply to older procurement contracts). Suppliers who have committed certain criminal offences (including bribery) or have been involved in or investigated for misconduct, among other circumstances, may be excluded from supplying services to public agencies.

Suppliers to public agencies are required by the core terms of the Public Sector Contract to avoid any actual or potential conflicts of interest between their financial or personal duties and those of the relevant agency. Whether political contributions amount to a conflict of interest will depend on the specific facts and circumstances.

## Compliance

- 8 | Is a construction manager or other construction professional acting as a public entity's representative or agent on a project and its employees subject to the same anti-corruption and compliance rules as government employees?**

Representatives or agents of a public entity will be bound by similar contractual obligations and any payment made with the intention to influence a person to perform a function improperly could amount to a criminal offence under the UKBA. Among other things, the core terms of the Public Sector Contract require suppliers to maintain adequate anti-bribery policies and procedures and the Procurement Regulations 2024 govern procurement activities carried out by public sector bodies in England and Wales (the Public Contracts Regulations 2015 may apply to older procurement contracts). Suppliers who have committed certain criminal offences (including bribery) or have been involved in or investigated for misconduct, among other circumstances, may be excluded from supplying services to public agencies.

## Other international legal considerations

- 9 | Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

The same legal issues apply as in many other jurisdictions, for example in relation to visas, employment rights and taxation.

## CONTRACTS AND INSURANCE

### Construction contracts

- 10 | What standard contract forms, if any, are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

The Joint Contracts Tribunal (JCT) suite of contracts are the most common forms of construction contract used in England & Wales. There are a number of different versions available depending on the procurement model being used or the size of the project, including the Design and Build Contract (for contractor-designed projects), Standard Building Contract (for employer-designed projects), Intermediate Building Contract and Minor Works Building Contract. The 2024 suite comprises the most recent editions.

Another common suite of contracts used in England & Wales are the New Engineering Contract (NEC) contracts, which include the Engineering and Construction Contract (which can be used for contractor or employer-designed projects). The most recent edition is NEC4, first published in 2017 but republished in 2023 with some minor amendments/corrections. The use of International Federation of Consulting Engineers (FIDIC) contracts is less common in part due to the fact that, in their unamended form, the FIDIC contracts do not comply with the Housing Grants, Construction and Regeneration Act 1996 (HGCRA 1996) considered below.

For design-only services, standard forms of appointment include the NEC4 Professional Services Contract and the Royal Institute of British Architects (RIBA) Professional Services Contracts.

There is no legal requirement for the language of the contract to be English, although it is rare to see a different language used. There are no restrictions on the choice of law or venue, although a point to note is that where the contract is one to which the HGCRA 1996 applies, there is a mandatory right to refer disputes to adjudication.

### Payment methods

- 11 | How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Payment is normally made by electronic transfer such as bank transfer. In relation to construction contracts, the Housing Grants, Construction and Regeneration Act 1996 (HGCRA 1996) provides the contractor with a right to interim payments where the duration of the works is 45 days or longer. The Act is silent as to the trigger or frequency of payment, and the JCT Design and Build Contract provides for periodic or stage payments. In practice it is common for interim payments to be made monthly.

The HGCRA 1996 applies to 'construction contracts', which are principally defined as contracts for the carrying out of 'construction operations'. This has a wide meaning and can include subcontracts and contracts for design services. However, there are some express exclusions in both the Act itself and several Exclusion Orders made under it, including contracts for the drilling or extraction of oil or natural gas, mining projects and contracts for the provision of plant or machinery on sites where the primary activity is power generation. Further, the HGCRA

1996 will only apply where the works are physically located in England & Wales, or Scotland.

Workers are normally paid monthly. As for contracts with vendors (to the extent these do not constitute 'construction contracts' for the purpose of the HGCRA 1996), the standard structure for payments will depend on the nature of the arrangement (eg, for a one-off delivery, a vendor may receive a deposit and then the remainder on delivery).

### Contractual matrix of international projects

- 12 | What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants? For example, do owners contract directly with contractors or do they contract through construction managers to trade contractors? Are any of the relationships legally defined?

The contractual matrix will depend on the procurement strategy of the owner. That may be:

- traditional procurement, where the owner contracts directly;
- design and build, where the client contracts with a single entity responsible for the design and construction, including managing the trade subcontractors; or
- forms of construction management or management contracting, where the owner contracts directly but engages a third party to manage or coordinate the works.

The relationships will usually be legally defined in the form of standard contract used, such as JCT, NEC or FIDIC. Legislation also imposes obligations on participants, such as the specific duty holders in the Construction (Design and Management) Regulations 2015, Health and Safety at Work etc Act 1974 and other building regulations.

### PPP and PFI

- 13 | Is there a formal statutory and regulatory framework for PPP and PFI contracts?

There is no formal statutory or regulatory framework governing the use of PPP or PFI contracts, save that any procurements carried out by public authorities would be subject to the Procurement Act 2023, which regulates procurement of goods, works or services above specified thresholds by public authorities. The Act came into force in February 2025, replacing several regulations which had implemented EU public procurement Directives in England & Wales.

Various obligations are imposed on contracting authorities where the Procurement Act applies. These include (i) the publication of public notices at pre-tender stage, following the award of the contract and during its performance; (ii) carrying out the procurement process in accordance with one of the procedures permitted under the Act; and (iii) awarding the contract to the most advantageous tenderer.

Various pieces of governmental guidance on PPPs and PFIs have also been published over the years, for example HM Treasury's Green Book (published in 2022), which provides guidance on how PPP projects should be appraised.

Historically, PFI was the most common form of PPP used in England & Wales, but in 2018 it was announced that PFI (specifically, 'PF2', which was a reformed version of PFI) would no longer be used on new UK Government projects. Due to their often long lifespans, many PFI projects continue to be in operation.

## Joint ventures

### 14 Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

Parties will normally expressly agree in the construction contract the nature of the liability owed by the consortium members to the employer. Where the members are stated to be 'jointly' or 'jointly and severally' liable, each member is liable to the employer for the whole project (although the employer cannot double recover). The key difference in practice is that, for joint liability, all members of the consortium should be joined in any proceedings brought by the employer, whereas for joint and several liability, proceedings may be brought against one (or several) members of the consortium. Where the contract is silent as to the nature of the liability owed, it is necessary to interpret the contract as a whole to establish which is to apply.

Separate to their agreement regarding liability to the employer, the consortium members will agree how liability will be allocated between themselves, for example in the shareholder agreement or joint venture agreement regulating the consortium.

## Tort claims and indemnity

### 15 Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

It is permissible for a contractual indemnity to apply even where the indemnified party has been negligent, but clear wording will be required to achieve this.

In practice, indemnities tend to be limited to specific types of loss, for example personal injury, damage to other property and those arising from intellectual property breaches.

Limited types of loss cannot be indemnified, for example those caused by fraud.

## Liability to third parties

### 16 Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity? Can a contractor's liability to contracting parties and others be limited by contract or law?

While the starting point is that under the common law doctrine of privity of contract a contractor will not owe contractual duties to a party it has not contracted with, there are some important exceptions/alternative routes to liability.

- It is common practice for contractors to be required to provide collateral warranties to third parties (eg, purchasers, lessees and/or lenders). These provide a direct contractual route for a third party to claim against the contractor. The nature and extent of the contractor's liability will depend on the terms of the collateral warranty.
- Under the Contracts (Rights of Third Parties) Act 1999, a third party may enforce a term of a contract where the contract expressly provides for this, or a term purports to confer a benefit on the third party. It is possible for the parties to exclude their contract from the effect of the Act, and this is common practice. However, as an alternative to using collateral warranties, parties may use third-party rights schedules to specify the third parties which are permitted to enforce certain terms of the contract in accordance with the Act.
- The contractor will owe liability in tort in respect of death, personal injury and damage to other property.

- Where works are carried out on a dwelling, under the Defective Premises Act 1972 the contractor will owe a duty to any future owner of the dwelling to see that its work is done in a workman-like or professional manner, with proper materials and so that the dwelling is fit for habitation. The Building Safety Act 2022 expanded the scope of the Defective Premises Act to include work on existing dwellings, and extended the applicable limitation periods.

## Insurance

### 17 To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards? Does the local law limit contractors' liability for damages?

A wide range of insurance products cover different types of risks associated with construction projects. Available insurance products could include:

- public liability insurance: typically covers legal costs and compensation claims, including damage to the property of third parties and bodily injury to third parties;
- employer's liability insurance: typically covers claims by workers who are injured or become ill as a result of their work (and is mandatory in the UK for most businesses with employees);
- contractors' all risk policies: typically covers against physical loss or damage, and would be maintained by a contractor until practical completion;
- environmental liability insurance: typically covers claims related to pollution or other environmental damage, and could include costs associated with remedial actions, legal fees and compensation; and
- professional indemnity insurance: this may be available for certain professional work, such as claims arising from professional negligence, design errors and project management failures that lead to loss.

## LABOUR AND CLOSURE OF OPERATIONS

### Labour requirements

#### 18 Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

No, although use of local labour may be included as a condition to the grant of planning permission.

### Local labour law

#### 19 If a contractor directly hires local labour at any level for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

Ex-employees may continue to benefit from certain rights under legislation, including in relation to data protection, data access, discrimination and whistleblowing. There may also be certain express obligations in the employment contract that continue to apply, although these tend to protect employers (eg, confidentially).

### Labour and human rights

#### 20 What laws apply to the treatment of foreign construction workers and what rights do they have? What are the local law consequences for failure to follow those laws?

Labour and human rights laws apply equally to all construction workers in England & Wales regardless of their immigration status.



## Close of operations

### 21 | If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

There are no legal obstacles as such, but there will be various factors to consider, including:

- rights of employees, including to redundancy payments;
- tax obligations; and
- company law requirements, including if any locally incorporated entity is to be wound down.

Specialist advice that takes into account the specific nature of the proposed departure should always be sought.

## PAYMENT

### Payment rights

### 22 | How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

Under the law of England & Wales, a contractor can rely on both contractual and statutory measures to secure the right to payment of costs and fees from an owner. The Housing Grants, Construction & Regeneration Act 1996 (HGCRA 1996), (if applicable to the relevant construction contract), provides statutory rights to payment and mandates a statutory adjudication process for the swift resolution of payment disputes.

The HGCRA 1996 applies to "construction contracts", which are principally defined as contracts for the carrying out of "construction operations". This has a wide meaning, and can include subcontracts and contracts for design services. However, there are some express exclusions in both the Act itself and several Exclusion Orders made under it, including contracts for the drilling or extraction of oil or natural gas, mining projects and contracts for the provision of plant or machinery on sites where the primary activity is power generation. Further, the HGCRA 1996 will only apply where the works are physically located in England & Wales, or Scotland.

While parties can agree to more stringent payment terms in the construction contract, these must comply with the HGCRA 1996 and any failure to meet the Act's requirements will trigger the Scheme for Construction Contracts (England and Wales) Regulations 1998, which imposes default terms. Contractors are entitled to suspend work if payment is not made by the due date, provided no withholding notice has been issued by the owner and a notice of intention to suspend has been issued to the owner.

Additionally, contractors have the right to sue for unpaid amounts as a debt under common law.

The contractor may also claim a lien over works in limited circumstances where the contractor has not been paid for goods or materials it has provided.

### 'Pay if paid' and 'pay when paid'

### 23 | Does local law prohibit construction contracts from containing terms that make a subcontractor's right to payment contingent on the general contractor's receipt of payment from the owner, thereby causing the subcontractor to bear the risk of the owner's non-payment or late payment?

Yes, where the Housing Grants, Construction & Regeneration Act 1996 (HGCRA 1996) applies, there is a prohibition on making payment conditional on receipt of payment from a third party, except where the third party is insolvent. Any term that breaches this prohibition will be

ineffective. If the payment provisions can no longer function without the ineffective term, the default payment provisions contained in the 'Scheme for Construction Contracts' will be implied to the extent required.

There is also a prohibition on making payment conditional on the performance of obligations under another contract, or certification thereof. If a contract purports to do this, it will not be regarded as having an adequate payment mechanism and again the Scheme for Construction Contracts' payment provisions will be implied to the extent required. The prohibition does not apply where the works are not being carried out by the contractor, for example in a management contracting arrangement.

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### Contracting with government entities

### 24 | Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

Under the State Immunity Act 1978, state immunity does not apply in proceedings relating to a 'commercial transaction'. This includes a contract for the supply of goods or services.

### Statutory payment protection

### 25 | Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

No.

## FORCE MAJEURE

### Force majeure and acts of God

### 26 | Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

There is no freestanding concept of 'force majeure' under the law in England & Wales, although a contract may be discharged on the ground of frustration where an event occurs making it impossible for a party to fulfil its obligations (or transforming a party's obligation into something radically different). This is a high threshold.

In practice, most construction contracts will include express force majeure-type provisions providing for contractor relief (and potentially other consequences, such as termination) where the works are delayed and/or disrupted due to events beyond the parties' control.

## DISPUTES

### Courts and tribunals

### 27 | Are there any specialised tribunals that are dedicated to resolving construction disputes?

Yes, the Technology and Construction Court (TCC) hears construction and engineering disputes, including adjudication-related matters and challenges to decisions of arbitrators in construction and engineering disputes. It is part of the Business and Property Courts of England &

Wales. The principal centre for the TCC is in London, but TCC judges also sit in other locations such as Birmingham, Bristol, Cardiff, Leeds, Liverpool, Manchester and Newcastle.

Proceedings in the TCC are governed by the Civil Procedure Rules (CPRs), accompanying Practice Directions and the TCC Guide. There is also a specific Pre-Action Protocol for Construction and Engineering Disputes.

### Discovery and disclosure

#### 28 | To what extent do local proceedings include discovery or disclosure?

Disclosure is often required in litigation proceedings, although a number of changes have been made in recent years in an attempt to reduce the extent of disclosure required. Where proceedings are brought in the Business and Property Courts (which include the TCC), the normal position under Practice Direction 57AD is as follows.

- Each party must provide 'initial disclosure' along with its statement of case, being the key documents on which it relies and that are necessary to enable the other party to understand its case.
- If requested by one of the parties, the court may make an order for 'extended disclosure' if it is reasonable and proportionate to do so. There are five models: (i) disclosure confined to known adverse documents; (ii) limited disclosure (essentially initial disclosure plus known adverse documents); (iii) disclosure of particular documents or narrow classes of documents; (iv) narrow search-based disclosure; and (v) wide search-based disclosure. Different models may be applied to different issues, types of document or parties involved. The court normally decides whether to order extended disclosure at the first case management conference.

A person who knows that they will/may become a party to proceedings is under an obligation to preserve relevant documents.

### Dispute boards

#### 29 | Are dispute boards (DBs) used? Do they issue decisions or only recommendations? Are their decisions treated as mandatory, advisory, final or interim? Do they have dispute avoidance roles?

The use of dispute boards is not widespread in England & Wales, with parties normally relying on the statutory right to adjudication provided by the Housing Grants, Construction & Regeneration Act 1996 (HGCRA 1996) where it applies.

Adjudication under the HGCRA 1996 is mandatory and cannot be excluded by agreement. The HGCRA 1996 requires that a construction contract must, among other things:

- enable a party to give a notice of adjudication 'at any time';
- provide for the appointment of, and referral to, an adjudicator within seven days of the notice;
- require the adjudicator to reach a decision within 28 days of the referral (which can be extended to 42 days with the consent of the referring party, or longer with both parties' consent); and
- impose a duty on the adjudicator to act impartially.

Where a construction contract fails to comply, the default adjudication provisions of the Scheme for Construction Contracts will apply.

If the parties agree to use a dispute board, the nature and effect of its output, and whether it is to play a dispute avoidance role, will depend on what the parties have agreed.

### Mediation

#### 30 | Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

Mediation is a generally accepted practice in England & Wales. Further, under the Civil Procedure Rules, the court's case management duties and powers include ordering or encouraging the parties to use alternative dispute resolution methods, such as mediation.

Parties can agree who will be the mediator, or ask a panel to appoint one for them. There are several panels available, including those of the Centre for Effective Dispute Resolution, the Technology & Construction Bar Association, the Royal Institution of Chartered Surveyors and the Construction Industry Council. Mediators come from various professional backgrounds, both within the construction and legal industries.

### Confidentiality in mediation

#### 31 | Are statements made in mediation confidential?

It is common practice for mediation agreements to include confidentiality provisions, to provide that any statements made during the process are confidential. In the absence of an express provision, a confidentiality obligation is likely to be implied in any event.

Mediation proceedings are also protected by the 'without prejudice' rule, meaning that any oral or written statements made during the mediation cannot later be put before a court.

### Arbitration of private disputes

#### 32 | What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Given the strong reputation and industry expertise of the TCC, litigation is the most common choice of final dispute resolution method on construction projects in England & Wales. However, it is not unheard of for parties to choose arbitration instead, and many standard forms (including the Joint Contracts Tribunal (JCT) and New Engineering Contract (NEC) contracts) include arbitration as an option.

### Governing law and arbitration providers

#### 33 | If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

The arbitration rules of the International Chamber of Commerce (ICC) and London Court of International Arbitration (LCIA) are popular choices, being well-established and respected arbitral institutions. This is consistent with the wider picture: according to the 2025 Queen Mary University of London and White & Case International Arbitration Survey, the preferred arbitral rules for respondents based in Europe were the ICC (60 per cent of respondents) and LCIA (41 per cent of respondents) rules.

### Dispute resolution with government entities

#### 34 | May government agencies participate in private arbitration and be bound by the arbitrators' award?

Yes.

## Arbitral award

### 35 Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

The UK is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which is enacted in England & Wales by the Arbitration Act 1996.

The Act sets out the grounds on which a court may refuse to recognise or enforce a Convention award, which are consistent with the grounds set out in Article V of the Convention and can be summarised as:

- a party to the arbitration agreement lacked capacity;
- the arbitration agreement was not valid;
- a party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- the award deals with a difference outside the scope of the arbitration agreement or contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement;
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the seat jurisdiction; or
- the award is in respect of a matter which is not capable of settlement by arbitration, or it would be contrary to public policy to recognise or enforce the award (including fraud and corruption).

## Limitation periods

### 36 Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

Statutory limitation periods are set out in the Limitation Act 1980. For claims under contract, proceedings must be commenced within six years of the cause of action accruing, which is extended to 12 years where the contract is executed formally as a deed. In practice, many construction contracts are entered into as a deed to benefit from the longer limitation period. The cause of action accrues when the contract is breached. In relation to defective works, this is normally on practical completion in the case of contractors. In respect of design services, it will depend on the nature of the designer's obligations.

For claims in tort, the limitation period is six years from the cause of action accruing. In respect of negligence claims, the limitation period may be extended where the claimant did not have the requisite knowledge (eg, in the case of latent defects) up to a longstop of 15 years. A cause of action in tort normally arises when loss is suffered, although there has been a degree of case law over the years as to when loss is considered 'suffered' in the context of defective works.

Some changes to limitation periods have also been introduced by the Building Safety Act 2022. Where works are carried out on a dwelling, under the Defective Premises Act 1972 the contractor will owe a duty to any future owner of the dwelling to see that its work is done in a workmanlike or professional manner, with proper materials and so that the dwelling is fit for habitation. The Building Safety Act 2022 expanded the scope of the Defective Premises Act to include work on existing dwellings, and extended the applicable limitation periods. In particular, in respect of the obligations in relation to dwellings under the Defective Premises Act 1972, the limitation period is extended to 15 years (or 30 years where a claim accrued before 28 June 2022). The Building Safety Act 2022 also provides for special limitation periods in respect of construction products.

Court or arbitration proceedings are required to stop the limitation period from expiring. Adjudication or other forms of alternative dispute resolution proceedings will not be sufficient.

## ENVIRONMENTAL REGULATION

### International environmental law

#### 37 Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

The UK participated in the United Nations Conference on the Human Environment in 1972 that led to the Stockholm Declaration and Action Plan for the Human Environment and other resolutions. While a state is not a party to the declaration in the sense of a formal, binding agreement, the Stockholm Declaration has influenced the law in the UK.

Today, legislation that seeks to balance environmental preservation with infrastructure and building projects is comprised of a complex environmental regime including both statutory and common law.

Relevant laws include the:

- Environmental Protection Act 1990;
- Conservation of Habitats and Species Regulations 2017;
- Town and Country Planning Act 1990;
- Flood and Water Management Act 2010;
- Town and Country Planning (Environmental Impact Assessment) Regulations 2017; and
- Environment Act 2021.

These laws cover a wide spectrum of construction activities, from permitting to waste management.

In addition, there are a number of regulations addressing factors such as industrial permits, emissions and air quality, as well as the energy performance of buildings (such as the Energy Performance of Buildings (England & Wales) Regulations 2012 and the Energy Savings Opportunity Scheme).

### Local environmental responsibility

#### 38 What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

Developers and contractors are subject to duties and liabilities to ensure compliance with environmental regulations and to mitigate the creation of environmental hazards. Starting with the requirement to obtain the necessary environmental permits for activities that could impact the environment, as well as planning and environment impact assessments, through to regulations that prevent water pollution, protect wildlife and control air quality. For example, under the Environmental Protection Act 1990, developers and contractors have a duty of care to manage waste responsibly, and the same law imposes obligations on those responsible for contaminated land.

## CROSS-BORDER ISSUES

### International treaties

#### 39 Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

The UK is signatory to various bilateral investment treaties (BITs; more than 80 BITs are currently in force) and multilateral investment



agreements (there are currently more than 25 treaties with investment provisions). These will typically offer a range of protections, such as fair and equitable treatment and protection against expropriation.

All of the UK BITs define 'investment' broadly as 'every kind of asset, owned or controlled directly or indirectly', followed by a non-exhaustive list of property, shares, claims, intellectual property rights and business concessions.

While these protections are offered to foreign investors, the National Security and Investment Act 2021 (NSIA) also enables the government to assess and scrutinise investments on national security grounds. The government intentionally does not set out exhaustive circumstances in which national security is, or may be, considered to be at risk, but 17 'sensitive' areas of the economy that legally require notification include energy, transport, defence, communications and data infrastructure projects.

## Tax treaties

### 40 | Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Yes, the UK has entered into double taxation treaties with over 130 countries, forming one of the world's most extensive networks. The specific conditions for exemption or relief are detailed in the relevant double taxation treaty, and His Majesty's Revenue and Customs (HMRC) provides an online repository of the treaties on its website for reference.

Please see below a link to the UK Tax Treaties which sets out all the treaties entered into the UK by country: Tax treaties - GOV.UK.

## Currency controls

### 41 | Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

No.

## Removal of revenues, profits and investment

### 42 | Are there any controls or laws that restrict removal of revenues, profits or investments from your jurisdiction?

There are no foreign exchange or capital controls in the UK. There is, however, a requirement to notify HMRC with details of certain international transactions whose value exceed £100 million under the International Movements of Capital Regulations.

## UPDATE AND TRENDS

### Emerging trends

### 43 | Are there any emerging trends or hot topics in construction regulation in your jurisdiction?

Regulation relating to building safety, including (but not limited to) fire safety, has been the subject of reform following the Grenfell Tower fire in 2017. This is principally in the form of the Building Safety Act 2022, which has had a significant impact on the construction industry in England & Wales. Among other things, the Act has introduced the following provisions.

- The ability for the court, in certain scenarios including in respect of building safety risks, to make a 'building liability order' against an associated entity (eg, parent) of a liable party. The effect of such an order is that the associated party is also liable for the relevant breach, which can have the effect of piercing the corporate veil. The first reported building liability order was made in December 2024.

- Extension of certain limitation periods such as the limitation period in respect of the obligations in relation to dwellings under the Defective Premises Act 1972.
- Additional obligations for higher-risk residential buildings under the Building Act 1984.
- The establishment of the Building Safety Regulator within the Health and Safety Executive.

Long-awaited changes to public procurement laws finally came into effect in February 2025, pursuant to the Procurement Act 2023 which repealed and replaced several regulations which had implemented EU procurement Directives into UK law. Key changes introduced by the Procurement Act 2023 included the creation of a single set of rules, fewer procurement procedures and greater flexibility, a new focus on contract management, a central debarment list and additional grounds on which to exclude suppliers.

The relationship between nature and the built environment is also the focus of an independent regulatory review in spring 2025, with 29 recommendations that could further shape the evolving landscape. There is also a renewed focus on employment rights, and an ongoing review focused on forced labour and supply chains, which could impact the construction sector.

## WHITE & CASE



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