

Table of Contents

| | |
|-------------------------------|----|
| Preface | V |
| List of Abbreviations | XI |
| List of Editors/Authors | XV |

CHAPTER 1 EARLY CLAIMS RESOLUTION

| | |
|---|----|
| I. Introduction | 3 |
| II. Effective claims management | 8 |
| III. Neutral/engineer determination | 17 |
| IV. FIDIC and NEC claims procedure | 25 |
| V. Practical issues | 31 |
| VI. Conclusion | 34 |

CHAPTER 2 ALTERNATIVE DISPUTE RESOLUTION

| | |
|--|----|
| A. Overview | 35 |
| I. Choosing the right dispute resolution mechanism | 36 |
| II. ADR clauses | 41 |
| III. Multi-party disputes | 47 |
| B. Adjudication | 50 |
| I. Introduction | 51 |
| II. Statutory adjudication | 52 |
| III. Contractual adjudication | 61 |
| C. Expert Determination | 66 |
| I. Introduction | 67 |
| II. Distinction between expert determination and other forms of ADR | 67 |
| III. Types of expert determination | 69 |
| IV. Advantages and disadvantages of expert determination | 72 |
| V. Scope and limits to the expert's jurisdiction | 74 |
| VI. Procedure for expert determination | 74 |
| VII. Challenge of expert determination | 77 |
| VIII. Enforcement of expert decisions and interplay with arbitration | 79 |
| IX. Conclusion | 80 |

CHAPTER 3 ARBITRATION

| | |
|---|-----|
| A. Arbitration (Commercial) | 81 |
| I. Introduction | 83 |
| II. The arbitration agreement | 85 |
| III. Applicable laws and rules | 90 |
| IV. Role of state courts in arbitration | 93 |
| V. The arbitral tribunal | 95 |
| VI. The arbitral proceedings | 100 |
| VII. The award | 111 |
| VIII. Interim measures and partial awards | 115 |

| | |
|--|-----|
| B. Investment Arbitration | 117 |
| I. Introduction..... | 118 |
| II. Investment arbitration as a means of resolving (construction-related) disputes | 119 |
| III. Fundamental requirements for raising an investment arbitration claim | 122 |
| IV. Investment arbitration proceedings | 136 |
| V. Recognition and enforcement of investment arbitration awards..... | 140 |
| VI. Recent developments and the future of investment arbitration..... | 141 |

CHAPTER 4 LITIGATION

| | |
|---|-----|
| A. Litigation (National) | 147 |
| I. Introduction..... | 149 |
| II. Construction litigation in civil law jurisdictions..... | 149 |
| III. Construction litigation in common law jurisdictions | 158 |
| IV. The Technology and Construction Court (England and Wales) | 169 |
| B. International Courts | 174 |
| I. Introduction..... | 177 |
| II. General overview of international commercial courts..... | 177 |
| III. International commercial courts..... | 181 |

CHAPTER 5 EVIDENCE IN CONSTRUCTION DISPUTES

| | |
|--|-----|
| A. General Principles | 205 |
| I. Introduction..... | 211 |
| II. Fundamental principles of evidence | 214 |
| III. Means of evidence..... | 217 |
| IV. Burden and standard of proof..... | 229 |
| V. Proving complex claims..... | 233 |
| VI. Applicable law issues and ascertaining the content of the applicable law | 242 |
| VII. Conclusion | 244 |
| B. Delay | 245 |
| I. Introduction..... | 246 |
| II. Time aspects | 247 |
| III. Financial aspects | 262 |
| IV. Procedural aspects..... | 270 |
| C. Quantum | 274 |
| I. Introduction..... | 276 |
| II. Legal bases for the determination of quantum in construction disputes..... | 276 |
| III. Typical monetary claims in construction disputes..... | 280 |
| IV. Procedural aspects regarding the determination of quantum..... | 291 |
| V. Proof of quantum..... | 297 |
| D. Expert Evidence | 305 |
| I. Introduction..... | 307 |
| II. Types of specialised knowledge and the corresponding experts | 308 |
| III. Party-appointed experts..... | 310 |
| IV. Procedural aspects concerning party-appointed experts..... | 317 |
| V. Tribunal-appointed experts..... | 321 |
| VI. Experts recording specific situations of fact..... | 328 |
| E. Early Taking/Securing of Evidence | 329 |
| I. Introduction..... | 330 |
| II. Time aspects for securing evidence..... | 332 |
| III. Types of evidence | 333 |
| IV. Institutions and procedures of taking evidence | 334 |
| V. Selected practical issues..... | 335 |

CHAPTER 6
THE FUTURE OF CONSTRUCTION DISPUTES

| | |
|---|-----|
| A. The digitalised construction site | 339 |
| I. Introduction..... | 340 |
| II. Electronic documentation..... | 341 |
| III. Building Information Modelling ('BIM') | 342 |
| IV. Sensorial and visual documentation | 345 |
| V. The automated construction process..... | 346 |
| VI. Blockchain..... | 347 |
| VII. Smart contracts | 349 |
| VIII. Outlook and conclusion..... | 351 |
| B. Legal Tech in Construction Disputes | 353 |
| I. Introduction..... | 354 |
| II. Document and information handling..... | 355 |
| III. Demonstration and visualisation | 359 |
| IV. Assisted decision-making | 362 |
| V. Outlook and conclusion..... | 364 |
| Index | 365 |