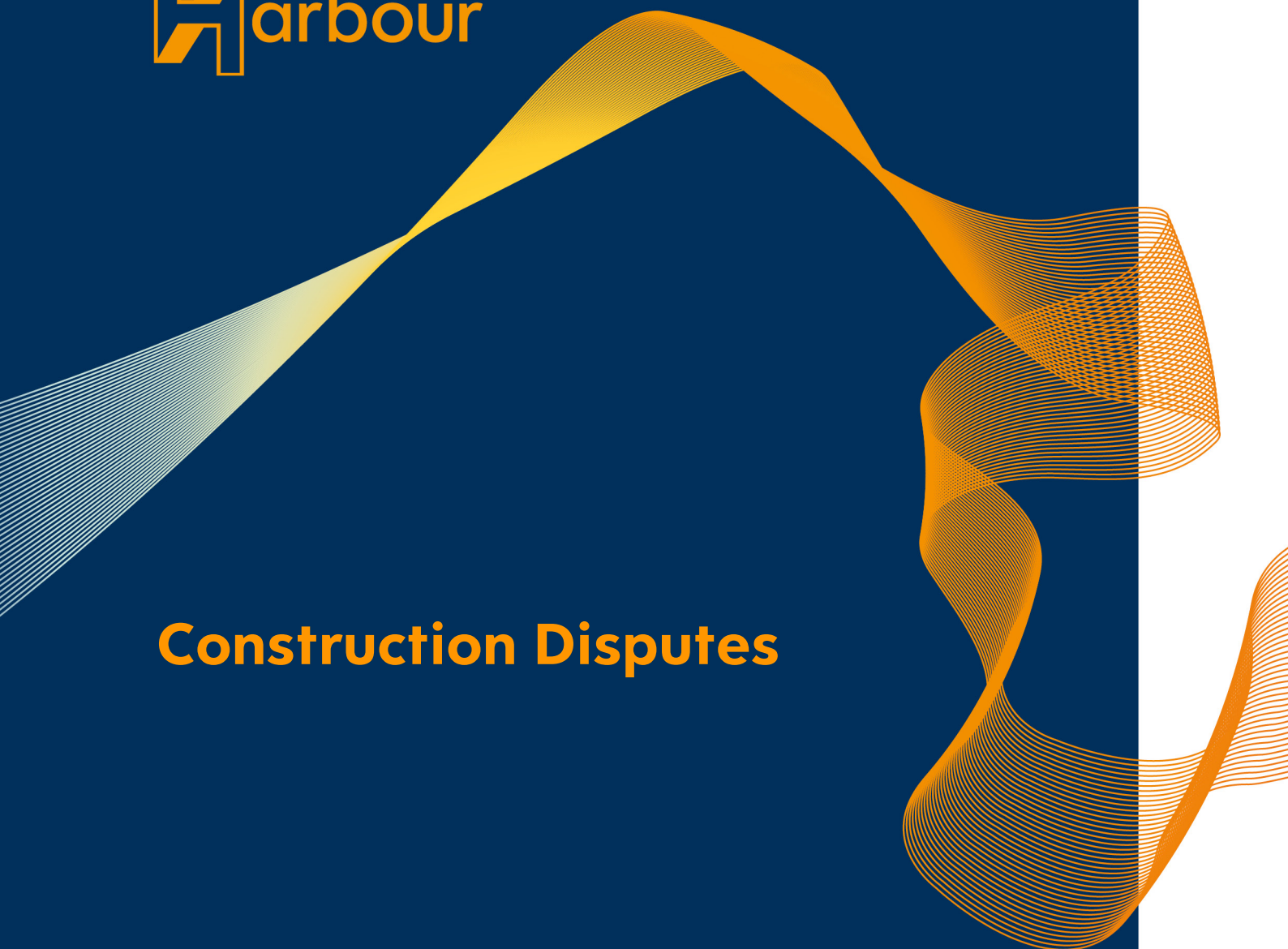




Construction Disputes





What are construction disputes?

Commercial construction projects are typically delivered by a number of different parties. In addition to the employer (the client) there will be engineers and a main contractor who, in turn, will usually engage various sub-contractors. Projects involving numerous parties with different roles and duties make disputes more likely, both during and after the completion of the project.

Disputes often arise from:

- Design and construction defects;
- Variations and disputes surrounding the scope of work;
- Delays to the time for completion and associated costs; and
- Entitlements to terminate contracts.

Cashflow is often tight for those in the construction sector, as payments to suppliers are often dependent on payments in from other parties above them in the contractual chain. As a result, when disputes arise and a party seeks to withhold payment, resources may not be immediately available to pursue a claim through litigation or arbitration.

The costs of bringing a claim can be prohibitively expensive for parties with restricted cashflow. In addition to engaging lawyers, substantial advisory and evidential input from a range of experts (technical, programming and quantum) is typically required. Construction disputes are often document-heavy and can require many more witnesses than general commercial disputes. You may also have to cover the adverse costs of a defendant if your claim is brought in a jurisdiction where adverse costs apply, and your claim is unsuccessful.

Disputes can be determined through litigation and arbitration (the latter particularly where local courts are not as well equipped to handle complex technical disputes).



Is funding right for your claim?

We need to understand the details of your claim to ascertain whether it could be funded. It is also important for us to know we can rely on your support in bringing the claim to a successful resolution. Answers to the following questions will help us to quickly assess your claim.

Recoverability	<ul style="list-style-type: none">• Has the defendant got the means to satisfy a judgment or arbitral award made against them?
Economics	<ul style="list-style-type: none">• What amount of funding do you require?• Is any payment likely to be required for security for costs?• What is the exposure to adverse costs likely to be? If there are multiple defendants, do you expect them to have separate or joint legal representation?• How long do you expect the case will take?
Experience	<ul style="list-style-type: none">• Who is in the legal team, and what is their track record in bringing claims of this type to a successful conclusion?
Merits	<ul style="list-style-type: none">• Are there good grounds for bringing the claim?• Were good contemporaneous records kept throughout the project?• What expert evidence has been obtained, or will be needed?• Which witnesses will need to give evidence and are they available?• What is the value of the claim, and how is that substantiated?• What counterclaims may be made and what is their value?



What sets us apart?

Harbour is amongst the largest and most experienced funders in the world, having supported cases in 14 jurisdictions and 6 arbitral forums since 2007. Our experience of reviewing over 4,000 claims means we can quickly review the responses to the questions above and provide an indicative view on pricing, before guiding you through our due diligence process.

We are one of the world's leading and most experienced funders supporting construction disputes, with members of our team having practised at leading global construction firms. We understand these technical disputes.

Our pricing

Harbour provides a flexible and tailored solution to suit your needs. We can cover all or part of your legal fees and disbursements, including potential adverse costs and funding for security for costs.

The pricing of our funding is bespoke and is informed by our view of the specific risks involved. We consider factors such as the claim value, how many claims are to be pursued, the budget required (for IPs, lawyers, and financial investigators), the merits, the jurisdiction of your claim, and any potential difficulties with enforcement.

A number of pricing options are available, with non-recourse funding being the most popular, where Harbour only receives a return when proceeds are recovered. Should the claim be unsuccessful, the risk is entirely ours, and you owe Harbour nothing. Pricing is generally structured as a return of capital plus the greater of a percentage of proceeds and a multiple of our capital.

Recourse funding is also available, which allows a claimant to maximise their return and free up capital. This financing is repayable at the end of the process, regardless of the outcome of the case.

We can also acquire interests in claims and judgments, providing immediate cash payments of an agreed percentage of the claim or judgment value, potentially with more to follow upon successful recoveries if the claimant wishes to remain involved.

We seek to agree pricing which fairly rewards the risk you and we are taking.

Pricing is agreed with our investment team at an early stage in our discussions, and before the case is presented to our investment committee you will know what the pricing is and how an agreement will be structured. More information on pricing and our processes is available on our website.



Construction dispute case study

A FTSE 250 company wanted to obtain funding for its subsidiary's claim against a country in the Middle East in relation to the unlawful termination of its contract to supply and install IT infrastructure as part of the construction of an international airport. The claim value was in excess of £50m.

Given the investment team's familiarity with disputes of this nature, it was able to pinpoint quickly the specific areas where it would need information from the legal team. A plan was devised with the claimant and lawyers on how to address and mitigate the risks in the case over its lifetime, and then to present the case to our investment committee. The case was approved quickly thanks to the construction expertise in our investment team.



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