

4 KEY TAKEAWAYS

The Future of Construction, Infrastructure and Energy Disputes in the Endemic Age

On August 31, 2022, [Kilpatrick Townsend](#) partner [Thomas G. Allen](#) spoke at the Inter-Pacific Bar Association's Arbitration Day at Maxwell Chambers in Singapore. Mr. Allen, who leads the firm's international disputes practice, focused his remarks on the future of construction, energy, and infrastructure disputes in an endemic Covid environment. Here are 4 key Takeaways from Tom's remarks.

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Covid-19 continues to cause stress to global supply chains and labor supply as China persists in its zero Covid policy. The Russian invasion of Ukraine has shocked global energy markets causing a pronounced rise in energy prices. Inflation has risen on an international scale and borrowing rates for capital have increased as central banks have raised interest rates. Some major projects have been delayed or cancelled due to price pressures and supply chain issues. The solar industry in particular has been facing upward price pressures and equipment shortages.

A variety of claims and economic damage can arise from current the economic disruption, including Breach of Contract; Damages for delayed or failed delivery; Project delays, EOT claims, Indemnity Claims for sub-tier breaches, Parent and Performance Guarantees and Business Interruption Claims.

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Global energy demands are only going to increase in the near term. The U.S. has recently passed a green energy bill that will invest billions in renewable projects. This tracks with carbon neutrality goals in other countries, along with ESG policies for companies calling for carbon neutrality. Construction and Energy projects will continue to be the source of disputes so long as we are experiencing pricing pressures. With respect to renewable energy, the global supply chain will face challenges in meeting the increased demand to build green energy projects. Nuclear energy may also start to make a comeback as energy demands increase and extreme weather causes intermittent energy shortages.

Companies negotiating new deals should consider adding flexible provisions aimed at sharing the risks of a volatile environment. Price review clauses that include a defined trigger and process for price adjustment may be worth considering. Companies should also review their force majeure provisions to make sure they appropriately reflect the present risk landscape. Provisions that may allow for the suspension of liquidated damages in some cases may also be appropriate.

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