

**Andrew Aglionby**

Aglionby ADR Ltd.

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Email: andrew@aglionbyadr.comWebsite: www.aglionbyadr.com*“An academically strong aggressive and tactically impressive practitioner”**“An impressive presence”, “pleasant demeanour and thoroughness”**Listed in Who’s Who Legal – for both Commercial Arbitration and Construction for many years.*

Andrew Aglionby provides legal services as a party advisor and as an independent neutral third-party, accepting appointments as arbitrator, mediator, dispute board member and adjudicator.

His advice to clients is mostly in the infrastructure sector, most often relating to projects using adapted forms of the FIDIC Contract (Yellow Book, Red Book and Silver Book) and other forms of engineer, procure and construct contracts. His current practice for clients involves strategic and practical advice from the early stages of ongoing projects, through dispute board preparation and representation, and to arbitration where necessary.

He applies more than 35 years of experience as a lawyer specialising in dispute resolution with experience of common law and civil law legal systems.

Andrew commits to providing an efficient and cost-effective service for parties to disputes.

Since 1984, Andrew has worked on matters involving projects and parties from, among other places, Abu Dhabi, Azerbaijan, Bahamas, Bermuda, China, Denmark, Dubai, Egypt, Ethiopia, France, Georgia, Germany, Hong Kong, India, Indonesia, Iraq, Israel, Italy, Japan, Kazakhstan, Korea, Kosovo, Lebanon, Malaysia, Myanmar, Namibia, the Netherlands, Nigeria, Norway, Pakistan, Palau, Panama, Philippines, Poland, Qatar, Russia, Saudi Arabia, Slovakia, Singapore, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Vietnam, the United Kingdom, and the United States.

Experience in Practice

Construction, Energy and Real Estate:

- ICC arbitrations concerning responsibility for delay, prolongation costs, scope of Work and Change provisions, FEED endorsement, management of procurement, design approvals, pre-commissioning, commissioning and mechanical completion, Force Majeure and effect of COVID 19 regulations in an upstream gas project in North Africa.
- ICC arbitration concerning defects in gas turbines and conditional payment obligations in a settlement agreement.
- Advice relating to disputes concerning a PPP Integrated Healthcare Facility in Turkey and related ICC arbitration relating to delay and cost recovery, and negotiated restructuring of subcontracts.
- Advice on and a Dispute Adjudication Board process relating to a large mall development in the GCC based on FIDIC Yellow Book conditions.
- Advice on claims and Dispute Adjudication Board processes relating to unforeseeable physical conditions and related delay and cost consequences in a motorway project in a Central European state under a contract based on FIDIC Yellow Book conditions and subject to a civil law system. The project involved drill and blast tunnelling in alpine conditions and external works involving bridges, retaining walls, buildings, and motorway pavement all in complex and challenging geology.
- Advice relating to disputes and operation of DAB provisions in and across related contracts for construction of a metro system in the GCC.
- Advice on liabilities arising from an allegedly defective Ground Source Heat Pump System used for heating and cooling in a Private Public Initiative hospital project including contractual issues arising from insolvency of a consortium partner.
- Advice concerning a FIDIC Yellow Book contract in an African country for a concrete plant including jurisdiction of arbitrators and the adjudicators, disputes for delay, Cost and concealed ground conditions relating to a concrete production facility.
- Advice concerning effects on a FIDIC contract of successful challenges to tender under local procurement legislation in an African country.
- Advice and negotiating settlement of disputes arising from FIDIC Silver Book based provisions and physical conditions revealed by post-contract site investigations in relation to a hydro project in the CIS.
- Advice and party representation in DAB processes arising from a FIDIC Silver Book amended form concerning obligations for access and possession, interaction with local communities, obligations to obtain permits, TBM procurement and tunneling and power supply issues on a hydro project in the CIS.
- Advice on recovery of loss for defects in the works of Sub-Contractors, and measurement and payment issues arising in a metro project in a Northern European country and their referral to a DAB. The engineering elements included piling, water penetration, and durability arising from construction of metro stations.
- Advice and representing party in a mediation relating to termination of contract following suspension of works, allocation of risks, adequacy of design, application of force majeure provisions and physical conditions in a FIDIC Red Book hydro project in Turkey.

- Advice concerning a DAB process over a number of disputes arising in relation to a FIDIC Red Book form for a hydro project in Malaysia including variations, re-rating, measurement of and payment for work undertaken under a Supplementary Agreement.
- Advice concerning DAB processes and disputes arising from road projects under a FIDIC MDB form in a Central Asian country.
- ICC arbitration over the disputed termination of a construction contract for a multi-structure hotel, commercial and residential development in Baku, Azerbaijan. The project involved reclaimed land and engineering challenges arising.
- Advice on recovery of sums arising from the disputed termination of a cost-plus contract for the construction of a hotel in the former CIS states, and related ICC arbitration process.
- Advice on the structure of contractual loss allocation and change of control provisions in the event of default in a joint venture agreement.
- Advising on delay and defect issues in a substantial residential construction project in England.
- Ad Hoc arbitration in Hong Kong resolving disputes arising from refurbishment of premises.
- Acting for a retail and leisure client in pursuing negligence and insurance claims arising from damage to an asset in England.
- Disputed termination of a construction contract in the CIS for a Chinese client, arbitration in Stockholm.
- Advising in relation to ground condition claims for civil engineering works in Asia Pacific.
- Valuation and delay issues concerning a substantial lump sum earthworks contract in Asia Pacific.
- Advising on disputed entitlements concerning design and supervision during construction of a technology park.
- Advice on the disputed application of material change provisions in a production sharing contract in the energy sector.
- Advising on issues arising from a TBM tunnel project in Hong Kong during expansion of a well-known theme park.
- Acting as legal advisor to the developer on contracting issues arising during construction of two separate and well-known theme park expansions.
- Advice to the joint developers on management of risk during construction of a new port development in Hong Kong.
- Advice to a regional power producer concerning its entitlements and liabilities in relation to an LNG supply agreement.
- Acting for a sub-contractor in its claims for extensions of time and loss and expense in relation to a railway project in Hong Kong.
- Advice to the Owners consortium concerning the construction and commissioning of a 550MW combined cycle power plant in Asia Pacific including advice on the management and settlement of claims from the EPC and Supply Contractors.
- Advising a Hong Kong holding company in relation to disputes arising from a substantial port concession agreement in Spain.
- Acting in two arbitrations for a contractor engaged in foundation work.
- Party counsel in a mediation concerning disputes arising from the terms of a long-term agreement for the supply of aggregates in Greater China.

- Advising in relation to disputes over time for completion and payment disputes arising from a project in Sri Lanka.
- Representing a public-sector body in Hong Kong arbitration against a contractor in a large residential development. The disputes concerned delay, disruption, variations and allegations of lack of independence in the actions of the supervising architect.
- Advice on the termination of a construction contract in the PRC for non-performance and fraudulent conduct in obtaining regulatory approvals.
- Acting for the individual directors of an insolvent construction company in relation to claims made against them by the liquidators relating to conduct in management of the company before liquidation.
- Acting in arbitration for a large public-sector employer seeking damages for negligent design and contract administration during a major civil engineering project in Hong Kong.
- Advice to the project owner on the settlement of disputes concerning defects in the design or construction of a retractable roof to a public entertainment facility in Hong Kong.
- Advice to one joint venture partner in an EPC contractor delivering a major chemical facility in the PRC concerning delay in performance, acceleration, omission of works and interpreting scope of work obligations disputed by the Contractor.
- Advice to an EPC Contractor on liabilities and risk management arising from the delayed construction of a coal-fired power station in Greater China and arbitration.
- Advice to the owners' consortium on the defective performance and delayed commissioning of a multi-phase gas turbine power station and issues arising under affected Gas Supply, Power Purchase and Operation and Maintenance Agreements in Greater China.
- Advising a consortium of contractors in relation to substantial disputes (ground conditions, drill and blast tunneling, delay, variations and acceleration) arising from a multi-purpose dam project in Greater China. This included a Dispute Review Board procedure.
- Advising employer in disputes and resulting arbitration over delayed completion, fitness for purpose, adequacy of testing and defects in mechanical apparatus and computerised control systems for automated batches of plant provided under a design and construct contract for use in a port facility.
- Acting for a public-sector employer in Hong Kong in multi-million-dollar delay and defects claims and arbitrations arising from several large residential (building) projects.
- Acting for several contractors as respondents in different arbitrations commenced by building developers. The arbitrations concerned alleged inadequacy in bored piling foundations in large residential developments. The amounts in dispute in the arbitrations varied from HK\$600 million to HK\$1.3 billion.
- Acting in a public enquiry into defective large diameter bored piling.
- Adjudication between joint developers concerning cost split on a major project (including analysis of how land premiums were calculated by the Hong Kong Government).
- CIETAC arbitration concerning termination and defective work (PRC law heard in Beijing).
- Drafting a FIDIC based engineering contract for a works in excess of €1 billion.
- Drafting project documentation for the construction of new port and port-related facilities in Asia and Central America.

- Drafting operating system contracts for Kowloon Canton Railway Corporation developments in Hong Kong. These contracts involve detailed integration requirements, many of which affect control systems.
- Drafting onshore and offshore consultancy agreements and construction contracts for a natural produce process facility in the PRC.
- Drafting numerous arbitration agreements for a variety of industry sectors and arbitration venues.

Technology and Media:

- Advice on termination of a contract for system integration services in the telecoms sector.
- Acting in a LCIA arbitration for the recovery of sums under a contract for the provision of media content in Asia Pacific.
- LCIA arbitration in the media content sector concerning financial adjustment provisions in an international contract.
- ICC arbitration between a provider of software and a European state-owned telecoms provider of telephone services concerning the disputed termination of two contracts and associated loss of income claims, and further acting in enforcement of the same.
- LCIA arbitration over payments and other rights relating to media content.
- Advice concerning contractual interpretation and early dispute resolution in various software supply agreements for different clients.
- Advice on contractual remedies appropriate for inclusion within a contract for the joint development of mobile telephone infrastructure.
- An ICC arbitration arising from disputed termination of a contract for the supply of LTE mobile telephone network equipment.
- Acting in two ICC arbitrations concerning licences for exploitation of on-line computer games.
- Acting in a dispute concerning termination of a hosting agreement in the gaming sector, and as party representative in a successful mediation.
- Advice on structuring of arbitration agreements, exclusion of liability and limitation of liability provisions in complex network sharing agreements.
- Disputed termination of a sale and purchase agreement involving investment in Korea.
- Acting in an arbitration concerning alleged breaches of representations and warranties in the sale and purchase of a microchip business.
- An arbitration concerning adequacy of sub-contracted software and its interface with other software forming part of an electronic delivery system.
- Arbitration over inadequate and delayed performance leading to a disputed termination of a licensing and technology agreement in the microchip business.

Commercial Disputes:

- Advising on a LCIA arbitration concerning the application of a pre-emption provision in a shareholders agreement relating to exploitation of oil and gas resources.
- LCIA arbitration (and related court proceedings) concerning asset-backed structured finance documents and recovery of losses alleged to have been suffered in the use of associated derivative products.
- Commencing court proceedings appealing a London arbitration award, acting for an Italian party.

- Arbitration over disputes arising from a proposed joint venture to distribute PRC produced goods in the United States, subject to arbitration in Hong Kong, connected with RICO proceedings in the United States with a claim for over US\$1.4 billion.
- Acting in a SIAC arbitration arising from supply of commodities, and disputes as to quality.
- Advising several parties on contractual remedies arising from trading in carbon credits.
- Acting in disputes concerning the international sale of goods.
- Acting as party representative in a linked series of 11 CIETAC arbitrations concerning long-term supply and distribution arrangements between a multi-national life sciences company and its Chinese distributors.
- Assisting overseas counsel in Hong Kong-related issues concerning a claim before ICSID.
- Acting as party representative in CIETAC arbitration proceedings concerning enforcement of security over shares.
- Shipbuilding arbitration concerning delay, payment and termination (Dutch law and venue).
- Arbitration for substantial sums concerning shareholders rights in PRC assets (Texas law, Swiss venue).
- Arbitration of franchise agreements (Japanese law).
- Acting in a CIETAC arbitration concerning payment and time for performance under an international trade agreement.

Appointments as Arbitrator

Approximately 30 appointments as arbitrator including institutional appointments as presiding arbitrator. Disputes include:

- Unforeseeable physical conditions.
- Change provisions (disputed variations and valuation of variations, claims and final accounts).
- Alleged defects.
- Time for completion and extensions of time.
- Alleged defects within components for electric vehicles.
- Components for power installations.
- Obligations for the provision of technology.
- Disputes over development and implementation of software solutions.
- Inspection and maintenance obligations.
- Renewable energy installations.
- Termination payment and set-off arrangements in the telecom industry.
- Interpretation and application of preemption provisions in the energy sector and related financial remedies.
- Revision and application of escalation pricing provisions in long-term design, build, operate arrangements.
- Shareholder and unfair preference disputes.
- Retention and use of confidential information.
- Sponsorship arrangements for sporting tournaments.
- Long-term space-sharing shipping agreements.

- Guarantee obligations under conflicting legal systems.
- Parent company guarantees.
- Performance bonds.
- Director's personal liabilities for actions of companies.
- Payment, delivery, quality of performance, termination and damages under contracts for the international sale of goods.

Professional Memberships and Panels

Andrew is

- A member of the Panel of Arbitrators, Panel of Emergency Arbitrators and Panel of Adjudicators of the Hong Kong International Arbitration Centre (HKIAC);
- a member of the Panel of Arbitrators of the Singapore International Arbitration Centre (SIAC);
- a member of the Korean Commercial Arbitration Board (KCAB) Panel of International Arbitrators;
- a Panel Arbitrator for China International and Economic and Trade Arbitration Commission (CIETAC);
- a Panel Arbitrator for Shanghai International Economic and Trade Arbitration Commission (SHIAC);
- a member of the Japan Commercial Arbitration Association (JCAA) list of arbitrators;
- a member of the Panel of Arbitrators of the Thailand Arbitration Centre (THAC);
- a member of the list of arbitrators at the Dubai International Arbitration Centre (DIAC);
- included on the Chartered Institute of Arbitrators President's Panel of Arbitrators;
- on the CPR Global/International Panel of Distinguished Neutrals;
- a Mediator on the panel of the US-China Mediation Council (Beijing/New York);
- a Panel Mediator for CIETAC; and
- Panel Mediator of the China Council for the Promotion of International Trade/China Chamber of International Commerce (CCPIT/CCIC) Mediation Centre.

Qualifications

- Inns of Court School of Law (Bar School) (1983 - 1984)
- University of East Anglia, Norwich, England, LLB (1980 - 1983)

Admitted

Andrew was called to the Bar of England and Wales in 1984 (Inner Temple) and later re-qualified as a solicitor in England and Wales (1990) and in Hong Kong (1994). Andrew does not maintain a current practicing certificate in Hong Kong.

Professional work experience

- Consultant, Decimus Fearon LLP, solicitors (2015 to February 2022)
- Arbitration Chambers Hong Kong and London – arbitrator member (2015 to 2020)
- Olswang LLP (London), Partner, Head of Arbitration (2010 – 2015)
 - International Best Friends Partner, running the global best friends law firm network

- Training partner, litigation
- Baker & McKenzie (Hong Kong), Assistant Solicitor (1993), and Partner (1996) (1993 – 2010)
 - Head of International Arbitration, Asia Pacific (coordinating the commercial arbitration practice across 14 offices)
 - Head of Construction – Hong Kong (also covering China)
 - Member Global International Arbitration Steering Committee
 - Member Asia Pacific Disputes Steering Committee
- Denton Hall Burgin & Warren (London), Assistant Solicitor, Construction Group (1990 – 1993)
- DJ Freeman & Co. (London) Assistant Solicitor, Litigation Department (1986 – 1990)
- 2 Harcourt Buildings, Temple (chambers of Quentin Iwi, now Henderson Chambers), London, Pupil Barrister and Barrister (1984 – 1986)

Professional activities and qualifications

- A Chartered Arbitrator and Fellow of the Chartered Institute of Arbitrators.
- A Fellow of the Hong Kong Institute of Arbitrators.
- Dispute Resolution Board Foundation (DRBF) – professional member and Country Representative for the United Kingdom.
- A former member of the ICC Commission on Arbitration and ADR (for over 10 years until June 2022).
- A member of the CPR Construction Committee.
- Consulting Editorial Board member LexisPSL Arbitration.
- Member of the Society of Construction Law (formerly a council member in Hong Kong).
- A member of the International Bar Association.
- An Associate member of the American Bar Association.
- Lifetime member Lighthouse Club Hong Kong.
- Society of Construction Arbitrators, supporting member.
- .Vis Moot East arbitrator for many years (Presiding Arbitrator for final arguments in 2018).