Global Certificate in Construction Law (Mauritius)

Dispute Resolution in Construction

Adjudication – a statutory or contractual process where an independent adjudicator makes a binding decision on a construction dispute, usually within a short timeframe.
Related terms: Arbitration, Mediation, Dispute Review Board.
Explanation: The adjudicator reviews submissions, may hold a hearing, and issues an adjudication award that parties must comply with pending final resolution. The decision is enforceable but often interim, preserving the contract's performance.
Practical application: In Mauritius, the Construction Contracts Act mandates adjudication for public works contracts, allowing contractors to obtain swift relief on payment issues.
Challenges: Parties may resist the quick timeline, and the limited scope can lead to subsequent litigation if the award is contested.

Adjudication Clause – a contractual provision requiring parties to submit disputes to adjudication before pursuing other remedies.
Related terms: Dispute Resolution Clause, Arbitration Clause.
Explanation: The clause sets out the trigger events, appointing authority, timelines, and effect of the adjudication award. It aims to prevent work stoppage and maintain cash flow.
Practical application: A contractor includes an adjudication clause in a turnkey project to ensure rapid resolution of payment claims.
Challenges: Drafting ambiguity may cause disputes over which issues are covered, and parties sometimes ignore the clause, leading to procedural delays.

Arbitration – a consensual dispute-resolution method where an independent arbitrator or panel renders a final, binding decision (the award).
Related terms: Arbitration Clause, Arbitral Award, International Chamber of Commerce (ICC).
Explanation: Arbitration can be institutional (administered by bodies such as ICC or LCIA) or ad-hoc. Parties agree on the rules, seat, language, and governing law. The award is enforceable under the New York Convention.
Practical application: A multinational developer and a local subcontractor resolve a breach of warranty through ICC arbitration, avoiding Mauritian courts.
Challenges: Costs can be high, confidentiality may limit public precedent, and enforcing awards against insolvent parties can be difficult.

Arbitration Clause – a contractual term that obliges parties to submit specified disputes to arbitration.
Related terms: Arbitration, Seat of Arbitration, Governing Law.
Explanation: The clause identifies the scope (e.g., all disputes), the institution or rules, the number of

arbitrators, and procedural matters such as notice periods. It provides certainty and can pre-empt litigation.
Practical application: A construction contract for a hotel includes a clause stating that any claim exceeding MUR 500,000 will be referred to LCIA arbitration.
Challenges: Over-broad clauses may be challenged for being unreasonable, and parties sometimes disagree on the seat, affecting procedural law.

Beneficiary – a person or entity entitled to enforce a contract right, often a third-party beneficiary in a construction contract.
Related terms: Third-Party Rights, Assignment, Novation.
Explanation: The beneficiary may be a lender, guarantor, or project owner who can enforce warranties or performance guarantees even if not a direct party.
Practical application: A bank financing a tower project is named as a beneficiary of the contractor's performance bond, allowing the bank to claim under the bond if the contractor defaults.
Challenges: Determining the extent of enforceable rights requires careful drafting; ambiguous beneficiary clauses can lead to litigation over standing.

Building Contract – the primary agreement governing the design, construction, and completion of a building project.
Related terms: FIDIC, Standard Form Contract, Scope of Work.
Explanation: The contract allocates risk, sets payment terms, defines time extensions, and incorporates dispute-resolution mechanisms. In Mauritius, common forms include the FIDIC Red Book and the Mauritian Public Works Contract.
Practical application: A developer signs a FIDIC Red Book contract with a contractor to build a residential complex, including clauses on liquidated damages and adjudication.
Challenges: Misinterpretation of obligations, change-order disputes, and unclear force-majeure provisions frequently generate conflicts.

Change Order – a written amendment to the building contract that alters the scope, price, or schedule.
Related terms: Variation, Scope Creep, Contract Amendment.
Explanation: Change orders must be documented, signed, and priced according to the contract's variation procedure. They can arise from design errors, regulatory changes, or client requests.
Practical application: During construction, the client requests additional staircases; a change order is issued, increasing the contract sum by MUR 2 million.
Challenges: Disagreements over valuation, timing, and impact on critical path often lead to claims and disputes.

Claim – a formal request by a party for additional payment, time extension, or other relief due to a breach or unforeseen event.
Related terms: Notice, Delay Claim, Compensation Event.
Explanation: A claim must comply with contractual notice requirements, include supporting documentation, and be submitted within prescribed periods. Failure to follow procedure can forfeit the right to relief.

Practical application: A subcontractor submits a claim for extra costs caused by a delayed delivery of steel, attaching invoices and a schedule analysis.
Challenges: Proving causation, quantifying damages, and meeting strict procedural deadlines are frequent hurdles.

Conciliation – a voluntary, non-binding process where a neutral conciliator assists parties in reaching a mutually acceptable settlement.
Related terms: Mediation, Settlement Agreement, Negotiation.
Explanation: The conciliator may suggest solutions but does not impose a decision. The process is confidential and can preserve business relationships.
Practical application: Two contractors in dispute over site access engage a local construction conciliator, who helps them agree on a revised traffic plan.
Challenges: Lack of enforceability, reliance on parties' goodwill, and possible delays if parties later pursue arbitration.

Construction Dispute – any disagreement arising from the performance of a construction contract, including issues of payment, quality, delay, and termination.
Related terms: Litigation, Arbitration, Adjudication.
Explanation: Disputes may be technical, contractual, or factual and often involve multiple parties (owner, contractor, subcontractor, suppliers). Early identification and resolution are critical to project success.
Practical application: A delay claim leads to a dispute over liquidated damages, prompting the parties to refer the matter to adjudication.
Challenges: Complex causation, multi-jurisdictional issues, and the high cost of prolonged resolution.

Contractor – the party responsible for executing the construction works in accordance with the building contract.
Related terms: Employer, Subcontractor, Principal Contractor.
Explanation: The contractor assumes risk for design, procurement, and installation, and must manage health, safety, and quality standards.
Practical application: A general contractor coordinates the work of electricians, plumbers, and civil works to deliver a commercial building.
Challenges: Managing subcontractor performance, cash-flow constraints, and exposure to change-order impacts.

Defect – a non-conformity in the completed work that fails to meet contractual specifications, standards, or regulatory requirements.
Related terms: Defect Liability Period, Rectification, Warranty.
Explanation: Defects are identified during inspections, punch-list processes, or post-completion phases and must be remedied by the contractor.
Practical application: An inspection reveals that the concrete strength in a foundation does not meet the specified 30 MPa; the contractor must remediate.

Challenges: Determining responsibility, assessing the cost of remediation, and agreeing on the timing of fixes can trigger disputes.

Dispute Review Board (DRB) – a panel of independent experts appointed at the start of a project to assist in preventing and resolving disputes.
Related terms: Adjudication, Dispute Resolution Clause, Expert Determination.
Explanation: The DRB meets periodically, reviews progress, and can issue non-binding recommendations or binding decisions if the contract provides such authority.
Practical application: A large infrastructure project in Mauritius establishes a DRB to monitor schedule adherence and address emerging claims.
Challenges: Maintaining DRB independence, ensuring parties accept recommendations, and avoiding procedural delays.

Dispute Resolution Clause – a contractual provision that outlines the steps and mechanisms for handling disputes arising under the contract.
Related terms: Arbitration Clause, Adjudication Clause, Mediation Clause.
Explanation: The clause may prescribe a hierarchy (e.g., negotiation → mediation → adjudication → arbitration) and specify governing rules, seats, and language.
Practical application: A contract includes a clause that first requires parties to attempt settlement through a designated mediator before proceeding to arbitration.
Challenges: Over-complex clauses can cause confusion, and parties may dispute the applicability of a particular step.

Expert Determination – a process where a subject-matter expert, appointed by agreement, decides a specific technical issue.
Related terms: Expert Witness, Arbitration, Binding Decision.
Explanation: The expert's decision may be binding or advisory, depending on the agreement. This method is useful for complex engineering questions where legal expertise alone is insufficient.
Practical application: Parties dispute the measurement of a concrete volume; they appoint a civil engineer as expert determiner, whose calculation becomes the basis for the final award.
Challenges: Selecting an impartial expert, ensuring the expert's authority is respected, and dealing with potential challenges to the expert's methodology.

FIDIC – the International Federation of Consulting Engineers, which publishes widely used standard forms of construction contracts (e.g., Red Book, Yellow Book).
Related terms: Red Book, Yellow Book, Contractual Risk Allocation.
Explanation: FIDIC contracts provide balanced risk allocation, clear dispute-resolution mechanisms, and standardized terminology, facilitating international projects.
Practical application: A joint-venture between a Mauritian firm and a French contractor adopts the FIDIC Red Book for a mixed-use development, using its adjudication provisions.
Challenges: Local adaptation may be required to align with Mauritian law, and parties unfamiliar with FIDIC

may misinterpret clauses.

Force Majeure – an event beyond the control of either party that prevents or delays performance, such as natural disasters, war, or pandemic.
Related terms: Impossibility, Frustration of Contract, Clause.
Explanation: The clause typically enumerates qualifying events, outlines notice requirements, and may allow for suspension or termination. It does not excuse performance for ordinary risks.
Practical application: A cyclone damages the construction site; the contractor invokes the force-majeure clause to obtain a time extension.
Challenges: Proving that the event qualifies, demonstrating that it directly caused delay, and negotiating the extent of relief can be contentious.

Good Faith – a principle requiring parties to act honestly, fairly, and cooperatively in the performance and enforcement of contractual obligations.
Related terms: Duty to Cooperate, Misrepresentation, Equitable Relief.
Explanation: While not always expressly stated, courts may impose a duty of good faith, especially in negotiation of extensions or settlement.
Practical application: An employer must act in good faith when refusing a contractor's request for a time extension, providing clear reasons.
Challenges: The concept is often vague, leading to disputes over whether a party has acted unreasonably or in bad faith.

Injunction – a court-ordered directive requiring a party to do or refrain from doing a specific act, used to preserve the status quo.
Related terms: Specific Performance, Interim Relief, Court Order.
Explanation: In construction, injunctions may be sought to stop demolition, enforce safety measures, or prevent breach of exclusive use. They are typically temporary until final determination.
Practical application: A contractor seeks an injunction to stop the client from interfering with the site after a notice of breach.
Challenges: Obtaining an injunction requires showing likely success on the merits and potential irreparable harm, which can be difficult in complex technical disputes.

Joint Venture – a contractual arrangement where two or more parties combine resources to undertake a specific construction project, sharing risks and profits.
Related terms: Consortium, Partnership, Equity Share.
Explanation: Joint ventures may be formalized through a JV agreement and a separate construction contract with the project owner. Governance, decision-making, and dispute-resolution mechanisms must be clearly defined.
Practical application: A local developer and a foreign engineering firm form a JV to build a port facility, allocating design risk to the engineering partner.
Challenges: Divergent cultures, differing risk appetites, and unclear dispute-resolution pathways can cause

internal conflicts.

Litigation – the process of resolving disputes through the formal court system, culminating in a judgment enforceable by law.
Related terms: Jurisdiction, Procedural Rules, Judgment.
Explanation: Litigation provides a public, precedent-setting forum but can be lengthy, costly, and expose confidential project details. It is often a last resort after alternative dispute-resolution steps fail.
Practical application: A subcontractor files a suit in the Mauritian Commercial Court for non-payment, seeking damages and interest.
Challenges: Court backlogs, jurisdictional challenges, and the risk of adverse precedent are significant considerations.

Liquidated Damages – a pre-agreed sum specified in the contract to be payable for each day of delay beyond the completion date.
Related terms: Penalty Clause, Delay Claim, Compensation.
Explanation: The amount must represent a genuine pre-estimate of loss and not be punitive; otherwise, it may be deemed unenforceable.
Practical application: The contract stipulates MUR 10 000 per day of delay; the contractor exceeds the deadline by 30 days, incurring MUR 300 000 in liquidated damages.
Challenges: Determining whether the clause is a penalty, and calculating actual loss versus the stipulated amount, often leads to disputes.

Notice – a formal communication required by the contract to inform the other party of a claim, breach, intention to terminate, or other significant event.
Related terms: Claim Notice, Termination Notice, Compliance.
Explanation: Notices must meet prescribed form, content, and timing (e.g., within 28 days of the event). Failure to give proper notice can bar subsequent relief.
Practical application: The contractor serves a notice of delay on the employer, outlining the cause and requesting a time extension.
Challenges: Disputes arise over whether the notice was sufficiently detailed, served to the correct address, or delivered within the contractual period.

Ombudsman – an independent, impartial official appointed to investigate and resolve complaints, often within the public sector.
Related terms: Alternative Dispute Resolution, Complaint Handling, Public Works.
Explanation: In Mauritius, the Construction Ombudsman may handle grievances related to public-sector contracts, offering recommendations or mediation.
Practical application: A subcontractor lodges a complaint with the Ombudsman over delayed payments from a government agency; the Ombudsman facilitates a settlement.
Challenges: Ombudsman recommendations are typically non-binding, and parties may still resort to arbitration or litigation if dissatisfied.

Payment Clause – a contractual provision that sets out the schedule, method, and conditions for payment of the contract price.
Related terms: Retention, Progress Claims, Certificate of Completion.
Explanation: The clause may include milestones, interim payment certificates, and mechanisms for withholding amounts (e.g., retention). Clear payment terms reduce cash-flow disputes.
Practical application: The contract requires monthly certificates signed by the architect, with payment due within 14 days of receipt.
Challenges: Ambiguities in certification, disputes over the adequacy of work, and differing interpretations of "substantial completion" often lead to payment conflicts.

Performance Bond – a surety instrument issued by a bank or insurer guaranteeing the contractor's performance of its obligations.
Related terms: Surety, Guarantee, Beneficiary.
Explanation: If the contractor defaults, the beneficiary (usually the employer) can claim against the bond for the cost of completing the work. Bonds typically cover a percentage of the contract sum.
Practical application: A performance bond of 10 % of the contract value is issued to secure the contractor's obligations on a high-rise project.
Challenges: Claiming under the bond may involve strict notice periods, and the surety may dispute the extent of the contractor's default.

Quantitative Claim – a claim that quantifies the monetary impact of a breach, typically involving detailed cost analysis, schedule impact, and supporting documentation.
Related terms: Cost Claim, Delay Analysis, Schedule Impact.
Explanation: The claimant must present a clear methodology (e.g., "as-built versus as-planned" comparison) and substantiate each cost element.
Practical application: A contractor prepares a quantitative claim for additional MUR 5 million due to unforeseen ground conditions, attaching geotechnical reports and revised schedules.
Challenges: Disputes often focus on the accuracy of the cost model, the relevance of the data, and the causation link between the event and the claimed loss.

Retention – a portion of each progress payment (commonly 5-10 %) withheld by the employer to ensure the contractor fulfills its obligations and rectifies defects.
Related terms: Retention Release, Defect Liability Period, Payment Clause.
Explanation: Retention is typically released in stages: part upon practical completion, the remainder after the defect liability period, subject to satisfactory final inspection.
Practical application: After substantial completion, the employer releases 50 % of the retained amount, holding the balance until the final punch list is cleared.
Challenges: Delays in releasing retention can strain the contractor's cash flow, and disagreements over the condition for release may trigger disputes.

Settlement Agreement – a legally binding contract whereby parties resolve their dispute, often including

payment terms, confidentiality, and release of further claims.
Related terms: Compromise, Release, Mediation Outcome.
Explanation: The agreement must be in writing, signed, and may be ratified by a court to ensure enforceability. It often contains a clause that the parties waive any future litigation on the same matter.
Practical application: After mediation, the parties sign a settlement agreement where the contractor receives MUR 8 million in exchange for withdrawing all claims.
Challenges: Ensuring the agreement reflects the true intent, covers all possible issues, and is enforceable across jurisdictions can be complex.

Time Extension – an adjustment to the contract's completion date granted due to events that delay performance, such as variations, force majeure, or client-initiated changes.
Related terms: Extension of Time (EOT), Delay Claim, Schedule Impact.
Explanation: The contractor must provide a notice of delay, supporting evidence, and a revised program. The employer may grant or deny the extension based on contractual criteria.
Practical application: A client's late provision of design drawings triggers a time extension of 20 days, approved by the contract administrator.
Challenges: Disputes arise over the adequacy of the contractor's evidence, the allocation of concurrent delays, and the impact on liquidated damages.

Unfair Contract Terms – provisions that create a significant imbalance in the parties' rights and obligations, potentially contravening consumer protection or statutory fairness doctrines.
Related terms: Abusive Clause, Statutory Protection, Good Faith.
Explanation: In Mauritius, the Consumer Protection Act may render certain clauses unenforceable if they are deemed unfair, especially in contracts with smaller contractors or owners.
Practical application: A clause imposing unlimited liability on the contractor for minor defects is challenged as unfair.
Challenges: Identifying unfair terms requires legal analysis, and parties may need to renegotiate contracts to comply with statutory requirements.

Valuation – the process of determining the monetary worth of work performed, variations, or completed portions of a construction project.
Related terms: Measurement, Schedule of Rates, Progress Claim.
Explanation: Valuation may be performed by the contract administrator, a quantity surveyor, or an independent valuer, using agreed-upon methods such as unit rates or cost-plus formulas.
Practical application: After a variation, the quantity surveyor prepares a valuation of the extra works, which the employer reviews before payment.
Challenges: Disagreements over measurement units, applicability of rates, and interpretations of "completed work" can lead to payment disputes.

Warranty – a contractual guarantee that the works will meet specified performance criteria for a defined period after completion.

Related terms: Defect Liability Period, Maintenance, Surety.
Explanation: Warranties may be express (written) or implied, and may require the contractor to repair or replace defective items without cost to the employer.
Practical application: The contractor provides a five-year warranty on the building's façade, obligating them to address any water ingress that occurs within that period.
Challenges: Determining whether a defect falls within the warranty scope, and the cost of remedial work, often generates disputes.

Working Schedule – a detailed timetable that outlines the sequence, duration, and dependencies of construction activities.
Related terms: Critical Path, Program Update, Delay Analysis.
Explanation: The schedule serves as a baseline for monitoring progress, measuring delays, and supporting time-extension claims. It must be regularly updated and approved by the contract administrator.
Practical application: The contractor submits a monthly program update showing a shift in the critical path due to a material shortage.
Challenges: Inaccurate baseline schedules, lack of proper documentation, and disagreements over the impact of concurrent delays can undermine the credibility of time-related claims.