

THURSDAY, 18 JANUARY 2018, TOKYO, JAPAN
NEW YEAR SEMINAR

**“A BUMPY ROAD” – CASE-STUDY OF AN
OVERSEAS EPC PROJECT FROM START TO FINISH**

At the request of OCAJI members, this year’s seminar will focus on a case-study created and presented by Hogan Lovells. The scenario involves a Japanese EPC contractor constructing a new road overseas, with a foreign government as its ‘customer’ and a Korean EPC consortium partner (acting through a local subsidiary).

When OCAJI asked its members to vote on what topics should be included in this year’s seminar, the two most popular topics were "administering major projects overseas" and "focus on a project in crisis". The seminar will therefore aim to cover both of these areas.

The case-study will include some of the issues and challenges that OCAJI members frequently encounter in real-life projects. The project scenario involves both the civil works to construct the road and mechanical bridge engineering works, to reflect the wide interests of OCAJI members.

The case-study will examine the project at four main stages:

1. the tendering phase when the EPC Contract and other project documents are being negotiated by the EPC contractor;
2. early in the construction phase, when things are starting to go wrong and the parties must consider how to protect themselves and prepare for disputes;
3. later in the construction phase, when there are difficulties during commissioning/performance tests of the bridge and the EPC consortium partner is financially unstable; and
4. alleged defects discovered after taking-over.

An important theme of the seminar is that the EPC contractor must - at each stage of the project – ‘look ahead’ and be aware of the dispute resolution process and how it might be applied where the parties cannot resolve their differences amicably.

The programme is as follows:

14:00 – 14:05	Opening remarks <i>Yoshihiro Yamaguchi, Chief Executive Director, OCAJI</i> <i>Tony Marshall, Partner, Hogan Lovells London</i>
14:05 – 14:10	Stage 1: Introduction of the Case Study (Tendering Phase) <i>Tony Marshall, Partner, Hogan Lovells London</i>
14:10-14:20	Anti-Corruption and Anti-Trust issues during the Tendering Phase <i>Wataru Kawai, Associate, Hogan Lovells Tokyo</i>
14:20-14:50	Key Amendments/Negotiating Points in the EPC Contract

	<i>Angus Rankin, Partner, Hogan Lovells London</i>
14:50-15:10	Key Amendments/Negotiating Points in the Project Security documents (eg. Bonds/Parent Company Guarantees) and EPC Consortium Agreement <i>Michael Lynch, Senior Associate, Hogan Lovells Tokyo</i>
15:10-15:25	Passing risk to Sub-Contractors/Establishing a dispute resolution framework for handling related project disputes among multiple parties (joinder/consolidation) <i>Tamara Watson, Senior Associate, Hogan Lovells Tokyo</i>
15:25-15:45	BREAK FOR TEA/COFFEE
15:45-15:50	Stage 2: When things start to go wrong ... (Construction Phase) <i>Tony Marshall, Partner, Hogan Lovells London</i>
15:50-16:35	Steps Contractor should take to protect itself, including record-keeping, and handling of project correspondence. <i>Roberta Downey, Partner/Global Co-Head of Construction & Engineering, Hogan Lovells London</i>
16:35-16:40	Stage 3: Dispute regarding bridge design/delayed taking-over/insolvency of EPC Consortium Partner <i>Tony Marshall, Partner, Hogan Lovells London</i>
16:40-16:55	Discussion of Contractor's bridge design obligations <i>Angus Rankin, Partner, Hogan Lovells London</i>
16:55-17:10	Discussion of EPC Consortium Partner's insolvency – where does that leave the Japanese Contractor? What can the Contractor do to protect itself/mitigate its loss? <i>Michael Lynch, Senior Associate, Hogan Lovells Tokyo</i>
17:10-17:15	Stage 4: alleged defects discovered after taking-over <i>Tony Marshall, Partner, Hogan Lovells London</i>
17:15-17:25	Discussion of defect liability/remedies <i>Tamara Watson, Senior Associate, Hogan Lovells Tokyo</i>
17:25-17:30	Conclusion/Summary of Key Points <i>Tony Marshall, Partner, Hogan Lovells London</i>
17:30-18:00	Question and Answer session <i>All speakers, with interpretation assistance by Wataru Kawai, Associate, Hogan Lovells Tokyo</i>
18:00 to 19:30	New Year Reception

Brief biographies of speakers (in alphabetical order)

Roberta Downey is a Partner in Hogan Lovells' London office and Global Co-Head of the firm's Construction and Engineering practice. Roberta has very extensive experience fighting disputes

in English litigation and International Arbitration, but has also conducted mediations, adjudications and other forms of Alternative Dispute Resolution (ADR). Her work has covered a broad range of industries (e.g. renewable and conventional energy projects, major infrastructure and process plants) and projects that span the globe (Europe, Africa, the Middle East, Asia, Central America and the Caribbean). Roberta has more than 20 years' experience in commercial dispute resolution. She has become a market leader in offshore wind farms, on which she published a prize winning paper for the Society of Construction Law. Described as 'absolutely first rate' and 'excellent' by Chambers 2014/2015, a 'fine lawyer' in Chambers 2017 and as having 'superb expertise' in Who's Who Legal 2017.

Wataru Kawai is an Associate in Hogan Lovells' dispute resolution practice. He has five years' experience working in our London and Singapore offices handling a wide range of cross-border commercial litigation, arbitration and investigation matters across a range of sectors including construction and energy. In particular he has recently advised a Japanese construction company on dispute resolution issues under the SIAC arbitral rules. Alongside his native English and Japanese, he also speaks fluent German and Chinese. He is currently on secondment to our Tokyo office.

Michael Lynch is a Senior Associate in Hogan Lovells' Tokyo office with seven years' experience working in Tokyo and is registered as a *gaikokuho bengoshi* with the Tokyo Bar Association. Michael is currently on secondment at JX Nippon Oil & Gas Exploration Corporation and has previously been seconded to Sumitomo Corporation. He has experience of drafting and negotiating large EPC and other construction contracts in the conventional and renewable power sector and has advised on major energy, infrastructure, oil and gas and PPP/PFI projects..

Tony Marshall is a Partner in Hogan Lovells' construction and engineering practice, based in the London office. He has 30 years' experience of advising on all manner of contractual documents required in the procurement of construction and infrastructure projects, including issues arising during projects and dispute avoidance and dispute resolution procedures such as mediation, expert determination, adjudication, dispute boards, arbitration and court proceedings. He led the firm's construction practice in Asia from 1994 until 2002, based in Hong Kong, and retains particular responsibility for the construction practice in our Tokyo office. He is currently co-chairman of the International Construction Projects Committee of the International Bar Association and has advised the Legal Affairs Committee of the Engineering Advancement Association in Japan (ENAA) on their forms of contract since 2003.

Angus Rankin returned to Hogan Lovells in 2017 as a Partner in the construction and engineering practice, based in the London office. Before that, he was employed by Mitsubishi Hitachi Power Systems as General Counsel for their thermal power businesses in Europe, North Africa and Turkey (based in London). Prior to that, he was seconded from Hogan Lovells as International Counsel to Mitsubishi Heavy Industries Ltd's HQ Legal Department in Tokyo for two years after which he worked in Hogan Lovells Tokyo office advising trading companies and contractors on international projects. He trained and spent the early part of his career at Hogan Lovells. In addition to heavy machinery, transportation and process plant projects, during the past ten years he has advised on more than 100 power projects in Europe, Middle East, Africa and Asia at different points during tendering and/or project execution stage.

Tamara Watson is a Senior Associate in Hogan Lovells' Tokyo office with over four years' experience working in Tokyo. Her experience includes a long term secondment to a major trading company in Tokyo. Admitted to practise in Australia, international arbitration and dispute resolution is her main focus. Tamara has front-end and back-end construction experience, meaning that her knowledge spans the entire life of a construction project – beginning from the initial review of invitations to tender and bidding documents, through to the conclusion of the project, including representing the client in any outstanding disputes arising in relation to any project.

Note: The seminar topics will be presented in English, with power point slides in both English and Japanese. The panel discussion will be conducted in both Japanese and English, with a facilitator providing translation of key elements.