ARBITRATION FOR SUPPLY CHAIN AND MONEY SUPPLY CAUSE DISPUTES IN PPP PROJECTS: DISTILLING COMPARATIVE ECONOMIC INTERESTS FROM THE GREEK LEGAL SYSTEM

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Abstract

The worlds of arbitration and business infrastructure look at each other with ever greater intensity. The longevity, financial stakes and contractual features of PPP (Public-Private Partnerships) projects suggest that public, institutional and private stakeholders may not have overlapping decision-making portfolios. In a new transient domestic and international commercial and investment era, the economic drivers for arbitration in supply chain and money supply cause (third party) project disputes is not well documented. The present paper reports upon the institutional and legal environment of this dispute regime in the developing infrastructure market of Greece and identifying the impact of a legal environment upon the stakeholders’ business incentives to press ahead with arbitration. A critical appreciation of the contours of the legal and business risks involved in arbitration will confirm the need to invent a new procedural tool and practice standard, a “level playing field” which will be responsive to the project risk profile and the parties’ economic interests. The findings of the present study are two-fold. First, they confirm that the parties will be more inclined to embark upon arbitration at the end of the construction phase, and second, that domestic and international stakeholders’ economic interests in the regime are measured against their anticipated losses from non-completion of the PPP projects. The findings of this study further re-theorise arbitration as a “cyclical” or “counter-cyclical” dispute resolution regime. Construction management researchers will benefit from an exploratory and informed appreciation of unorthodoxies in the Greek legal system and gain from a fresh approach of economic incentives when they are faced with decision-making tasks as arbitrators or engaged in dispute resolution contract drafting.

Keywords

Decision-making analysis, level playing field, risk, synergies.

INTRODUCTION

The following study draws upon a paper presented at the London School of Economics, European Institute Hellenic Observatory PhD Symposium, “Contemporary Greece: Structures, Context and Challenges” held on 14 and 15 June, 2007. The main theme of consensus amongst participants was that the development and attainment of national economic growth lies in new policies featured in alignments of objectives and business attitudes between the public sector and foreign and domestic investors. Embarking on this consensus, the key objective of this study is to investigate the conflict environment in long-term business relationships and to propose how a robust arbitral regime can lead to market achievement i.e. prevention or elimination of financial losses in all phases of the project cycle. The interconnection of financial structures in the project cycle reveals the distributory nature of the PPP infrastructure projects and suggests that there is an immediate link between construction and financial risks. A review of the contractual and legal characteristics of large infrastructure projects in Greece reveals pre-fabricated alliances between foreign and domestic parties, driven by economic interests...