



# Legal finance for the construction sector

Omni Bridgeway's finance helps businesses facing disputes in the construction sector



Disputes are costly for all parties involved. We understand construction disputes and can work alongside businesses throughout the supply chain to finance and manage their disputes to a successful outcome.

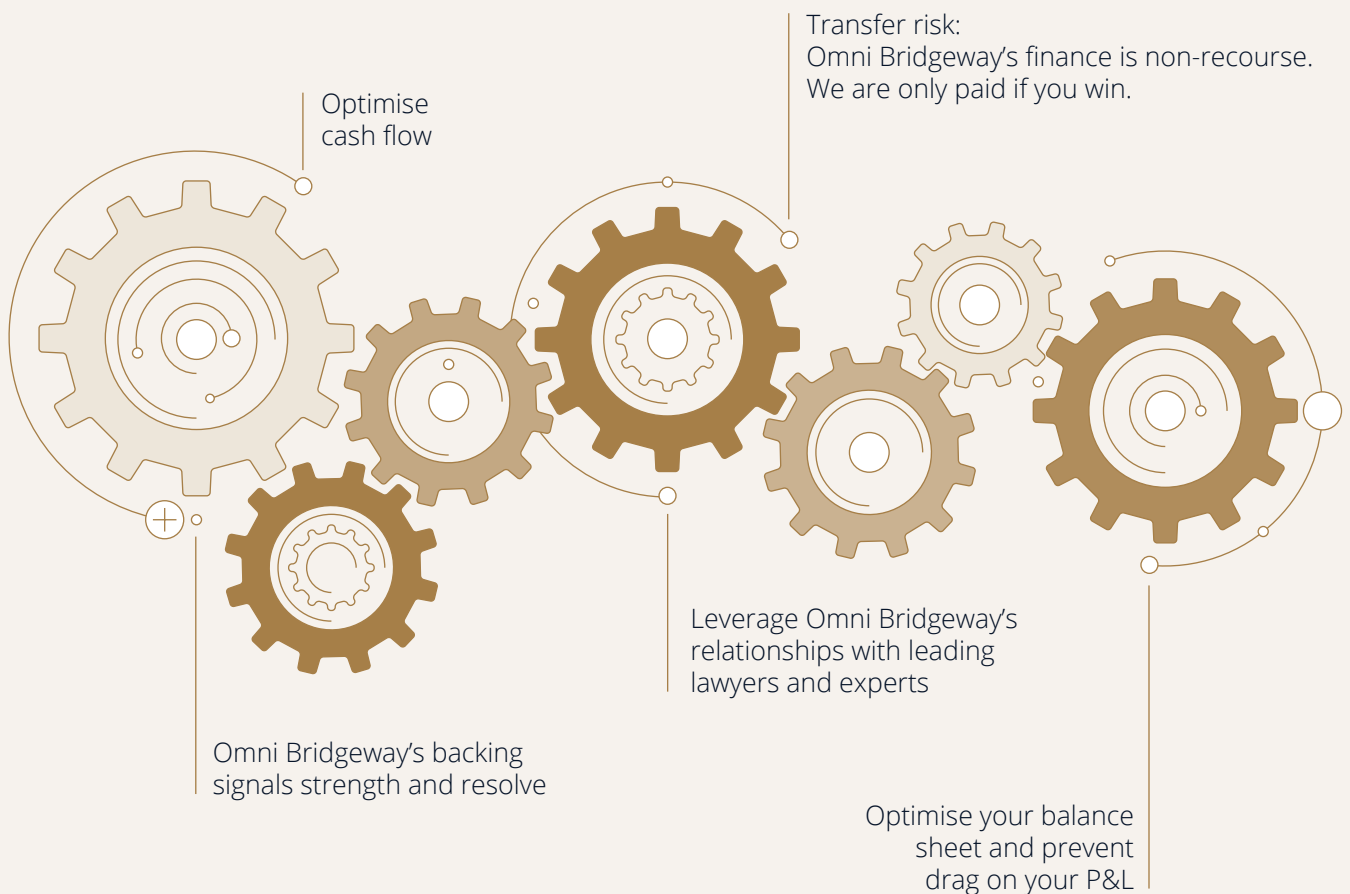
In construction, 'cash is king'. We know that generating cash from projects is often challenging and understand that financial pressure can be caused by an array of issues – scope changes, delays, supply chain disruptions and delayed payment for work done. Our dispute finance helps owners/employers, contractors, consultants and suppliers to pursue their entitlements and make financial recoveries, while preserving the company's capital and avoiding a drag on its financial performance.



# Benefits of our dispute finance

Here's how we can help you:

- Our multidisciplinary team is familiar with the full range of legal issues and commercial drivers typically faced by construction companies across all jurisdictions.
- Our construction specialists work alongside industry-leading lawyers and experts to help determine the risk-weighted value of claims through rigorous analysis so you can enter commercial discussions or dispute resolution proceedings on a fully informed basis. We work with you to formulate strategies aimed at realising your claims' fair value and securing payment as efficiently as possible.
- We offer bespoke financing products that are unique to the construction sector and have been developed in consultation with owners and contractors, industry-leading lawyers and experts.



# Bespoke solutions for construction disputes

In addition to standard single-case arbitration and litigation funding, we offer bespoke financing products that are unique to the construction sector. Our products have been developed in consultation with owners and contractors, industry-leading lawyers and experts.

## ✓ **EARLY-STAGE CONSTRUCTION CLAIM FINANCE**

Financial pressures can make it difficult to assess the real value of construction claims. Up-front investment is often needed, to pay for legal and expert analysis. This investment increases the probability of an early payment (or settlement) at the claim's fair value, avoiding formal dispute resolution proceedings.

Omni Bridgeway offers early-stage finance to facilitate the swift resolution of construction claims, at a fair value.

We give you the resources to properly assess the value of claims, and present them to stakeholders.

- Our finance meets the cost of developing and presenting a robust analysis of claims.
- Our strong relationships with leading experts and lawyers enable access to a top-tier advisory team.
- Our experienced construction specialists help ensure a cost-efficient process.

We then support you to resolve claims at a fair value.

After the early-stage analysis, if required we can also finance formal proceedings in suitable cases.

## ✓ **ADJUDICATION AND DISPUTE BOARD FINANCE**

We fund all dispute resolution processes that result in a binding outcome. In many jurisdictions this includes adjudication and dispute board proceedings.

## ✓ **PORTFOLIO FUNDING**

We offer finance for portfolios of multiple claims relating to the same or different projects, often with favourable pricing. Portfolios can include defence-side funding, and funding for smaller claims.

## ✓ **SALE / MONETISATION**

A quick way to realise cash. In certain circumstances Omni Bridgeway may purchase your award or judgment.

## ✓ **ASSET TRACING AND ENFORCEMENT CAPABILITY**

We have world-leading asset-tracing and enforcement capability, which comes with all of our bespoke construction finance solutions.

The insolvency rate in the construction sector is higher than in any other industry. We undertake extensive due diligence on your counterparty's financial position and develop enforcement strategies at the outset to ensure that any successful outcome can be leveraged.

We are frequently approached when counterparties refuse to honour awards, judgments and preliminary decisions (eg. decisions made pursuant to certain statutory adjudication regimes or Dispute Adjudication Board processes). We develop and fund enforcement strategies only realising a return if funds are recovered.

# Case study – USD 50m claim against an employer

	Contractor A 	Contractor B 
	<p><b>Pays for arbitration costs itself.</b></p> <ul style="list-style-type: none"> <li>• A ringfences a budget of USD 3m to cover the arbitration costs, significantly impacting A's overall financial accounting position.</li> <li>• The Tribunal orders security for costs requiring A to pay an additional USD 2m further impacting its cash flow.</li> </ul>	<p><b>Obtains legal finance to cover arbitration costs.</b></p> <ul style="list-style-type: none"> <li>• USD 5m in arbitration costs (including security for costs) saved and available for deployment across the business, reducing debt and/or generating profit for B over 2-3 years.</li> <li>• Potential to monetise contingent claim value, bringing additional funds onto B's balance sheet with no corresponding debt or liability – funds may be treated as cash or profit, or otherwise deployed in the business over 2-3 years.</li> <li>• Omni Bridgeway's involvement adds credibility to B's position and improves prospects of settlement.</li> <li>• Omni Bridgeway's sophisticated risk-weighted NPV assessment, facilitates commercial decision-making and settlement on a fully informed basis.</li> <li>• Omni Bridgeway assumes all risk of loss, and maintains a close eye on recovery leveraging its experienced investment managers and unique asset tracing and intelligence platform.</li> </ul>
<p>During the arbitration (2 – 3 years)</p>		
<b>Possible outcomes</b>		
<b>Arbitration tribunal dismisses claim</b>	<p>Lost USD 5m (USD 3m arbitration costs + USD 2m adverse costs award). Recovers nothing.</p>	<p>Saved USD 5m (USD 3m arbitration costs + USD 2m adverse costs award). Recovers nothing.</p>
<b>Counterparty unwilling to pay and enforcement unsuccessful</b>	<p>Lost USD 3.5m spent on costs of arbitration, challenge proceedings and enforcement. Recovers nothing.</p>	<p>Saved USD 3.5m spent on costs of arbitration, challenge proceedings and enforcement. Recovers nothing.</p>
<b>Recovery successful</b>	<p>A recovers USD 50m, net of costs – however, A suffers significant lost opportunity by tying up at least USD 5m over 2-3 years, distracting business and management personnel, and carrying significant risk of loss throughout.</p>	<p>Recoveries of USD 50m, plus costs. B shares some of these recoveries with Omni Bridgeway, to cover Omni Bridgeway's costs and a return on its investment. The amount shared with Omni Bridgeway will depend upon the risk profile of the dispute and the length of time to recovery (an early settlement resulting in only a modest return to Omni Bridgeway). In many cases, the commercial opportunities generated for B through the redeployment of the USD 5m in costs saved (and any further potential monetisation) will be significant, including advancing projects and assisting with debt reduction. These benefits significantly offset any share of recoveries granted to Omni Bridgeway. B's net commercial benefit will likely be close to or better than USD 50m.</p>



Years

35+

years of experience  
in funding and  
assisting enforcement  
and asset recovery  
proceedings globally



Specialists

180+

specialists around  
the world



Locations

23

with experts  
on-the-ground  
throughout the world

“The Omni Bridgeway team has a solid understanding of the common drivers of construction disputes and have gone the extra mile to develop products with that in mind.”

DANIEL WALDEK, CONSTRUCTION & INFRASTRUCTURE DISPUTES, PARTNER  
HERBERT SMITH FREEHILLS LLP

# Credentials

Omni Bridgeway's specialist construction investment managers combine their experience in funding a wide range of construction and infrastructure disputes, including the following examples:



## **MIDDLE EAST INFRASTRUCTURE PROJECT FINAL ACCOUNT DISPUTE**

A subcontractor's DIAC arbitration claim in connection with a FIDIC contract for a major transport infrastructure works package in the UAE, seeking additional payments for variations as well as an extension of time and associated prolongation, disruption and other losses totalling close to USD 1 billion.



## **UK ADJUDICATION PORTFOLIO FOR LIQUIDATED MAIN CONTRACTOR**

Five statutory adjudication claims for a large contractor arising from three UK construction projects, with quantum ranging from GBP 700,000 to GBP 6 million per claim, and funding covering legal and expert fees, ATE insurance premiums and the contractor's overheads, in partnership with a Big Four liquidator.



## **CLAIM ARISING FROM ENGINEERING DEFECTS ON HYDROPOWER PROJECT**

A claim by a multinational developer of a hydropower project in Eastern Europe for damages arising from its consulting engineer's alleged design defects which led to the collapse of water tunnels and delayed commencement of commercial operations, causing in excess of US\$130 million in remedial costs and lost revenue.



## **JOINT VENTURE DISPUTE**

A Middle Eastern EPC contracting company's UNCITRAL arbitration claim for in excess of US\$100 million in damages from its joint venture partner for breach of a shareholder agreement and deceit in connection with a manufacturing facility set up to supply the global power sector.



## **WRONGFUL TERMINATION OF CIVIL WORKS CONTRACT IN THE CARIBBEAN**

The quantum phase of a main contractor's ad hoc arbitration for unpaid sums and damages arising from a Caribbean government's wrongful termination of a contract for the construction of civil infrastructure works.



## **WRONGFUL TERMINATION OF A BUILDING CONTRACT FOR A MAJOR RESIDENTIAL DEVELOPMENT**

A liquidated contractor's claim for wrongful termination against a UK local authority arising from a residential housing project, including funding to support adjudication and a mediated settlement.



## **OFFSHORE OIL AND GAS DEFECT CLAIM**

An oil and gas operator's English litigation claim against a European industrial company for over USD 200 million in damages arising from the supply of defective well components.



## **FACILITIES MAINTENANCE SERVICES CONTRACT**

A major UK contractor's litigation claim for unpaid entitlements and damages of close to GBP 100 million arising from NEC3 contracts for the provision of FM services on critical UK-wide infrastructure.



## **ENFORCEMENT FUNDING AGAINST AN AFRICAN STATE**

Developing and funding an enforcement strategy against an African State which failed to comply with an arbitration award for damages in excess of USD 34m.

# The global leader in financing and managing legal risks

Today's disputes involve multi-national, multi-cultural and multi-lingual parties facing multi-jurisdictional issues and cross-border recoveries. A global team is essential to meet these needs.



We welcome the opportunity to discuss construction legal finance options with you.



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Omni Bridgeway is the global leader in legal finance and risk management, providing dispute and litigation finance from case inception to post-judgment enforcement and recovery. Listed on the ASX, Omni Bridgeway operates from over 20 international locations.

## Curious to know more?

We would be delighted to explore tailored solutions to unlock value for your business.

[omnibridgeway.com](http://omnibridgeway.com)