# HAS MULTIPARTY ARBITRATION FAILED IN CONSTRUCTION DISPUTES? LEGAL AND PRACTICAL ISSUES IN DRAFTING JOINDER PROVISIONS

**Dimitrios Athanasakis**[1]

*School of Law, Queen Mary University of London, Lincoln's Inn Fields Campus, 67 Lincoln's Inn Fields, London WC2A 3JB, UK*

Multiparty arbitration is a reliable legal mechanism for resolving construction disputes that affect a plethora of project parties. Ensuing awards are binding, final and directly enforceable against all affected parties. In the past years, non-adversarial contractual schemes have partly displaced multiparty arbitration. Nevertheless, construction projects have become increasingly complex and their legal environment seems totally unregulated. At present, parties treat multiparty construction dispute resolution with circumspection. If it is to become more effective, contract draftsmen must reflect upon the dynamics of multiparty arbitration and propose grounded institutional changes to provisions which allow joinder of parties. Certainly, success in this mechanism depends on the quality of the contractual terms. Research on the legal and practical issues in drafting joinder provisions will dispel the distorted image of multiparty arbitration and present client groups and engineers with fresh opportunities for concrete dispute resolution.

Keywords: disputes, joinder provisions, multiparty arbitration.

## INTRODUCTION

The UK practice of multiparty arbitration has played a leading role in the shaping of international construction dispute resolution. Standard forms of contract have for years included joinder provisions. These lay down procedural techniques to resolve disputes emerging by the actions of multiple project parties and allegedly amounting to breakdown of payment mechanisms and time overruns. Joinder provisions bestow arbitrators with extended powers to bring affected parties together in a single hearing in order to determine interfacing issues of risk, liability, and project performance in an overall final award. International professional bodies and arbitral institutions have espoused this specialist practice and made it gain a worldwide commercial appeal.

But in recent years, proactive management tools and the law have displaced the use of joinder provisions. Due to a conspicuous lack of intellectual challenge, legal research should pursue two main objectives: investigate this change from a historical perspective, and identify the efficiency of the practice in strongly drafted joinder provisions in an informative and analytical manner. The aim is to pin down a checklist of appropriate style, operation, and interpretation of such provisions. This checklist will be a touchstone of consultative reference for project participants and ARCOM

[1] d.athanasakis@qmul.ac.uk

Athanasakis, D (2007) Has multiparty arbitration failed in construction disputes? Legal and practical issues in drafting joinder provisions. *In:* Boyd, D (Ed) *Procs 23rd Annual ARCOM Conference*, 3-5 September 2007, Belfast, UK, Association of Researchers in Construction Management, 107-116.

researchers to avoid the traps and take the fruits of the practice. Future key industry players must fathom key elements of law and practice.

## BACKGROUND: PAST AND CURRENT TRENDS

The international institutional practice is indicative of the underlying policies and commercial success of multiparty arbitration. Back in the 70s, the International Chamber of Commerce (ICC) had widely dealt with multipartite business cases involving state agencies, business companies, petroleum enterprises and construction consortia. Although not explicitly provided by the ICC Rules of Arbitration, arbitrators enjoyed inherent powers to consolidate arbitrations involving parties who had a genuine and interrelated input in the construction process i.e. employers, main contractors, sub-contractors, suppliers, bond issuing banks and other participating parties. Arbitrators viewed that there was a compelling business reason to resolve complex business and technical disputes, in a fair and 'quick-fix' manner.

English law has been the oil that lubricated the joinder mechanisms to this international construction practice. Consolidated and concurrent arbitral hearings i.e. the merger of all arbitrations with a resulting single or multiple ensuing awards respectively were widely ordered. At the same time, the UK bespoke standard forms of contract, the JCT (Joint Contracts Tribunal) Standard Form of Building Contract 1980 and the ICE (Institution of Civil Engineers) Conditions (5th Ed) have inspired draftsmen of international standard contract forms e.g. the FIDIC (International Federation of Consulting Engineers) Conditions. Also, the early involvement of English engineers and lawyers in international institutional arbitrations has paved the way for English law and practice trends to pervade the global dispute resolution market. The tendency of English practitioners has been to instil domestic judicial trends into international practice. In domestic practice, English judges have early upgraded construction dispute resolution to an autonomous branch of law. Therefore, legal research on judicial trends substantially benefits from scrutiny of past case law and judicial interpretation of Arbitration Statutes. Before the enactment of the English Arbitration Act (EAA) 1996, Section 35, the English judiciary enjoyed a pivotal role in processing joinder requests, by enforcing joinder provisions and granting parties the requested relief. Joinder provisions were binding, once incorporated in the parties' contracts and where parties signed the Articles of Agreement (JCT 80 Building Contract, Article 5 and Clause 41B). It was axiomatic that parties ought to remain tied to their contractual arrangements, as multiple proceedings in arbitration and litigation would cause 'substantial injustice' to other affected parties of the supply chain.

Compared to arbitration practitioners, judges were bestowed with wider fact-finding capacities, in the arbitral case. Questions of fact and law tend to be of cardinal importance for construction dispute resolution e.g. if a three-month delay is a 'relevant event' under the contract. In practice, after the Court ruled upon the question of fact, the case could be remitted to the arbitrator to form an opinion and award. Alternatively, if the Judge was convinced that multiparty disputes were best dealt within litigation, he would order third party proceedings and strike out arbitration altogether.

In the early 1990s, an emergent generation of arbitration scholars had challenged this systematic judicial intervention in support of multiparty arbitration. The contention was that the above judicial practice left no room for lawyers and engineers involved in construction arbitrations to form independent skill and judgment in the resolution of

disputes. In other words, become active game-players in arbitral dispute resolution. Arbitration was still under the control of Courts and not the parties'. Clearly, for project clients this has caused some controversy: Why should they choose to arbitrate in England and be exposed to judicial attitudes? A new trend was now receiving support from the domestic arbitral community: 'self regulation' of arbitration, free from court supervision. Following Lord Mustill's Report and the DAC's recommendations, a new arbitration Statute was enacted, the EAA 1996. This Act has scrapped the Courts' joinder powers. But the direct result of this was twofold. First, the EAA has relieved pressure upon Courts to entertain joinder requests from aggrieved project parties. Second, drafters of standard contract forms have restructured their joinder provisions to maintain their prestige and prevent a drop in the sale of their forms in future. They then included more permissive terms, largely in compliance with the wording of the EAA and aligned to the parties' and not arbitrator's choice.

Professional institutions that aspire to market their services globally have recently moved the centre of dispute gravity to construction project management, both quickly and boldly. In the main, the decline of multiparty arbitration is attributed to the shift to 'relational' contractual structures, now customized to dispute avoidance. Parallel to this, project management scholars have, to a great extent, convinced project parties that early warning procedures, partnering charts and tight supervision will enhance the enforcement of payment mechanisms, offer greater protection from risk exposure and better determine the liability question. A lucid example of this is the Association of Consultant Architects Project Partnering Contract (ACA PPC) 2000 Standard form of Partnering Contract. The construction community has viewed strong project management as a unique opportunity to achieve a 'win-win' case for construction professionals and their clients. Compared to the arbitrator's joinder powers, new management techniques are more project-specific, with consultants and project managers taking a leading role as appointed adjudicators. The Project Manager is a central point of reference, the new game-player in construction dispute resolution. Unlike the arbitrator, he is finely tuned with a team of separate contractors, in a compromising and not adversarial way, and also exerts also strong performance control over project participants.

## CALL FOR REVIEW

The current legal and institutional landscape is far from accommodating and the learning curve is steep. In a global business market, which is becoming increasingly complex and deregulated, dispute avoidance creates uncertainties which are easier for arbitration to overcome. The backdrop of project management is that there is no such duty of 'good faith' or trust among project partners which could prevent them from claiming against each other in the litigation or arbitration arena. Where risk and losses occur, parties will become entrenched and seek to push liability to all different directions in the supply chain. In this reactive environment, multiparty arbitration will be a restorative regime and increase the level of authority and power of law.

Representations and requests to commissions have been plentiful, but the big step for favouritist deliberations has not yet been taken. Current research suggests that many of the past shortcomings will be overcome by the drafting of appropriate joinder provisions. Accessible contract language of dispute resolution is a critical factor in determining the commercial success of construction practice overall. A study of the

drafting essentials of joinder provisions can be appropriated for emerging good practice for contract negotiators and construction practitioners.

## DRAFTING ESSENTIALS AND FUTURE PARADIGM

The arbitration practice in the construction industry is fraught with pathological joinder provisions. For the most part, these fail to communicate a clear range of substantive steps down the procedural path in a sensible and balanced order. There is an ever-present need for legal research to establish an analytical roadmap of concomitant topical items, in order to produce 'self-contained' provisions that will appeal to future clients. These are:

- the method of appointing the tribunal and its numerical composition
- the means and time of referring disputes to multiparty arbitration
- the 'dispute' characterization for the purposes of the above referral
- the definition of the joinder 'link' and proportion of disputes
- the consent of the parties to multiparty arbitration
- the particulars and directions of the joinder decision

The above six items are generic 'living' components of a joinder provision. Research has identified that other complimentary or optional elements may be necessary to accord with the users' requirements. Linguistic technicalities e.g. the arbitrator's decision to be made within thirty days, are often imposed to provide parties with a timely and efficient arbitral process. However, drafting generalities will appeal more to project parties and arbitrators who seek extended procedural flexibility. Judicial precedent reveals that joinder provisions must not be overdescriptive. This often happens because contract draftsmen treat them as a panoply of substantive rights. Some points need not be over-emphasized.

Still, innovation regarding the style, format and approach of the text will make for future marketability of this approach to dispute resolution and is required in order to use a joinder provision as a touchbase for what to be included in the award(s). In the following analysis, eight tables are suggested regarding the suitability of contract terms for various items. Suitable terms are marked with a √ and unsuitable ones with a **X**. In part, the ensuing roadmap into legal terms appears excessively technical. Nevertheless, it serves to produce a corresponding checklist with competitive contractual and business issues, necessary for construction practitioners to succeed in the conduct of multiparty arbitration.

**Item one: method of appointment and number of arbitrators**

The method of appointing arbitrators is not a 'living' component of a joinder provision. For practice reasons, parties should consider excluding a [multiparty] appointment procedure, where they wish to join third parties thereafter. This is because newcomers will challenge the arbitrators' powers, when they later fear that they will lose in the arbitration. Correspondingly, an ad hoc provision could read:

'Following the decision of tribunal upon the participation of additional parties to the pending proceedings, the formation of the tribunal cannot be challenged'.

However, if the appointment of the tribunal is of paramount importance for the parties, they should trust the appointment to an appointing institution. They could

draft their provision to the effect that the appointment will be made by the London Court of International Arbitration. This technique will appeal to international parties arbitrating in England. Furthermore, appointment of a single arbitrator, as opposed to a three-member tribunal, has the added incentive of procedural economy for multiparty disputes. The most obvious advantage of a single arbitrator is that he will be more flexible to organize the hearings. Finally, the qualifications of the arbitrator need not be mentioned. If so requested, arbitral institutions would appoint an arbitrator with relevant dispute expertise. But, in ad hoc arbitrations, the obvious risk is to find it extremely difficult to nominate an overqualified arbitrator. Therefore, users of joinder provisions should avoid wordings of this kind: 'The Parties will appoint a suitable and experienced practising lawyer or heavyweight engineer skilled in legal matters; or Judge of the High Court as sole arbitrator'.

**Item two: form and time of referral**

The joinder request is part of a formalized procedure and will be crucial to the arbitrator's making of the award. Therefore, the form and time for referral are essential drafting features. Most institutional provisions will normally pin down the procedural route of a joinder request. However, for ad hoc arbitrations, the provisions of the applicable law may help. Indicatively, but not exhaustively, parties could make an 'effective' request by a written notice, statement of claim, a statement of defence, amendments to pleadings, answer to a request for arbitration or a counterclaim. In their request, parties need not stipulate that "parties A, B and C be joined as claimants or respondents".

The parties' formation of procedural standing will not impact upon the future of multiparty arbitration. The time of referral and progress are not standard components for every joinder provision. However, referral should be completed before the arbitrator decides the merits of the dispute, e.g. deciding causation and liability for the project breakdown. The consequence of late submissions should be a matter of discretion for the arbitrator and the administering institution. A partly defective or incorrect notice will not strike out multiparty arbitration altogether. Still, the arbitrator may draw conclusions from the failure of a party to answer to the request in its joinder award.

**Item three: dispute or difference?**

The law regarding crystallization of a 'dispute' has caused some emphatic debate among lawyers, judges and engineers. 'Dispute' must be viewed from a broader businesslike and commercial spectrum, beyond stringent legal definitions. Although mere 'disagreement' will not qualify, other terms may apply. Consultants involved in the administration of contracts, on behalf of employers or contractors, will be concerned about the effect of pre-selected multi-tiered procedures e.g. mediation, adjudication and amicable settlement upon the transfer of disputes into the arbitration terrain.

In the normal course, the exhaustion of these procedures will be a pre-condition to refer disputes to arbitration. In a pragmatic context, disputes in the construction industry are rarely readily identifiable, as it takes time for claims and submissions to be formulated. Therefore, broader language is preferable in order to cover a wide variety of circumstances. Below, is an illustrative list of dispute variants and their proposed suitability. Not all terms are ontologically equal, but they may carry the same 'joinder' weight.

**Table 1**: Suggested checklist of keywords of dispute and joinder effect

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 'Ambiguity' | **X** | 'Counterclaim' | | √ | 'Issue' | | √ |
| 'Case' | √ | 'Difference' | | √ | 'Matter or a thing' | √ | |
| 'Cause' | √ | 'Disagreement' | | **X** | 'Point' | | **X** |
| 'Circumstance' | **X** | 'Discrepancy' | | **X** | 'Questions in dispute' | | √ |
| 'Claim' | √ | 'Dispute' | √ | 'Rights to relief' | | **X** | |
| 'Contention' | **X** | 'Divergence' | | **X** | 'Subject-matter' | | √ |
| 'Controversy' | √ | 'Element' | **X** | 'Transaction' | | √ | |

## Item four: link and proportionality

The decision on the link and proportion of disputes is arguably the most essential component of the joinder request. The arbitrator must decide what is the main issue in each separate arbitration. These issues may simply contain elements of fact, not upheld in law. Indeed, parties often draw inferences of fact. It is also inherent in the nature of the construction industry that assertion of causation and liability is based on fact-finding procedures. Equally, there is no immediate need to restrict the scope of link to matters of law and/or fact, as it is peradvertenly clear that whatever the relief sought under their contracts or common law, disputes in the construction industry are always 'inseparable' questions of law and/ or fact.

However, the 'proportion of dispute' should be made a mandatory item. The further restriction is that parties ought not to make claims which are in the nature of third-party or contribution claims. This is because, allowing parties to consolidate disputes that are totally unrelated could yield procedural humps in the conduct of the hearings: parties could resort to amendment of claims, retarding the overall joinder process. However, in matter of substantive jurisdiction, the arbitrator should be allowed to strike out a claim which does not conform to the joinder question, for otherwise some parties would suffer substantial injustice. Ultimately, the decision in joining parties and the ultimate say in the proportionality and convergence of disputes must lie with the arbitrator. The agenda of drafting pointers regarding the proportion and link of disputes can be presented as follows:

**Table 2**: Suggested checklist of keywords of dispute proportion and joinder effect

| | | | | | |
|---|---|---|---|---|---|
| 'A' | √ | 'Mainly [concerns]' | | | √ |
| 'All' | √ | 'Partly [concerns]' | √ | | |
| 'Altogether' | √ | '[covering] Substantial portions of' | | | √ |
| 'Any' | √ | '[involving] Such part of' | | | √ |
| 'Certain parts of' | √ | 'Wholly' | √ | | |

**Table 3**: Suggested checklist of keywords of dispute link and joinder effect

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 'Appear to raise common issues' | √ | 'Interrelated' | √ | 'Sequenced on' | **X** | | |
| 'Associated' | √ | 'Interwoven' | **X** | 'So far as it | | | |
| 'Common' | √ | 'Is interdependent with' | **X** | concerns' | √ | | |
| '[inherently] Connected' | **X** | 'Materially bears upon' | √ | 'Substantially | | | |
| '[objectively] Connected' | **X** | 'Materially identical' | √ | the same' | √ | | |
| '[substantially] Connected with' | √ | 'Overlapping with' | √ | 'Ties in with' | **X** | | |
| 'Draws upon' | **X** | 'Related' | √ | **'**Touches upon' | √ | | |
| 'Inseparable' | √ | | | | | | |

**Item five: consent**

Consent is a paramount feature of the arbitral regime. The way this is asserted can give rise to considerable theoretical debate. Proponents of multiparty arbitration will argue that the inclusion of a joinder provision in a contract is a sufficient regard to the parties commitment. Therefore, this seals acceptance of the joinder. However, a clear anomaly could be identified here. As the law currently stands, joinder provisions are not self-executory. Their mere existence in the contract does not connote agreement. An extra approval is required to effectuate joinder of arbitrations. Good practice means that arbitrators must obtain the parties' written consent; because they could be blamed for unwarranted interference with party autonomy and risk being removed by the administering institutions. In reverse, this requirement can create stability in conduct, because silence is not deemed consent, nor the party's participation in the proceedings without protest. Current trends suggest an institutional undesirability to remove this requirement. Therefore, no change is anticipated. However, a timely requirement could be added for otherwise the parties would be purely driven by a 'wait and see culture' and perpetuate proceedings at the expense of the subject-matter. The following wording may be appropriate:

**Table 4**: Suggested checklist of terms for consent and joinder effect

| | | |
|---|---|---|
| 'All parties will endeavour to agree on a process to establish' | **X** | |
| 'The parties are free to [agree on consolidation]' | **X** | |
| 'The parties in consultation with the arbitrator [may decide that]… The consent of the parties should not be unreasonably withheld". | | √ |
| 'Unless the parties otherwise agree, and provided that such arbitrator will be willing so to act, the arbitrator may take all measures necessary for the disputes to be heard together' | | √ |
| 'With the agreement of all parties [the arbitrator will order that]' | **X** | |
| 'With the agreement of the majority of parties [the arbitrator will order that]' | √ | |

**Item six: arbitrator's powers**

Following a party' s request for joinder, the joinder provision will normally include a transitory sentence, throwing into prominence the arbitrator's action i.e. its decision. The options considered here establish an interplay between the parties and the arbitrator.

**Option one: full joinder**

Parties may consider to share the decisional weight of joinder with the arbitrator. Moreover, the wording 'just, fair, timely and expeditious' imports a reasonable balance of powers and duties on the arbitrator. And, for many advocates, this is a discretionary safety-net requirement. The following proposals for 'opt in' solutions may be well-received by client groups:

**Table 5**: Suggested provisos for the arbitrator's and joinder effect

| | |
|---|---|
| 'Disputes shall be heard together under such rules as the parties agree upon, or in absence of agreement, as determined by the arbitrator' | √ |
| 'If the parties are unable to agree, the arbitrator will decide whether disputes be heard together' | √ |
| 'In the absence of the parties agreement, the arbitrator will order joinder of disputes, taking into account all of the circumstances' | √ |

**Table 6**: Suggested provisos for full joinder

| | |
|---|---|
| 'If for some other reason it is desirable to make an order for joinder, the arbitrator shall have the powers to make such directions for disputes to be heard together on such terms as it thinks just' | √ |
| 'In so far as is practicable, the arbitrator shall take all reasonable steps to join disputes upon such terms he deems appropriate, just and fair' | √ |
| 'Provided all contracts incorporate the same Rules, the arbitrator will resolve such common questions to achieve substantial justice and provide a fair and efficient means for final resolution under all the circumstances' . | √ |

### Option two: partial joinder and de-consolidation

In practice, sustainable language means that 'fall-back' provisos will be part of the provision. Alternative arrangements of the type of partial joinder exist where disputes have many commonalities, however they are not perceived as a unit, as in full joinder. These may receive customer support, as some 'get out' action may be provided. Therefore, power should be vested upon the arbitrator to de-consolidate arbitrations. In specific, the process can be extended to provide as follows:

**Table 7**: Suggested provisos for partial joinder and de-consolidation

| | |
|---|---|
| 'The arbitrator may conduct the arbitrations separately, or consolidate them, partly or wholly' | √ |
| 'The arbitrator may deny consolidation of separate arbitrations and decide that the issues to be decided in separate proceedings. The arbitrator shall issue separate awards or as he sees fit'' | √ |
| 'The arbitrator shall give the parties a reasonable opportunity to state their views. If then it seems obviously sensible that issues affecting all parties should be determined together, then the arbitrator may in total or in part grant or refuse a joinder request' | √ |

### Award-making

Explicit in arbitration working practices in the UK is a tendency to produce 'reasoned' awards. Legal research has identified this practice, as a facilitator for lawyers to subsequently attack the arbitrator's award in Court on the reasoned points, in case they lose in multiparty arbitration. For drafting purposes, inclusion of such a requirement is a desirable, but not essential, component of the joinder provision. Still, the words 'interim' or 'interlocutory' award must be omitted. Parties may request the arbitrator to make as many awards as they wish. However, given the legal imperative for procedural economy, the number of awards must be delimited and a time-limit for making the award must be provided. Still, a resourceful draftsman should allow some room for flexibility, where time may be deemed to infringe the joinder and other contract provisions. The following wording may be considered:

**Table 8**: Suggested provisos for award-making

| | |
|---|---|
| 'The arbitrator shall make a single final award for or separate awards in respects of all parties involved in the proceedings. Within thirty days after receipt of the award, the parties may challenge it' | √ |
| 'The arbitrator shall make a reasoned award on joinder within thirty days upon the party's request. An award on joinder shall not be subject to appeal' | √ |

## RECOMMENDED JOINDER PROVISION

The effect of categorizing and correlating the above six topical items with ensuing suggested wording is to pin down an effective and workable joinder provision. A basic structural provision consolidates the essentials. Construction professionals or dispute resolution experts from other industries may in part follow the model provision below, or in part deviate from it according to their skills and clients' needs:

'Where disputes arise out of or in connection with two or more contracts and these raise common questions, and provided that the ensuing arbitrations are dealt with by the same arbitrator, the arbitrator may, following a party's request, order that such part(s) of the disputes at issue be heard together on such terms and conditions he deems fit. The arbitrator may conduct the arbitrations separately, or consolidate them, partly or wholly'

## CLOSING REMARKS

Previous content analysis of joinder provisions has helped draw four interpretative findings. First, joinder provisions constitute a centralized response to dealing with intricate project disputes, for the mere purpose of identifying the perennial and bottom-line question in project breakdowns: which party will bear the loss? Efficiency commands that joinder provisions should be generic, allowing for some margins of flexibility, but concise. The draftsman should not be rigorous in pursuit of what to include therein, for the mere purpose of pleasing lawyers, engineers and project parties. It is also virtually impossible to provide appropriate and uniform wording for all multiparty dispute situations in the construction industry. The reason is that risks, losses and disputes cannot be standardized. As a result, joinder provisions merely set the conceptual and resulting practice framework. Also, unambiguous language will enable contract managers to anticipate fewer contingencies and a vigorous drafting technique will clarify the decision points.

A second pointer of tantamount importance is the overall contractual symmetry. Joinder provisions must comply with the spirit and drafting style of the standard contract form they are attached to and the construction industry custom. In particular, time limits provided by the joinder provisions must be analogous to the remainder of contractual clauses. Lack of corresponding relevance would amount to unnecessary editing tasks for contract negotiators. Nevertheless, the underlying ethos of self-containment suggests that joinder provisions should be drafted to withstand any discrepancies of the remaining contractual provisions. Also, in terms of linguistic style, latin or wordy legal terms should be avoided. The text must customize to give a firm understanding to a domestic layman, a foreign industry client and an amateur practitioner.

Third, externalities will affect their force. Joinder provisions are reactive provisions and their application heavily depends upon the impetus of the applicable law, the standard form of contract, the seat of arbitration and the parties' attitudes and judgments proceeding to multiparty arbitration. Modern advocates and engineers must have an intelligible overview of the regime in its domestic and international fields of application. But it is not expected of them that their drafting process should promote synergy between international and domestic trends. The maxim is this: joinder provisions must provide a concrete legal background, which also reflects the commercial aspects of the deal.

Lastly, multiparty arbitration for construction disputes will be workable, only if 'used as intended', i.e. as a restorative fall back mechanism to help parties resolve their common disputes and obtain legal relief in a businesslike, timely and efficient manner. Co-operation between parties is the most critical factor in the success of multiparty arbitration, because this is an idiosyncratic procedural mechanism. Goodwill is far more important than the six topical items involved in the drafting process. Commensurately, the subsequent co-ordination of procedures provided by the

mechanism is vested with the arbitrator who must ensure that its orders and directions will reflect back credit to the parties.

## CONCLUSIONS

Analysis of the legal and institutional historical background to multiparty arbitration has revealed a distinct inefficiency of the industry and lack of policy makers to fully understand their part in the dispute resolution process. An even larger gap is revealed by the lack of suitable and self-contained joinder provisions. While these are not easy to draft, current research has been directed at producing a checklist of suitable terms, an analytical roadmap, which is fundamental in the successful development of multiparty arbitration for construction disputes.

The present legal environment suggests that an accommodating multiparty arbitration culture cannot evolve, unless the institutional gains and weaknesses of multiparty arbitration are courageously addressed and juxtaposed to other dispute management techniques. Only then, will institutional draftsmen and domestic lawmakers develop a drafting policy which encapsulates workable solutions in law and practice. The items analysed in the drafting process have set the foundations for a conceptual framework of change. Legal and construction researchers will be reinvigorated to energize draftsmen and lawmakers for the benefit of users of construction dispute resolution. Multiparty arbitration is at the centre of a very exciting practice of law and very much the way forward for construction disputes.

## ACKNOWLEDGMENTS

I am immeasurably in debt to my supervisor of thesis, His Honour Judge Humphrey Lloyd QC. The present paper is a token of my esteem for his unrelenting contribution to the shaping of my research ideas.

## REFERENCES

Bunni, N G and Lloyd, H (2001) Final Report on Construction Industry Arbitrations. *International Construction Law Review*, **18**(4), 645-80. .

Lloyd, H (1991) A National Experience. *In:* Wetter, Gillis J (Ed.), *Multi-party Arbitration Views from international arbitration specialists.* Paris: ICC Publishing S.A.

Mustill, M, The Rt Hon Lord Justice (1990), A New Arbitration Act for the United Kingdom? The Response of the Departmental Advisory Committee to the UNCITRAL Model Law. *Arbitration International*, **6**(1), 3-18.

Nicklisch, F (1995) Multi-party Arbitration-Typical Multi-Party Disputes And Civil Court Proceedings. *International Construction Law Review*, **12**, 421-438. .