CONSTRUCTION OPPORTUNITIES AND CHALLENGES TO BE ADDRESSED IN 2019

MARTIN COONEY, Partner and Head of Construction, ByrneWallace, writes that project finance will continue to be an issue in 2019, but peer to peer lenders may help get smaller projects up and running.

A recurring issue I hear from smaller developers is that they find it difficult to obtain finance for projects in the €1m to €5m bracket. There appears to be plenty of appetite in the market for large-scale projects, but it appears that smaller projects are more difficult to finance. This is an issue I highlighted in these pages last year. When these developers can identify willing funders, they often do not have the platform to deal with the myriad of funders' requirement, and this poses an additional barrier to obtaining funds. I have seen some positive developments with alternative funders, such as peer-to-peer lenders, entering the market, who are specifically focusing on the provision of funding for smaller developments. I believe that this will increase in 2019 as the demand is there.

STATUTORY ADJUDICATION

It is clear that there has been a significant increase in the use of statutory adjudication in 2018. I believe this will continue in 2019 and follow a similar trend to when it was first introduced in the UK. One matter which remains uncertain is how the courts will treat enforcement proceedings relating to an adjudicator's decision. There are various arguments which have been tried and tested in the UK in respect of enforcing and challenging adjudicators' decisions. However, we have yet to see whether the Irish judiciary will follow a similar approach. This uncertainty has meant that some parties are unwilling to engage in an adjudication process where they are not sure that they can ultimately enforce an adjudicator's decision. Nevertheless, this uncertainty is placing a greater impetus on parties to settle disputes which have been referred to adjudication, and it appears that this is what has been happening to date.

STATE-SPONSORED CONSTRUCTION

There has been a marked increase in State-sponsored construction initiatives, particularly in the area of residential development, and this will continue in 2019. The majority of initiatives require some form of public procurement process. It appears that there is a greater appetite on the part of contracting authorities to utilise innovative public procurement processes, such as competitive dialogue and the competitive procedure with negotiation. These can be very useful in terms of allowing market operators to propose alternative ways of achieving projects. However, these processes can require significant investment and time input. The cost and time involved may be off-putting to certain market participants, and some developers have indicated that they would rather focus on private sector projects as a result. There is no getting away from the fact, however, that if the State is to deliver on 'Project Ireland 2040', public procurement will be to the fore and market participants would do well to invest in their platforms to allow them to participate competitively.

SKILLS SHORTAGES

Finally, the skills shortage in the industry also poses legal risks.

Martin Cooney, Partner and Head of Construction, ByrneWallace.

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We are all familiar with what can happen when there is a lack of skills on a project or if a project is rushed, particularly in terms of health and safety and regulatory compliance. While I appreciate the pressure of seeking to meet increased demand, companies need to ensure that they scale in a steady and sustainable manner. Many companies have learned from the past and are doing so, and it is impressive to see how much is being invested in resourcing, training, implementation of good practice processes and accreditation with independent quality assurance bodies. This feels very different from our recent past, and it is an extremely positive development. **C**