



# Mediation in Construction Cases with Chinese Party

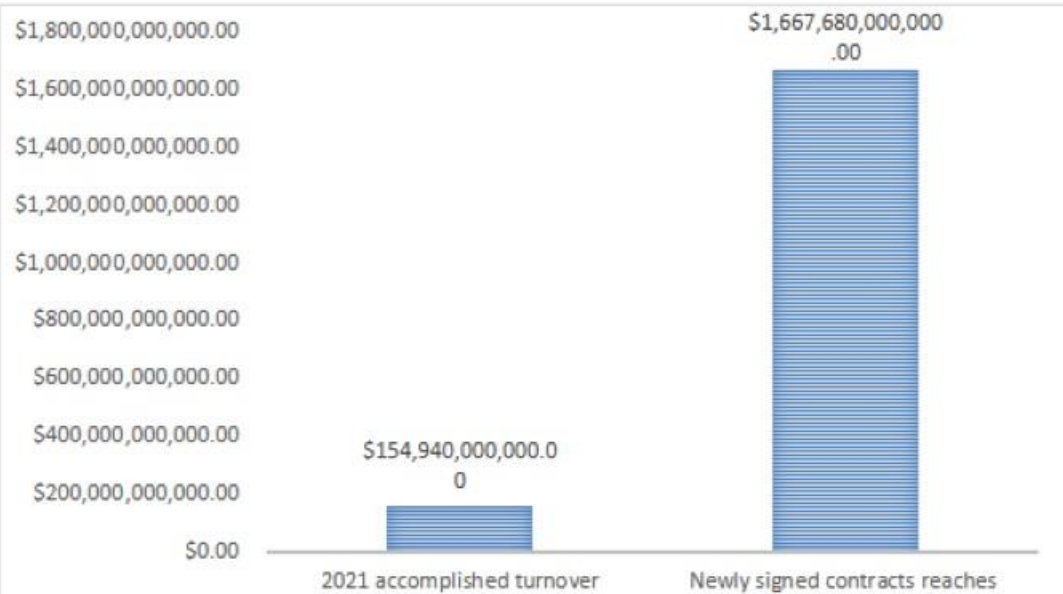
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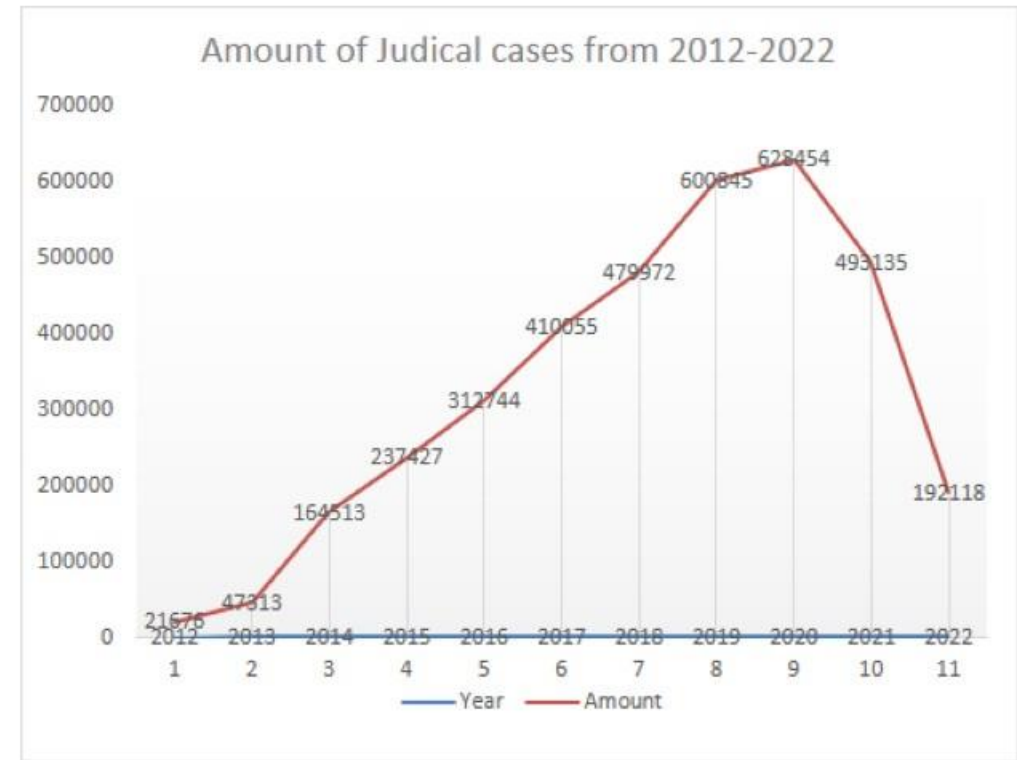
# 01

## Overview of China-related Construction Disputes

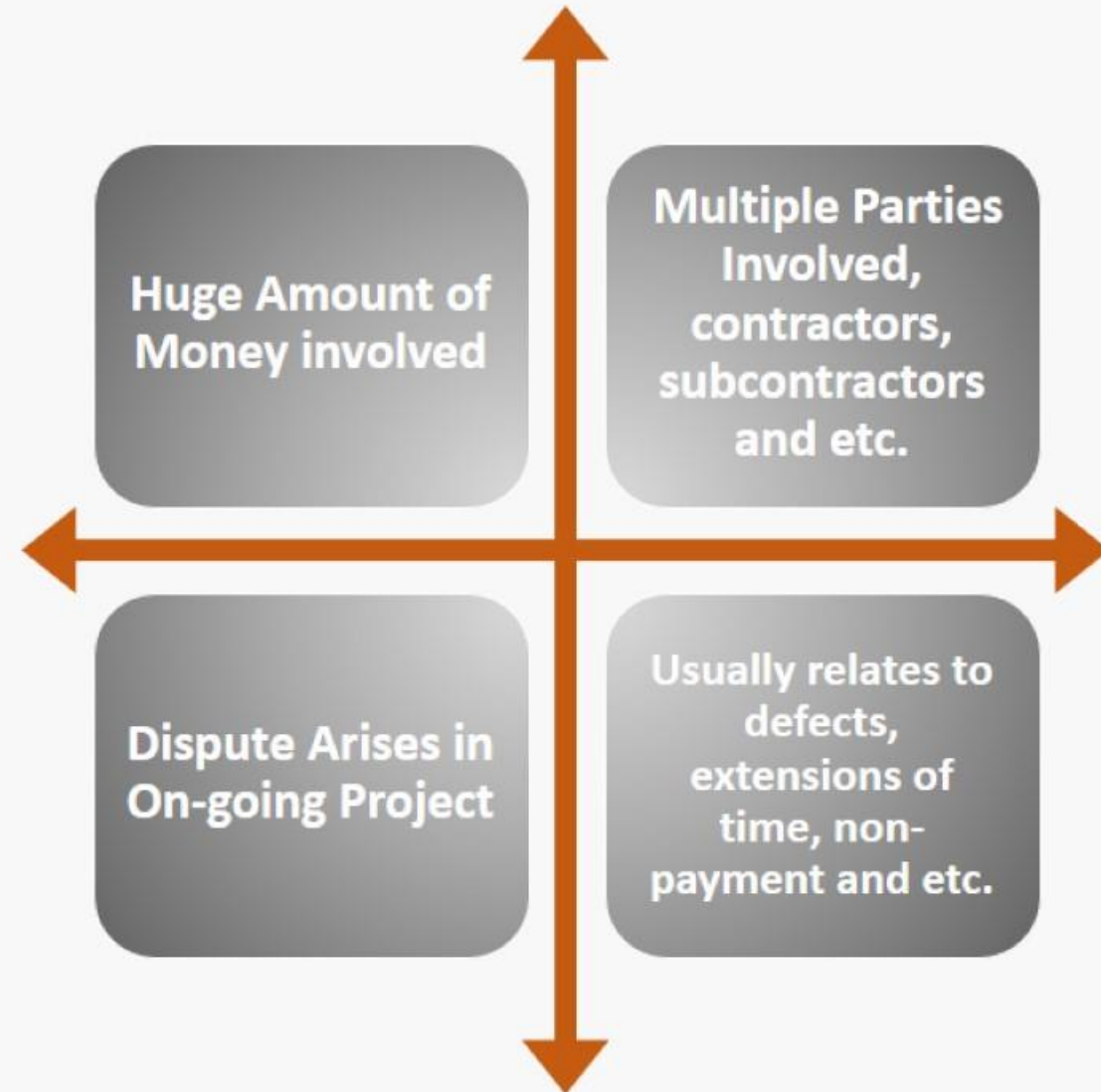
## 2021 Amount of Chinese company foreign contracted construction



- 2021 Amount of Judicial construction cases in last year **14,1326**
- 2021 Amount of Judicial construction cases over the past decade **3,742,841**



## 02 Features of Construction Disputes





02

**Observation of Using  
Mediation to Resolve  
Construction  
Disputes**

# 01 Why Choose Mediation

Dispute



To be Mediated



- Could be least expensive and fastest way of resolving disputes
- Can be initiated at any time agreed between the parties, even when litigation or arbitration is ongoing
- Allows commercial relationships to be maintained during and after the dispute, which is especially important for a project under construction
- Allows Parties to renegotiate and create a new agreement, incorporating flexible approaches
- Is confidential and
- Limited discovery information exchanged during the mediation cannot be used in court or in an arbitration if no settlement is reached needed for the parties .

## 02 Examples Of Construction Disputes That Are Most Frequently Mediated



- Contractor's defective work
- Architect's defective plans and specifications
- Delays in project completion and other schedule issues
- Payment issues
- Changes to the scope of work
- Differing site conditions
- Property damage to the project
- Termination of a contractor or subcontractor

## 03 Culture Background and Concept of Chinese Parties





## 04 Tactics Accommodated and Acceptable for Chinese Party

Touch the disputant's itchy point, such as pointing out invalid evidence

Suggest rethinking concession by hinting the weakness in future arbitration or lawsuit

Explain risk of arbitration or lawsuit, such as impairing reputation in future bidding

Illustrate the benefit of mediation, such as immediate enforcement execution



# 03

## Case Sharing of Using Mediation to Resolve Construction Dispute

# 01 Examples of Creative Resolution in Construction Mediation

## ✕ Contractor

- ✓ Correction of defective work;
- ✓ Extended warranty;
- ✓ Release of property preservation



## *Trade Off*



## ✕ Owner

- Structured payments;
- Additional work;
- Rescheduled Acceptance



# 04

## Views on Future development of Construction Dispute Mediation involving Chinese Party



## Tendency

- ✓ Voluntary participation in professionally organized mediation has gradually gained acceptance.
- ✓ The acceptance of professional mediation is far lower than that of mediation organized by courts or arbitration institutions

## Possible Reasons

- Mediation organized by courts or arbitration institutions is legally enforceable
- Behavior patterns of Judge-mediator or arbitrator-mediator are more credible to Chinese Party



## 02 Views : Incorporating Chinese Element into International Mediation Mechanism

- More facts finding;
- Evaluating right and wrongs;
- Mediator leading

**Chinese quasi-judicial  
Mediation**



Comment on strength and but would not really determine who is in the right

**Facilitative Mediation**



## 高俊 合伙人 Gary GAO Partner

中伦律所合规与政府监管部负责人，专业领域为合规/政府监管、跨境争议解决、公司/外商直接投资。至今，在合规及跨境争议解决领域已有二十余年的执业经验，非常熟悉公司的整体经营以及国际商业谈判中的技巧及陷阱，并在公司的合规领域拥有丰富的经验，协助过不同行业的跨国公司、机构、国内大型企业处理过一系列合规问题。

Mr. Gao Jun is the Head of Compliance and Government Regulatory Team of Zhong Lun Law Firm. His practice areas are compliance/regulatory, cross-board dispute resolution. So far, Mr. Gao has more than two decades of legal practices, which makes him very familiar with the international business skills and traps in the negotiations and accumulate rich experience for the compliance of the company.

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### 社会任职:

### Social Activities

- 香港国际仲裁中心仲裁员 / Listed Arbitrator in HKIAC
- 上海国际仲裁中心仲裁员 / Listed Arbitrator in SHIAC
- 新加坡国际调解中心专家调解员/Singapore International Mediation Centre (SIMC), Specialist Mediator
- 华东政法大学律师学院特聘教授/Lawyer Institute of East China University of Political Science and Law, Distinguished Professor
- 国际商会仲裁和ADR委员会“国际仲裁中反腐败事务特别行动组”，成员/ ICC Arbitration and ADR Commission "Task Force on Anti-Corruption in International Arbitration", Member

### 荣誉奖项:

### Honors

- 2018、2019、2020、2021，连续当选《钱伯斯亚太指南》(Chambers Asia-Pacific) 榜单，“公司调查/反腐败”领域推荐律师  
Recommended in Corporate Investigation/Anti-bribery by Chambers Asia-Pacific 2018、2019、2020、2021
- LEGALBAND 2019年、2020年“合规”和“政府事务”领域中国“第一梯队”律师  
the 2019 “Band 1 Lawyer of Compliance” and “2019 China Top 10 Lawyers – Government Affairs” by Legal Band
- Benchmark: “Litigation Asia-Pacific 2020 Lawyer”
- China Law & Practice (《中国法律商务》) “2017年度合规律师”  
The 2017 “Regulatory & Compliance Lawyer of the Year” by China Law & Practice
- ALB (亚洲法律杂志) 2016年度“客户首选律师20强”  
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Thanks!