

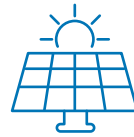


CASE STUDY

Damages assessment in a renewable energy breach of contract dispute: FSG vs Kingdom of Lesotho

The Kingdom of Lesotho (“Lesotho”) was found to have breached provisions of a supply agreement with a German renewables company, Frazer Solar GmbH (“FSG”), in an arbitration heard in South Africa. FTI Consulting’s quantum experts, Henry Pannell and Liberty Mncube, were appointed on behalf of the Claimant (FSG) to provide an independent assessment of FSG’s damages resulting from the breach.

THE SITUATION



FSG signed a supply agreement with Lesotho in 2018 to provide up to 40,000 solar water heating systems, 350,000 solar lanterns, 1.5 million LED lights and some solar photovoltaic capacity, nationwide.

The project was expected to have significant benefits for the country, to transform access to clean, renewable energy, replacing the use of polluting and expensive alternatives. It was to be financed by the German government, with the loan structured to ensure that Lesotho benefited financially, with self-funding loan repayments through significant short- and long-term electricity cost savings.

Despite the supply agreement being signed, the project did not proceed. FSG claimed that Lesotho had materially breached the provisions of the agreement and suffered significant damages as a result.

OUR ROLE

FTI Consulting's experts, Henry Pannell and Liberty Mncube, were instructed to provide an independent assessment of FSG's damages.

The key issues we were asked to consider were:

- the economic rationale for the project;
- the quantification of losses FSG incurred as a result of the breach of the agreement; and
- pre-award interest.

FTI Consulting experts prepared an expert report and gave oral testimony at a hearing in Johannesburg. The FTI Consulting team included Laurie Binge and Willem van Lill.

ABOUT FTI EXPERTISE IN DAMAGES ASSESSMENT

FTI Consulting is the pre-eminent firm in the provision of damages expertise. Providing expert testimony in arbitration requires a particular mix of skills, expertise and experience that is difficult to replicate. FTI Consulting experts are masters of their disciplines – accounting, economics, finance, valuation – and also the application of those disciplines to disputes. We have by far the largest group of testifying damages experts, working across all industries, meaning we can identify the right expert for the case in hand.



FTI Consulting is an independent global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities. For more information, visit www.fticonsulting.com and connect with us on Twitter (@FTIConsulting), Facebook and LinkedIn. www.fticonsulting.com
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OUR IMPACT

The Arbitrator found that the FTI Consulting experts had the necessary qualifications and expertise to present evidence as experts on matters involving the quantification of damages. Our instructing solicitors considered the Arbitrator was impressed by our report and oral testimony given, and that it underscored his damages decision.

€50m

Our client was awarded damages of EUR 50 million (plus interest and costs).

“Providing expert testimony in arbitration requires a particular mix of skills, expertise and experience that are difficult to replicate. FTI Consulting experts are masters of their disciplines – accounting, economics, finance, valuation – and also the application of those disciplines to disputes. They are superb at picking up the key issues at the heart of a dispute and translating them into clear and easily understood damages calculations.”

Dr. Liberty Mncube, Managing Director,
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