



Current Legal Challenges of Large and Complex Construction Projects

- drivers and challenges for collaborative delivery models

Professor, dr. jur. Ole Hansen

UNIVERSITY OF COPENHAGEN

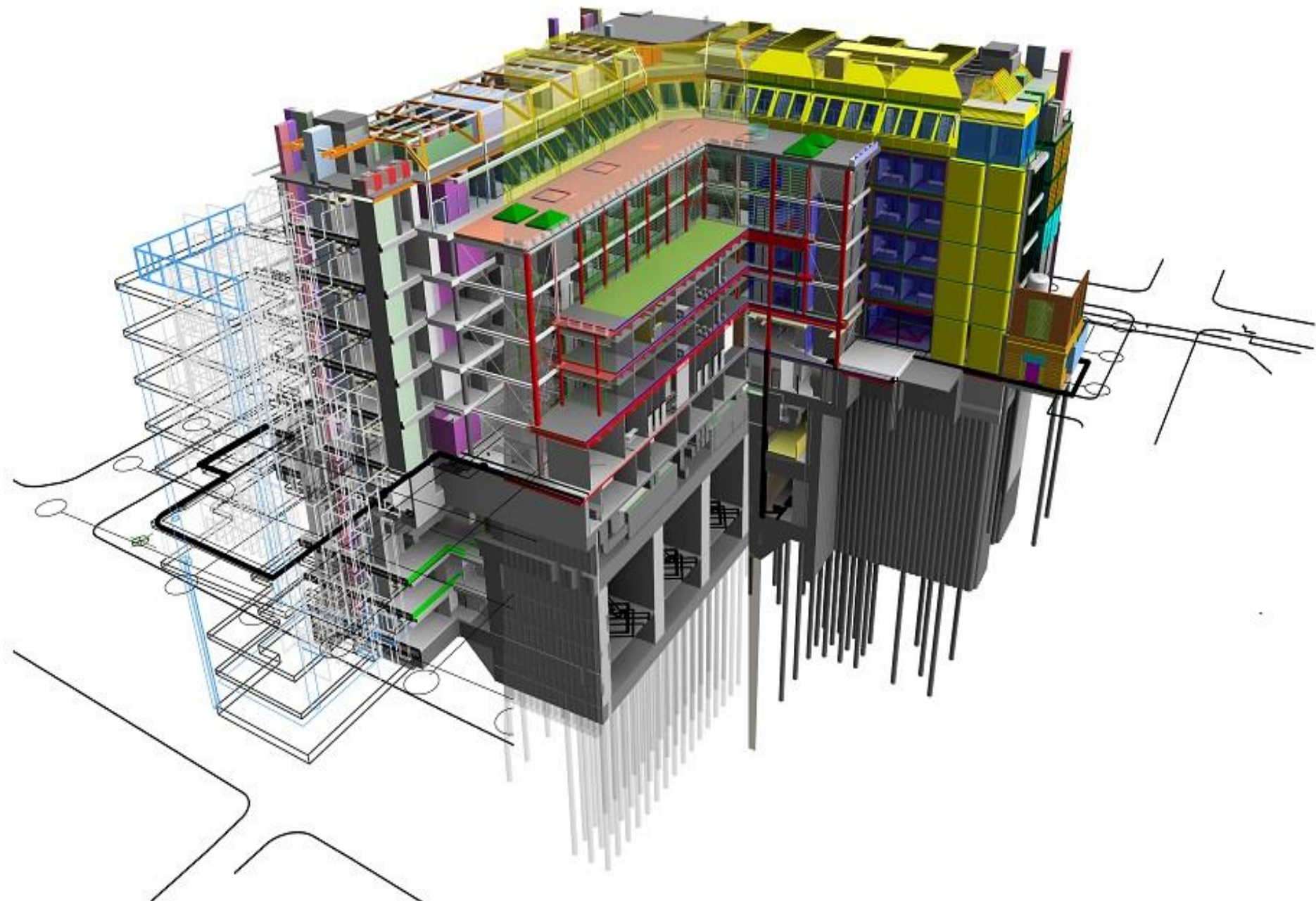


Drivers and challenges for collaboration

- What became of the design-bid-build model?
 - Complexity: Delegation of design
 - Choice
 - Innovation
 - Technology
 - Climate

Legal drivers for collaboration I: Technology

- Components
- Communication
- Design
- Management
- BIM
- Public projects and BIM-requirements (IKT-Regulation)



Challenges for collaboration I: Legal implications of BIM (a)

“The standard industry contract templates do **not contain sufficient contractual regulation** of the abovementioned topics in order to properly deal with the use BIM and 3D models, and in the author’s experience, **most industry leaders also lack the necessary contractual regulation** of the use of BIM and 3D models in their own custom-made contracts.”

Klint Klingberg Jensen: Use of PDMS models in offshore construction contracts - the importance of specific contractual regulations (ICLR 2024)

Challenges for collaboration I: Legal implications of BIM (b)

ISO 19650-1:2018:

"The purpose of a detailed regulation of the digital collaboration in (the ***BIM Execution Plan***) is to avoid those challenges, that follow from the increasing digitalization, including the increasing production and sharing of information, so that the contracting parties are aware of 1) **in which format** a given information shall be provided, 2) **what the information shall contain** and 3) **how the information shall be exchanged** between the parties"

Legal drivers for collaboration II: Climate policies (a)

- ***EU Green Deal:***
- April 2024: adopted Directive (EU) 2024/1275 on the energy performance of buildings
- April 2024 : Revision of Construction Products Regulation (harmonised conditions for green transition)
- July 2024: The Ecodesign for Sustainable Products Regulation 2024/1781(ESPR) in force.
- EU Directive 2022/2464 of 14 December 2022 (CSRD) and Regulation 2020/852/EU (Taxonomy Regulation).

Legal drivers for collaboration II: Climate policies (b)

- ***Denmark:***
- Building Regulation (January 1 2023) § 298, subs. 1: "12 kg/m²"
- Political agreement of May 2024 on decarbonisation of the construction of buildings → from 2025 will result in stricter and broader green requirements
- Readiness of markets: Byggeriets Handletank for Bæredygtighed, Bygge- og anlægssektorens handleplan på vej mod bæredygtighed i byggeriet (January 2024).

Legal drivers for collaboration II: Climate policies (c)

“Fostering collaboration between all parties involved in construction projects at all stages of the infrastructure life cycle also plays an important role to optimise decarbonisation. Sustainable design relies critically on knowledge found in construction supply chains. **The legal framework for public procurement, contractual law as well as digitalisation measures should facilitate and promote such a collaborative approach** rather than an adversarial one.”

Pat Cox and Konrad Bergmeister (Ed.) “Decarbonisation of the transport infrastructure construction Joint Final Report from the industry and scientific experts Working Groups” (2024)

Challenges for collaboration II: Implementation of decarbonisation requirements (a)

- ***Procurement law.***
- (EU dir. 2014/24)
- Restricted tendering procedures
- Art. 72
- Procurement practices (disconnect)

Challenges for collaboration II: Implementation of decarbonisation requirements (b)

- ***Contract law:***
- AB 18 Clause 33 (1): Duty of cooperation and good faith
 - “ The parties have a duty to work together in good faith so that errors, delays and cost increases are avoided.”
- No (or few) standardized construction contracts for collaborative delivery
- No incentives, no shared risks, no mutual waivers/disclaimers
- No remedial actions for non-collaborative behaviour

Closing points

- Both legal *drivers* and *challenges* for collaborative delivery models
- Developing standardized practices for collaborative contracting is an industry task
- *Collaboration* with those who define market framework, including
 - public regulators and policymakers and
 - public procurers for digitally complex low emission projects



Thank you for your
attention

UNIVERSITY OF COPENHAGEN

