



SHEPHERD+ WEDDERBURN

## Management of Risk – disputes in offshore projects



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# Introduction

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- The tactical importance of certainty
- Key Issues:
  - Choice of law
  - Jurisdiction
  - Forms of Dispute Resolution



# Introduction

- There are a lot of moving parts:
  - multiple interfaces
  - long period to deliver the project
  - detailed consents
  - design development
  - difficulty of access
  - international delivery team
  - significant capital outlay



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## What does this mean for managing disputes?

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- Complex supply chains means that it can be harder to address issues which affect multiple parties;
- Time of resolution can be very important - a plethora of deadlines;
- Complex projects may mean complex disputes but not always – importance of flexibility;
- Differing contract conditions;
- Design development;
- Different approaches – understanding the dispute culture of the other parties can be important.

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# Choice of Law

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- Interface between Choice of law and Jurisdiction
- Choice of Law relevant to:
  - Substantive obligations under the contract
  - Terms of arbitration agreement or other form of dispute resolution
  - Law of arbitration – curial law

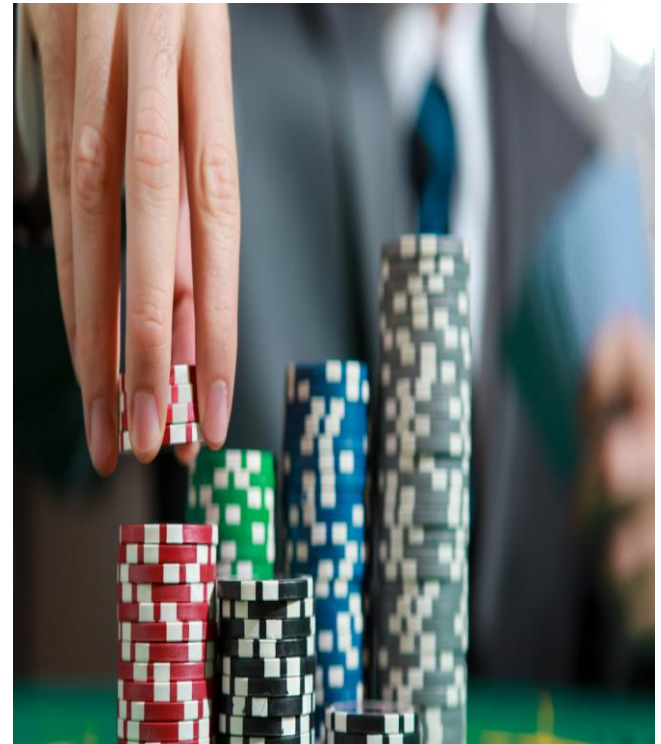


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# Law of the agreement

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- Choice of law
  - Importance of certainty
  - What happens if no express choice made?
  - Rome Convention in Europe
  - Exceptions to the Convention



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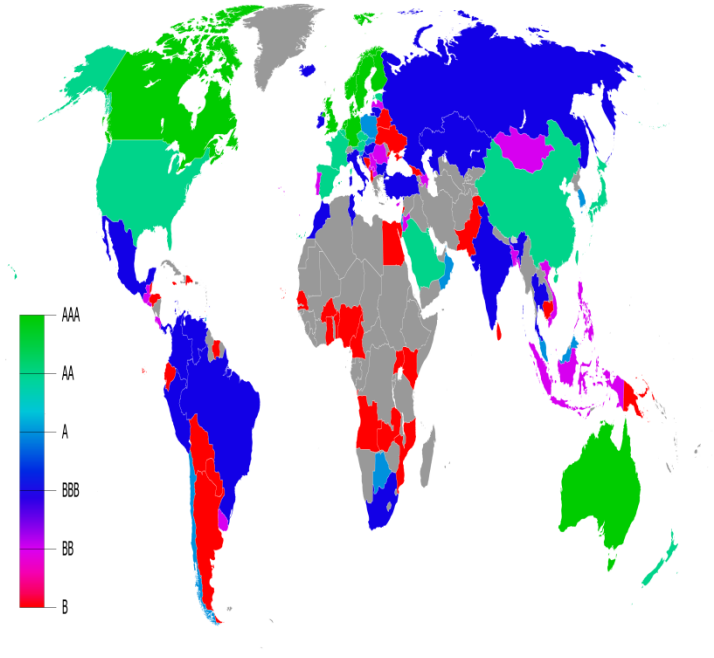
# Law of dispute resolution agreement/arbitration

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- Law of the dispute resolution agreement:
  - Not necessarily the same as the law of the contract
  - Governs the interpretation of the agreement itself
- Curial law in arbitration
  - Importance of certainty
  - Role of curial law

# Jurisdiction

- What's important?
  - Where do you want to have your dispute?
  - Location of witnesses etc.
  - Political considerations
  - Exclusive v non-exclusive jurisdiction





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# ADR

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- Commonly used forms:

- Negotiation procedure

- Mediation

- Expert Determination

- Arbitration



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# Negotiation Procedure

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- Issues to watch for:
  - Keep it simple
  - Who should undertake the negotiation
  - Should you include such a process?



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# Mediation

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- Key issues
  - Based on consensus
  - No binding outcome unless agreed
  - Flexible
  - A powerful tool if used correctly



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# Expert determination

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- Key Issues
  - What do you want resolved and by what kind of person
  - Mind the gap
  - Keep it simple
  - When should the decision be made?
  - Expert determination rules



# Arbitration

- Key issues
  - Tailor the process
  - Confidential
  - LCIA/ICC
  - Enforcement



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# Questions ?

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