Management of Risk – disputes in offshore projects

Presentation by David Anderson, Shepherd and Wedderburn LLP
Introduction

• 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
What does this mean for managing disputes?

- 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.
Choice of Law

- 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
Law of the agreement

- 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

- 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
ADR

- Commonly used forms:
  - Negotiation procedure
  - Mediation
  - Expert Determination
  - Arbitration
Negotiation Procedure

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

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

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Expert determination

• 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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