



AMERICAN ARBITRATION ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

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4:00-5:00**

International Construction Mega-Projects – Understanding the Issues, Challenges, Cultural Differences and Conflict Management Options

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Moderator:

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WHAT ARE INTERNATIONAL MEGA-PROJECTS?

- Cost above \$1 billion USD;
- An extended project schedule (typically greater than four years);
- Multiple and multi-national involvement of designers, engineers, contractors, equipment suppliers and specialty material vendors;



WHAT ARE INTERNATIONAL MEGA-PROJECTS? (CONT'D)

- Multiple specialty trade contractors and specialty trade workforces numbering in the thousands;
- Execution of technically complex project;
- Consortium financing and/or ownership, with multiple, multi-national project stakeholders and investors;



WHAT ARE INTERNATIONAL MEGA-PROJECTS? (CONT'D)

- Often Government involvement with enhanced political dimensions and risks; and
- Many cultural and social differences and risks.



SPECIFIC CHALLENGES ON THOSE PROJECTS

- Typically involve one or more alternative delivery methods, such as PC, Design-Build, CM at Risk, or CM/GC
- Risk matrix/clear allocation of project risks
- Management turnover
- Project evolution and contract/change management
- Managing cultural differences and varied language capabilities
- EPC Consortiums
- Proactive dispute avoidance and resolution
- Unique aspects of “First of a Kind” projects



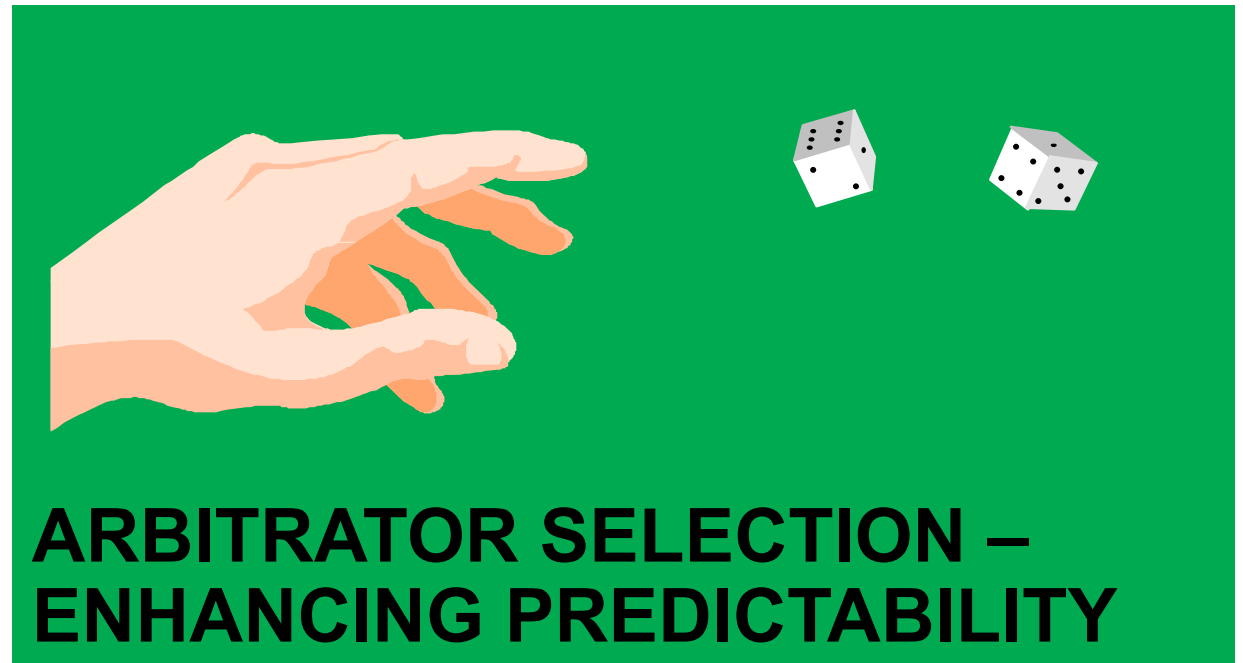
MANAGING DISPUTES DURING THE LIFE OF THE PROJECT

- Informal Negotiation
- DRB, DAB, Partnering, Senior Management Meeting
- Mediation and Step clauses
- Direct to arbitration
- Statutory Adjudication
- Applicable Rules
- Maintaining a paper trail



SELECTING YOUR ARBITRATORS

- Selection processes
- Strategic nature of arbitrator selection
- Arbitrator experience, background and training
- Former Judges, In-house Counsel, Former Litigators, and Arbitration Specialists
- Subject matter expertise
- Experience as arbitrator
- Influence on the Chair
- Panel Harmony



CIVIL VS. COMMON LAW TRIBUNALS

- Document Production & Exchange – Costs – E-Discovery
- Saving money reducing costs
- Differences in oral testimony – Presentation of Evidence
- Differing views on the independence of the experts (dirty vs. clean experts)
- Expert hot tubbing – challenges regarding expert evidence
- Attorney Client and other Privileges
- Allocation of Costs – “American Rule” – “English Rule”



Written Statements:

- Typical in International cases; gaining wider acceptance in domestic cases
- Whose testimony is it, the witnesses or the lawyers
- Same question arises in the context of the extent to which witness preparation is carried out/permissible. Real differences between jurisdictions and therefore expectations of tribunals.
- Saves hearing time, but does it save money?
- Do arbitrators devote sufficient pre-hearing time to digesting the witness statements?

WITNESS EVIDENCE (CONT'D)

- Do arbitrators study the exhibits referred to in the witness statements?
This issue arises potentially more broadly – if hearings are truncated as increasingly the trend in international arbitration where a mix of civil and common law approach encouraged – how to ensure Tribunal is familiar with relevant documentation.
- Given the witness testimony will only be heard primarily in on cross examination, can witness statements overcome negative impressions derived from oral cross-examination?
- How much weight is given to witness testimony, whether in statement or oral?





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