

Dealing with Disputes on Complex Projects

A presentation in association with Young Arbitral Women Practitioners and Equal Representation in Arbitration Pledge Young Practitioners' Subcommittee

Presented by:

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Who we are



Nelida Abi Saab Managing Consultant | Construction | London

Nelida has worked on quantum and delay cases in the context of arbitration and adjudication, where she has assisted experts in undertaking analysis, drafting reports and preparing for and attending hearings. She has advised on matters related to project programme and delay, including entitlement to extension of time, critical path analysis, and incidence and causes of project delays. She also has experience providing analysis and advice on construction quantum matters such as assessment of variations/additional work, loss and expense claims (i.e. prolongation/disruption/acceleration), assessments at contract termination and cost to complete claims on large construction and manufacturing projects worldwide, and loss of profits.



Athanasia Arapogianni Associate Director | Energy & Climate | London

Athanasia has 12 years of international experience in the energy industry. She focuses on conducting extensive research and analysis on various aspects of energy markets and pricing. She has led projects and prepared expert evidence in international arbitrations procedures concerning, inter alia, disputes on gas pricing, evolution of energy and gas markets, regulatory reforms and quantification of damages. Athanasia has supported experts and clients throughout arbitration processes, from research, analysis and expert reports to hearing procedures. Her clients have included global and national energy companies, utilities and regulatory bodies. In addition, Athanasia has a technical background in mechanical engineering and specifically in wind energy. She worked for almost four years as a senior research officer at the European Wind Energy Association.



Pascale Leymin Director | Economics & Damages | London

Pascale is a forensic accountant specialising in dispute resolution and expert witness work. She focuses on the quantification of damages and loss, mainly in the context of international arbitration, involving financial modelling and complex financial analysis. Her experience includes transaction-related and commercial matters across a range of industries. Before joining BRG, Pascale worked at a Big Four firm in London, where she was a part of the UK disputes practice. A native French speaker, Pascale gained experience in project management while working in business consulting services at a global information technology firm in Paris.

1

Introduction to complex projects

Difference between *complex* and *complicated*

Complicated systems

- Lots of interrelated parts.
- Each part is defined.
- The interrelations are clearly defined.

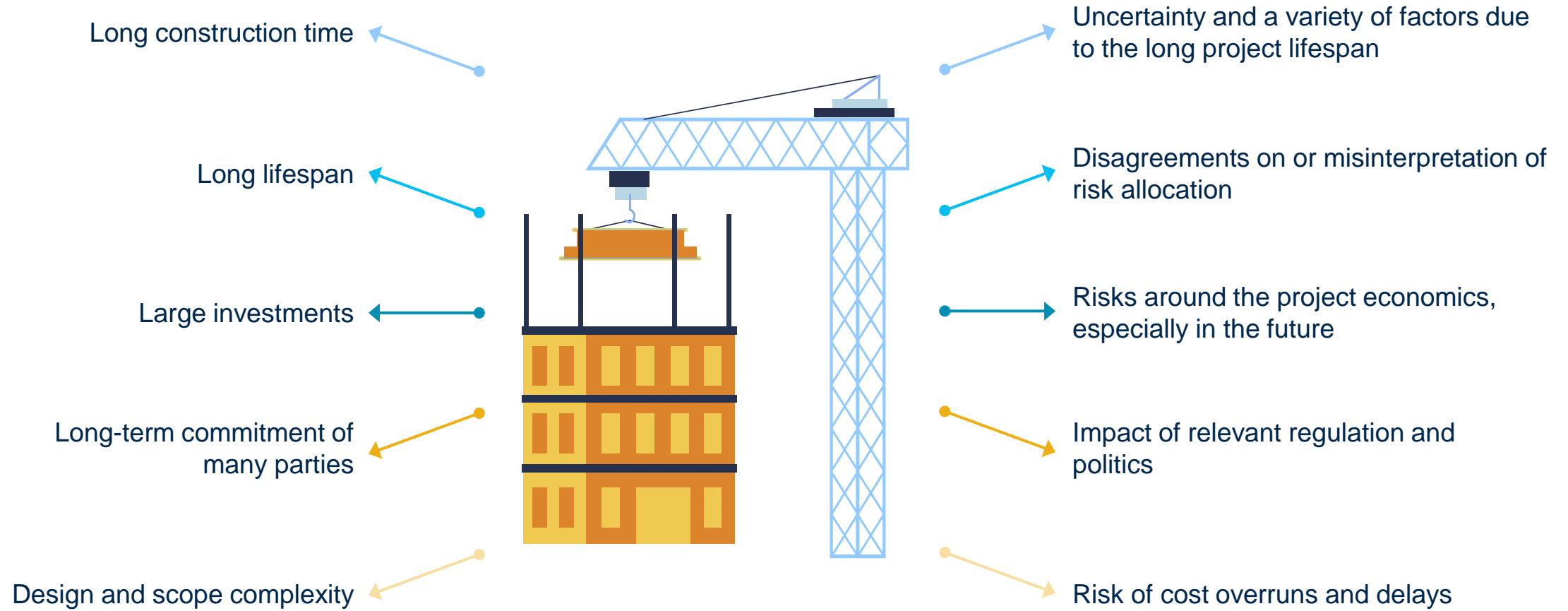
→ A change in one area will always create an expected and predictable change in another area.

Complex systems

- Lots of interrelated parts.
- Each part is defined.
- The interrelations are not clearly defined and not as predictable.

→ A change in one thing is likely to cause other changes throughout the system, many of which are hard to predict or even to trace once they occur.

Complex projects – Common characteristics and risks



2

What makes disputes
on complex projects
difficult?

Selection of causes of disputes on complex projects

1

Tender and procurement

The time allowed to review the tender documents and quote for the project is often too short to allow proper risk assessment, programme, methodology, contract review, etc.

2

Design

Inaccurate or incomplete design is a common cause of disputes.

3

Coordination

Complex projects involve many specialist trades requiring extensive and challenging coordination, meaning conflict often arises.

4

Changes in the operating environment

Changes in the economical, political, regulatory, environmental or technological landscape can impact the economics of projects and lead to disputes between the parties.

5

Contractual issues

Differences may arise in the parties' perception of the risk allocation under the contract, and/or in their interpretation of specific language, which may be unclear or ambiguous.

6

Variations

The nature and number of variations can transform a relatively straightforward project into one of unmanageable complexity.

7

Delays

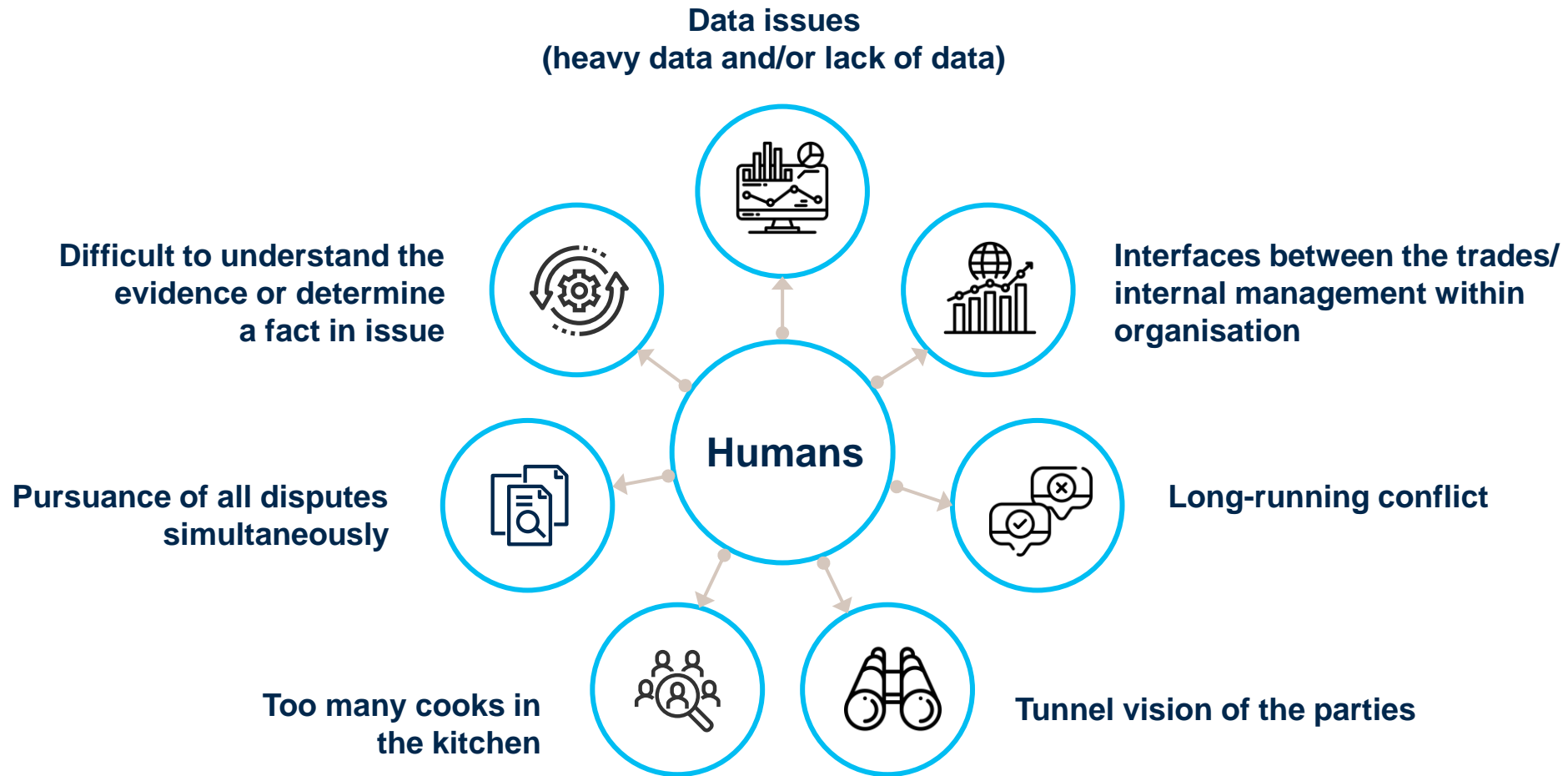
The question of delay is often raised towards the end of the contract. This makes the examination of the true causes of delay problematic and inevitably leads to disputes between the involved parties.

8

Cashflow and payment issues

The requirement for large investments at the outset can add stakeholders to projects. Cash-flow and payment issues experienced by contractors can compound other issues.

What makes disputes on complex projects difficult?



What do you think makes disputes on complex projects difficult?

A word cloud on a light blue background. The words are of various sizes and colors (teal, red, green, purple, brown). The most prominent words are "data" in teal, "time" in red, and "change" in green. Other visible words include "management", "project", "pressure", "flow", "resources", "amount", "invested", "technical", "budget", "policy", "cash", "high", "variations", "time available", and "unsure.".

data time change
management project
pressure flow resources amount
invested technical budget policy cash high
variations time available unsure.



3

Key issues faced by
experts in arbitration

Key issues faced by experts

Data

- Poor records/lack of data
- Contradictory or imperfect information
- Heavy data projects
- Last-minute provision of data from the client/delay on submission of important documents from opposing party

Parties involved

- Reluctance of project team to assist
- Witness no longer available
- Cooperation between the experts

Appointment

- Getting first appointment
- Diversity
- Rushed appointment

Processes: independence and impartiality

- Understanding the role and duty of experts
- Conflicting or unclear instructions between the experts
- Reliability of witness statement

Analysis: uncertainty and complexity

- Dealing with uncertainty
- Use of hindsight
- Specific causal links
- Simplifying complexity without jeopardising quality and completeness



What issues do you face as an expert dealing with complex disputes?

notenoughtime
pressure variations
change client
instruction cost data
defining-counterfactual



What issues do you face as an arbitrator/lawyer dealing with an expert on complex disputes?



Thank you.

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