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# Practical Considerations in Multi-Party Arbitration

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# Overview

- Is Arbitration Worth It?
- The Vexing Issue of Consent
- Multi-Party/Multi-Contract Situations -  
Avoiding a Multiplicity of Proceedings
- Other practical considerations

# Is Arbitration Worth It?

- A Question to ask yourself BEFORE a dispute arises

# Is Arbitration Worth It?

- Litigation vs. Arbitration
- Domestic vs. International
- Type of Agreement/Likely Disputes
- What are your interests?

# The Vexing Issue of Consent

- Consent is the cornerstone of arbitration
- Non-signatories - Can you bind them?
  - *Liberty Reinsurance Canada v QBE Insurance & Reinsurance*, [2002] OJ No 3599 (ONSC)
  - *MJS Recycling Inc. v Shane Homes Ltd.*, 2011 ABCA 221
  - *Javor v Francoeur*, 2003 BCSC 350, aff'd 2004 BCCA 134
  - *CE International Resources Holdings LLC v Yeap Soon Sit*, 2013 BCSC 1804

# Multi-Party Situations

## Avoiding a Multiplicity of Proceedings

- Party interests not aligned - Practical Issues
  - Need to adapt standard clauses to account for more than 2 positions
  - Don't know in advance how many parties will come to the party
  - Can't predict when parties will join
  - Multiple, overlapping (in content but not time) disputes may be commenced
    - *Western Oil Sands Inc. v Allianz Insurance Co. of Canada*, 2004 ABQB 79
    - *Pricaspian Development Corp. v BG International Ltd.*, 2016 ABQB 611
  - Clauses will be long(er) than a standard institutional clause and require skill to draft

# Multi-Party Situations

## Avoiding a Multiplicity of Proceedings

### Consolidation & Joinder – Increasing the Odds

- Party interests not aligned - Practical Issues
  - Use administered arbitration
  - Broad scope of dispute, require notice to all contracting parties
  - Consider process for appointment of arbitrators
  - Allow parties to commence arbitration either individually or with others
  - Specifically provide for all (substantially related) claims, counterclaims or crossclaims by all parties to be notified to all other parties within a specified period of time
  - Confirm that joined or intervening parties shall be bound by the award even if they do not participate



# Multi-Contract Situations

## Avoiding a Multiplicity of Proceedings

- Set groups of contracts from the outset vs. further separate contracts
- Practical considerations
  - All related contracts must have identical or compatible arbitration clauses
  - Parties must provide a procedure for consolidation
  - Parties must also address multi-party issues

# Multi-Contract Situations

## Consolidation & Joinder

- Use administered arbitration
- Possible solutions
  1. Stand-alone consolidation protocol signed by all parties to all related agreements
  2. Consolidation clause - a compatible and cross-referenced arbitration clause
  3. Consent to consolidation

# Other Practical Considerations

- Institutional rules
  - ICDR
  - ICC
  - Other
- Choosing the place of arbitration
- Costs