



Construction, Engineering and Infrastructure virtual seminar: Marriages of convenience and being "stuck in the middle with you" | 4 September 2020

3:00 p.m.

Welcome and Opening remarks

Speaker:

Alex Wong, Office Managing Partner, Hogan Lovells Lee & Lee, Singapore

We set the scene for the webinar by introducing:

- The various "marriages" which clients may choose, find convenient or be forced into: consortium and joint venture partners; (nominated) subcontractors; approved suppliers; satisfying local content regulations; interfaces with third parties (project managers, contract administrators, other contractors); co-defendants etc.;
- Divided loyalties: the enemy within – when different business lines of the same entity or subsidiaries of the same group work on different aspects of the project; and
- Second marriages: terminating and replacing contractors and subcontractors; changes in ownership and control.

3:10 p.m.

Part 1 : Divorce

Speakers:

Roberta Downey, Partner and Global Head of Construction and Engineering, Hogan Lovells, London

Sean Brannigan QC, 4 Pump Court, London

"Divorce is expensive. I used to joke they were going to call it 'all the money', but they changed it to 'alimony'." — Robin Williams

This session will focus on what happens when marriages fall apart and you find yourself "stuck in the middle".

By reference to case studies regarding a fictional offshore windfarm project, the speakers will discuss:

- internal challenges – the friendly fire of internal emails; finger pointing; engineering critical assessments and root cause analysis etc.;
- external challenges/strategic decisions – can you afford to divorce or is there a wider relationship to be preserved?; what is needed to defend or pursue a claim – cooperate with the partner who let you down or distance yourself?;

- how to mitigate the risk of being caught between two stools; preserving the ability to fight another party on another day – cooperation agreements, restricted use of material from first proceedings and preserving witness credibility in subsequent proceedings;
- managing competing proceedings – divided resources; different tribunals reaching different findings and decisions as to recovery; multi-party dispute resolution clauses; joinder and consolidation provisions; and
- termination, suspension and insolvency – the practicalities of enforcing contractual rights to ensure you can complete the work (for example, access to documents/equipment/site/personnel; injunctions; engaging an alternative contractor or stepping in (partially or completely); what records do you need and what steps should you take to maximise your chances of recovering the extra costs and losses?

3:50 p.m.

Part 2: Married life

Speakers:

Tim Hill, Partner, Hong Kong

Alex Wong, Office Managing Partner, Hogan Lovells Lee & Lee, Singapore

"By all means, marry. If you get a good wife, you'll become happy; if you get a bad one, you'll become a philosopher." — Socrates

This session will focus on live project management – how to make the relationship work day-to-day, to deal with issues before they escalate and to put in place some protections should you later need them.

By reference to case studies regarding a fictional offshore windfarm project, the speakers will look at dealing with the practicalities of:

- underperforming partners – the danger of blurring lines of responsibility when providing support; joint and several liability; proportionate responsibility;
- insolvent partners – the ramifications of allowing them to go bust, propping them up, acquiring them, stepping in, terminating;
- the dual role of the contract administrator (employer's agent and decision maker) – when (s)he must act impartially and when (s)he might take the employer's interests into account; challenging decisions; seeking the contract administrator's removal;
- financiers – the dominant concerns and objectives driving the behaviour of parties funding the project and how they differ depending on private or public sector; funders' advisers and their impact on execution;
- payment/non-payment – the factors to consider when deciding whether to exercise contractual remedies like a call on project security; suspension, termination and the risk of wilful default;
- good faith obligations (express and implied) and similar provisions;
- safeguarding interests when exercising contractual discretions and granting concessions; avoiding wider waiver; the estoppel minefield; and
- document management – communications protocol; good record keeping; project databases; the importance of notices; keeping on top of project correspondence; the danger of expressing opinions with limited and possibly unreliable information.

4:30 p.m.

Part 3: Q&A with Professor Doug Jones AO

Chaired by:

Kent Phillips, Partner, Hogan Lovells Lee & Lee, Singapore

Interactive Q&A session with Professor Jones, in which attendees and speakers can ask Professor Jones questions in relation to the topics discussed during the course of the webinar and how the issues that can arise can be effectively resolved by arbitration proceedings.

5:00 p.m.

Closing remarks
