

Project Disputes – Techniques to Avoid or Resolve Them Before or During Your Project

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Common Causes of “Major Project” Disputes

- Changes to the **Project Delivery Method**
 - e.g. fixed-price conversion to cost plus
 - Partial or total contract conversion
- **Change Orders & Approvals**
- Interim “without prejudice” **payments**
- Penalties / Relevance of **delay**
 - with practical (real) examples of each

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Changes to the Project Delivery Method

- Be cautious of **interim** changes
- **Document** the change carefully
- Assume that all **terms** of the original contract need to be reviewed
- Practical (real) examples
 - Supervision and reporting structures
 - Labor rates

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Change Orders and Approvals

- Obviously, care needs to be taken in **drafting** change orders:
 - Tie-back clearly to the language of the contract
 - Assume that all the clauses of the contract might be impacted by the change, and review accordingly
- **Silence is rarely golden**
 - do not ignore requests for approval
- **Constant dangers of waiver or estoppel**

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Interim “Without Prejudice” Payments

- Can be a useful method of facilitating the course of a project
- However, danger of waiver or estoppel
 - in-house legal teams should be involved from the outset
- Realistic prospect of recovering sums in a subsequent dispute?

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Penalties / Relevance of Delay

- Awareness of differing legal approaches to **penalty clauses**
- Conflation of **delay claims** with penalty clause claims
 - and the risk of under (or over) recovery
- Taking care when **complaining** of “delay” throughout the course of the project

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