

### **Unique Features of Public-Private Partnership (P3) Structure**

### Complexity of Relationships

- · Concessionaire (i.e. Project Company or "Project Co")
- · Public Authority
- Equity Investors
- Lenders
- · Design Build Contractor
- Subcontractors
- Operating (and Maintenance) Entity

### **Unique Features of Public-Private Partnership (P3) Structure**

- Intertwined Interests
  - · equivalent project relief
  - drop-down provisions
  - "no better or worse" provisions for Project Co
  - contractual delay damage provisions (akin to liquidated damages)
  - unique terminology that passes up and down the project structure: *compensation events, relief events, supervening events*

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## **Unique Features of Public-Private Partnership (P3) Structure**

Long-Term Nature of Relationship

- limited sources of P3 work
- joint venture relationships and partnerships among contractors with capacity to take on P3 projects
- · multiyear design and construction phase
- mutual interest in project's success not just through construction phase
- · operation and maintenance contracts
- "scorched earth" approach to litigation must be weighed carefully in this context!!!

### **P3** Dispute Resolution Procedures

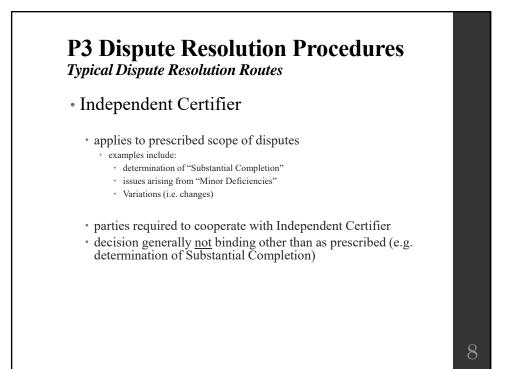
- Unique Features
  - complex (typically 15-20 pages, independent of procedural rules)
  - standardized (but updated from time to time)
  - · contingent upon nature and quantum of dispute
  - tiered

## **P3** Dispute Resolution Procedures

**Typical Dispute Resolution Routes** 

#### Amicable Resolution

- first step will be a prescribed and specific requirement for delivery of a written notice of dispute
  - *Practice Tip:* Don't let complexity of contract detract from paying careful attention to notice requirements. Case law contemplates strict enforcement of notice requirements (*Corpex* and *Technicore* decisions would presumably apply to P3 contracts)
- "frank, candid and timely disclosure" for discussions:
  - first among party representatives
  - next among senior officers
  - discussions governed by prescribed timelines
  - · if discussions fail, next step may depend upon nature of dispute

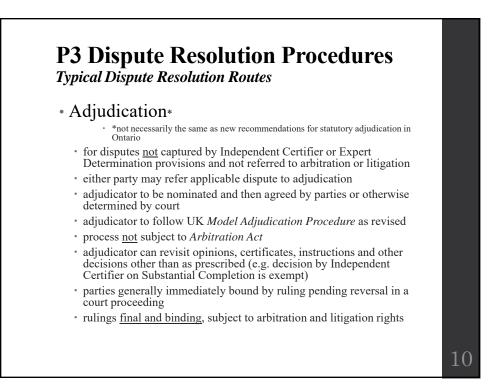


# **P3** Dispute Resolution Procedures

Typical Dispute Resolution Routes

#### Expert Determination

- prescribed timelines and process for appointment of expert who satisfies requisite qualifications
- can apply to court for appointment if no agreement
- applies to prescribed scope of disputes
  examples include tender and estimate issues
- expert determines process, with wide discretion on formalities, including taking of evidence
- · expert required to give reasons for decision
- decision of expert <u>is</u> "final and binding", but subject to arbitration and or litigation rights

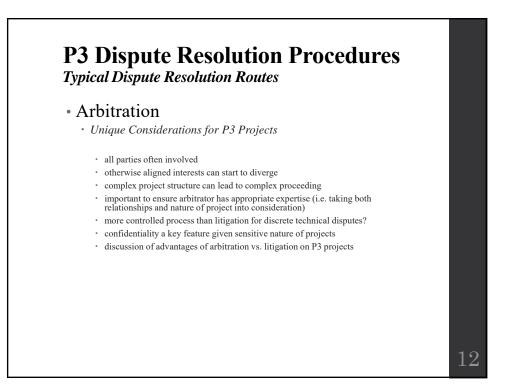


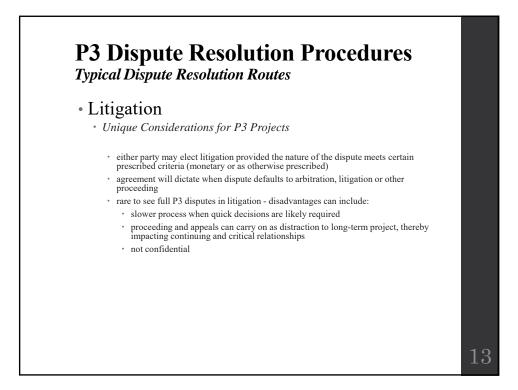
## **P3** Dispute Resolution Procedures

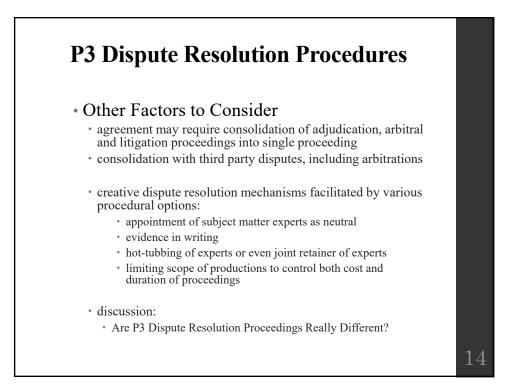
**Typical Dispute Resolution Routes** 

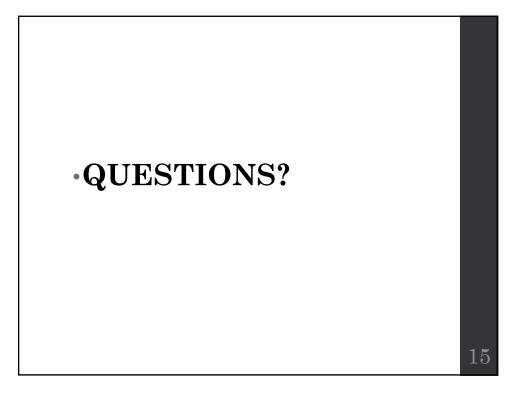
#### Arbitration

- disputes that meet certain monetary or other prescribed criteria (review provisions <u>carefully</u>) may be referred to arbitration by either party
- · strict procedural requirements for timing and form of notice
- documents and information submitted for Expert or Adjudication processes <u>not</u> admissible in arbitration (or litigation)
- Arbitration Act applies other than as otherwise set out in agreement
- · arbitration panel determines procedural rules
- · discretion to award costs
- decision final and binding











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