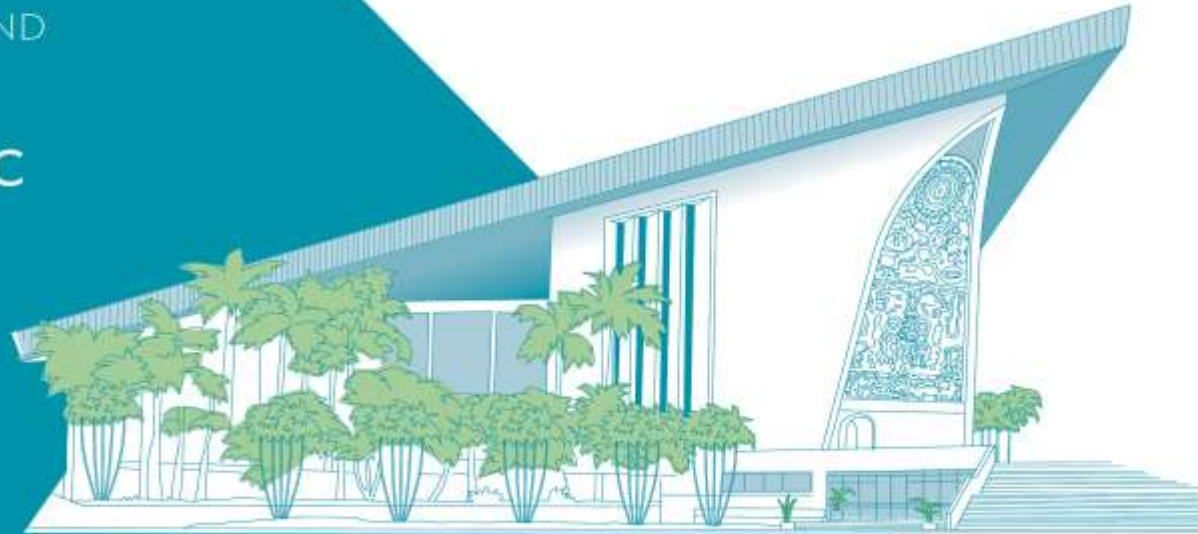




INTERNATIONAL MEDIATION AND ARBITRATION CONFERENCE

2nd South Pacific International Arbitration Conference

25–26 March 2019
Stanley Hotel, Port Moresby
Papua New Guinea



RESOLVING CROSS BORDER COMMERCIAL DISPUTES
Bronwyn Lincoln, Corrs Chambers
Westgarth
25 March 2019

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Resolving cross border commercial disputes

- Why are cross border disputes different?
- What are the options for resolving disputes?
 - Consensual and/or voluntary process
 - Determinative process
- How do you “choose” the process?
- What other factors are important?
- How do you measure the effectiveness of the dispute resolution process?



Why are cross border disputes different?

- Enforcement is key to protecting investment
- Cultural sensitivities can impact the process and outcome
- There are geographical and procedural challenges

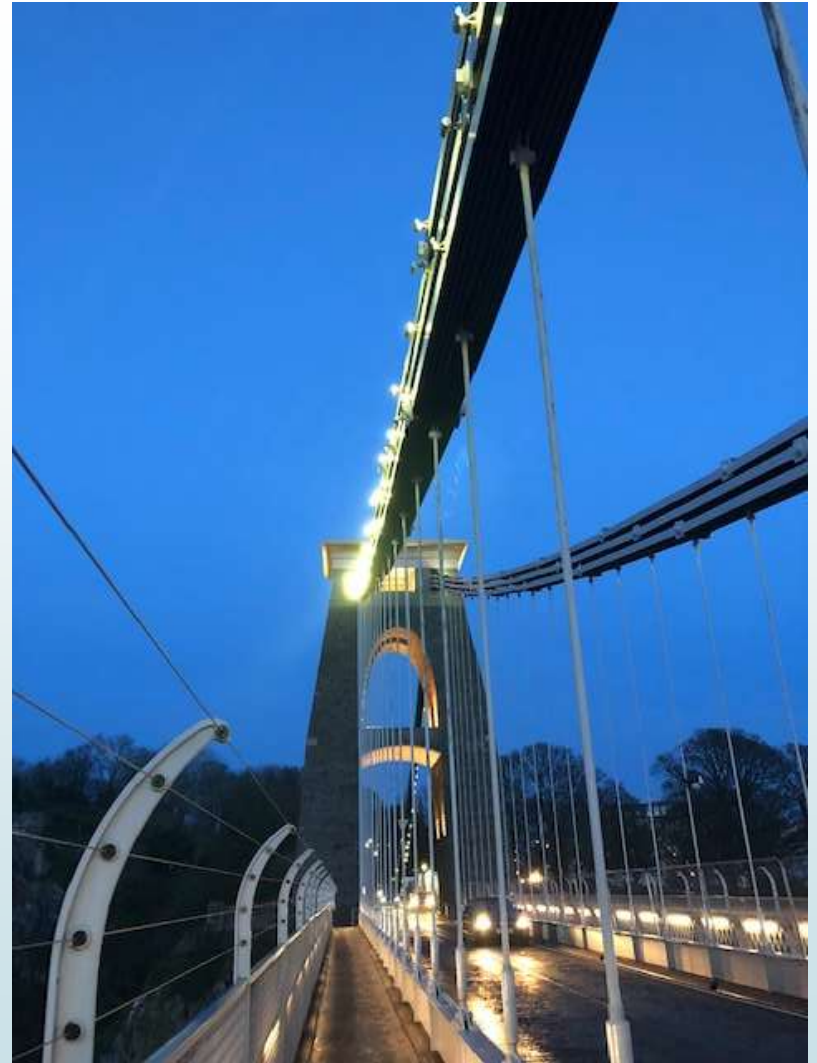


What are the options for resolving disputes?

- Negotiation
- Mediation or conciliation
- Litigation
- Arbitration
- Other bespoke processes such as expert determination or dispute boards

Choosing the process

- Who and where are the parties?
- What is the nature of potential disputes?
- What jurisdictions are involved?
- Where are the key assets?
- Is confidentiality important?
- Will you need urgent conservatory measures?



Other important factors

- The need for an ongoing commercial relationship
- Existence of related contracts
- Proportionality of dispute process to likely quantum of dispute
- Prospects of enforcement
- Need to accommodate cultural sensitivities



Effectiveness of the process

Measures include:

- Duration of proceedings
- Impact of proceedings on 'business as usual'
- Efficiency in pleadings, disclosure, fact and expert testimony
- Securing a timely award or judgment
- Ease of enforcement

