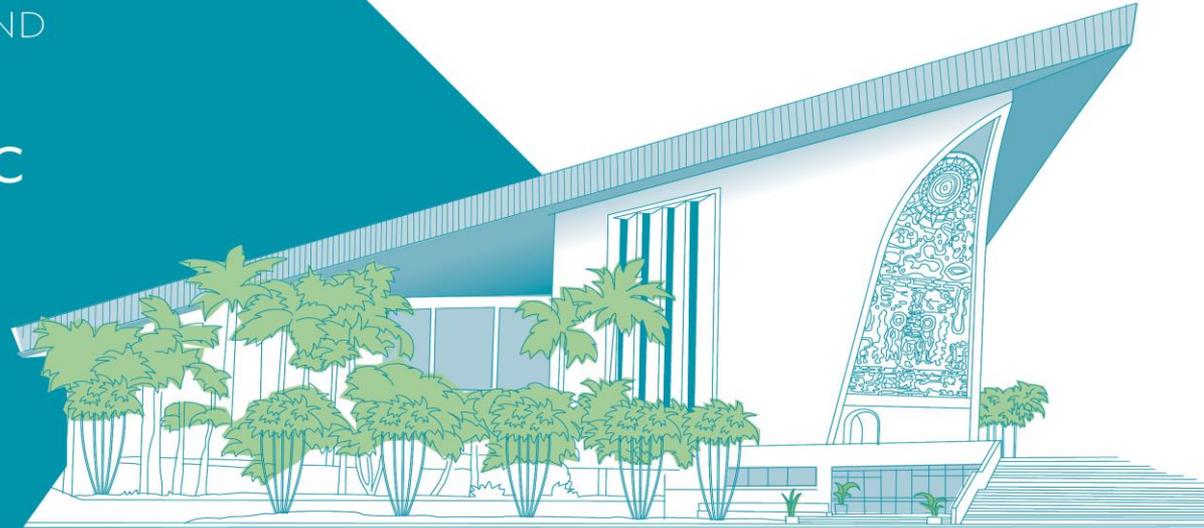




INTERNATIONAL MEDIATION AND
ARBITRATION CONFERENCE

2nd South Pacific International Arbitration Conference

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Stanley Hotel, Port Moresby
Papua New Guinea



EXPERTS IN FINANCIAL DISPUTES

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Importance of experts in Financial Disputes

- ▶ There are two 'categories' of experts:
- ▶ **Expert Arbitrators**
 - Expertise in financial products give Parties confidence that the arbitrator understands complex issues in dispute.
 - PRIME Finance expert list
- ▶ **Independent Experts**
 - Expert witnesses who give evidence on specific issues in dispute.

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Role of the independent expert

- To give a party an early assessment of prospects / exposure
- To give the Tribunal an impartial opinion on the issues in dispute
- Typically appointed by the Parties, so on a given issue, there would be two experts.
- Tribunals may appoint a single expert directly, but usually only with the Parties' consent (e.g., SIAC Rules 2016, Rule 26)



When are experts witnesses used (I)

- ▶ **When there are disputed issues of liability that require specific expertise for resolution**
 - Features of the product
 - Market practice is very significant in financial disputes
 - Suitability assessment
 - Commercial rationale for the transaction
 - Sales – reasonableness of selling process
 - Trading – reasonableness of trade execution
 - ISDA interpretation analysis
 - Causation



When are experts witnesses used (II)

► When there are disputed issues of quantum

- For complex financial products, you will typically need an expert to give evidence on quantum
- Close-out process / netting
- Assessment of market data
- Interest payments
- Opportunities to mitigate loss
- Present value and future variables



Expert procedure

- ▶ A typical procedure for Party-appointed experts would be:
 - First round of expert reports
 - Without prejudice meeting of experts
 - Joint report, setting out areas of agreement and disagreement
 - Supplemental report, commenting on areas of disagreement.
- ▶ Cross examination during trial
- ▶ Expert witness conferencing or 'hot-tubbing'