

# JOINT UNCITRAL-LAC CONFERENCE 2019

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**WOLF THEISS**

# TOPICS

## DEFINING CONSTRUCTION DISPUTES

- Allocation of Risks
- Contractor's Claims and Remedies
- Employer's Claims and Remedies

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## DEFINING CONSTRUCTION DISPUTES

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### Allocation of Risks (1)

- ❖ Principles of allocation
  - ✓ Control
  - ✓ Forseeability
  - ✓ Bearing
  - ✓ Benefits or sufferings
- Consequences on procurement

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## DEFINING CONSTRUCTION DISPUTES

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### Allocation of Risks (2)

- ❖ Specific risks
  - ✓ Quantities
  - ✓ Information provided by the Employer
  - ✓ Unforeseen ground conditions
  - ✓ *Force majeure*
- Indemnities and insurances

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## DEFINING CONSTRUCTION DISPUTES

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### Contractor's Claims and Remedies

- Extensions of Time (EoT)
  - Variations
    - Scope of contract
    - Price adjustment
  - *Force Majeure*
  - Payment
    - Non-payment, late payment
    - Financing charges, suspension, termination
  - Termination
    - Payment
    - Return of retention money, guarantees, etc.
- Procedure (notices, waivers, etc.)!

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## DEFINING CONSTRUCTION DISPUTES

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### Employer's Claims and Remedies

- Claims related to timing/completion
  - Liquidated damages
- Claims relating to quality of works
  - During performance
  - After completion/taking-over
  - After defects liability period
- Termination
- Payment/Set-off
  - Withholding payments
  - Withholding retention moneys
  - Setting off liquidated damages

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**THANK YOU FOR YOUR ATTENTION!**

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