5th Annual Arbitration and Investment Summit
- Caribbean, Latin America and Other Emerging Markets and Other Emerging Markets
Factors driving choice of **ARBITRATION** in **ADVERSERIAL** Energy Sector context

**Litigation**

Judge or jury - court issues binding decision

**PROS**
- Formal. Evidence / time to support argument.
- Verdict is final and binding. **Winner / loser.**
- Open and transparent process.
- **Enforceable** in same jurisdiction.
- Creates precedent for similar disputes.

**CONS**
- National Courts – no **neutral ground**
- Judges (or jurors), are ‘**foreign**’ parties to the dispute. **No detailed expertise.**
- Lack awareness of oil industry technicalities.
- Very high cost and time consumption.
- Open to appeal, added **cost and time**
- Open to the public – Oil industry closely knit demanding **confidentiality.**
- Detrimental to the **relationship** - business divorce
- Binding decision –no middle ground / mutual consensus.

**Arbitration**

Binding - mutually agreed third-party / institution. Neutral.

**PROS**
- Select arbitrator or institution based on expertise. (40%)
- Private - confidentiality is maintained - often crucial. (33%)
- Outcome has global enforceability. New York Convention.
- Finality. Relationship maintained. (65%)
- Lower **cost** likely consumes less **time.**
- Flexible / Customised. choose venue / platform. Neutral ground

**CONS**
- One party can prolong the proceedings. Increasing cost.
- Potential to be as formal as litigation in case of adverse parties.
- Limited scope of appeal.

**Expert determination**

Expert or umpire vast knowledge. Technical / financial claims.

**PROS**
- Expert - well aware and knowledgeable. Confidence.
- Confidentiality maintained. The business relations maintained.
- Potentially binding.
- Faster and cheaper. Less formal - set of rules and regulations.

**CONS**
- Not easily challenged.
- Not easily enforceable.
ARBTRATION in Energy Sector

1. Cost and Time - Efficient
   - Institutional
   - Ad Hoc

2. Integrity - Certainty
   - Expertise - Technical
   - Track Record / Reputation
   - Confidential
   - Enforceable

3. Practical
   - Infrastructure
     - Human
     - Physical

   - Specialist Energy Sector Knowledge
   - Size of market, Sector Capital Flows
   - Reputation / Track Record - Routinely enforced
MAP SHOWING PREVIOUS PETROLEUM EXPLORATION LICENCES IN THE BAHAMAS

Source: The Commonwealth of The Bahamas
Gravity Data from Sandwell et al. (2013); image processing courtesy of Stephen Leslie

Knowledge

Regional Hydrocarbon Distribution Map ... shows & production
## What Would The Project Benefits Be?

### Dividing the Pie

<table>
<thead>
<tr>
<th>Phase</th>
<th>Seismic &amp; Geologic Studies</th>
<th>Exploratory Drilling</th>
<th>Appraisal Drilling</th>
<th>Development Planning &amp; Construction</th>
<th>Development and Production</th>
</tr>
</thead>
<tbody>
<tr>
<td>~ 5 - 10+ years</td>
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<td>~ 1 year</td>
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<td>~ 1 - 3 years</td>
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<td>~ 3 - 6 years</td>
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<tr>
<td>~ 20 - 40 years</td>
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<table>
<thead>
<tr>
<th>BPC</th>
<th>Gov.</th>
<th>BPC Return on Investment: $20 Billion</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50 million</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>$60 - 160 million</td>
<td>$0</td>
<td>$400 - 600 million</td>
</tr>
<tr>
<td>$400 - 600 million</td>
<td>$0</td>
<td>$multiple billion USD</td>
</tr>
<tr>
<td>$multiple billion USD</td>
<td>$0</td>
<td>$ tens billion revenue</td>
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</tbody>
</table>

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<thead>
<tr>
<th>Status</th>
<th>Estimated Typical Costs Based upon Exploration Success</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completed</td>
<td></td>
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<tr>
<td>In Progress</td>
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</tbody>
</table>

**Bahamas Government Revenue:** $20 Billion

**No financial risk, No cost to Government**

**BPC:**
- Supply contracts: Rigs
- Education: Opportunity
- Training: Jobs; International options
- Royalties: Long term revenues
- Debt burden: Relief
- Development: Growth
- Fuel and Power: Cheaper, lower costs
- Wealth Fund: Generations to come

**Projected revenue assumes 1 billion bbls developed at $80/bbl oil price**
Oil price – long term contracts
- Cancelled projects
- Increasing level of trade and competing projects
- Falling demand in context of excess supply
- Complex value chain
- Long term relationships

Commercial disputes
- Complexity
- Contractual, Financial, Technical

→ Expert Determination

Licence / Oil Field Boundary Disputes - Unitisation
Forties Field Licence Boundary Disputes - Unitisation

- Geology / Nature deciding factor
- Maximise economic realisation
  - Efficient operations
  - Single field operator
  - Common reservoirs
  - Well locations
- Global relationships

Unitisation disputes
- Legal, Technical, Tenure
- Dominant partner

Litigation
International Boundary Disputes - Determination

→ Changing nation status / Government
→ International relationships
→ Sovereign Wealth Fund
→ International precedent
→ Other examples
  • China - Spratly Islands
  • Nigeria - Sao Tome
  • Caspian Sea

International disputes
• Fairness?? Reputation

→ Arbitration
Oil Exploration – Oil Development Potential in The Bahamas?

- Attractive to BPC
  - Size of fields
  - Low cost environment
  - Legislative and fiscal stability
  - Technology application

- Licences 2007- renewed 2013
  - Drilling to commence 2015
  - +$80 million spent to date
  - Nassau based office & staff

- FLORIDA
- CUBA
- BAHAMAS

- Cay Sal #1
- Great Issac #1
- Andros #1
- Long Island #1
- Doubloon Saxon #1
1. Specialist knowledge
   • Centre of expertise – Technical, Legal and Financial
   • Demonstrated industry activity and capital investment

2. Specialist knowledge
   • Centre of expertise – Technical, Legal and Financial
   • Demonstrated industry activity and capital investment

3. Specialist knowledge
   • Centre of expertise – Technical, Legal and Financial
   • Demonstrated industry activity and capital investment

4. Conventions
   • National signatory
   • Global enforceability

5. Confidentiality / Confidence
   • Integrity of institutions / system
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