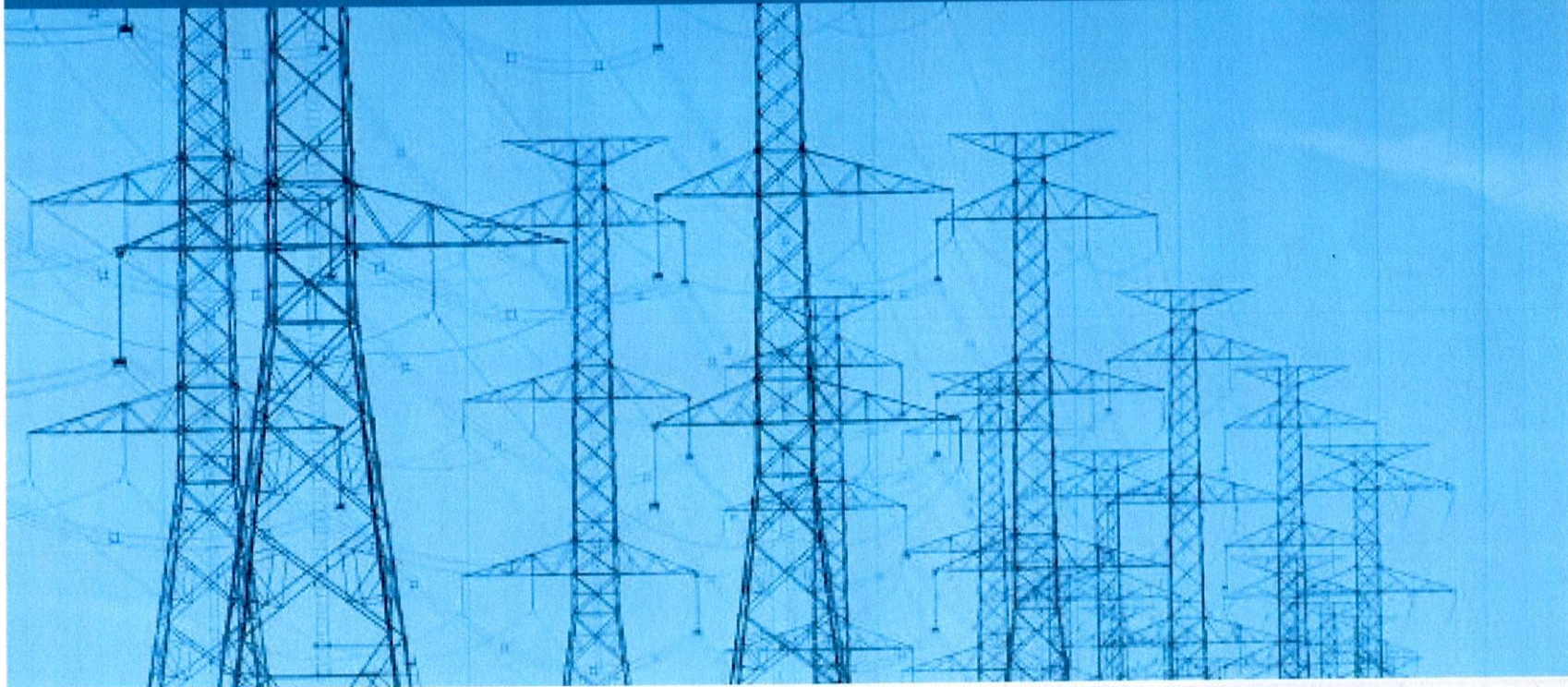


WHITE & CASE



## EPC Contracts

ESQ LEGAL – POWER / PROJECT FINANCE WORKSHOP

Olaniwun Ajayi LP

Christopher Wong



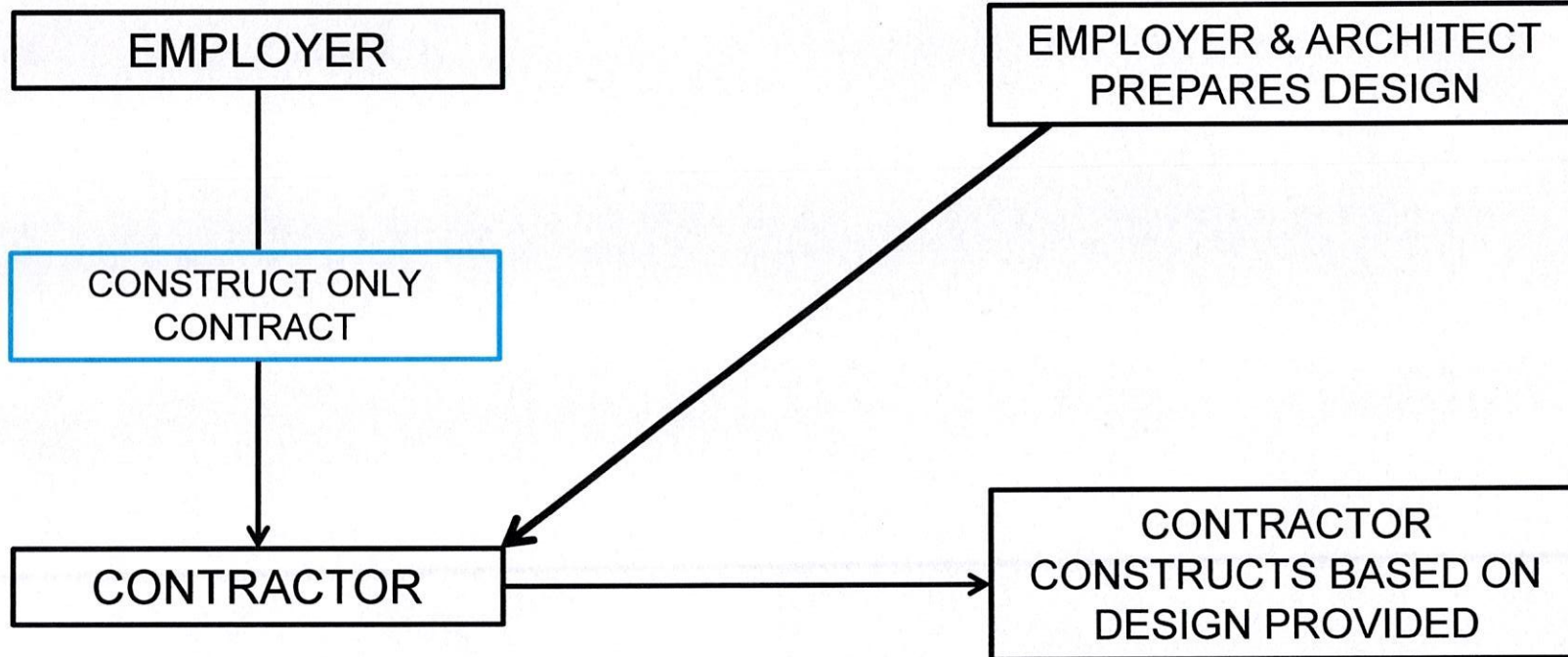
# Introduction

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- **Traditional procurement (construct only)**
- **Design and Build (D&B)**
- **Engineering, Procurement and Construction (EPC)**
- **Why are EPC contracts preferred?**

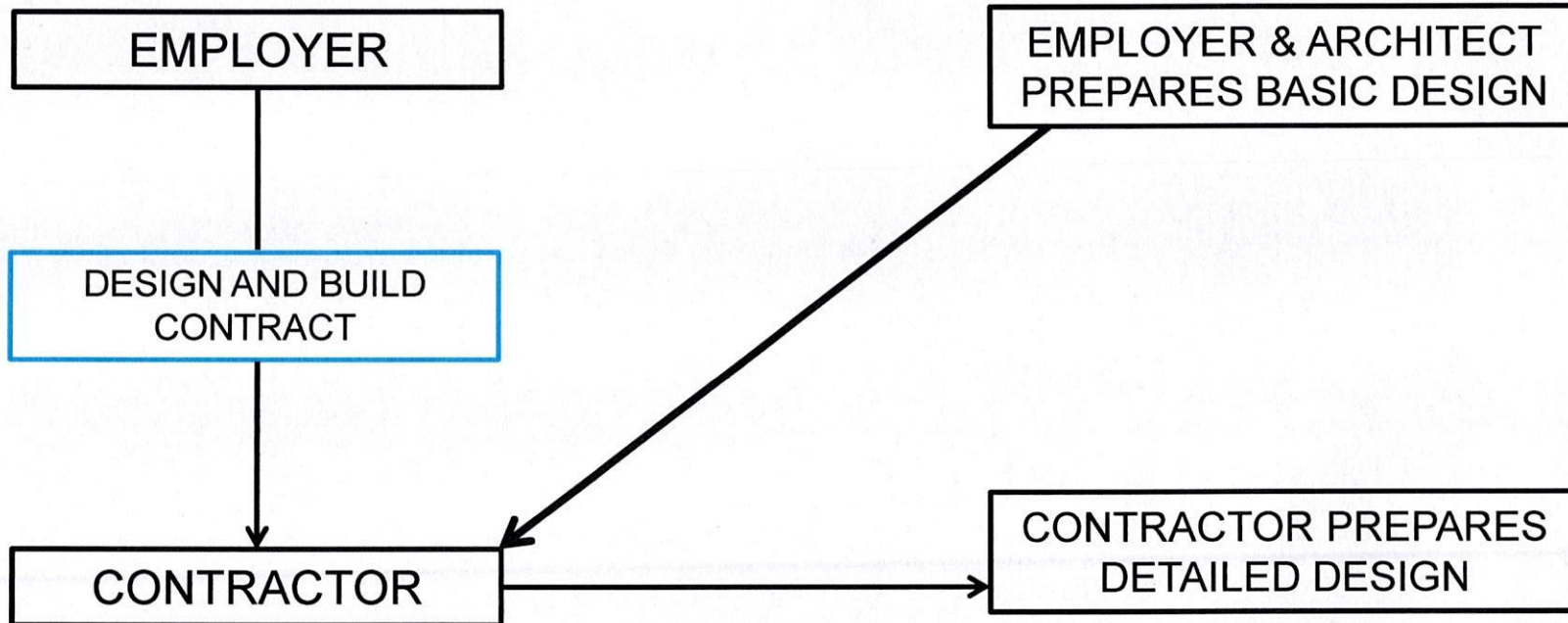
# Traditional Procurement

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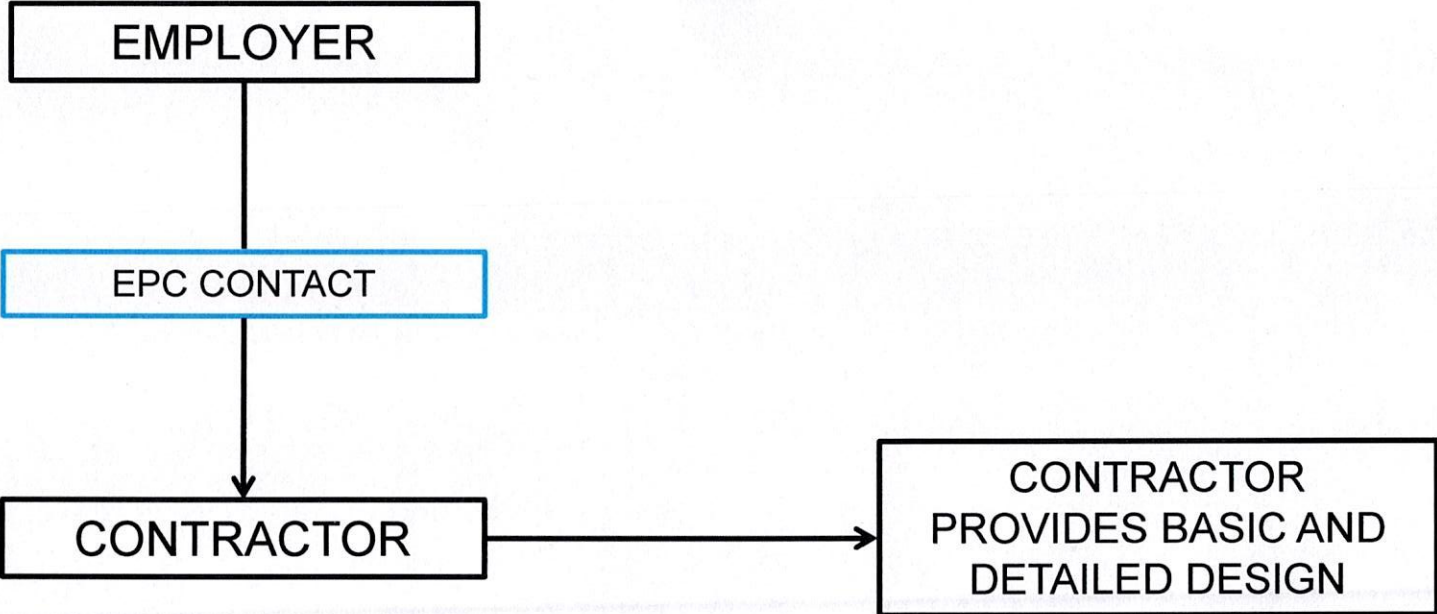
# Design and Build

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# EPC Contract

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## EPC Contract – Forms

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- **Two main types of EPC contracts:**
  - lump sum turnkey
  - cost-plus
- **Industry standard**
- **Bespoke form**
- **Choice of EPC contractor**
  - third party
  - sponsor affiliate

# EPC Contract – Basic Obligations

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- **Fundamental obligation of EPC Contractor to deliver:**
  - a complete facility
  - for a fixed price
  - by a specified date
  - up to contractual performance standards
- **EPC Contractor pays liquidated damages for late delivery and performance below the guaranteed level**

# EPC Contract – Performance Guarantees

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- **Main guarantees for power plants:**
  - output
  - heat rate
  - emissions
  - reliability
  - availability
- **Guarantees during tests on completion – performance test and reliability test**
- **Guarantees after completion – availability**
- **Absolute or non-absolute guarantees**



## Key EPC bankability issues

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- **Cost overruns**
  - variations, change in law, defects, owner's risks
- **Timely completion**
  - variations, defects, force majeure, owner's risks, delay liquidated damages
- **Guaranteed performance**
  - re-testing, performance liquidated damages, rejection, termination
- **Security package**
  - performance bond, warranty bond, retention bond, parent company guarantee
- **Caps on liability**
- **Assignment**
- **Termination & suspension**
- **Direct agreement**
- **Governing law & dispute resolution**

# EPC Contract – Contracting Strategies

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- **Single EPC procurement**

- EPC contractor provides the technology and takes full risk
- EPC contractor provides single point of contact and responsibility
- Common for conventional coal-fired power plants p to about 1,200 MW
- Attractive to lenders because EPC contractor takes completion and performance risk for the whole plant

- **Multiple EPC procurement**

- More than one EPC contractor responsible for different parts of work
- Risk is shared between multiple contractors
- Owner is responsible for managing interface and gaps risks between the different contracts

# Single EPC Procurement

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- **Advantages:**

- Single point of responsibility – EPC overall “wrap”
- “One stop shop” saves time and cost in undertaking multiple tendering
- Minimizes interface and gap risks
- Remedies are calculated by reference to the entire project ie. higher

- **Disadvantages:**

- Total cost usually higher
- Single contractor responsibility – risk if insolvent entity
- Choice of preferred contractor and technology more limited

# Multiple EPC Procurement

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- **Advantages:**

- Spread risk to different contractors
- Do not pay the cost of an EPC wrap on the whole project
- Choice of select preferred contractor or technology for specific portions of the work

- **Disadvantages:**

- Poor performance by one EPC Contractor may affect and delay the entire project
- Establishing and attributing cause of defect to a particular contractor difficult
- Remedies relate to the size of the individual EPC contract rather than the impact a breach may have on the project as a whole
- Employer takes interface risk - co-ordination may cause difficulties

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