

Dispute Boards: Pros & Cons

VBLC Debate Night
8 June 2018

VBLC Debate Night ...

- Welcome
- Meet my role model: Sir Vivian Ramsey!



Typical dispute resolution clauses ...

- Arbitration
 - High Risk Business!
 - Unknown Surprises!
- Mediation
 - Dispute not “resolved”!

Dispute Board ...

- Impartial committee of 3 professionals:
 - Set up at the beginning.
 - Following project implementation.
 - Warning / Avoiding disputes.
 - Resolving disputes quickly.

Dispute Board ...

- Different names:

- Dispute Review Board: making recommendations, non binding;
- Dispute Adjudication Board: making decisions, subject to arbitration; and
- Dispute Avoidance and Adjudication Board: (**DAAB**).

Dispute Board ...

- Different types:
 - Ad hoc dispute board: only when dispute arises; and
 - Standing dispute board: set up at the beginning and continuing throughout.

Dispute Board ...

■ History:

- 1970: started to develop;
- 1975: first use (Eisenhower Tunnel).
- 1981: first international use (Honduras)
- 1995: World Bank introduced mandatory dispute boards for projects more than \$ 50M.
- 1995: FIDIC
- 2004: ICC Dispute Board Rules
- More recently: JICA projects.
- www.drb.org : 2813 Projects with DBs.

Dispute Board ...

- How does it work?
 - Dispute Board provision in contract;
 - Incorporating General Conditions of Dispute Board Agreement: procedures, payments etc.
 - Dispute Board Rules of the ICC.
 - Appointment by parties / appointing authority
 - Signing of Tripartite DB Agreement.
 - Starting site visits, meetings, reports.
 - Dispute resolution in “real time”.
 - Payment of retainer fees, daily fees for site visits and expenses.

Dispute Board ...

- How much does it cost?
 - Contract for 24 months;
 - Monthly retainer of \$2,000;
 - Daily rate of \$2,000 for site visits;
 - Monthly retainer of \$1,000 during Defect Liability Period;
 - Expenses.
 - 3 members: \$400K.
 - If a dispute arises: around \$150K each.
- Contractor pays and then shares half with Employer.

Dispute Board ...

- Decision making:
 - Dispute can be referred to the Board by either party;
 - Determination made within 84 days and by majority;
 - A party may then give a notice of dissatisfaction, then non binding;
 - If no NoD, decision binding until overturned by arbitration.
- Decree 37?

Dispute Board ...

Pro	Cons
Real time familiarity with project	Low billing for lawyers!!!
Good will between the parties	Unnecessary costs / efforts
Availability of evidence.	Too much clarity
High voluntary compliance while project is ongoing	Uncertain enforceability
	Risk of lack of impartiality