



DISPUTE BOARDS IN SINGAPORE – COMPATIBILITY WITH STATUTORY ADJUDICATION

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Mediate.
It makes sense.

DISPUTE BOARDS IN SINGAPORE – COMPATIBILITY WITH STATUTORY ADJUDICATION

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The Singapore Construction Industry

- Expected to award:
 - \$31 - \$38 billion work in 2014
 - \$25 - \$34 billion of work each year (2015 and 2016)
- 60% of the total demand from building projects; 40% from civil engineering projects



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Construction Disputes Landscape

- Arbitration
 - Preferred for construction disputes
 - Mandated in all major standard forms of contract
 - Minor proportion of matters actually ran full course
- Mediation
 - Establishment of SMC (1997) generated widespread interest
 - 40% - 50% of SMC caseload (8 years following SMC establishment)



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Construction Disputes Landscape

- Statutory Adjudication
 - Building and Construction Industry Security of Payment (SOP) Act - 1 April 2005
 - Addresses cash-flow difficulties - right to progress payment
 - Quick, inexpensive determination of dispute arising from payment claims under SOP Act
 - Determination is temporarily binding but is immediately enforceable



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Construction Disputes Landscape

- Statutory Adjudication
 - Inexpensive (less than 3% of contested sum)
 - Fast (determination within prescribed 14-day period)
 - Impacted arbitration and mediation
 - Decline in *domestic* construction arbitration work by 40% - 50%



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Issues with Dispute Boards

- Limited Inroads
- Public Sector Projects – no huge infrastructure projects reportedly used dispute boards
- Relationship with Statutory Adjudication
 - Statutory adjudication regime thought to discharge same role as dispute boards
- Dispute Resolution Culture
 - Public sector confident - sufficient leverage/skills to engage and deal effectively with contract disputes
- Cost of dispute boards



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Addressing Issues with Dispute Boards

- Emphasis on Dispute Avoidance
 - Enhance quality of decision making before germinating into disputes
 - Issues narrowed and more definitively framed
- Contest with Statutory Adjudication
 - Parties not prevented from setting up dispute boards under contract (under SOP Act)



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Addressing Issues with Dispute Boards

- Do dispute boards add anything (to SOP adjudication regime)?
 - i) SOP adjudication regime only addresses particular class of disputes
 - ii) Can only be initiated by a person who “has carried out” construction work
 - iii) Adjudication will adversely affect working relationship
 - iv) Statutory adjudication exposed to jurisdictional challenges



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Addressing Issues with Dispute Boards

- Economics of Dispute Boards
 - Cost threshold of SOP adjudication low in relation to arbitration/litigation
 - When project presents considerable issues, economics of dispute boards persuasive
 - Economics of dispute boards should not be considered only on the basis for determinative rulings – consider too dispute avoidance and dispute management roles



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Positioning Dispute Boards in Singapore

- Focus on Dispute Avoidance
 - Consider dispute avoidance and dispute management
 - Extension of mediation
 - i) Protocol setting out typical programme of work
 - ii) Guidance provided for the management of specific issues
- Different term – possibly “Dispute Management Panel”



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Positioning Dispute Boards in Singapore

- Relative Economics
 - Tiny when measured against project cost - 0.06% and 0.30% of construction cost
 - Issue of cost to be considered:
 - Instituting a mechanism to facilitate less disruptive working relationships
 - Allow parties to focus their attention to carrying out construction work



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Conclusion

- Dispute boards appear to have made limited headway where there is a statutory adjudication regime
- Dispute boards can add value:
 - Anticipating and resolving issues which may flare up as disputes
 - Ensure that resources are focussed on carrying out the work
 - Facilitate the working relationships



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