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Session for A: Mechanics of a Dispute Board Operation
Decisions or Recommendations, and thereafter

Nicholas Gould, Partner, Fenwick Elliott LLP, Visiting Senior
Lecturer, King's College London, Past President DRBF, Region 2





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Terminology

- DBs – Dispute Boards (a generic term)
- DRB – Dispute Recommendation Board
- DAB – Dispute Adjudication Board
- CDB – Combined Dispute Board



Applicable Rules and Procedures

- FIDIC (Clause 20, Appendix, Procedural Rules and Tri Party Agreement)
- American Arbitration Association (AAA) Dispute Resolution Board Guidance Specification
- The International Chamber of Commerce (ICC) Dispute Board Rules
- Institution of Civil Engineers (ICE) Dispute Resolution Board Procedure (Alternative 1 and Alternative 2 which is Housing Grants, Construction and Regeneration Act 1996 compliant)



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Key Characteristics

- The number of Dispute Board members
- Selection of members
- When is the Dispute Board established?
- Neutrality
- Qualification of members
- Familiarity with project and individuals



Key issues - Procedure

- Referral of dispute
- Applicable procedure
- Deadline for issuing the recommendation or decision
- Obligation of parties to comply with procedure
- The rules applicable to the recommendation or decision making process
- Nature of the decision
- Effect of the decision
- Admissibility of decision in aid of proceedings
- Enforcement of decision
- Frequency of use and success rate



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Key Questions

- Should DB members exhibit the same independence and impartiality?
- Should they adopt the same procedures?
- Is a DAB required to make a “judicial decision”, in other words follow the contract, hear evidence on the facts and the law and come to a reasonable *decision*?
- Can a DRB depart from that approach when reaching a *decision* that is issued as a recommendation?
- Is it helpful to depart on that strict approach and decide on some other basis?
- What objective criteria can be used to reach a non-binding recommendation if it is not one based upon the contract, the facts and the law applicable to the dispute?



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Questions and Answers

Nicholas Gould

#4126-4114-5600