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***Controlling Costs and Preventing Disputes through the Use  
of Dispute Boards***

**Dr Cyril Chern**

**Crown Office Chambers  
London**

# Recognised methods of dispute resolution

- Party negotiation (with or w/o assistance)
- Mediation/Conciliation
- Adjudication
- Dispute Boards (Advisory vs. Non-Advisory)
- Arbitration
- Litigation

# Dispute Boards

- 1, 3 or more neutral & experienced individuals
- Chosen by parties to give recommendations or decisions that provide interim / final resolution of dispute
- Standing Dispute Boards appointed at the start of major projects, visiting job-site regularly

# A Typical DAB Project

## ERTAN HYDRO Dispute Board

<b>Project description:</b>	Concrete Dam /and Hydro plant
<b>Approx value:</b>	US\$5,000m
<b>Location:</b>	China
<b>Employer:</b>	Chinese State Organisation
<b>Contract:</b>	FIDIC 4 <sup>th</sup> with 2 main contracts with DBs
<b>Construction period:</b>	1991 – 2000
<b>Contractors:</b>	International Joint Ventures with local partners
<b>Number on DB:</b>	3 – each side chose one and they chose Chair
<b>Frequency of visits:</b>	3 times each year
<b>Total site visits:</b>	About 20

# A Typical DAB Project

## ERTAN HYDRO Dispute Board

**DB determinations:** Recommendations, not automatically final and not automatically binding

**Disputes referred to DB: 40**

**Disputes that went to arbitration: 0**

# A Typical DAB Project

## ERTAN HYDRO Dispute Board

### Special factors:

- First DB in China
- For most, first exposure to DB
- Chinese initially wary but later supportive as DB helped clear difficult disputes
- DB increasingly proactive, assisting both formally and informally
- DB instrumental in securing parties' consent to final accounts settlement

# Dispute Boards

## International Adjudication

3 principal areas of activity:-

- Model forms developed for the International Projects financed by World Bank (WB) or other Multilateral Development Banks
- Model forms developed by the International Federation of Consulting Engineers (FIDIC)
- Chamber of Commerce (ICC)
- Model Forms developed by the Dispute Board Federation (DBF)

# History

- World Bank promoted Dispute Boards (DB) on The El Cajon project in Honduras in 1980
- DB resulted in successful settlement of disputes and World Bank grew to favour this approach
- 1995 – World Bank Standard Bidding Document published – modified FIDIC conditions – deleted the usual provision of the “Engineer” deciding disputes, giving this task to a Dispute Review Board (DRB), similar to those being used at the time in USA



## History (cont'd)

- Disputes submitted to Dispute Board for a written “recommendation” which, if no objections within 14 days, became final and binding
- In case of objections, parties free to negotiate (mediate) or, ultimately, go to international arbitration

## History (cont'd)

- World Bank required all borrowers of greater than US\$50m to establish a three-person DB by contract
- Borrowers of between US\$10m - \$50m could use a one-man board or Dispute Review Expert (DRE)
- Other banks, *e.g.* Asian Development Bank, followed this example
- Today 90% of all DB's are Dispute Adjudication Boards with binding Decisions

# Europe

- Significant procurement of EU/ WB funded works that utilise the FIDIC form of contracts and thus require the establishment of DABs
- Traditional procurement
- Build and Construct
- Concession Contracts

# Dispute Boards

## Current Practice

- In the UK:
  - Channel Tunnel
  - Channel Tunnel Rail Link
  - Hospitals, power plants, schools
  - Docklands Light Railway
  - Various Highway Agency works
  - The Olympic Games Construction

# Dispute Boards – Current Practice (cont'd)

- International:
  - Dams / hydro plants in China, Pakistan, India, Ethiopia, Uganda, Egypt, Iceland, Lesotho, Maldives, Ghana, Canada, Brazil
  - Airports in Hong Kong, Athens
  - Road schemes in Romania, Kazakhstan, Ireland
  - Railways in Holland

# Dispute Boards – Current Practice (cont'd)

- Waste Treatment in St Lucia
- Tunnels in Switzerland, Turkey
- Public Works in Vietnam
- USA – extensive use throughout construction

# KATSE DAM

## Dispute Board

**Project description:** High Concrete Arch Dam

**Approx value:** US\$2,500m

**Location:** Lesotho (Southern Africa)

**Employer:** Lesotho Development Authority

**Contract:** FIDIC 4<sup>th</sup>

**Construction period:** 1993 – 1998

**Contractors:** International Joint Ventures  
with local partners

# **KATSE DAM**

## **Dispute Board (cont'd)**

Number of main contracts subject to DRB: 1

Number on DB: 3

How chosen: Jointly selected by parties

Frequency of visits: 2-3 times each year

Total site visits: Approx 16



# KATSE DAM

## Dispute Board (cont'd)

Nature of DB's determinations: Recommendations, not automatically final and not automatically binding

Number of disputes referred to DB: 12

Number of disputes that went to arbitration: 1 and importantly the DB was upheld

# KATSE DAM

## Dispute Board (cont'd)

### Special factors

- First DB in Africa
- Party representatives all new to the process
- Some initial resistance to DB from employer
- Referrals to DB had to follow formal notice of arbitration

# HONG KONG AIRPORT

## Dispute Board

Project description:	International Airport
Approx value:	US\$15 Billion
Location:	Hong Kong SAR China
Employer:	Airport Authority
Contract:	Bespoke, similar to HK Government standard form
Contractors:	International, some Joint Ventures with local partners, many specialists (eg Air Traffic Control systems)

# HONG KONG AIRPORT

## Dispute Board (cont'd)

Number of main contracts subject to DB: 22

Number on DB: Convenor (non sitting) plus  
6 others of various disciplines

How chosen: Agreement between Authority and  
Contractor's Association, members  
selected prior to contract awards

Frequency of visits: Every 3 months

Total site visits: About 16

# HONG KONG AIRPORT

## Dispute Board (cont'd)

Nature of DB's determinations: Decisions, not automatically final but binding in the interim

Number of disputes referred to DB: 6

Number of disputes that went to arbitration: 1  
and the DB decision was upheld

# HONG KONG AIRPORT

## Dispute Board (cont'd)

### Special factors

- DB covered all main airport contracts
- Quarterly reviews / visits with all main contractors
- Each DB member selected for specialist knowledge and experience
- Formal hearings with parties' positions well presented by engineers, not lawyers
- Draft decisions for party comments before finalisation

# DOCKLANDS RAILWAY

## Dispute Board

Project description:	Urban Light Railway
Approx value:	US\$500m
Location:	London, UK
Employer:	Docklands Railway Authority
Construction period:	1996 – 1999
Contractors:	UK domestic

# **DOCKLANDS RAILWAY**

## **Dispute Board** (cont'd)

Number on DB: 5 - two sets of 3 with common chair

How chosen: Agreement of the parties

Frequency of visits: Quarterly

Total site visits: 10



# **DOCKLANDS RAILWAY**

## **Dispute Board (cont'd)**

Nature of DB's determinations: Decisions final

Number of disputes referred to DB: 0

Number of disputes that went to arbitration: 0

# **SALTEND PRIVATE POWER PLANT Dispute Board**

Project description: Gas Turbine Power Plant

Approx value: US\$200m

Location: North-East England

Employer: Concession company

Construction period: 1997 – 2000

Contractors: US specialist contractor

# **SALTEND PRIVATE POWER PLANT**

## **Dispute Board (cont'd)**

Number of main contracts subject to DB: 1

Number on DB: 5- 3 main members, 2 alternates

How chosen: By agreement after interviews

Frequency of visits: Twice yearly

Total site visits: 6

# **SALTEND PRIVATE POWER PLANT**

## **Dispute Board** (cont'd)

Nature of DB's determinations: Decisions final and binding

Number of disputes referred to DB: 0

Number of disputes that went to arbitration: 0

# Main Benefits

- Benefits the PROJECT: owners, contractors, funders, industry
- Like the “Engineer” of old, DB is part of the project
- Routine visits provide focus for parties to discuss disputes and potential disputes – tremendous opportunity for dispute avoidance
- DB is “up to speed” at all times by routine visits (3 times per year) and receipt of regular reports

## Main Benefits (cont'd)

- DB understands the project, the parties, individuals involved, physical difficulties, economic background
- Speed of dispute resolution (56 days)
- Economy (usually less than .1% of project cost)
- Rarely fails to end dispute- parties reluctant to go on to arbitration/courts especially if DB output is admissible
- Fear of unknown dispute resolution tribunal avoided

# Additional Information

For more information about Dispute Boards or their development please contact:

**Dr Cyril Chern**  
**Crown Office Chambers**  
**London EC4Y 7HJ**

Tel: +44 (0)20 7797 8100

Email: [chern@crownofficechambers.com](mailto:chern@crownofficechambers.com)

Web: [www.crownofficechambers.com](http://www.crownofficechambers.com)

or go to

**The Dispute Board Federation**

[www.dbfederation.org](http://www.dbfederation.org)