Controlling Costs and Preventing Disputes through the Use of Dispute Boards

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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**

<table>
<thead>
<tr>
<th><strong>Project description:</strong></th>
<th>Concrete Dam /and Hydro plant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Approx value:</strong></td>
<td>US$5,000m</td>
</tr>
<tr>
<td><strong>Location:</strong></td>
<td>China</td>
</tr>
<tr>
<td><strong>Employer:</strong></td>
<td>Chinese State Organisation</td>
</tr>
<tr>
<td><strong>Contract:</strong></td>
<td>FIDIC 4&lt;sup&gt;th&lt;/sup&gt; with 2 main contracts with DBs</td>
</tr>
<tr>
<td><strong>Construction period:</strong></td>
<td>1991 – 2000</td>
</tr>
<tr>
<td><strong>Contractors:</strong></td>
<td>International Joint Ventures with local partners</td>
</tr>
<tr>
<td><strong>Number on DB:</strong></td>
<td>3 – each side chose one and they chose Chair</td>
</tr>
<tr>
<td><strong>Frequency of visits:</strong></td>
<td>3 times each year</td>
</tr>
<tr>
<td><strong>Total site visits:</strong></td>
<td>About 20</td>
</tr>
</tbody>
</table>
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 4th
Contractors: International Joint Ventures with local partners
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
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
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
Nature of DB’s determinations: Decisions final

Number of disputes referred to DB: 0

Number of disputes that went to arbitration: 0
<table>
<thead>
<tr>
<th><strong>Project description:</strong></th>
<th>Gas Turbine Power Plant</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Approx value:</strong></td>
<td>US$200m</td>
</tr>
<tr>
<td><strong>Location:</strong></td>
<td>North-East England</td>
</tr>
<tr>
<td><strong>Employer:</strong></td>
<td>Concession company</td>
</tr>
<tr>
<td><strong>Construction period:</strong></td>
<td>1997 – 2000</td>
</tr>
<tr>
<td><strong>Contractors:</strong></td>
<td>US specialist contractor</td>
</tr>
</tbody>
</table>
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:

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or go to

The Dispute Board Federation  
www.dbfederation.org