

KEYNOTE ADDRESS

Ladies and Gentlemen,

It is with great pleasure and enthusiasm, that I have received an invitation to be present today at this Regional Conference organized by the Dispute Resolution Board Foundation (DRBF) where several topics have been already discussed yesterday and more are on the program for today.

1. Introduction

No doubt that the comfortable revenues of several Arab and Middle Eastern countries from the exploitation of their natural resources have given unprecedented opportunities for development and modernization. The wealth generated by producing and exporting large quantities of oil and gas has been invested in high-profile projects leaving to the next generations a modern infrastructure and state-of-the-art facilities. Such ambitious plan steered in particular by the Governments of the GCC countries which announced the launch of several mega-projects and have encouraged the private-sector contractors, investors and stakeholders to participate actively.

All these factors and circumstances have created a favorite climate for construction companies to participate in tenders and to win contracts in the Region. Almost every large international construction company refers in its projects *portfolio* to one or several projects accomplished in the Gulf or in the Middle East and North of Africa (MENA) Region .

From the Aswan High Dam built on the Nile in Egypt in the sixties of last century to the Burj Khalifa Tower in Dubai inaugurated almost half a century later, thousands of construction agreements have been signed. Some of them went successfully while others have faced different difficulties which either have been wisely resolved or unfortunately have given endless disputes. In the real business world, delays happen, financial problems can crop up, and other unexpected events can occur to hinder or even prevent a successful contract from being carried out.

2. Dispute Boards as a contractual Built-in mechanism

Aware that a well-drafted contract for works should include a single or multiple tier of proactive dispute resolution clause, several professional organisations such as the FIDIC decided to establish a dispute board from the beginning of the project as a "dispute avoidance" body to sort out differences '*on-the-job*' quickly and efficiently by a pre-approved sole person or a panel of three members. The presence of a dispute board reduces the potential for disruption to the project and enables the parties to devote their resources and efforts to the central contractual objectives.

Actually, the vital importance of the dispute boards is largely admitted by Employers and Contractors. Pro-active rather than reactive, it is this aspect in particular that differentiates Dispute Boards from other conventional Alternative Dispute Resolution processes. By visiting regularly the project, receiving updates and staying abreast of the project development, a Dispute Board has the opportunity to implement a proactive monitoring of the project.

A Dispute Board is considered an early proactive effort to resolve the dispute as the events leading to the difference are fresh in the minds of the parties minds and may not have had time to become deeply entrenched in their positions.

Dispute Boards help to avoid serious clashes and disagreements in an anticipate manner.

Depending on the extent of authorities granted to a dispute board by the signatory parties, they make either recommendations or decisions on issues that the parties have been unable to resolve through a negotiation process.

3. Opportunity for Dispute Boards development in the Gulf region

Generally speaking about the opportunity of dispute boards to develop in the Arab Region, we know that the FIDIC forms of contract have been

in use in the Middle East and the Gulf since the seventies and their translation into Arabic language has contributed for a better understanding of their different clauses and provisions. Several Middle Eastern countries have drafted standard conditions for public works either based on the FIDIC different books or at least largely inspired from them with some necessary adjustments. Getting adapted to the 1999 edition of the FIDIC suite of contracts, the professionals of the construction industry discovered the concept of dispute boards as part of the contractual setting.

It under the principle of "contract freedom" and "the binding force of a contract" which are widely recognized by both the civil law and the common law jurisdictions, that dispute board agreements can be put in application.

The role of the dispute board, its functioning rules and the appointment of its members should be discussed during the negotiation process between the parties.

By establishing a Dispute Board from the inception of the project, the Dispute Board members become part of the project team and are thought of in a different fashion and because of their "hands on" approach can be trusted to be fair and impartial and their advice is respected and taken more readily than would a "third party" to the project.

Since dispute boards are governed by the law of the country in which the underlying contract is governed, and that the basis of the Dispute board decisions should be placed in its substance under the law of the host country where the project is undertaken, it is necessary to pay attention to the legal system existing in the Arab countries and in particular to the role or impact of the Sharia'a principles.

Well, there is also full and entire compatibility between the concept of agreeing to appoint a dispute board and the principles of Islamic Sharia'a. In fact, Sharia'a allows considerable freedom of contracting. Any agreement freely entered between two parties of legal capacity is valid and binding. It should be executed in good faith and without delay.

Before Islam, the Arabs resolved their disputes through conciliation or through arbitration and was administered through tribal chiefs or other respected tribal elders. The resolution of disputes during this period relied on the parties first coming to an agreement as to the extent to which any resolution of their dispute would be binding on them.

After the coming of Islam and the continuing development of Sharia'a, the earlier dispute resolution procedures were recognized and upheld.

Whether or not dispute resolution is binding depends on the intention of the parties and this can be determined best if the parties at the inception have an agreement as to whether any dispute resolution decision is final and binding on them. Dispute boards are acceptable under Sharia'a principles. It is a contractual agreement to which the parties are bound as far as they are treated on an equal footing.

In order to improve the reception of Dispute boards in the Middle East, stress should be made on the fact that their main objective is to "assist" the parties to avoid minor disagreements to escalate into real disputes. A clear and detailed presentation of the process with reference to some success stories may also contribute for a better understanding of the benefits such as savings in time and money. The eloquent speakers today shall share with us their experience in using the dispute boards in this region. They will reveal the crucial importance of avoiding disputes in the beginning of a project which may cause irreparable delays particularly for projects with very tight timetables or in the case of contractual chains.

The intervention of a Dispute Board member should be qualified by:

Professionalism, where the dispute board member must reflect knowledge of specific conflict resolution processes, and may receive fees in exchange for the services provided;

Impartiality, emphasizing on the objective of achieving a fair deal for both parties; and

A strict conformity to legal procedures and structure of the country where the dispute board member has been appointed

Also, the ability of the dispute board to act as an inquisitor, able to ask questions, to visit the site, to examine the witnesses, to ask for documents and to come to a conclusion shall be welcomed as long as it helps to absorb any eventual dispute in a wise manner.

From this perspective, the implementation of the dispute boards should be largely encouraged in the Middle East since they have enjoyed increased usage on a variety of projects around the world.

4. Dispute Boards and Qatar in the next decade

Ten years from now (i.e. in 2022), Qatar shall be hosting the World Cup in 2022. Such mega-event involves huge construction plans such as building 9 different stadiums and large renovation projects that shall take nearly a decade to complete according to a tight timetable and a synchronized program of works. It shall require large spending on constructing and updating venues. In addition to venue construction, it shall necessitate also expansive infrastructure to move the participants, officials, and fans to and from the venues.

The insertion of the dispute board mechanism as a *built-in* contractual provision in the different contracts for works will surely increase the success rate of all the projects to be undertaken. It will assist the concerned parties to achieve the desired results in due time as usually a lot of pressure is put on the contractors with the countdown towards the completion date. The reason behind is that the use of dispute boards shall prevent almost 99% of the disputes from mounting into time consuming and costly litigation.

The roles and characteristics of the third party who can assist the parties and intervene in resolving a conflict are likewise based on principles largely accepted under the concepts of Islamic Law and Sharia'a rules. Any effort towards the mitigation of risks and the prevention of any escalation of disputes is welcomed also under the Civil law doctrine.

The quasi-binding effect of the DAB's decision creates a fine balance between giving a quick binding decision to the dispute while maintaining amicable relationships on the construction site.

5. Conclusion

There is a real opportunity for the dispute boards to flourish in the coming few years. Based on their previous successes in avoiding disputes which in some extreme cases may stop definitely the project, disputes boards shall be considered the most useful tool offered to the construction professionals in resolving disputes in a proactive manner. Handled wisely by real experts, I am convinced of their success in preventing unnecessary cost and time. The compatibility of dispute boards with the Islamic principles as well as with the civil law concepts offer to the dispute boards all the chances to be adopted easily in the Region.

“Knowledge is a treasure, but practice is the key to it”. (Ibn Khaldoun)

I wish to all of you a very informative day, interesting discussions, and to the guests of the Conference and to the visitors of Qatar a very pleasant stay.

Thank you!