

# The DRB Landscape in China



**Country Rep:**  
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The use of the dispute board mechanism for dispute resolution has been known in China for almost twenty years. The concept and mechanism was first introduced on the Ertan Hydropower Project in 1990. From then on, the concept and was further promoted and used on three other projects: the Xiaolangdi Multipurpose Dam Project, the Yellow River Diversion Project and the Kunming Zhangjiuhe River Water Diversion & Water Supply Project.

The first three projects were all partially financed by The World Bank, and the last one (so far) was partially financed by a commercial loan from Bank of Tokyo-Mitsubishi Co. Ltd.

At that time, contracts for civil works were based on FIDIC's standard form of contract. For the general conditions, the 4th edition of 'Conditions of Contract for Construction' was adopted.

In consideration of the complexity of the works and variations and claims to be encountered, as suggested by the World Bank or similar organizations, the employer and contractors agreed to establish the DRB for avoiding and solving of disputes.

The DRB gave their independent and professional assessment, and the DRB tried best to make both parties eliminate misunderstanding through numerous talks. Actually, the DRB's recommendations and suggestions have established a platform which helped both parties finding their way to the settlement of disputes.

Based on the use of DRBs in the above four projects, it is believed that the following learning and experience have been gained, particularly with respect to how the DRB plays a key role in the successful settlement of disputes:

- **The DRB's independence is a very important factor in getting both parties' confidence.** Under 4th FIDIC Contract for Construction, the engineer is suspected of acting on behalf of the employer, which usually prevents the contractor from reaching agreement with the employer, even the employer's proposal is constructive.
- **The DRB's knowledge and experience can complement the contract.** For projects of huge size and with various components, it is very common that variations and unexpected things happen, which may go beyond the scope of original contract. Then the DRB provides a unique and valuable proposal and/or suggestion which may help both parties in reaching supplementary agreement.
- **The DRB's interpretation of the contract (not only on a strict contractual approach, but also in the spirit of the FIDIC type of contract and normal practice on international contracts) is necessarily required for solving those disputes that arise of different interpretation and understanding of the contract by parties.** It seems like that most disputes occur due to different ideas and opinion about clauses of the contract, and those contrary understandings and behavior can be frequently found in international construction

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contracts resulting from various cultural backgrounds and experiences.

- **The flexibility in the DRB’s approach will encourage both parties to contact and look for the amicable way for settlement.** On the one hand, DRBs will give professional advice from the point of the contract and the law; on the other hand, DRBs endeavor to make parties understand each other and to find the way between them.

With the above learning and experience in mind, the DRBF (partially through DRBF’s representative in China) successfully collaborated with the World Bank Institute (WBI) in Washington DC, and the International Development Law Organization in Rome, Italy, (IDLO) to produce a four-way simultaneous satellite link among: Beijing, China; Hanoi, Viet Nam; Bangkok, Thailand; and Washington, DC. The session is one in a series of Policy Dialogues conducted by WBI and IDLO, aimed at high level officials in developing countries. The three hour Dispute Board session was held on 09 December 2005 (see previous article in the *Forum*, Volume 10 Issue 2, p. 12).

The discussion explored existing systems of dispute resolution in the three countries, their advantages and disadvantages in respect of mixed nationality usage, and compared their operations with those of Dispute Boards. Special attention was given to the dispute provisions of the “Procurement of Works” documents of the Multilateral Development Banks, led by the World Bank, which involved examination also of the 1999 “suite” of FIDIC Conditions of Contract. In addition, there were discussions of the International Chamber of Commerce Rules for Dispute Boards.

It was hoped that this Policy Dialogue would lead to future training on successful use of Dispute Boards in China. However, very slow progress has been made since then. The following steps, with strong support from the DRBF, need to be done in China:

- **Knowledge of DRBs.** To have general knowledge about DRBs; for example, its main function, advantages and disadvantages, procedure for member selection and DRB operation.
- **Training for local DRB members.** DRB recommendations are not binding on both parties, his successful operation depends mostly on his knowledge, experience and ability.
- **Establishing of DRB organization.** We need one organization and some people with enthusiasm to keep doing this hard work.
- **Adoption of DRBs in construction contracts,** and establishment of DRB at the beginning of the project.

About the Author: In July 2007, Hongwei Zhao was appointed Country Representative in China, a position he continues to hold.

Mr. Zhao has been involved in many international hydro projects in China, including the Xiaolangdi Multipurpose Dam Project, one of the largest construction projects in the world today. His academic training in business administration (China) and project management (UK) has improved his ability in analyzing and solving problems. He has, through his work, obtained experience with the technical aspects of hydropower and the legal procedures for construction disputes.

Mr. Zhao believes the Country Representative position is a very significant role and carries with it many responsibilities. He hopes to work with others toward sharing ideas, notes of accomplishments and work towards achieving the primary objectives of expanding the understanding of DRBs, promoting their use, and providing assistance to parties within China. He can be reached by email at zhwxld@hotmail.com. □