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## DRBF Task Force Update: Public Private Partnerships

### BACKGROUND

Public Private Partnerships (PPPs) are increasingly being used as a way to bring private sector money to the table to fund public projects. For example, Australia and Canada have very mature PPP markets and decades of experience in delivering PPPs. By contrast, the United States has not had the same depth of experience, and recent articles in *Engineering News Record* have highlighted that some major companies are pulling out of the PPP market in the U.S. due to perceived risk of overly aggressive risk transfer from owners, resulting in major claims.

Recognizing that PPPs are “here to stay” as a mechanism to bring private sector funding and know-how to public sector project delivery, several years ago the DRBF Executive Board of Directors (ExBoD) formed a PPP Task Force to serve as a thought leader worldwide for the use of Dispute Boards on PPP projects. The purpose of this article is to update DRBF members on the Task Force’s activities and initiatives, plus provide information to assist in outreach on DB use on PPPs.

### PPP TASK FORCE PAST ACTIVITIES

The main activities of the DRBF Task Force to date have focused on:

- Publication of two white papers, one on the use of DBs in the US and Canada and the other on the use of DBs globally (available in the DRBF Library).
- Organizing and presenting workshops on DBs for PPPs at DRBF conferences. As an example, there was a half-day workshop held in conjunction with the 19th Annual International Conference in Berlin: “Dispute Boards: Public-Private Partnership (PPP) Models and How DBs Help Prevent Disputes.”
- Speaking at PPP conferences. As an example, DRBF members presented in July at the P3 Water Summit in the US. [https://www.youtube.com/watch?v=fYiVm6Fi5\\_g](https://www.youtube.com/watch?v=fYiVm6Fi5_g)
- Tracking and making contact with PPP projects and with major funding agencies (such as the multilateral development banks, or MDBs) regarding best

practices for use of DBs on PPPs.

- Contributing to the DRBF’s 2019 *Dispute Board Manual: A Guide To Best Practices and Procedures*, specifically Chapter 10, “Dispute Boards in Public-Private Partnership Contracts.”

## PPP TASK FORCE: CURRENT PROJECTS

The Task Force has the following major deliverables in progress for 2020 and 2021:

- Development of best practices models for the use of DBs on different types of PPP delivery methods (for example, Design Build and Deliver; Design Build Finance and Deliver; Design Build Finance Operate and Maintain). In essence, this will be a 2.0 version of the general guidance included in the DRBF’s 2019 *Dispute Board Manual*, designed for worldwide usage depending on delivery method.
- Publication of updates to the existing White Papers for Regions 1 and 2, taking into account market and industry developments since they were first published a few years ago. Publication of a White Paper covering the PPP experience in Region 3 is in development.
- The DRBF’s Executive Board developed a 5-year Strategic Plan in 2018 that included pursuing the PPP Task Force initiatives. The Task Force is working with the ExBoD on updating the Strategic Plan in 2020, to take into account current PPP market conditions, including the impact of COVID-19.

## PPP TASK FORCE INITIATIVES BY REGION

Each Region’s Task Force Vice-Chair is leading the following initiatives that take into account region-specific PPP experience and current market conditions:

### REGION 1 FOCUS

Updating the 2015 White Paper, including:

- Update of White Paper “Exhibit 1”, a summary of dispute avoidance and dispute resolution techniques used on PPPs in the region
- Selected case studies of DB usage on PPPs
- Development of a “tool kit” of best practices and model documents for DBs on PPPs
- Surveying selected law firms to get feedback and engagement with those who draft PPP agreements
- Maintaining contact with industry groups that have PPP-specific groups (for example, Design Build Institute of America, American Road and Transportation Builders Association, and Associated BIA and ARTBA; and American Public Transportation Association)
- Maintaining a “Canada sub-group” to focus on that country’s PPP practices/projects
- Identifying PPP projects in the pipeline for early engagement on use of DBs

## REGION 2 FOCUS

Updating its 2017 White Paper. Main focus is to include case studies (from Europe and Africa) supporting the recommendations/conclusions in the current White Paper.

- Planning a “Use of DBs on PPPs” Workshop for the DRBF Conference in Lisbon, March 2021.
- Participating as speakers in various conferences: Infrastructure Investment Global Summit (Berlin/Oct. 2020); ESCL Conference (Sofia/Oct. 2021); PPP conference (Oman/Nov. 2020); PPP Week (Istanbul/Nov. 2020). Opportunities at conferences for Africa are also being investigated.
- Pursuing its promotion of DB use on future PPPs among sponsors, contractors, operators, legal firms, public administrations, and relevant professional associations.

## REGION 3 FOCUS

- Completing its White Paper, including:

- Outline of PPPs in Australia
- Approach to pass through or linked claims
- How DBs can assist the operation of PPPs
- Preferred model for use of DBs on PPPs

- Preparing an Addendum addressing the interrelation of pass through or linked claims on PPP projects with Security of Payment legislation/adjudication

- Identifying and communicating with “influencers” for promoting the use of DBs on future PPP projects in Australia

## CONCLUSION

The DRBF is a leader in the worldwide use of DBs on PPPs. The PPP Task Force welcomes input from DRBF members on PPPs where the use of DBs can be considered, as well as topics that members would like to see the Task Force address in the coming years as PPPs move into the mainstream of major project development, delivery and operations.

### DRBF Task Force on Public Private Partnerships Current Members

#### Kurt Dettman (Chair)

#### Linda Konrath (Vice-Chair Reg. 1)

Hugo Fontirroig  
Larry Baker  
Adam Nicolopolous  
Aaron Toppston  
Chris Kane  
Matt Pollack  
Will Buchner  
Graeme Greene  
Bruce Reynolds

#### Serge Bodart (Vice-Chair Reg. 2)

Lindy Patterson  
Rabab Yasseen  
Doris Chevalier  
James Perry  
Paul Taggart  
Leonardo Carpenteri  
Mark Moseley

#### Ron Finlay (Vice-Chair Reg. 3)

Barry Tozer  
Sameh Ibrahim  
Pamela Jack  
Robert Fenwick Elliott