

# DRBF 28<sup>th</sup> ANNUAL INTERNATIONAL CONFERENCE

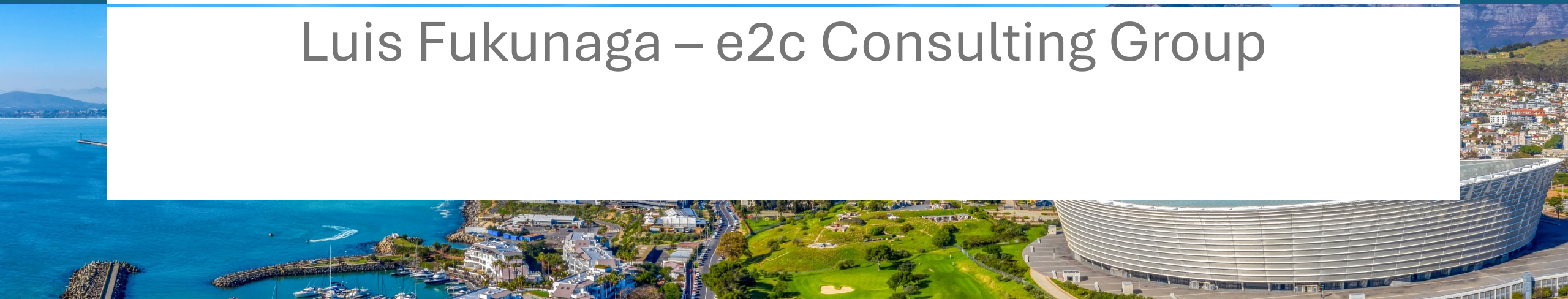
CAPE TOWN | SOUTH AFRICA  
15-16 MAY 2025





# Evaluating Sole Member DB: Balancing Cost and Effectiveness

Luis Fukunaga – e2c Consulting Group





# Presentation

## **DB Appointments**

- ✓ NEC Contracts / ICC DB Rules / Peru  
7 Three-person DAB / 4 as Chair / D&C-C / USD 100-500 million
- ✓ FIDIC Contracts / Peru-Central America-Africa  
3 Three-person DAAB / 1 as Chair / D-D&C-C / USD 50-200 million  
1 One-person DAAB / D&C / USD 150 million

# Presentation

## **DB Appointments**

- ✓ Peruvian Contracting Law / Peru  
9 Three-person JRD\*/ 5 as Chair / C / USD 50-350 million

\* JRD: Juntas de Resolución de Disputas  
JPRD: Juntas de Prevención y Resolución de Disputas (2025)

# DAB/DAAB: One-person vs. Three-person

- ✓ World Bank / Interamerican Development Bank
  - < USD 20 million      One-person
  - USD 20-50 million      One-person or Three-person
  - > USD 50 million      Three-person
- ✓ Peruvian Contracting Law
  - < USD 15 million      One-person
  - > USD 15 million      Three-person

# DAB/DAAB: One-person vs. Three-person

## FIDIC Practice Note II Appointment Of Dispute Boards - 2024

### Task 2: Decide on the number of Dispute Board members

20. The next step is to determine whether the DB should consist of one or three members. Where cost of the DB is not a critical consideration, FIDIC considers that three DB members are generally preferable to one; however, one DB member is generally preferable to none.

# DAB/DAAB: One-person vs. Three-person

Key issue: Costs...costs...costs!

- ✓ GC DAAB Agreement:
  - SC 9.1 (a) Monthly fee
  - SC 9.1 (b) Daily fee
  - SC 9.1 (c) Expenses
- ✓ ICC DB Rules:
  - Art. 29 Monthly fee
  - Art. 30 Daily fee
  - Art. 31 Expenses

# DAB/DAAB: One-person vs. Three-person

## GC DAAB Agreement / DAAB Procedural Rules

- ✓ Avoidance of Disputes / Informal Assistance – Rule 2
- ✓ Meeting and Site Visits / on-line or in-person – Rule 3
- ✓ Procedures – Rule 4
- ✓ Decision – Rule 8



# DAB/DAAB: **One-person** vs. Three-person



- ✓ Flexibility
- ✓ Independence
- ✓ Autonomy
- ✓ No internal discussions
- ✓ Fast decision making

BUT....

# DAB/DAAB: **One-person** vs. Three-person



## Risks:

- ✓ Single point of view
- ✓ No added-value internal discussions
- ✓ Excess of confidence
- ✓ Not a robust analysis

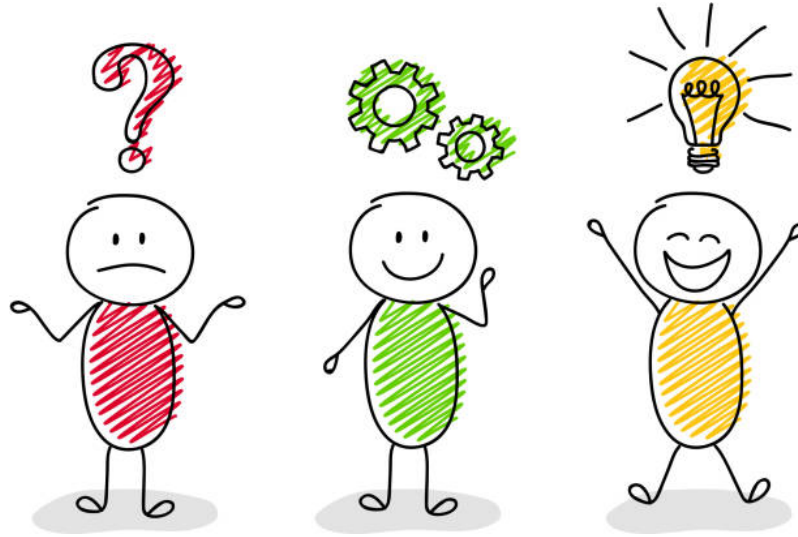
# DAB/DAAB: One-person vs. **Three-person**



- ✓ Synergy
- ✓ Robust analysis
- ✓ Share activities
- ✓ Teamwork

BUT....

# DAB/DAAB: One-person vs. **Three-person**



## Risks:

- ✓ Lack of alignment
- ✓ Exhausting discussions
- ✓ Slower response time
- ✓ Common availability



# DAB/DAAB: One-person

## Practical experiences

- ✓ In charge alone for all the arrangements for the Site Visits (Airflights, Hotel, Visa, vaccines, etc).
- ✓ Flexibility to schedule Site Visits, Meetings and Hearings.
- ✓ Technical, legal, and contractual issues single point of view for Informal Assistance and Decisions.
- ✓ More time spent...in general.



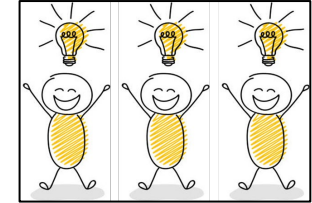
# DAB/DAAB: One-person

## Practical experiences

- ✓ Show impartiality and independence at all time when interacting with Parties “especially” during the Site Visits.
- ✓ “Just nobody to talk”.
- ✓ “Always in front”...more pressure?
- ✓ “Greater caution”...you’re alone.

# Conclusions

- ✓ “There is no a magic or unique formula”



A One-person DAAB can be as successful as a Three-person DAAB

- ✓ The Parties (Employer) define how the DAAB is to be conformed so (for the DAAB Practitioners):

Are you ready to take on the next challenge as Sole DAAB Member?



# Thank you

## Luis Fukunaga

DAB/DAAB Member

**e2c Consulting Group**