



# Enhancing the Dispute Adjudication Board Process via Executive Sponsorships Used for Mega Oil and Gas Projects

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**Abstract:** In this article, the author explores how the best practice of the executive sponsorship in mega oil and gas projects can enhance the dispute adjudication board (DAB) process. The role of executive sponsors is overseeing project execution, support strategic decision-making and dispute resolution. The essence of the executive sponsorship is defined by credibility, ability to challenge assumptions, ability to provide clear directions, and maintain fairness. DAB is a contractually established alternative dispute resolution method which offers a high-quality dispute avoidance advice and real time decisions to resolve disputes by one or three selected experts in order to support execution of construction projects. After comparing the procedural rules of DAB with the mechanics of executive sponsorship as typically established on mega oil and gas projects, and ability to consider the parties' underlying interests during the dispute avoidance or dispute resolution process, the authors identified that the essence the executive sponsorship may possibly enhance and improve the efficiency of the DAB. The authors formulated four suggestions to improve the DAB processes: (1) DAB members should be experienced construction professional with technical background, (2) DAB members should have extensive knowledges of the projects in which they are involved, (3) DAB should address parties' underlying interests, and (4) DAB should possibly intervene before contract award. DOI: [10.1061/JLADAH.LADR-1210](https://doi.org/10.1061/JLADAH.LADR-1210). © 2025 American Society of Civil Engineers.

## Introduction

The construction industry faced a significant hurdle with the development of large-scale oil and gas projects in the 2000s. These projects did not opt for the dispute adjudication board (DAB) dispute resolution mechanism, which is known for its effectiveness in avoiding and resolving conflicts (DRBF 2019). Instead, many projects developed the concept of executive sponsorship, which is a governance framework where highly experienced individuals, typically with senior positions like vice presidents or former operation officers, provide leadership above the project management role. Executive sponsors are effectively overseeing the project's execution, support strategic decision-making to avoid and resolve disputes.

In this paper, the author will investigate the executive sponsorship's attributes and characteristic typically displayed in mega oil and gas projects and observe if the executive sponsorship may contribute to the improvement of DAB practice. The research for this paper was primarily desk-based, drawing from publications, specialized databases and information from reputable institutions. Additionally, examples included in the article were informed by the author's firsthand experience, providing practical insights into the subject matter.

The paper does not recommend using executive sponsorship instead of a DAB. On the contrary, the aim is to propose improvements to the current DAB process by examining another dispute resolution practice that has proven successful under specific

conditions. It is acknowledged that executive sponsorship is fundamentally different from a dispute board; the primary difference being that executive sponsors are inherently partial, whereas the foundation of a DAB is impartiality. However, the converging purposes and similarities in the processes of executive sponsorships and dispute boards are evident. Furthermore, no research has been conducted to compare these two similar practices. While being mindful of the differences and limitations of each practice, this paper will attempt to identify the underlying reasons for the success of executive sponsorship and, from these insights, as a vector for innovation, formulate proposals to improve DAB practice.

The first section of the paper will discuss the role of executive sponsors in mega oil and gas projects, how their involvements are similar in some respects to alternative dispute resolution. The second section will be a refresher on the definition of a DAB, by examining its historical origins as dispute resolution boards, the evolution of the board into a dispute avoidance and resolution mechanism, and the main functions of the current practice of DAB. The third section will attempt to compare the key elements of the procedural rules of DAB with the mechanics of executive sponsorship as typically established on mega oil and gas projects, to identify which practices of executive sponsorship could effectively improve the DAB process. The fourth section will discuss how parties' interests are addressed by executive sponsors and it could similarly improve the DAB process. Finally, suggestions for the improvement of the DAB process will be discussed to conclude this paper.

## The Role of the Executive Sponsorship in Mega Oil and Gas Projects

This section aims to discuss the role of executive sponsorship in mega oil and gas projects, how that process is similar in some respects to alternative dispute resolution, specifically DAB, and identify the essence of the executive sponsorship.

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A mega project is defined as a large-scale and complex venture that typically costs at least USD 1 billion (Flyvbjerg 2014). In the author's experience, oil and gas projects mega projects cost between USD 10 and 20 billion. These projects involve the performance of various components of the project outside of the construction site, often worldwide, such as design development, equipment and module fabrication, which are then transported to the construction site for assembly and start-up. The sheer scale of these projects makes it impossible for a project director to have full control over every aspect, resulting in inherent complexity.

Importantly, dispute boards are not typically utilized in the oil and gas industry (Cooper and Robinson 2012). Instead, a scheme of executive sponsorship is implemented for those mega projects. Executive sponsors usually represent the highest level of their respective parties involved in the projects (AHI Carrier, n.d.). They are generally very experienced individuals, often a vice president, former COO, seasoned project directors, with technical or engineering background.

Following is the example of typical contractual clause to establish an executive sponsorship scheme on a contract for a mega oil and gas project:

The role of the Executive at Sponsor is to be the senior management contact that will become involved and take a proactive approach to the successful execution of the Work. The Executive Sponsor will be aware of the progress of the works through the major milestones and will hold at least one meeting each month on the status of the works. Contractor's Executive Sponsor will contact client's Executive Sponsor on any potential problems in contractor's organization or in client's organization or other major issues that may negatively impact the progress of the works. Contractor's Executive Sponsor will be available to meet with client's Executive Sponsor or other client project or construction management representative at the worksite to review the status of the works and the contract.

The role of executive sponsors on mega projects is to provide substantial leadership (beyond project management role, notably when it is beyond its control), establish an effective governance framework, oversee the business case, support strategic decision-making, and support conflict resolution (Louw et al. 2021). The author suggests that the executive sponsorship serves, in addition to many functions, like an alternative dispute resolution, for both prevention and resolution of disputes as they occur on the project, offering high quality and real time advice and decisions, as the issues emerge during the project execution.

Executive sponsors have proven to be highly successful in numerous projects (Louw et al. 2021), particularly large-scale oil and gas projects. The author recalls numerous executive sponsor meetings where the directions given and decisions taken were essential to avoid major disputes between the contractor and subcontractors and allow them to achieve critical stages of the construction. An example of successful executive sponsorship follows.

On a major LNG project involving the fabrication of modules in China became significantly impacted by COVID-19. The module fabrication subcontractor seized the opportunity to submit a large number of claims, attempting to recover from their low bidding. This situation exacerbated tensions, leading to an adversarial relationship between the contractor and the subcontractor as each defended its position. Delays began to accumulate. After three months of observing this escalating conflict, the executive sponsors of both the contractor and the subcontractor convened for an executive sponsors meeting. They decided to refresh the contract and to

reach a global settlement of the claims and COVID-19 impacts. The agreement was reached by the team within the next 3 months, included a lump-sum payment and an incentive plan, based on a realistic revised construction schedule. This intervention normalized relations between the contractor and subcontractor teams. Although the project lost some time and cost contingencies due to the revised agreement, it was eventually delivered within the adjusted timeframe and budget. The executive sponsors' decision to settle the disputes early and halt the adversarial relationship was essential to the project's ultimate success. This example shows the executive sponsorship's leadership, ability of making strategic decision and resolve conflict.

Louw, Steyn, Wium, and Gevers (2021) analyzed the relationship between the personal attributes of the individual appointed as executive sponsors and the project success. They found that certain attributes must be possessed by the executive sponsors for the success of mega projects: (1) seniority, credibility, power within the organization, (2) ability to challenge project assumptions, and also (3) ability to provide clear directions in term of strategy and governance. To those attributes, the author suggests adding fairness. It submitted that these four attributes characterize the essence of an executive sponsorship.

This section identified that the role of the executive sponsors on mega oil and gas projects is to provide substantial leadership, establish an effective governance framework, oversee the business case, support strategic decision-making, avoid and resolve dispute. The essence of the executive sponsors was also identified as being credibility, ability to challenge assumptions, provide clear directions and fairness. The next section will attempt to underline the main functions of the current practice of DAB.

## Dispute Adjudication Boards (DAB)

This section aims to provide a definition of a DAB by examining its historical origins as dispute resolution boards, the evolution of the board into a dispute avoidance and resolution mechanism, and the main functions of the current practice of DAB.

In the United States and Canada, the most common terms are *dispute review board* or *dispute resolution board*. Worldwide, the most common terms are *dispute adjudication board* or *dispute avoidance and adjudication board*. The present paper will use the term dispute adjudication board (DAB) to refer to both standing dispute adjudication boards or dispute avoidance and adjudication boards operating from the outset of the project, as defined under the FIDIC's DAAB procedural rules as part of the *FIDIC Construction Contract 2nd Edition (Red Book 2017, Reprinted in 2022 with Amendments)*. The ICC's *Dispute Board Rules Effective from October 1, 2015 (Including Appendices Effective from October 1, 2018)*, and the CIARB's dispute board rules dated August 2014. The three sets of rules are generally similar; the minor differences existing between the rules will not be addressed in the present paper.

The first instance of a dispute board being utilized occurred during the construction of the second bore of the Eisenhower tunnel from 1975 to 1979 (Harmon 2010). The decision to implement a dispute board was made due to the financial failure of the first bore. The primary role of the dispute board at that time was focused on preventing disputes from arising. In 1978, the National Academy of Sciences published a report entitled *Better Management of Major Underground Construction Project*, which included recommendations for improving the construction of underground projects. It was recommended to establish an independent board composed of three to five experts in their respective fields possessing qualities of integrity and fairness (Harmon 2010). According to Groton et al. (2016), the

initial purpose of the dispute board, similar to adjudication in the UK or the dispute board in the US, was to resolve disputes in a timely manner as they occurred.

The success of dispute board spread worldwide: the World Bank recommended the usage of dispute board from 1995, and the Asian Development Bank considered the same in 1997 (DRBF 2019). The Japan International Cooperation Agency has become a leader among development lenders by including the dispute board as part of its procurement guidelines but also treats the dispute board cost as eligible for financing (Jaynes 2012). Since its initial implementation, the International Federation of Consulting Engineers (FIDIC) has taken the lead in developing the concept of DAB. The idea of DAB first emerged in the FIDIC Red Book edition 1987 through a supplement in 1996, and has since been included in the 1999 edition and the FIDIC Multilateral Development Bank Harmonized Conditions of Contract (Jaynes 2011). The current FIDIC Golden Principles advocate for DAB as a mandatory method of resolving disputes before resorting to arbitration (FIDIC 2019).

The DAB operates under a contractual framework and consists of one or three members chosen mutually by the parties involved. The DAB usually is established when the contract is awarded and remains active throughout its duration (Ad-hoc DAB which are nominated in response to dispute referrals during the course of the project also exist; this paper will only addresses standing DAB which are established from the outset of the project as recommended in the FIDIC, ICC and CIARB rules). Typical DAB members include a mix of engineers, contractors, architects, builders, consultants and lawyers, all of whom are specialists in construction work (DRBF 2019). The Dispute Resolution Board Foundation (DRBF) Manual (DRBF 2019) suggests that DAB members should be neutral, technically knowledgeable and experienced in a range of technical, contractual, and commercial matters relevant to the project, and also must possess management and communication skills and be fluent in the relevant language for communications.

The main objective of DAB is to timely advise the parties to prevent disputes from arising and to decide on any disputes that are submitted by the parties. The DAB's decisions are contractually binding on the parties but are not necessarily final and can be challenged by either party through arbitration or litigation. Dispute Resolution Board Foundation conducted in 2018 for the Asian Development Bank a study for 230 projects, and reported that only 7% of DAB's advisory opinions went on a formal request to the DAB to decide a dispute, and only 6% of DAB's decisions about those disputes were subsequently referred to arbitration (DRBF 2019). Many experts believe that the DAB is particularly effective in resolving complex technical disputes between the owner and the contractor (Groton et al. 2016).

This section pointed out that DAB is a contractually established alternative dispute resolution method which offers a high-quality dispute avoidance advice and real time decisions to resolve disputes by one or three selected experts in order to support execution of construction projects. The next section will examine and compare the processes of DAB and executive sponsors meetings, explore whether executive sponsorship can act as alternative dispute resolution, and identify potential benefits that could enhance DAB.

## Comparison of the Processes: DAB and the Executive Sponsorship

This section compares the key elements of the procedural rules of DAB (FIDIC 2022; CIARB 2014) with the mechanics of executive sponsorship as usually established on mega oil and gas projects.<sup>1</sup>

The aim is to identify the practice of executive sponsors which may enhance the DAB process.

## Objectives

The objectives of the DAB are defined similarly in the Rule 1 of FIDIC, Article 1.1 of ICC, and Article 4.2 of CIARB: to prevent/avoid and resolve disputes. FIDIC's rules explicitly state that dispute resolution should be expeditious, efficient and cost effective. The underlying concept is that any disputes should be addressed in real-time to avoid disrupting the construction progress.

The executive sponsors meeting serves a similar purpose to avoid and resolve disputes, but it goes further by taking on additional responsibilities, such as guiding the project's direction and making executive decisions. The executive sponsors, through direct seniority and credibility, play a leadership role to conduct the parties toward the project objectives.

It is argued that the DAB, similarly to executive sponsorship, in their efforts to prevent disputes, by identifying issues and warning about potential conflicts, may indirectly influence and guide the parties toward achieving the project's objectives. While this indirect guidance must certainly not contravene the independence and impartiality's obligations of the DAB, it is contended that a proficient DAB should understand the objectives of the parties and project's objectives, anticipate the project's challenges, and proactively guide the parties toward meeting those objectives and overcoming these challenges, which will in turn reduce the numbers of disputes.

## Formation and Structure

DABs typically consist of three members, although there can be instances of single member DABs as well (e.g., s1.3 of FIDIC DAA Agreement). The members of the DAB are appointed at the beginning of the project, usually within 28 or 30 days of the letter of acceptance or signature of the contract (s21.1 of the FIDIC Red Book or article 7 of ICC rules). Face-to-face meeting are held between DAB member and the parties at site, or location of the project, every 70 to 140 days (Rule 3 of FIDIC).

For mega projects, executive sponsors are fully dedicated to the project. Executive sponsors convene regularly (either monthly or quarterly) during executive sponsor meetings at the project site (bipartite, client and contractor, or tripartite with a subcontractor). Sometimes, the assignment of the executive sponsors is included in the contract or occur shortly after its signature. In certain cases, the contractor may nominate an executive sponsor during the bidding process, prior to contract award, to demonstrate their commitment to the client. This phase can last for a year or two for oil and gas project (through FEED and open book tendering). It is suggested that the role of dispute avoidance of the executive sponsors before contract signature may be of great efficiency for dispute avoidance, as it represents an influence opportunity for the executive sponsors to adjust risk allocation between the parties which may appear unfair or inappropriate, thus significantly reducing future disputes.

In terms of structure, the DAB and executive sponsors meetings share a similar format. The executive sponsors typically possess a deeper understanding of the project as they are fully dedicated to it. Furthermore, the executive sponsors' capacity to intervene prior to the contract being signed is extremely beneficial. At present, a DAB is only established after the contract is signed, disallowing the DAB to fulfil this role. The writer proposes considering how a DAB could intervene prior to the contract being awarded. One suggestion is to establish a permanent



DAB, through a reputable institution, that can be consulted by both parties involved in the contract prior to its signing, similar to a cold eye review.

### **Fairness, Independence, and Impartiality**

The independence and impartiality for DAB members are core contractual obligations of the DAB (FIDIC's DAA agreement, ICC's model dispute board member agreement and CiArb's tripartite agreement for a dispute board). These agreements require the DAB to act fairly and impartially between the parties involved (FIDIC's Rule 6.2 of FIDIC, Article 21.6 of ICC and Article 14 of CIArb).

As an executive sponsor represents a party on the project, he is necessarily partial. However, in the author's experience, Executive sponsors have frequently demonstrated a notable level of fairness. They willingly cooperate, make decisions with the project's bigger picture in mind, and build trustful relationships with other parties. This, in turn, helps them direct the project toward timely delivery and minimize disputes.

It is argued that in addition to impartiality and independence, DAB members should also strive to develop a trusting relationship with the parties involved on-site to enhance their ability to effectively prevent disputes. DAB member should strive to obtain this trust from the parties by exhibiting a fair behavior and demonstrating high levels of competence.

### **Identification of Issues**

According to rule 3.1 of FIDIC, the DAB is required to stay informed about the parties' performance of the contract, as well as the site and its surroundings, and the progress of the works. Similarly, Article 11.1 of the ICC's rules states that the parties and the DAB must cooperate to ensure that the DB is fully informed about the contract and its performance by the parties. While the DAB is not intervening or visiting site (retention period), the DAB typically stays updated with the project's progress by reviewing important project indicators, monthly reports and meeting minutes (DRBF 2019). This retention stage is essential for the DAB to be acquainted with the project information and develop an understanding of the specifics of the project. During the visits, to identify issue, the DAB conduct reality testing, by confronting the parties with his observations and concerns, to uncover any issues or disagreements that may be hidden by the parties (DRBF 2019).

The requirements to stay informed about the performance of the contract and site progress is also essential for the executive sponsors (see the standard clause at section 1 of this paper). It might be easier for the executive sponsors, than for the DAB, to understand the issues at hand, as the executive sponsors have direct access to their own party's records and have the power and seniority to obtain reporting from project teams.

It is contended that for a DAB to improve its effectiveness, it must possess extensive knowledge about each project they are involved in. It is suggested that the DAB should have the sufficient technical background and experience to understand the issues at stake. To effectively understand the project, the DAB should seek a deeper understanding of the project by consulting with informed sources, as opposed to relying solely on monthly reports and meeting minutes, which often fail to capture the true intentions and disagreements of the parties. Notably, the author propose that the DAB reads important communications, such as letters, variation requests and claim submitted, and reports generated by the parties.

### **Informal Assistance**

Informal assistance refers to advice or opinions given by the DAB to the parties involved on the construction project. This assistance can be provided during meetings, site visits, or through written communication, if and when the parties jointly request it (Rules 2 and 3.1 of FIDIC and the ICC's Article 17). If the DAB becomes aware of any issues or disagreements, they may invite the parties to request informal assistance (s21.3 of the FIDIC Red Book 2017). It is important to note that the parties are not obligated to act on any informal assistance provided (not binding).

Through meetings at site, the executive sponsors will generally offer direction on the project's governance and strategy decision making. These directions are generally commanding, but allow a certain level of latitude for the project teams to apply them.

It is suggested that either the informal assistance offered by the DAB and the directions offered by executive sponsors similarly encourage the project team to put aside their egos, pride, and personal agendas, and instead focus on understanding the broader issues and objectives of the project. It is recommended for the DAB to be proactive in proposing high quality informal assistance to the parties to support understanding of the greater picture of the issues that the project need to overcome to be successful (provided that impartiality and independence are preserved at any time). The DAB members must build upon fairness, trust and knowledge of the projects to excel in their role.

### **Decision on Disputes**

A dispute is when a disagreement, or an issue, cannot be resolved by the parties. This section will observe how the DAB and executive sponsors handle a dispute, to reach a decision or a conclusion.

#### **Formalization of the Dispute**

Before submission to the DAB for decision (s21.4.1 of the FIDIC Red Book), a dispute is either identified through a specific process (following a notice of disagreement after an engineer decision for FIDIC), or simply notified as such (ICC's Article 19.1).

Similarly, executive sponsors meetings are used for dispute resolution. A dispute is identified by the project team and escalated to the executive sponsors. Most contracts in the oil and gas industry establish senior executive negotiation as part of the dispute resolution procedure. These negotiations generally occur after unsuccessful project team negotiations or following an unsatisfactory expert determination or early neutral determination. It is usually the last resort before an arbitral proceeding. The executive sponsors meeting is one of the most appropriate fora to satisfy the requirement for these senior executive negotiations. Following is a typical clause of senior executive negotiations:

In the event a Dispute cannot be resolved in accordance with [...], a party may, via written notice to the other, request that the parties engage in senior executive discussions; [...]. Upon a party's receipt of such written notice, each party shall immediately designate a senior executive to resolve the dispute and notify each other of the identity of the senior executive appointed. [...]. Such negotiations shall be held in project site or at another location if agreed upon by the parties in writing, such negotiations shall be confidential and without prejudice, and no part of such negotiations shall be used by either party in any subsequent arbitration, action, case, proceeding, or other similar dispute resolution forum.

Some contracts in oil and gas do not require senior executive negotiations. Nevertheless, the executive sponsors meetings are

possibly the best forum to address and resolve any dispute that arises between the parties.

### Process of Decision (or Conclusion)

The process of the decision of dispute by the DAB is well framed by the rules. For instance rule 5 of FIDIC requires that the DAB has the power to decide the scope of the DABs' decision, establish the procedure to be applied in issuing decisions, the ability to decide on the DAB's own jurisdiction (ICC 2018), convene any meetings or hearings as deemed necessary, appoint one or more experts (including legal and technical expert), take the initiative in ascertaining the facts, and to open up, review and revise any previous certificate, decision, determination of the engineer that is relevant to the dispute. The decision (or conclusion) of the DAB is recorded in a DAB report. In case of a three members DAB, the decision is usually reached unanimously. In some instances, the decision might be reached by 2 members; the dissenting opinion is also recorded in the DAB report (DRBF 2019).

The executive sponsors have similar capabilities, such as deciding the agenda of their meetings, the specifics of site visits, appoint technical experts which can be a group of persons on the project composed of employees of the contractor and client, request to hear any persons concerned by an issue of a disagreement. However, decisions taken by executive sponsors might lack a standardized process, or the application of decisions might be inconsistent as interpreted differently by parties and individuals. In case of indecisiveness between members, the executive sponsors cannot rely on the tie breaker decision of the chairman of DAB (in case of a three members DAB), they have instead to negotiate and compromise until a common decision is reached. The actual formalization of any decision of the executive sponsors under a change order, or an amendment, to the contract is not performed by the executive sponsors, but by the project team. The executive sponsors will generally agree the principles of the agreement, which may be recorded under a term sheet signed by the executive sponsors at the end of the executive sponsors meeting or within the next few days; the finalization and the recording of the agreement into a change order or amendment to the contract will be developed by the project team. The draft change order, or amendment, generally goes through further discussion and negotiations. A DAB is much more efficient in this regard with a clear and established contractual process. To that extent, the author is of the view that DAB provides greater settlement rate of dispute than DAB.

In the DAB process, party's disagreement with a decision of a DAB (expressed by a party under a notice of dissatisfaction) leads to a new negotiation. For executive sponsors meetings, the agreement is always reached in principle so it is up to the project team to finalize the actual agreement which will be signed and thus no further negotiation is required (the overall framework of the agreement is already set). According to Groton et al. (2016), the quality of a decision of a DAB is likely to be higher if the DAB members have experience of construction at issue. The writer concurs and proposes that this is typically true for executive sponsors, who usually possess extensive managerial experience and technical knowledge.

### Timing of the Decision

For disputes submitted to a DAB, the decision should usually be rendered within the 84 days (as per FIDIC's Rule 21.4.3 and CIARB's Article 15.2), or the 90 days (ICC's Article 22.1) after the submission of the referenced dispute. For executive sponsors, agreement may be reached in a single meeting, or it may take two or three meetings to reach an agreed decision on the dispute (i.e., negotiations can span multiple months depending on the executive sponsor's availability and eagerness to resolve the dispute).

Once an agreement has been reached, or once a decision has been rendered, the outcome is then captured by the project team in a change order or a contract amendment.

### Enforceability

The Rule 5.2 of ICC specifies that a decision is binding on the parties upon its receipt. The Parties shall comply with it without delay, notwithstanding any expression of dissatisfaction. In all the rules, provided that the notice of dissatisfaction is served, the decision of DAB can be challenged through arbitration. For both the DAB and executive sponsors, the decision taken becomes contractually binding (either directly for the DAB, or by the actions of the project teams for executive sponsorship), but it is not a final decision as it can be challenged during arbitration. Jaynes (2012) reported that resistance exists in many countries to consider the decision of the DAB immediately binding. This issue is irrelevant for an executive sponsor's decision, which possesses a large ethos of credibility within the respective organizations.

In this section, it became clear that the essence the executive sponsorship, notably the credibility of the sponsors, the ability to challenge the project assumptions by understanding the overall picture of the project, and the ability to provide clear directions, as well as their fairness may possibly enhance and improve the efficiency of the DAB. The next section offers a note about parties' interests.

### DAB and Executive Sponsorship Dealing with the Parties' Interests

This section aims to explore how parties' interests are considered in executive sponsorship and determine how that could support the DAB process.

During the ICC conference of 18 March 2024, occurring during the Paris Arbitration Week (ICC 2024), panelists discussed the advantages of addressing the parties' underlying interests in a dispute during an arbitral proceeding (Laurita et al. 2024). It was suggested that understanding parties' underlying interests allows arbitrators to reach more valuable awards to the parties, as the awards may be accepted in an easier manner, and, in some instances, can support the basis of a continuous relationship between the parties. It was debated that it was easier for an arbitrator to understand and consider parties' interests when an existing relationship between the parties was subsisting in parallel to, and continuing beyond, the dispute submitted to arbitration, for example the ongoing performance of other contracts or frame agreements.

While the project is generally completed or terminated by the time arbitration proceeding are undertaken, the project is still alive and on-going during a DAB process. The most evident and immediate existing relationship between the parties is therefore the project. It is suggested that during the execution of the project and before the emergence of any dispute, the parties' common interests materialize in the successful achievement of the project itself. Project success (time and budget) generally means probable benefits for both parties (or at least limited losses); it also offers reputation, fame, income, and further market opportunities. It is submitted that the executives of construction companies and clients both desire the success of their projects, as, before any dispute arises, their respective interests entirely lay in the success of the projects they undertake. This is the core purpose of their company. To that extent, the executive sponsorship excels to achieve that purpose, as by essence the executive sponsors are executives focusing on the success of their companies.

The author suggests that the true benefit of utilizing a DAB, as an alternative dispute resolution method, lies in its ability to

consider the interests of all parties involved and reach a mutually beneficial solution that leads to the success of both sides. This observation aligns with the feedback received by the DRBF from current projects that indicates a high degree of acceptance by both owners and contractors when a DAB adopts a proactive approach to its role and involvement in the project; the success of this approach generally results in a best-for-project outcome for all parties (DRBF 2019).

It is suggested that a DAB, to enhance the prospects of success, must strive to understand the interests of parties involved and align them with the overall goals of the project. This should be done pro-actively and informally, without compromising the DAB's obligation to remain independent and impartial. It is recommended that the DAB includes the executives of the parties involved in its site visits. This way, the DAB can gain insight into the parties' interests and address any potential issues early on, promoting a shared understanding of the project's objectives. By reminding and aligning the parties' interests with the project's goals, the DAB can effectively prevent disputes throughout the duration of the project.

## Conclusion and Suggestions

The first section of this paper explained that the role of the executive sponsors on mega oil and gas project is to provide leadership (beyond project management role), establish an effective governance framework, oversee the business case, and support strategic decision-making and conflict avoidance and resolution. The executive sponsors are generally experienced individual, often a vice president, former COO, seasoned project directors, with technical or engineering background. Executive sponsor meetings are used as a forum for dispute avoidance and resolution. Credibility, ability to challenge assumptions, ability to provide clear directions and fairness were defined as the characteristic forming the essence of executive sponsorship.

The second section of this paper reminded that a DAB is a contractually established alternative dispute resolution method which offers high-quality dispute avoidance advice and real time decisions to resolve disputes by one or more selected experts in order to support the success of construction projects. The main objective of DAB is to timely advise the parties to prevent disputes from arising and to decide on any disputes that are submitted by the parties. The DAB's decisions are contractually binding on the parties but are not necessarily final and can be challenged by either party through arbitration or litigation. The quality of a decision of a DAB is likely to be higher if the DAB members have experience of construction at issue.

In the third and fourth section of this paper, The DAB and executive sponsorship were compared to determine differences and similarities in procedural rules and mechanics, as well as each's ability to consider the parties' underlying interests during the dispute avoidance or dispute resolution process. It was identified that certain attributes and abilities of the executive sponsorship may foster and improve the efficiency of the DAB process.

From that perspective, the author proposes the following suggestions to improve the DAB process. These suggestions would be most appropriate for projects similar to mega oil and gas projects, characterized by their large scale and high technical complexity, such as energy transition projects (hydrogen, power-to-x), conventional energy plants, nuclear plants and chemical plants.

1. DAB members should be experienced construction professional with technical background.

The quality of a decision of a DAB is likely to be higher if the DAB members possess technical experience of construction issues. Therefore, the DAB members should be qualified and experienced professionals like engineers or construction professionals. In case of a three-member DAB, it is recommended that this applies to at least two members.

2. DAB members should have extensive knowledges of the projects in which they are involved.

To improve effectiveness, DAB should have extensive knowledge of the project. During the retention period, DAB should seek a deeper understanding of the project by not only staying up to date on project progress through monthly report or progress indicators, but also appraising the on-going intentions and disagreements of the parties through communication letters, variation requests and claims submitted, and reports produced by the parties. One suggestion would be allowing the parties to recover retention previously paid to a DAB member if there is reasonable evidence that this member was evidently not sufficiently informed of the project.

While this suggestion might seem somewhat stringent, it should be viewed rather as a guarantee of DAB involvement, which could facilitate the acceptance of DAB retainer fees and overall DAB costs in countries where such practices are not well established.

3. DAB should address parties' underlying interests.

The true benefit of using a DAB, as an alternative dispute resolution method, lies in its ability to consider the interests of all parties involved and reach a mutually beneficial solution that leads to the success of both sides. DAB should adopt a proactive approach leaning toward best-for-project, and address to the executives of the parties involved. This should be done informally without compromising the DAB's independence. One suggestion would be for the DAB to initiate a workshop at the beginning of the project, where the project teams from all parties can openly discuss and identify their shared goals and motivations for successfully completing the project together. The resulting document would not be contractual or binding, but could be used by the DAB during his future informal assistance to remind what was the shared value of parties' project teams while starting the project.

4. DAB should possibly intervene before contract award.

The period before signing a contract is an opportune time to impact the project set-up and balance the distribution of risks between the parties involved, thereby significantly reducing future disputes. It is proposed to investigate the possible ways for a DAB to contribute prior to the contract being executed between the parties. One suggestion would be to establish a permanent DAB, through a reputable institution, that could be consulted by both parties consented common decision prior to sign the contract, similarly to a cold eye review.

The preceding suggestions are opened for discussion, further research, and experimentation on future projects. This article advocates for, and humbly aims to contribute for, the continuous improvement of dispute adjudication board practice, as a dispute avoidance and alternative dispute resolution method until, hopefully, it will become the most commonly used dispute resolution method in the construction industry.

## Data Availability Statement

No data, models, or code were generated or used during the study.



## References

### Endnotes

<sup>1</sup>This section 3, and generally this paper, specifically looks at the procedural rules outlined in FIDIC's Construction Contract 2nd Ed (2017 Red Book, Reprinted 2022 with amendments), the ICC's dispute board rules effective from October 1, 2015 (including appendices effective from October 1, 2018), and the CIARB's dispute board rules dated August 2014.

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