



Dispute Boards –What Architects Need to Know

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Disputes and delay are common in the international construction industry. Until recently these have not been easily resolved without recourse to lengthy arbitrations or worse yet to the Courts. This is now undergoing a major change with the utilization of new rules relating to Dispute Boards and Procedures.

A Dispute Board is a panel of (usually) three experienced, respected and impartial members, who are appointed at the outset of the contract and act throughout its performance, visiting the project on a regular basis and being regularly updated on its progress through written reports submitted by one or both of the parties. This is a perfect role for architects knowledgeable in the construction process and is an expanding area of potential revenue.

There has been an increasing need for methods of resolving disputes which will not destroy the working relationship between the parties but will help them resolve their problems while they continue performing the contract, with as little cost and disruption to the contract as possible. With this in mind the *Fédération Internationale des Ingénieurs-Conseils* (FIDIC) has used Dispute Boards in its contracts for some time and its new Multilateral Development Bank Harmonized Edition (Conditions of Contract for Construction) has been adopted as part of the Standard Bidding Documents for any construction funded by The World Bank, The African Development Bank, The Asian Development Bank, the Black Sea Trade and Development Bank, the Islamic Bank for Development, the Nordic Development Fund, and other such institutions. In addition to the FIDIC contracts, the International Chamber of Commerce (“ICC”) has published its own “Dispute Board Rules”, which provide the framework for establishing and operating a Dispute Board in a multitude of various projects, not just construction.

WHY A DISPUTE BOARD?

The traditional methods of Arbitration or Alternate Dispute Resolution (ADR) focus on trying to resolve a dispute after it has already arisen. By the time an Arbitrator, Mediator or Conciliator has been brought on board, both sides have generally retained Counsel and costs are



beginning to escalate. Frequently, such ADR is attempted only after litigation or arbitration has already commenced and the parties are seeking a less expensive way to deal with their differences. They will have already expended considerable amounts of time and money - not to mention goodwill, which will have all but evaporated.

The major difference between traditional ADR methods and Dispute Boards is that the parties at the very outset of their contractual relationship set up the Dispute Board, when the Agreement is entered into. The idea behind a standing Dispute Board is that its members accompany the contract throughout its duration and can be called upon at any stage to deal with a problem between the parties as soon as it emerges. A Board also visits the site at regular intervals and its members are continually updated on the progress of the implementation of the contract. This first-hand information puts the Board in a unique position to make determinations about any dispute that the parties bring before it. Dispute Boards not only resolve disputes brought before them, they also provide the parties with a regular forum for discussion of difficult or contentious matters. Architects should support this growing trend in dispute avoidance and should apply their special knowledge to the process.

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