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**CI Arb - Retrospective and prospective – 20 Years of  
European Branch – 1993-2013, Tremezzo, Italy**

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# How dispute resolution has been impacted by Mediation and Dispute Boards

**Iain Aitchison FDBF FCI Arb**

Architect - Arbitrator- Adjudicator- Mediator

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# European Background

- 20 years ago I was just starting my professional career
- Son of a Lawyer / became an Architect
- ‘Common Law’ training / ‘Civil Law’ experience
- Scotland is a ‘Hybrid’ jurisdiction: Roman Law - ‘European’
- Stewart Kyd: Advocate / Arbitrator in 1790s Scotland
- Arbitration (Scotland) Act 2010 (statutory confidentiality)



# Analysis and Synthesis

- Design of Prototypes
- Highly complex projects - technical/legal
- Mix – risks /specifications/drawings/written contract/time schedules / unique location / completion date and cost
- Variability clauses (TIME/COST) – key to construction law
- Immense costs // need for rapid decisions
- Risk Structure // Dispute Structure
- Protecting Relationships // Binding Decisions



# Mediation Board

- Contracted Mediation / Project Mediation
- Involved in process from the beginning
- Focus on needs not rights
- Lawyer and Commercial Expert (both trained Mediators)
- Traditional Mediation techniques – not inquisitorial
- Similar to Dispute Resolution/Review Board
- Advisory Opinions and/or Recommendations



# Dispute Board

- FIDIC / Dispute Board Federation – Dispute Avoidance
- ‘Ad-hoc’ Dispute Board – single formulated decisions  
one party avoids use and defeats access/forum
- Standing Board – may avoid dispute arising / faster access
- Engineer (3.5) as Facilitative Mediator then Evaluative Adjudicator
- DAB Opinion (20.2) / DAB Decision (20.4)
- Pre-Arbitration Mediation / Amicable Settlement (20.5)



# Success: Multi-Path

- Access to Engineer and/or Dispute Board
- Access to Opinions or Decisions
- Mediation (party control) - (third party) Adjudication  
(consensual) - (adversarial)
- Parallel/cyclical pathways (speed/efficiency/certainty)
- Default to Adjudication within contractually limited period



# Challenges: Multi-Level

- Balance in the DAB (not all legal, not all technical)
- Risk Structure (micro contract // macro project)
- Subcontractor/main contractor disputes (FIDIC Pink Book)  
– highlights difficulty to coordinate multiple layers of DAB
- Multiple turn-key (interfaces - cross contract risk structures/dispute escalation mechanisms)
- Effective Dispute Resolution through/across levels





# Decision-making ADR

- Statutory Adjudication – Decision in 28 Days (UK)
- Dispute Boards (FIDIC) – Opinion or Decision in 84 Days
- Mediation – Facilitative and/or Evaluative mediations
- Mediation Board – continual / project duration
- Conciliation – (binding) Recommendation from Mediation
- ADR – primary forum, (first/preferred)



# Non-Arbitral Settlements and NYC

- Arbitration remains for appeal on Merits or Enforcement
- Arbitration provides a Remedy not a Resolution
- ‘Morph’ of Mediator into Arbitrator for Consent Awards / Award on Settlement
- Creation/Extension of all inclusive consensual Jurisdiction for ‘Arbitrator’ – perhaps after settlement of a ‘Dispute’
- Recognition/Enforcement of consensual/adversarial ADR



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