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# DISPUTE BOARDS

Giving effect to Dispute Board decisions rendered under  
FIDIC Conditions of Contract

By

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## Dispute Boards and FIDIC

- Dispute Boards: first instance dispute resolution device widely used in construction contracts
- FIDIC and the World Bank contributed to their worldwide spread in the 90s
- Most FIDIC standard forms provide for the Dispute Board to decide any dispute between the parties as a mandatory precondition for any subsequent reference of the same dispute to arbitration



## Dispute Board decisions (I)

- Under Clause 20 of the 1999/2006/2010 FIDIC forms the DB decision is “**binding**” upon the parties who should promptly give effect to it
- Where not voluntarily complied with, this decision is given effect to via a referral to arbitration
- An award giving effect to a decision should therefore enforce the decision as it is without considering its merits. However, under the same Clause 20 this is possible only for “**final and binding**” (unchallenged) decisions



## Dispute Board decisions (II)

- The usual scenario is that the dissatisfied party challenges the DB decision (that does not become “**final**”) and does not comply with it
- No remedy is offered to the aggrieved party other than damages for breach of contract in the context of long, costly arbitration proceedings dealing with the underlying dispute
- Some cases now suggest that even where DB decisions have been challenged, arbitrators are inclined to give effect to these decisions irrespective of their merits



## Giving effect to *non-final* decisions

- ICC Case 10619: **Interim Award** giving effect to the Engineer's decision
- ICC Case (DBF case): **Final Partial Award** enforcing the DAB's decision
- ICC Case 15751/JHN: **Partial Award** ordering payment of the sums decided by the DAB by way of damages for breach
- The Singapore Case: “not everybody agrees”



## Some issues to consider

- Should the failure to comply with the decision be the subject of separate DB proceedings before arbitration?
- Should this failure be addressed within the context of the arbitration dealing with the merits of the original dispute?
- Interim, final or partial award?
- Breach of contract or specific performance?
- ... and finally, the FIDIC Guidance Memorandum to Users dated 1<sup>st</sup> April 2013



## Conclusions

Dispute Board decisions are binding upon the parties unless and until revised by arbitration/amicable settlement.

Dissatisfied parties commonly seek to frustrate the dispute resolution process by challenging DB decisions and not complying with them since most FIDIC contracts currently provide no remedy against the failure to comply.

The dispute resolution mechanism becomes more effective if DB decisions are immediately given effect to by an arbitral award pending consideration of their merits.

Some arbitral tribunals have taken this approach which encourages earlier settlement of disputes, saves time, costs and effort for parties involved in addition to unlocking projects cash flow.