

DISPUTE BOARDS: AN ESSENTIAL INVESTMENT OR A COSTLY MISTAKE?

- Dispute Boards are becoming a powerful tool in resolving international disputes before they proceed to arbitration.
- A Dispute Board is appointed at the inception of a project giving it significant knowledge of the project and the parties.
- Members of a Dispute Board are usually selected for their specialist project related expertise.

WHAT IS A DISPUTE BOARD?

A Dispute Board is a permanent panel appointed at the commencement of a project, and before any dispute arises. A Dispute Board is therefore actively involved throughout the lifecycle of a project so that should a dispute arise, its project knowledge and relationship with the parties can be utilised far quicker and more efficiently than a third party being called upon simply to resolve a dispute between the parties.

WHAT VALUE IS A DISPUTE BOARD LIKELY TO OFFER TO A PROJECT?

By establishing a Dispute Board at the inception of the project the Board is perceived by the parties as part of the project, leading to an informal dialogue and the building of a good rapport between the parties and the Board. As a result, the Board's views, concerns and informal decisions are more readily accepted by the parties than those of an individual coming to a dispute on a project without that project knowledge and trusted relationship with the parties.

Disputes on projects which do not have a Dispute Board, but instead have a dispute resolution procedure which is activated once the parties are firmly in dispute, are often more difficult to resolve as the parties become entrenched in their respective positions. With a Dispute Board it is much more difficult for the parties to become entrenched because the Board is spending time on site with the parties on a regular basis and is therefore aware of any issues which may start to manifest themselves and can act at an early point to seek to resolve such issues and influence the parties' behaviour.

The value offered by a Dispute Board has to be measured against the financial cost of appointing one. Each panel member will be paid an ongoing monthly fee plus a day cost for the actual time spent on site, together with travel and accommodation costs. Clearly it is much less expensive to appoint a single individual, rather than a three person panel, however it will be clear from the size and complexity of the project which appointment will be more beneficial (i.e. on a complex project the benefits of having Dispute Board members who have a technical background which aligns with the nature of the project would be significant).

Depending on the contract terms, Dispute Board Proceedings can be a mandatory step, prior to arbitration. A determination by the Dispute Board cannot be enforced in the same way as an arbitration award, however the determination is usually stated to be binding on an interim basis. A notice of dissatisfaction usually needs to be served, however the determination will remain binding until the matter progresses to arbitration, despite its lack of enforceability.

WHY IS IT IMPORTANT TO CONSIDER UTILISING A DISPUTE BOARD?

In a construction project, success at its simplest is often measured by whether the project is on time and within budget. However, the management time and legal costs of a dispute during and/or following completion of a project can be significant. If there is an ability to get to completion of the project having resolved disputes informally along the way, the benefit of this can be significant.

Richard Linton, a Managing Associate in our Construction team comments "*Having used a Dispute Board on an international construction dispute, it was very beneficial to have a neutral party who was trusted by both parties. Despite Dispute Board submissions being necessary, the Dispute Board did reach a decision and way of moving forward with the project which was acceptable to both parties and prevented the matter proceeding to arbitration.*"

WHO TO CONTACT



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