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The Practice of Dispute Avoidance and Adjudication Boards on Construction Projects

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WHAT IS A DAAB?



- DAAB stands for Dispute Avoidance/Adjudication Board. It was introduced under the FIDIC 2017 Suite, it's the successor to the FIDIC 1999 Suite, where it was referred to as DAB, Dispute Adjudication Board.
- Dispute boards are panels of experts or a single member that avoid or resolve disputes on construction projects.
- Dispute Boards are effective tools for dispute avoidance and resolution in construction projects, evolving from non-binding recommendations to binding decisions.

HOW DAABs WORK



- DAABs are experienced construction professionals who ought to be impartial. They may be Engineers, Architects, Surveyors, or Construction lawyers.
- SC 21.1 FIDIC 2017 requires the parties to jointly appoint the members of the DAAB within the period stated in the Contract Data after the Contractor receives the Letter of Acceptance.
- If the DAAB comprises three members, each party must select one member for the other party's agreement.

HOW DAABs WORK



- Once the two nominated members have been agreed, the parties seek the assistance of the two members to appoint the Chairperson.
- If no period is stated, the appointment must be made within 28 days of receipt of the Letter of Acceptance.
- DAAB is appointed at the commencement of the project and stays in force during the entire construction period, emphasizing avoiding disputes or resolving them when they occur.
- Parties are obliged to provide the DAAB with key documents, including the contract, progress reports, the baseline programme and impacted programme, meeting minutes, and other documents. (A Site Platform).

HOW DAABs WORK



- DAABs hold periodic joint meetings with the Employer, Contractor, and Engineer and give advisory, non-binding opinions on potential issues.
- DAABs encourage the parties to discuss and negotiate key issues that affect the Time for Completion, financial claims, and quality of works.
- Encourages the resolution of issues and claims at the “job site level” before they escalate into fully blown disputes.
- Make formal binding decisions that must be complied with unless reversed through Arbitration or Litigation.

ENFORCEMENT OF DAAB DECISIONS



- FIDIC provides that if a party fails to comply with a decision of the DAAB, whether binding or final and binding, then the other party may refer the failure itself to Arbitration since it amounts to a breach of contract. SC 21.6 FIDIC 2017.
- The Arbitral Tribunal shall have the power to enforce the DAAB decision by way of a summary or other expedited procedure through an interim award.
- In Botswana, the High Court enforced the DAB decision as a liquidated demand in the case of **Liftoff Investments (Pty) Limited v Debswana Diamond Company (Pty) Limited**, HC Case No. MAHGB-000193-23.

ENFORCEMENT OF DAAB DECISIONS



- On appeal, in the case of **Debswana Diamond Company (Pty) Limited -v-s Liff Investments (Pty) Limited**, CA No.292 of 23, the Apex Court held that;
“...DAB awards may be referred to the High Court for enforcement .. Courts should, as a general rule, be slow to enforce such awards, and that judicial interference should be resorted to in exceptional circumstances, such as where the contractual imperatives relating to the resolution of disputes are found wanting.”
- To ensure uniformity in the enforcement of DAAB decisions, the world needs a convention similar to the Singapore Convention on Mediation, which provides a uniform framework for the recognition and enforcement of mediated settlement agreements.

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