Resolution of Disputes by ICC Dispute Boards*
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INTRODUCTION

A Dispute Board is a standing body that is put into place at the signature of the contract and remains in place for the life of the contract. The Dispute Board’s role is to assist the parties in resolving disputes quickly and cost efficiently as they arise during the performance of the contract. Dispute Boards are typically made up of three members, but having a sole Dispute Board Member is also possible for smaller contracts. To put a Dispute Board in place, it is sufficient to include a Dispute Board clause in the underlying contract, such as one of the standard ICC Dispute Board clauses that can be found in the ICC Dispute Board Rules.

Dispute Board Members, at the very beginning of the performance of the contract and long before any disputes arise, familiarize themselves with the contract itself and with the parties. They visit the site where the contract work is being performed and become knowledgeable about the project as a whole. Typically during a site visit the Dispute Board Members will observe the progress of the works on site. They will also be given oral presentations on the progress of the works, and each party will raise any issues of concern it may have regarding the performance of the contract. This process enables the Dispute Board to play a role in the prevention of disputes and to be prepared to render a Determination as to a dispute quickly, when the need arises.

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A Dispute Board is a first tier dispute resolution mechanism. This means that any disputes that are not resolved at the level of the Dispute Board must be finally resolved by arbitration or litigation in national courts.

Dispute Boards are a unique dispute resolution mechanism in that, unlike virtually all of the others, Dispute Boards are put in place long before any disputes actually arise. Litigation in national courts, arbitration, adjudication, neutral evaluation, and mediation all intervene after a dispute has arisen. Judges, arbitrators, adjudicators and neutrals normally do not know anything about the contract, the parties or the dispute prior to the time when they are called upon to resolve or assist the parties in resolving their pre-existing dispute. Dispute Board Members, on the contrary, know the parties, the contract and the project very well from the very beginning. Dispute Board Members understand the project from the inside and have firsthand knowledge of the issues of concern to the parties. Dispute Boards are actually a part of the project. By gaining the trust and respect of the parties over time, Dispute Board Members are uniquely positioned to contribute to the dispute resolution process. These unique features enable Dispute Boards to play a range of roles in both dispute prevention and dispute resolution.

In view of the increasing demand for Dispute Boards throughout the world, the ICC formed a task force to prepare standard Dispute Board clauses that parties can insert in their underlying contracts, Dispute Board rules setting forth the Dispute Board procedures, and a model agreement between the parties and each Dispute Board Member that constitutes the appointment of the Dispute Board Member and provides for the compensation of the Dispute Board Member. The ICC Dispute Board Rules came into force on September 1, 2004 (the “ICC DB Rules”). The ICC DB Rules also contain a foreword explaining the ICC DB Rules in general terms. The discussion of Dispute Boards in this article is based upon the ICC DB Rules but most of what is explained applies to Dispute Boards in general.

This article examines and analyzes the methods used by Dispute Boards to assist the parties in the prevention and resolution of disputes in an efficient and cost-effective manner. First, the article will further discuss the special nature of Dispute Boards and the criteria that should be considered in deciding whether to use a Dispute Board. Next, the article will review the various roles that a Dispute Board can play in assisting the parties, with particular emphasis on the technique of informal assistance. Lastly, the article