

# Certain challenges in using dispute boards

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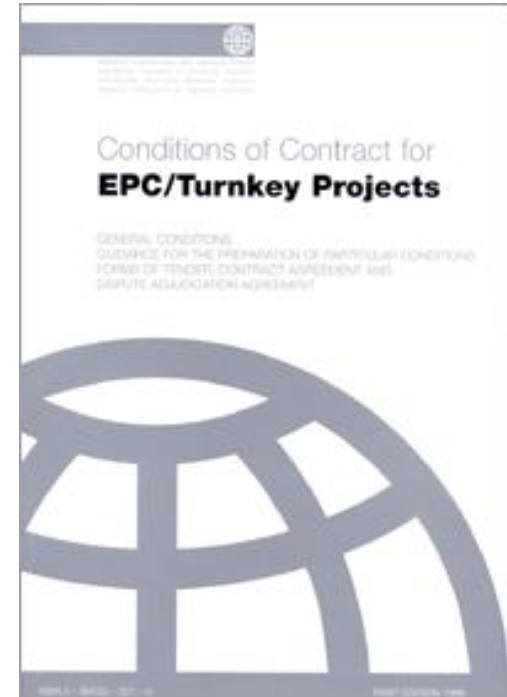
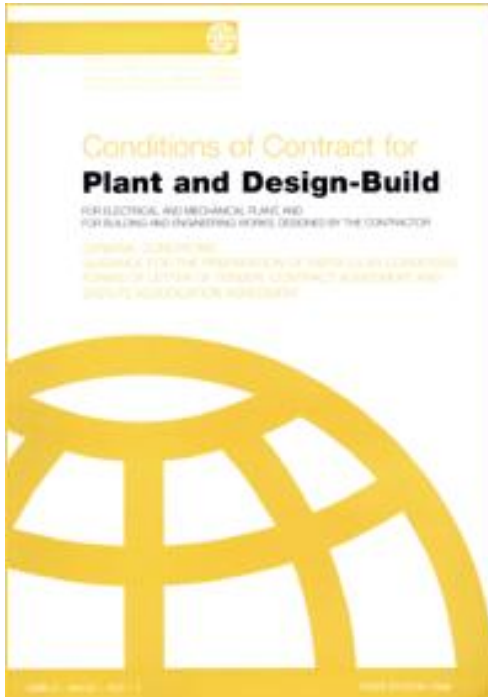
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# I. DAB Appointment

# Standing Board

Parties:



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# Ad-Hoc Board

Parties:



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## II. Jurisdiction

A. Whether adjudication is a mandatory step?

# Excerpts from FIDIC:

- 20.2: “Disputes **shall** be adjudicated by a DAB in accordance with Sub-Clause 20.4.”
- “The Parties **shall** jointly appoint a DAB...”

# Excerpts from FIDIC:

- 20.4: “either Party **may** refer the dispute in writing to the DAB for its decision...”
- 20.6: “... any dispute in respect of which the DAB’s decision (**if any**) has not become final and binding shall be finally settled by international arbitration.”
- 20.8: “if... there is no DAB in place ... the dispute may be referred directly to arbitration.”

## II. Jurisdiction

B. Whether the DAB may decide on its own jurisdiction?

# III. Statute of Limitations

- 6 months in case of hidden defects.
- Application to DAB does not suspend the limitation period.



# IV. Enforcement

- DAB decision is not a substitution for a court proceeding
- Contractual nature
- Mandatory, but not directly enforceable
- Inquisitorial role of the DAB
- Due process?

## IV. Enforcement: FIDIC

Notice of dissatisfaction is not served:

- The DAB decision becomes binding and final.
- The failure to comply can be referred to arbitration.
- The DAB decision itself, as a contract, can be challenged.

## IV. Enforcement: FIDIC

Notice of dissatisfaction is served:

- The DAB decision is binding but not final.
- The original dispute can be referred to arbitration.
- Arbitral tribunal is not bound by the DAB decision.
- Can the failure to comply be directly referred to arbitration?

# V. Costs

- Amount
- Allocation

## VI. Other Issues:

- Handling multi-party & multi-contract disputes
- Bringing counterclaims



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# Conclusions:

- Use standing dispute boards for large-scale projects
- Whether to use ad-hoc DAB?
- Optional adjudication?
- Get your lawyer involved from the very inception!



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