



# **DISPUTE BOARDS**

## **Experience in Francophone Africa**

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# Topics

- The puzzle
  - absence of DB experience in Francophone Africa
- Why?
  - the French background
  - the French solution
- The future : room for a Francophone influence?



# The Puzzle

- Lack of both practice and regulatory initiatives in Francophone Africa
  - OHADA : only arbitration
  - Little use of FIDIC forms
- Lack of French / Francophone Africa representation on FIDIC President's List
- Lack of interest?



# The French approach

- Key distinguishing features
  - Powers and obligations of contractors
  - Construction dispute resolution : tried and tested solutions
    - Conciliation of public works disputes
    - ‘expertise’ not adjudication
    - Recent PPP legislation only opens door to arbitration
  - Compare Common Law : procedural excesses have prompted the introduction of adjudication



# ‘Expertise’

- Civil Law procedure
  - Inquisitorial?
- The Court – appointed expert
  - Court list
  - Technical issues
  - Power to call for documents
  - Due process
  - Must not decide instead of Court
- Some parallels with adjudication



# Where does this leave DBs?

- Advent of DBs in Francophone Africa – probably just a question of time
  - No fundamental problems raised by DB procedure
    - Procedural freedom under FIDIC Rules
  - Pressure from funding banks
  - Welcome in any event due to increasingly international ie multi-cultural participation in projects



# What sort of DBs?

- Heritage of French legal culture points to ‘diluted’ version of current arrangements
  - Informal Assistance with Disagreements (ICC Article 16) : available, but requires parties’ agreement
  - ICC Dispute Review Board / FIDIC approach ie decision not automatically binding : but will nature of decisions be easily understood?



# Conclusion

- Two questions:
  - How easily will Francophone countries make the move to DBs with their decision-making focus?
  - Should the terms of reference of DBs be extended to embrace conciliation?