



The Dispute Resolution Board Foundation
Fostering common-sense dispute resolution worldwide

The D.B. Process in Anglophone Africa

DB Aspects on Non-Standard Forms
Private Works and Sub-Contracts

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Overview

- 1. Background**
 - 2. DR Aspects of Main Contract**
 - 3. DR Aspects of Sub-Contracts**
 - 4. Implementation**
 - 5. Key Observations**
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1. Background

Dispute Resolution Project Brief

- Unique in Africa
- EPC Client Form (non-standard / non-FIDIC)
- Financial Aspects
- Subcontract content

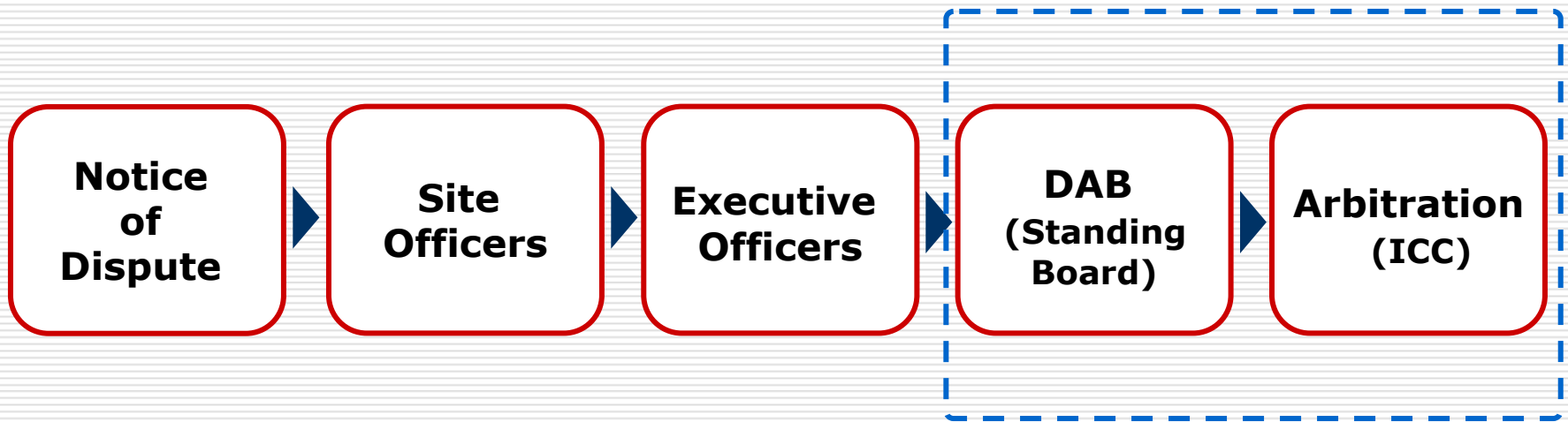
Dispute Resolution Options

- ADR
 - Litigation
 - Arbitration
 - Multi-tiered DR approach
 - Local Statutory Requirements for Dispute Resolution (Any?)
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2. DR Aspects of Main Contract

The Dispute Resolution Solution



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2. DR Aspects of Main Contract (cont'd)

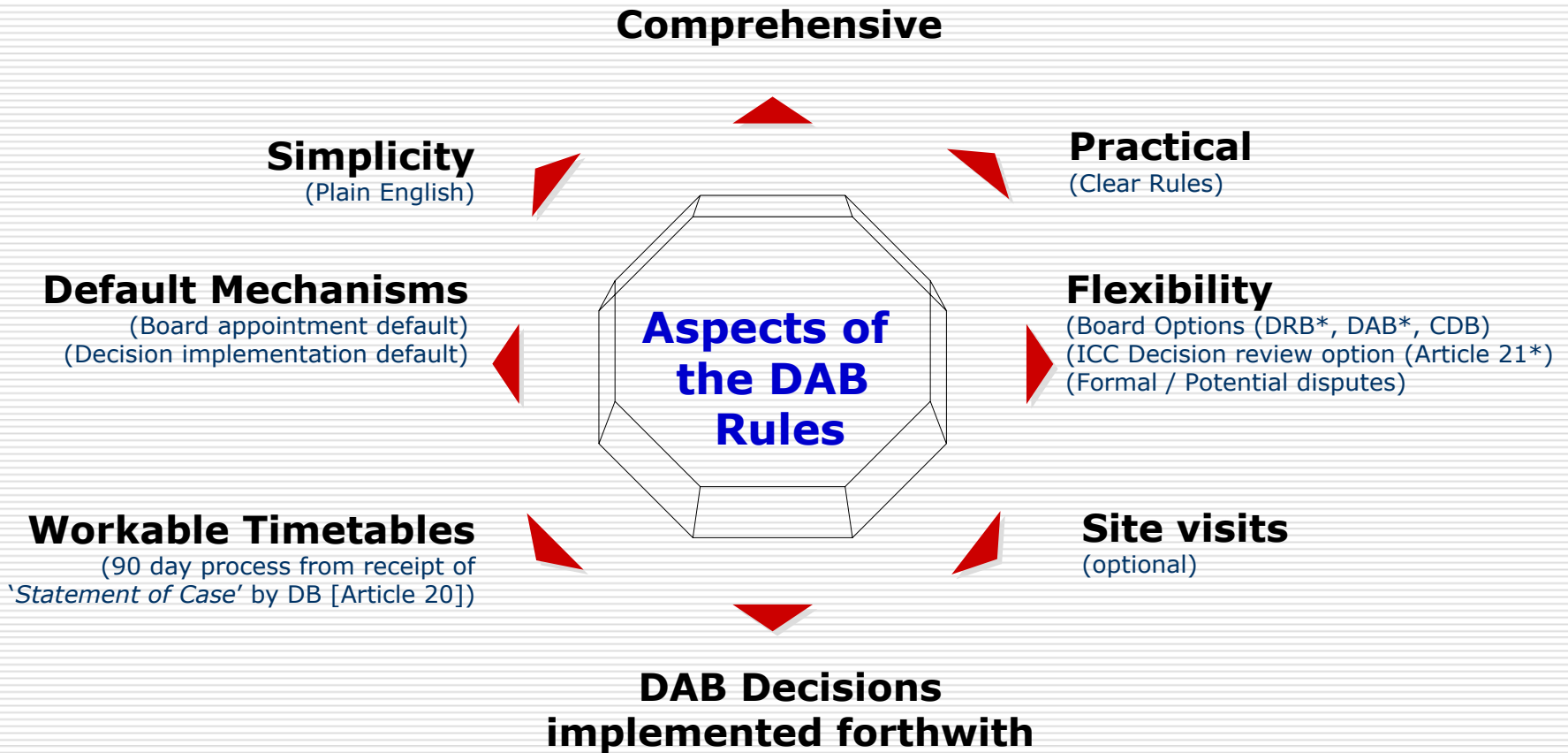
DAB Rules

"Dispute Board Rules of the International Chamber of Commerce"*

- Types of Dispute Boards
- Establishment of the Board
- Obligations of the Dispute Board
- Obligation to Cooperate
- Operation of the Dispute Board
- Procedures before the Dispute Board
- Determinations of the Dispute Board
- Compensation of the Dispute Board Members and ICC

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2. DR Aspects of Main Contract (cont'd)



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3. DR Aspects of Subcontracts

Subcontract Dispute Resolution

- Back to back Main Contract
- MC / SC dispute resolution

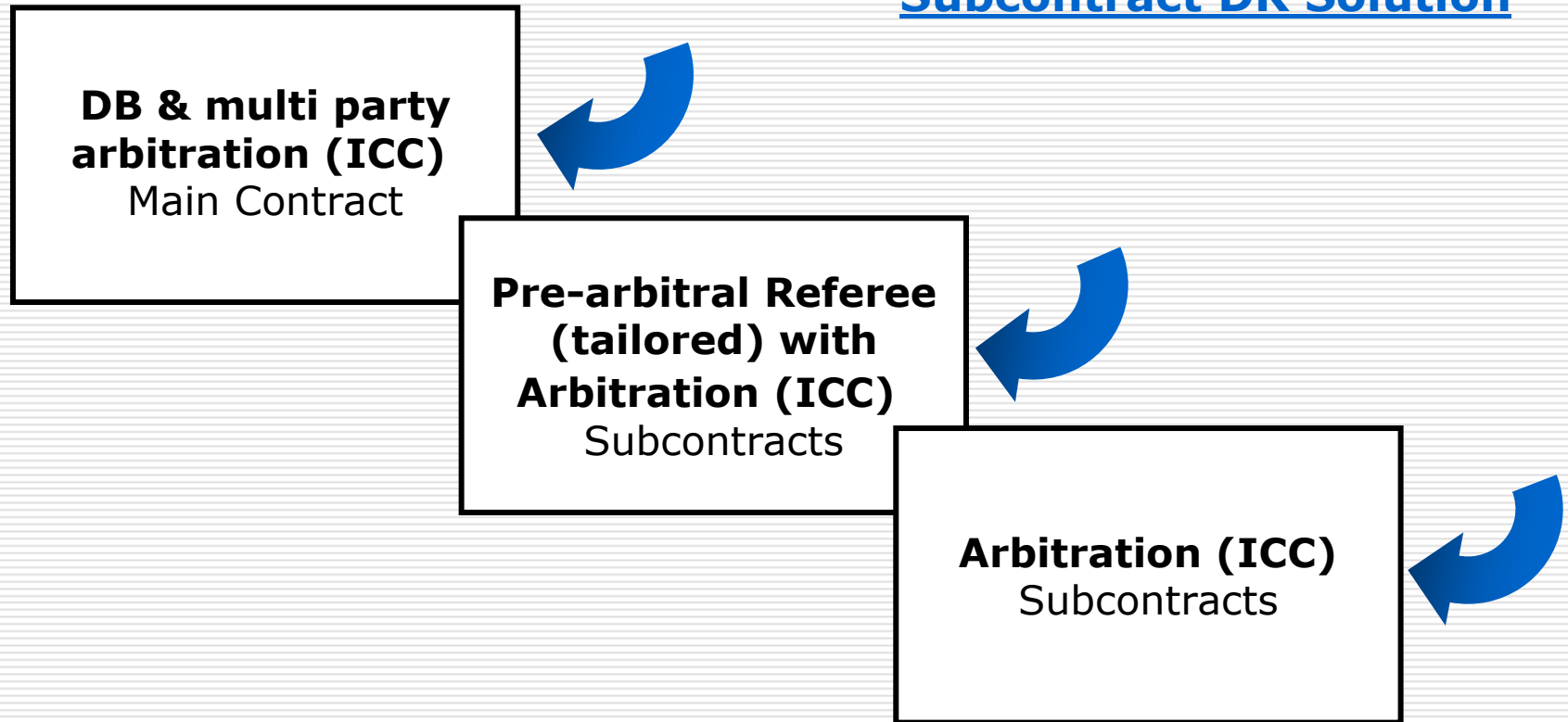
Main Contract / Subcontract DR Options

- Conciliation
 - Adjudication
 - Arbitration
 - Main Contract procedures
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3. DR Aspects of Subcontracts (cont'd)

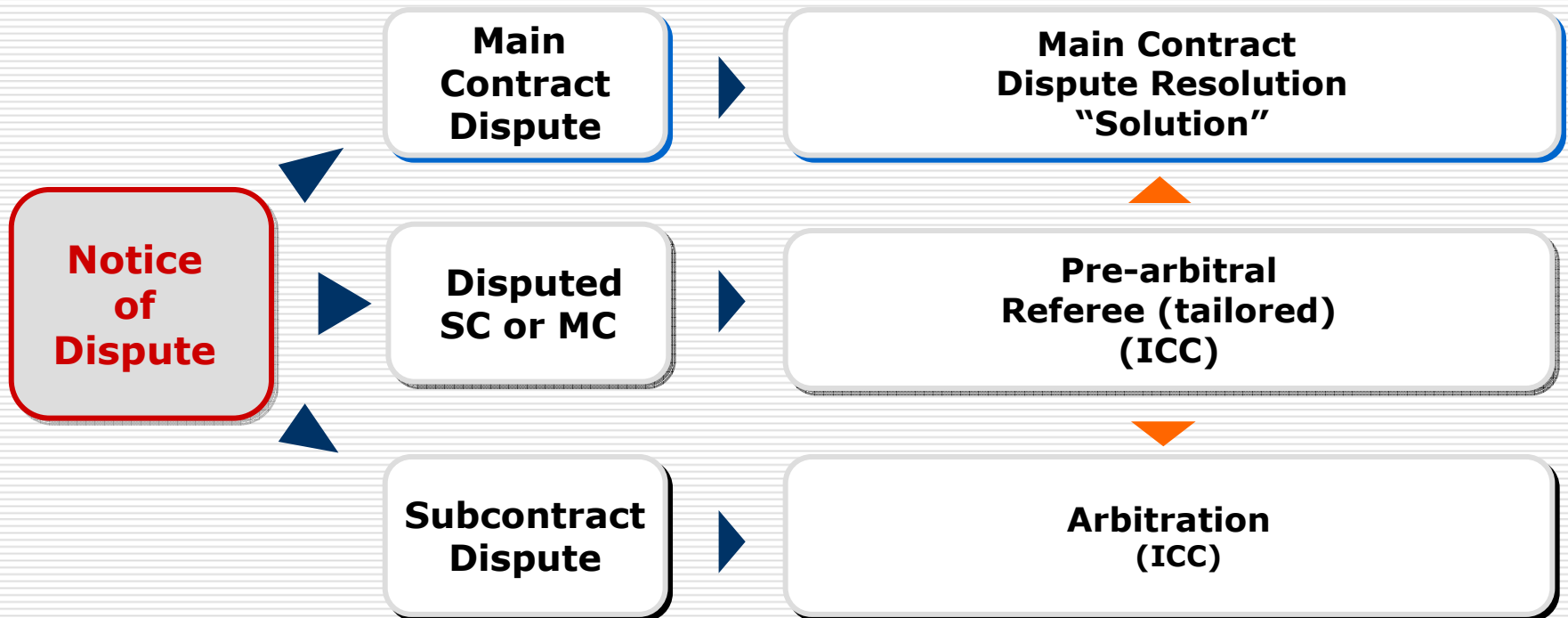
Subcontract DR Solution



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3. DR Aspects of Subcontract (cont'd)

The Subcontract Dispute Resolution Solution



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3. DR Aspects of Subcontracts (cont'd)

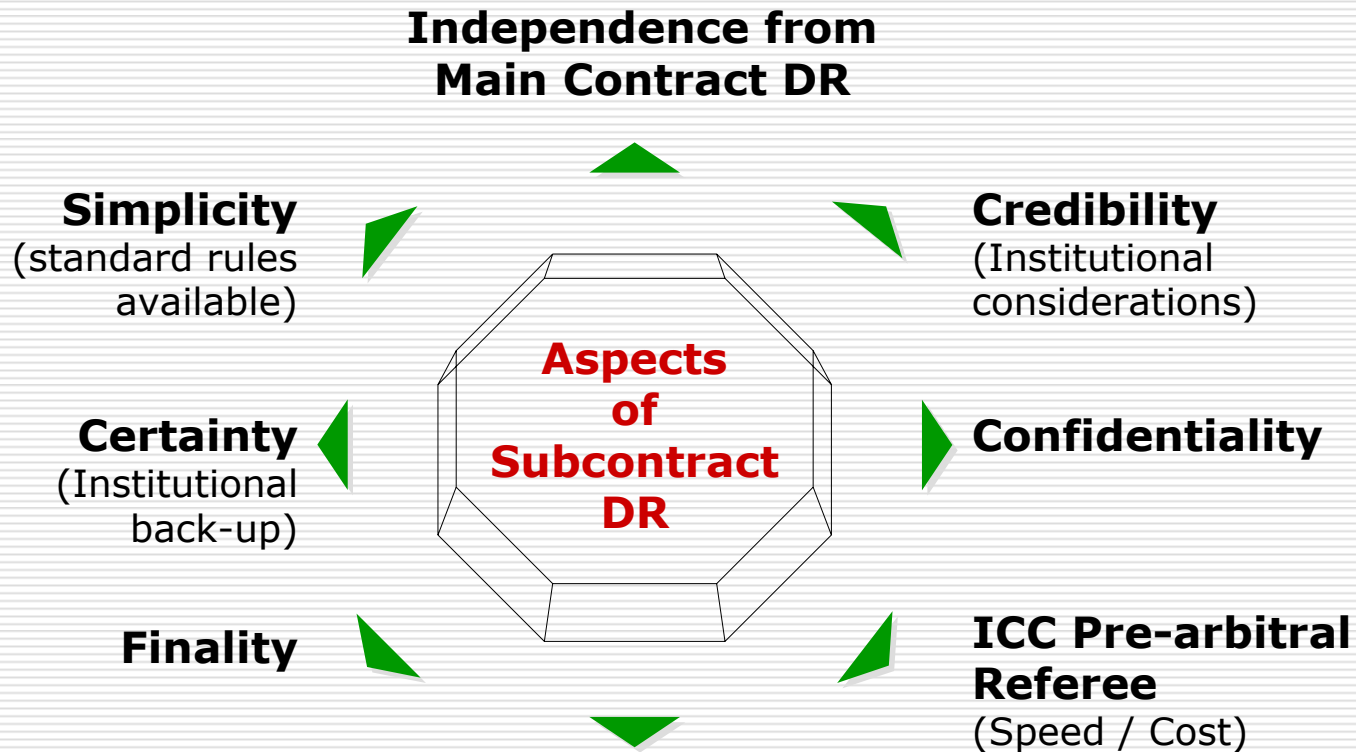
Achieved Back to Back Principle with Main Contract

- **Main Contract Disputes Pass Through**
 - Main Contractor's obligations - diligence
 - Subcontractor's obligations - cooperate
 - Subcontractor's right to attend / defend itself
 - Multi party DAB/arbitration
 - Bound in a like manner in relation to the MC dispute
 - Main Contractor default
 - Costs sharing

 - **ICC Pre-arbitral Referee Procedure (1990)**
 - Definition of duties
 - Owner actions
 - Costs sharing
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3. DR Aspects of Subcontract (cont'd)



Main Contract DAB Decisions/Arbitral Awards for related disputes binding

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4. Implementation

□ **Status of the project**

- 12.5% time expended
- Design X% complete
- Construction Y% complete

□ **Disputes**

- Main Contract (MC) with potential disputes since implementation

□ **Key reflections**

- Dispute Resolution Options – Main Contract
 - Satisfaction with multi-tiered system
 - Benign intrusion/interest of DAB
 - DAB Rules – Main Contract
 - Mostly satisfaction (see Key Observations)
 - Dispute Resolution - Subcontracts
 - Untested
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5. Key Observations

□ **Effectiveness of the DB process**

- Multi-tier system with DB workable for MC
- Historically proven effectiveness on BOT projects
- Type of DB(DAB) & rules suitable
- Fee scales
- Hearing location (s)
- Failure to agree terms for Board Members

□ **Suggestions for DB members and contracting parties to improve effectiveness**

- Programme snapshots integration

□ **Suggestions for the Subcontract DR process**

- Draft multi-party arbitration agreements option (all round)
 - Ad hoc adjudication or ADR method as an intermediate / final stage
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