

COMPARISON TABLE OF DISPUTE BOARD RULES

Glossary:

AAA	American Arbitration Association
CDB	Combined Dispute Board
DAB	Dispute Adjudication Board
DB	Dispute Board
DRBF	Dispute Resolution Board Foundation
DRB	Dispute Review Board / Dispute Resolution Board
FIDIC	Fédération Internationale des Ingénieurs Conseils
FIDIC (red book)	FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer, first edition 1999
ICC	International Chamber of Commerce
ICE	Institution of Civil Engineers
NOD	Notice of dissatisfaction
TPA	Tri-partite agreement

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Source of clauses, articles and rules referred to herein.	AAA Dispute Resolution Board Guide Specifications , effective 1 December 2000.	DRBF Manual, User Guide, Section 2; Guide Specification, Section 2, Appendix 2A (“ Appendix 2A ”).	FIDIC 1999, General Conditions of Contract for Construction (“the General Conditions”).	ICC Dispute Board Rules in force as from 1 September 2004.	ICE Dispute Board Procedure, effective 30 April 2012 - Procedural Rules for Procedures One and Two.	CIArb Dispute Board Rules published in August 2014
Further DB documents for establishing and operating DBs	AAA DRB Three-Party-Agreement.	Three-Party-Agreement, Section 2, Appendix 2B (“ Appendix 2B ”); Members Guide, Section 3.	Dispute Adjudication Agreement (a tripartite agreement), which incorporates the General Conditions of Dispute Adjudication Agreement as set out in the Appendix.	Standard ICC Dispute Board Clauses; and ICC Model Dispute Board Member Agreement.	Dispute Board Agreement - Tripartite Agreement (TPA).	The CIArb Tripartite Agreement and the CIArb Dispute Board Clauses.
Type of DB	Dispute resolution	Dispute review board	Dispute adjudication board	The Standard ICC Dispute	Dispute Board (DB) (Rule 1).	Dispute Review Board

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	board (DRB).	(DRB).	(DAB) (clause 20.2).	Board Clauses offer three alternatives: Dispute review board (DRB) (Article 4); or Dispute adjudication board (DAB) (Article 5); or Combined dispute board (CDB) (Article 6).		or Dispute Adjudication Board
Who appoints DB members?	Parties, from a list provided by AAA (clause 1.02.A).	Owner (“O”) and contractor (“C”) jointly select and appoint three DB members (Article 4C, Appendix 2A).	Parties jointly appoint a DAB. If the DAB is to comprise three members, each party shall nominate one member for the approval of the other party.	Parties, in accordance with contract or if contract is silent in accordance with ICC rules (Article 7 (1)).	Parties, by date stated in contract. If no date stated, then within 56 days after contract is formed (Rule 2.1).	Parties in accordance with the contract. If the DB is to comprise three members, each party shall nominate one member each (Article 6(2) and 6(3)).
Who appoints chair?	Two members nominate chair and parties approve (clause 1.02.A).	Either the parties or DB members select the chair (Article 4D, Appendix 2A).	Two members nominate chair and parties agree (clause 20.2).	Two members nominate chair and parties agree (Article 7 (5)).	Two members nominate chair and parties agree (Rule 2.4).	Two members nominate chair and parties agree (Article 6(3)).
How are the DB members appointed?	Each party nominates one member (clause 1.02.A).	After award of contract, O and C meet to establish qualifications for nominees (Article 4A, Appendix 2A).	Jointly, by date in Appendix to Tender <i>or</i> each party nominates one member (clause 20.2).	Jointly by agreement between parties for sole-member-DBs; each party nominates one member for three-member-DBs (Article 7 (3)).	Jointly by agreement between parties for sole-member-DBs; each party nominates one member for three-member-DBs (Rules 2.3 and 2.4).	Jointly by agreement between parties for sole-member DBs; for three member DBs, each party nominates one member and the two members appoint a chair (Article 6(1) to 6(3)).
By when shall DB members and chair be appointed?	Within 14 days of the effective date of contract,	Within 5 weeks of the award of the contract (Article 4C, Appendix 2A).	By date in Appendix to Tender (clause 20.2).	Within 30 days after signing the contract or within 30 days after the commencement of any performance under the	By date specified in contract; or if no date is specified, within 56 days after contract is formed (Rule 2.1).	By date specified in contract, or if no date is specified, within 28 days of the date of the

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	<p>parties file a Request for DRB Assistance with the AAA (clause 1.02.C.1).</p> <p>Within 14 days after receipt of list of persons from AAA (clause 1.02.C.5.a.) each party shall nominate a proposed DRB member.</p> <p>DRB takes effect from date stated in the Three-Party Agreement (clause 1.01.G.1).</p>			<p>contract, whichever occurs earlier, or as otherwise agreed by the parties (Article 7 (3) and 7 (4)).</p> <p>The third DB member (usually chairman) shall be proposed to the parties within 30 days after appointment of the second DB member. (Article 7 (5)).</p>		contract (Article 6(3))
Form of DB appointment	Three-party-agreement signed by the parties and three members (clause 1.01.E).	Three-party-agreement signed by all members and parties in the form of Appendix 2B.	Tripartite agreement between the parties and the DB members, which incorporates by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to the General Conditions (clause 20.2).	Dispute Board Member Agreement (Article 10).	Dispute Board Agreement - Tripartite Agreement ("TPA") signed by the parties and DB members (Rule 2.5).	Tripartite Agreement between the parties and each of the DB members (Article 9)

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Payment of DB members	Parties equally share the fees and expenses of the DB members (clause 1.06).	Parties equally share the costs of the DRB services as set forth in the contract (Article 6.G.7, Appendix 2A); and equally bear the cost of an expert employed by the DRB (Article 6.F.2.c., Appendix 2A).	Parties equally share the daily fees and monthly retainer and expenses of the DB members. Fees are fixed for 24 months. (Appendix, condition 6). If a DB member fails to comply with any obligation under clause 4 of the Adjudication Agreement, he/she shall not be entitled to any fees and expenses. (Appendix, condition 8).	Parties equally share the fees and expenses of the DB members (Article 26 (1)). All DB members receive the same monthly retainer and the same daily fee, unless otherwise agreed by the parties. Fees are fixed for 24 months (Article 26 (2) and (3)).	Parties equally share the daily or hourly fees and monthly retainer and expenses of the DB members (TPA, clause 5).	Parties shall equally share the fees and expenses of the DB members (Article 17(1) and 17(2)). Parties must agree terms and rate of remuneration, and if they disagree, the parties can request the CI Arb to decide what the reasonable remuneration should be (Article 17(3)).
Default appointment of DB members	No default procedure for three-member boards. For single-member boards in limited circumstances a default procedure is set out in clause 1.02.D.2.f.	None.	Third party named in the Appendix to Tender can appoint (upon the request of any party and after consultation with both parties) if parties fail to appoint DB by certain date: <ul style="list-style-type: none"> - For single-member DBs, if parties fail to agree by date stated in Appendix to Tender. - For three-member DBs, if either party fails to nominate a member by date stated in Appendix to Tender. - If parties fail to agree on appointment of chair by date stated in Appendix to Tender. - If parties fail to 	ICC appoints, upon the request of any party, if the parties fail to appoint the sole DB member, or the first two members in case of a three-member DB, within 30 days after signing the contract or within 30 days after commencement of any performance under the contract, whichever occurs earlier, or as otherwise agreed by the parties (Article 7 (3) and 7 (4)). ICC appoints third DB member if parties fail to do so within 15 days from receipt of the proposal (Article 7 (5)).	ICE appoints within 14 days of the request of one or both parties: <ul style="list-style-type: none"> - If parties fail to appoint the sole DB member by date in contract. - For three-member DBs, if either party fails to nominate or approve a member. - If parties fail to agree upon the appointment of chairman by date in contract. - If parties fail to agree upon a replacement within 42 days after existing member's appointment terminated. (Rule 3)	CI Arb appoints within 28 days of written request of one or both of the parties: <ul style="list-style-type: none"> - If parties fail to establish a DB in accordance with Article 6 - If parties fail to agree on a replacement member as described in Article 6 (Article 6(6)).

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			replace a DB member within 42 days of death, disability, resignation or termination. (Clause 20.3)			
Replacing of DB members	<p>Either party may object for cause to AAA. AAA's decision as to whether DB member should be disqualified is conclusive (clause 1.02.F). If a DB member is unable to perform duties of office, AAA may declare office vacant (clause 1.02.G).</p> <p>Replacing procedure is the same as the original appointment of DB member (clause 1.02.G).</p>	<p>If a Board member resigns, is unable to serve, or is terminated, he/she shall be replaced within four weeks in the same manner as he/she was originally selected.</p> <p>Termination of member's appointment requires both parties' agreement and four weeks notice (Clauses X.A. & X.B., Appendix 2B)</p> <p>The three-party-agreement shall be amended to indicate the member replacement.</p> <p>(Clause X.C., Appendix 2B = Three-Party-Agreement)</p>	<p>A replacement comes into effect if a DB member declines to act or is unable to act due to death, disability, resignation or termination of appointment.</p> <p>Parties must act jointly if they decide to terminate an appointment.</p> <p>Replacing procedure is the same as the original appointment of DB member (clause 20.2).</p>	<p>On a DB member's death, resignation or termination of appointment, the new member shall be appointed in the same manner as the DB member being replaced (Article 7 (6)).</p> <p>Parties may at any time jointly agree to terminate member's appointment without cause and with immediate effect. (Article 10 (2)).</p>	<p>If a DB member is unable to act, or if the parties jointly terminate his/her appointment by giving 28 days notice of termination, then a new member shall be appointed (Rules 2.6 and 2.7).</p> <p>Replacing procedure is the same as the original appointment of DB member (Rule 2.8).</p>	<p>A replacement comes into effect if parties terminate the DB members appointment or if a DB member declines to act, or is unable to act as a result of death, disability, resignation or termination of appointment ((Article 6(4)).</p> <p>Parties shall appoint a suitably qualified person to replace a DB member and the new DB member shall be appointed in the same manner as the original appointment (Article 6(4)).</p>
Referral of a	Either party	Either party may	The parties may at any	Either party may at any time	Either party may at any time	Parties shall comply

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dispute to the DB	<p>may refer a dispute to the DB if it believes negotiations are unlikely to succeed and if any contractual pre-review requirements have been met (clause 1.04.B).</p> <p>Referral to DB must be made prior to initiating other dispute resolution procedures or referral to court, and set out nature of dispute, factual and contractual basis of dispute, remedies sought, incl. all supporting documents (clause 1.01.B.2 and clause 1.04.C.1), simultaneously sending a copy to the</p>	<p>refer a dispute to the DB in writing to the chair, with copies to DB members and other party (Article 6.B.1., Appendix 2A).</p> <p>Preconditions for referral to DB:</p> <ul style="list-style-type: none"> - Prior good-faith negotiations between O and C to settle dispute (Article 6.A., Appendix 2A) - Compliance with prior dispute resolution process as per contract (Article 6.B.2., Appendix 2A) - If one party fails to comply with prior dispute resolution process, the other party may refer the dispute to the DRB (Article 6.B.2., Appendix 2A). <p>The referral shall define nature and specifics of the dispute to be considered by DRB, and the scope of the requested recommendation (Article 6.B.3., Appendix 2A).</p>	<p>time agree jointly to refer a matter to the DAB for an opinion, even if the issue has not matured into a dispute (clause 20.2).</p> <p>If any dispute arises, either party may refer it to the DAB in writing, with copies to other party and engineer, and referring to clause 20.4 (clause 20.4).</p> <p>Preconditions for referral to DB: The Contractor must have notified the Engineer (clause 20.1) and there must be a dispute.</p>	<p>refer a dispute to the DB - or settle it without the DB.</p> <p>Referring party must submit a written statement of its case to the other party and the DB, setting out nature and circumstances of the dispute, list of issues, supporting materials, and what the referring party requests the DB to determine (Article 17).</p>	<p>give notice of its intention to refer any dispute to the DB for adjudication. Such notice must include the issues for decision and the redress sought (Rule 4.1 - Procedure One; Rule 5.1 - Procedure Two).</p>	<p>with any contractual pre-review requirements or prior dispute resolution process as provided for by the Contract, as applicable (Article 13(1)).</p> <p>If a dispute arises, either party may at any time give notice of its intention to refer a dispute to the DB by submitting a position statement to the other party and to the DB (Article 13(2)).</p> <p>The position statement shall include a summary of the dispute, a list of issues, the referring party's position and the redress sought together with any supporting evidence (Article 13(2)).</p>

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	other party (clause 1.04.C.2).					
When is DB determination due? With reasons?	<p>DB's recommendation in writing is due within 14 days of hearings. Time may be extended if all agree (clause 1.04.I).</p> <p>AAA rules do not specify whether DB must give reasons for determination, but either party may request clarification if it does not understand the recommendation, and also request the DB to reconsider if new information becomes available (clause 1.04.K).</p>	<p>No due date specified.</p> <p>Article G.1., Appendix 2A states: "The report shall be submitted concurrently to the parties, as soon as possible after completion of the hearing as agreed by all parties."</p> <p>Reasons (rationale for recommendation) to be given. If the DRB cannot arrive at a unanimous report, it shall include in the recommendations majority findings and minority findings and also identify the issues of disagreement (Articles 6.G.1. and 6.G.2, Appendix 2A).</p> <p>Within 10 days of receiving report, parties may seek clarification (one request per party only), or reconsideration if</p>	<p>The binding decision is due within 84 days of the referral being received by the DAB. Time may be extended if parties agree.</p> <p>The DAB's decision shall be reasoned.</p> <p>(Clause 20.4).</p>	<p>Determination is due within 90 days of the statement of case being received by the chairman. The parties may agree to extend the time limit (Article 20 (1)).</p> <p>DB determination shall state findings and reasons (Article 22)</p> <p>If the DB cannot achieve a unanimous determination, the DB members who disagree with it shall give their reasons in a separate report, which is not part of the determination (Article 23).</p> <p>If the parties agree for the ICC to review the DB's determination, the time limit shall be extended by 30 days, or as required by the ICC (Article 20 (2)).</p>	<p>Reasoned and binding decision due within 84 days of referral being received by DB/chairman.</p> <p>Time may be extended if parties agree.</p> <p>(Rule 4.5, Procedure One).</p>	<p>DB's determination (i.e. recommendation or decision) with findings and reasoning within 84 days of receiving the position statement (Article 15(2)).</p> <p>The parties can agree on an extension of time for rendering a determination (Article 15 (3)).</p> <p>If the DM cannot achieve a unanimous determination, it must be by a majority vote (only in the case of three DB members) or by the DB chairperson alone (Article 15(4)).</p> <p>A DB member who disagrees with the determination must give their reasons in a report and provide it to the parties (Article 15(4)).</p>

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		new information available (Articles 6.G.3. and 6.G.4, Appendix 2A).				
Third party administration assistance?	AAA provides notices of meetings and transmits meeting minutes and DB recommendations. AAA also administers payment of members (clause 1.07.A).	Not specified.	Assistance with appointment of DB members if necessary. No other third party assistance mentioned.	Default appointment of DB members (Article 7); and Review of DB's decisions by ICC dispute board centre upon parties' request (Articles 20 and 21). ICC charges non-refundable registration fee of US\$ 2,500 to review determination and may charge up to US\$10,000 for review (Articles 2 and 3, Appendix).	Assistance by the ICE with appointment of DB members (Rule 3). No other third party assistance.	Not specified.
Effect of the determination	Non-binding recommendation (clause 1.01.B.3).	Non-binding recommendation. DRB reports are admissible in subsequent dispute resolution proceedings. (Article 1.D, Appendix 2A).	DAB's decision is binding (and parties must give effect to it immediately) until revised by amicable settlement or arbitration. If no NOD is served, it is final and binding. (Clause 20.4).	DRB Non-binding recommendation that parties may comply with voluntarily (Article 4 (2)). Recommendation shall become binding within 30 days in the absence of a NOD (Article 4(3)). DAB DAB's decision is binding on receipt by parties (Article 5(2)). Decision remains binding even if NOD is served - until the dispute is finally settled by arbitration or otherwise (Article 5 (6)).	Binding until revised by agreement, arbitration or court proceedings (Rule 4.6, Procedure One). Parties shall promptly give effect to decision, irrespective of a service of a notice of arbitration or application to the courts (Rules 4.5 and 4.6, Procedure One).	DRB Non-binding recommendation that parties may comply with voluntarily (Article 2(a)). DAB The decision is binding on the parties upon receipt (Article 4(1)) and Article 4(3)). Parties must submit its written acceptance or rejection of the decision to the other party and the DAB within 21 days of receipt of the decision

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						(Article 4(4)). DAB decision shall be admissible in any subsequent arbitral or judicial proceedings (Article 4(5)).
Period for serving notice of dissatisfaction (“NOD”)	Parties must accept or reject determination within 14 days. Failure to respond is deemed acceptance (clause 1.04.J).	Parties must accept or reject determination within 14 days. Failure to respond is deemed acceptance (Article 6.G.5, Appendix 2A).	NOD must be given by either party within 28 days of receipt of DAB’s decision (clause 20.4).	DRB: Within 30 days of recommendation (Article 4 (3)). DAB: Within 30 days of decision (Article 5 (3)).	Within 28 days of the DB’s decision (Rule 4.7).	Within 21 days of receipt of the decision (Article 4(4)).
Content of NOD	Written notice. Details not specified.	Not specified.	NOD must refer to: - Clause 20.4; - Matter in dispute; - Reasons for dissatisfaction (Clause 20.4).	DRB: Written notice expressing dissatisfaction. Specifying reasons for such NOD is optional (Article 4.5). DAB: Written notice expressing dissatisfaction. Specifying reasons for such NOD is optional (Article 5.5).	NOD must refer to: - Rule 4.7; - Matter in dispute; - Reasons for dissatisfaction. (Rule 4.8)	Written notice. Details not specified.
What if no NOD is given by either party?	Parties are deemed to accept the DB’s recommendation, which is non-binding in any event (clause 1.01.B.3).	Parties are deemed to accept the DRB’s recommendation, which is non-binding in any event (Article 6.G, Appendix 2A).	Decision becomes final and binding on parties (Clause 20.4).	DRB: Recommendation becomes binding on parties after 30 days (Article 4.3). DAB: Decision remains binding on parties (Article 5.3).	Decision becomes final and binding on parties (Rule 4.9).	Decision becomes binding on the parties (Article 4(3)).

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May DB provide the parties with advice and informal opinions?	No. No advice, communication or consulting between DB members and any party (Schedule A, clause 2.0).	Yes. Either as advisory opinion that may help to avoid a DRB hearing; or as part of the good-faith negotiations between parties. When parties agree, DRB may provide an advisory opinion on any issue (Article 6H, Appendix 2A).	Parties may jointly refer matter to DAB for its opinion. Neither party shall consult the DAB on any matter without the agreement of the other party. (Clause 20.2).	Yes. DB may informally assist the parties in resolving any disagreements. The DB's informal assistance may be given in any way which may help the parties resolve the disagreement. When making its determination, the DB is not bound by any informal advice or assistance given to the parties. (Article 16).	Parties may jointly refer matter to DB for its opinion. Neither party shall consult the DB on any matter without the agreement of the other party. (Rule 4.10).	Parties may jointly refer matter to DB for its opinion or to discuss and attempt to resolve any disagreement (Article 12(1)). DB may on its own initiative raise an issue with the parties in order to establish dialogue or clarify matters (Article 12(2)). When making its determination, the DB is not bound by any informal advice or assistance given to the parties (Article 12(3)).
What can be referred to arbitration or court proceedings?	Not specified.	Not specified.	Disputes in respect of which the DAB's decision has not become final and binding (Clauses 20.5 and 20.6). A party's failure itself to comply with a DAB's decision may be referred to arbitration (Clause 20.7.).	DRB: A party's failure itself to comply with a recommendation when required to do so under Article 4. (Article 4.4). DAB: A party's failure itself to comply with a decision when required to do so under Article 5. (Article 5.4). In addition, any dispute that arises after the DB has been disbanded (Article 14.3).	Not specified.	Disputes in respect of the DAB's decision or parties' rejection or failure to comply with the decision (Article 4(5)).