

FIDIC Latin America Users' Conference

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International Federation of Consulting Engineers



ADR – DISPUTE BOARDS ON DESIGN/BUILD (EPC) CONTRACTS

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ADR – DISPUTE BOARDS ON DESIGN/BUILD (EPC) CONTRACTS

1. DISPUTE BOARDS AS ADR
2. HOW TO STRUCTURE THE CONTRACT TERMS
3. DISPUTE AVOIDANCE
4. ECUADOR EXPERIENCE
5. RECOMMENDATIONS



DISPUTE BOARDS AS ADR

- ✓ Dispute Boards from the perspective of the user as construction engineer
- ✓ Standing Board – insurance against development of disputes – informal assistance
- ✓ Minimal cost related to overall project cost



HOW TO STRUCTURE THE CONTRACT TERMS

- ✓ EPC contracts sometimes do not adopt FIDIC formats
- ✓ Negotiation of contract should consider inclusion of DB:
 - Referral to DB obligatory step prior to arbitration
 - ICC Rules generally accepted in the industry



DISPUTE AVOIDANCE

- ✓ Dispute Avoidance starts at the feasibility stage
- ✓ Constructive interaction required between Owner/Engineer and Contractor.
- ✓ Design optimization/value engineering should be accepted by Owner



ECUADOR EXPERIENCE – LESSONS LEARNT

- ✓ Hybrid between ad-hoc and standing DB
- ✓ ICC Rules adopted
- ✓ Board chair selection required ICC involvement
- ✓ Dispute History



ECUADOR EXPERIENCE – LESSONS LEARNT

- ✓ **Dispute History**
- **Change of Law**
- **Design Optimization**
- **Risk sharing in underground works**
- **Contract terms to provide equitable risk sharing arrangements**
- **Complex geology requires clear definition of foreseeable/non-foreseeable**



RECOMMENDATIONS

- ✓ Educate public officials on benefits of DB's – negotiate standing DB into contract terms
- ✓ Admit design optimization of tender stage feasibility design
- ✓ Define risk sharing arrangements accurately



GRACIAS!



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