



MODULE 6

Responses, Determinations and Disputes

VIDEO 3

Arbitration

Disputes

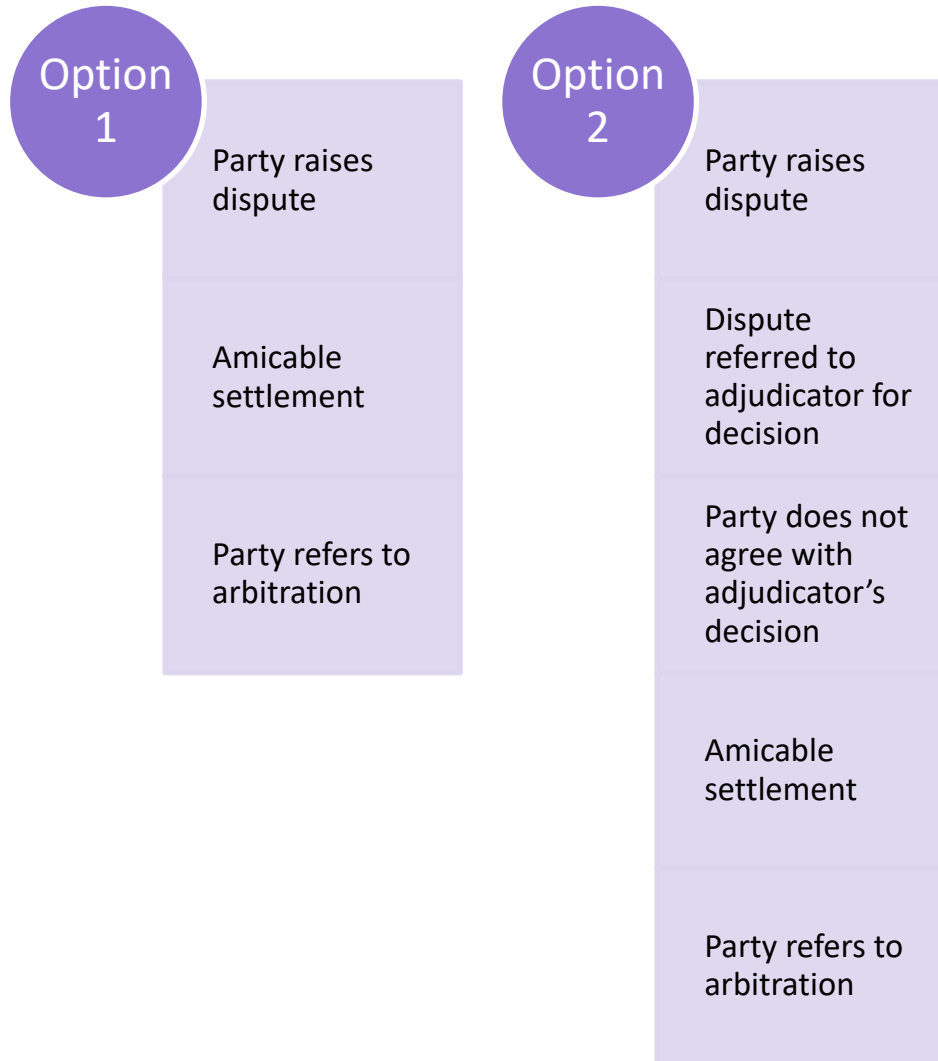
Dispute Boards

Arbitration

Procedure should be set out in the contract

- One or three arbitrators
- Rules of arbitration
- Language of arbitration
- Place of arbitration

Disputes



What is a Dispute Board?

- Board comprises 1 or 3 individuals:
 - Experienced
 - Respected
 - Impartial
- Board is organised before construction begins
- Board is provided with contract documents

What is a Dispute Board?

- Board becomes familiar with:
 - The project
 - The parties
 - The people
- Board meets with the parties on site on a regular basis
- Board encourages the resolution of disputes at job level
- Either party may refer a dispute or request an opinion

What is a Dispute Board?

- Matters are dealt with promptly
- Board may prevent disputes by providing recommendations on the contract provisions
- DBs are mandatory for projects funded and supported by the World Bank, the European Union, the European Investment Bank, European Bank for Reconstruction and Development and the Asian Development Bank
- DBs are recommended by the International Chamber of Commerce, FIDIC and the Institution of Civil Engineers

The Responsibilities of the Dispute Board

- Periodic site visits
- Keep abreast of project activities and developments through reports and site visits
- Encourage resolution of disputes by the parties
- Provide recommendations on the provisions and interpretations of the contract

The Responsibilities of the Dispute Board

- When a dispute is referred:
 - Review documents
 - Conduct hearing
 - Prepare and issue recommendations or decisions within a set time frame (FIDIC allows 84 days)

Elements of an Effective Dispute Board

- The DB members are impartial
- The DB members are subject to the approval of both parties
- The DB members sign a 3-party agreement obligating them to serve both parties equally and fairly
- The DB fees are shared equally by the parties

Costs of Dispute Boards

- Monthly retainer fees
- Daily fees for site visits and specific involvement
- Travel time and expenses
- Between 0.05% of the construction cost on dispute free projects and 0.25% for more difficult projects (DRBF statistics)
- All costs are shared equally between the parties

Costs of Dispute Boards

- Savings by the use of DBs
 - Arbitration fees
 - Lawyer fees
 - Court fees
 - Employee time preparing for arbitration
 - Costs of delays by resolving disputes early
 - Goodwill between the parties

How Dispute Boards Prevent Disputes

- Promote bilateral agreement
- Facilitate positive relationships
- Facilitate open communication
- Facilitate trust and cooperation

How Dispute Boards Prevent Disputes

- Minimise inflated claims
- Encourage fair determinations
- Minimise posturing
- Encourage early identification, evaluation and prompt resolution of claims