

HKI Arb - Practitioner's Guide to ADR and Arbitration
Impartial Contract Administration and Dispute Review Bodies.

Mr Anthony Houghton SC gave an one hour presentation on 2 April 2008 at the HKIAC on the topic of impartial contract administration and dispute review bodies. This was part of the Hong Kong Institute of Arbitrators' Practitioner's Guide to ADR and Arbitration series.

The presentation first discussed the traditional dispute resolution role of the Contract Administrator ("the CA") (for example, an architect or engineer). The CA is expected to act independently in its role as valuer, certifier and adjudicator.

However, Mr Houghton pointed out that there could be situations where the CA's independence and fairness might be seen to be compromised. Mr Houghton gave a few examples of how this could occur in practice, including where the CA's decision might be considered to affect the prospect of its future engagement by the employer or where a dispute involves the CA's own shortcomings.

Mr Houghton then explained the concept of a dispute board ("the DB") and its increasing popularity as a dispute resolution body. Some standard construction contracts and rules now make provisions for a DB to resolve dispute (for example, the latest FIDIC contract and ICC rules). Mr Houghton classified these DBs into three categories: (i) DRB (where the board makes recommendations that are not binding on the parties), (ii) DAB (where the board's decisions are binding) and (iii) CDB (where the board's decisions become binding if neither parties make any objections within a certain period of time).

In the last part of the presentation, Mr Houghton discussed some of the advantages of utilising DBs as a dispute resolution body, rather than relying on the CA. Some advantages include (i) the DB generally makes a greater effort to narrow the dispute, (ii) the DB is a neutral body and decisions are made by credible third parties, and (iii) it is less likely for problems to "snowball" under the DB dispute resolution mechanism. Mr Houghton also observed that while the use of DB is becoming increasing popular in large construction projects, the costs of DB may make it a less desirable resolution mechanism in construction projects which involve a relatively small amount of money.

Following questions from the audience, members gave their thanks to Mr Houghton in the usual way.

[Reported by Eric Chan, member of the Young Members Group of the HKI Arb]