

International Construction Contracts: Dispute Review Boards, Dispute Avoidance and Recent Cases



The London Branch of the Chartered Institute of Arbitrators held a seminar entitled “International Construction Contracts: Dispute Review Boards, Dispute Avoidance and Recent Cases” on 15 October 2015.

The Seminar, kindly hosted by Macfarlanes LLP and chaired by Irvinder Bakshi , London Branch Chair comprised an experienced panel of the Hon Mr. Justice Edwards-Stuart (Judge in charge of the TCC), Richard Wilmot-Smith QC (39 Essex Chambers), Doug Wass (Macfarlanes LLP) and Murray Armes (Sense Studio).

Dispute Review Boards (“DRBs”) provide an independent standing or ad hoc body to give prompt interim decisions to parties during the course of construction projects. Such decisions are generally subject to further dispute resolution procedures. A number of recent and relatively uncommon English court decisions in this area have highlighted some key issues for parties to consider.

The Hon Mr. Justice Edwards-Stuart provided a fascinating insight into his judgment in *Peterborough City Council v Enterprise Managed Services* [2014] EWHC 3193 (TCC), outlining the approach of the Court to party compliance with conditions precedent in respect of prescribed dispute resolution procedures in construction contracts.

Emphasising the importance of appropriate document selection when appearing before a tribunal and providing practical examples, Richard Wilmot-Smith QC,

discussed *Iliffe & Anor v Feltham Construction Ltd & Ors* [2015] EWCA Civ 715 and highlighted the Shorter and Flexible Trial Procedures Pilot Scheme.

Doug Wass considered the recent cases of *Obrascon Huarte Lain SA v Her Majesty's Attorney General for Gibraltar* [2015] EWCA Civ 712 and *Al-Waddan Hotel Limited v MAN Enterprise SAL (Offshore)* [2014] EWHC 4796 (TCC) (in which he represented the Claimant) and highlighted of the potential difficulties raised by the approach adopted by the Court.

Murray Armes concluded the discussion by addressing the importance of dispute avoidance, outlining the likely costs of DRBs and identifying the advantages of DRBs: speed, protection of cashflow, confidentiality, limited management time commitment and resolution of issues on site.

A thoughtful and lively question and answer session followed the speakers' presentations.

The evening concluded with a reception for the speakers and attendees, generously hosted by Macfarlanes LLP.

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