

## CAB to Resolution: Steering Clear of Conflicts

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### Introduction

FIDIC and the Singapore International Mediation Centre (SIMC) both promote Appropriate Dispute Resolution ('ADR'<sup>1</sup>) procedures within the construction and engineering sectors.

In August 2024 SIMC introduced a new **Integrated Appropriate Dispute Resolution Framework** ('INTEGRAF') to help disputing parties *"to unbundle disputes and apply the most appropriate dispute resolution mechanism to each aspect of a dispute"*.

Even if a dispute cannot be fully resolved, INTEGRAF is designed to reduce or contain the conflict, so that only the most stubborn parts proceed to adversarial dispute resolution.

The parties may include the model [INTEGRAF clause](#) in their contracts, which can be tailored to specific circumstances.

INTEGRAF offers two mechanisms:

- (i) Standing Conflict Avoidance Board, and
- (ii) Ad-Hoc Conflict Management.

### Standing Conflict Avoidance Board

The adoption of a Standing Conflict Avoidance Board is appropriate for use on construction and engineering projects. It is strongly influenced by the standing dispute board procedure in the FIDIC forms of contract. The parties agree to appoint one or more neutrals to a Conflict Avoidance Board ('CAB') at the inception of their working relationship.

"The CAB offers real-time advice, facilitating discussions, negotiations, and conducting mediation between parties, or providing opinions and determinations as needed. With early and appropriate management by the CAB, and the flexible and interoperable application of ADR methods, parties will be empowered to avoid or contain disputes promptly".

<sup>1</sup> Rebranded from Alternative Dispute Resolution.

<sup>2</sup> Defined as "any difference or dispute between parties which either



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In a similar way as a FIDIC standing dispute board, the CAB is empowered to manage the dispute and relationship between the parties.

The parties may (individually or jointly) request the appointment of a CAB at any time. The CAB's fees and expenses are determined by the CAB, but an estimate of these fees and expenses must be given in advance of the appointment of the CAB members(s).

The CAB may schedule periodic 'Review Meetings' with the parties to assess issues relating to the performance of the underlying contract. The Review Meetings must be attended by the parties and the CAB. They may be (i) in-person, (ii) via video conference, or (iii) via telephone conference.

If a potential dispute between the parties is identified, the CAB is empowered to assist the parties with resolving or containing the dispute through (i) amicable settlement, (ii) mediation (iii) non-binding determination, or (iv) binding and final determination.

A Dispute<sup>2</sup> may be referred via a Referral notifying the

or both parties have referred to the CAB in accordance with Rule 5 of these Rules".



CAB and the other party, regardless of whether or not it was raised a Review Meeting.

The rules governing the process are detailed in the [INTEGRAL Rules 2024](#). There are some similarities with DAB Rules or DAAB Procedural Rules found in the FIDIC forms of contract.

There is no equivalent of (i) the Dispute Board Agreement and the General Conditions of Dispute Adjudication Agreement, or (ii) the Dispute Avoidance/Adjudication Board Agreement and General Conditions of Dispute Avoidance/Adjudication Agreement.

The CAB may have one, two or three members. It is unusual to see two members specified in dispute resolution procedures because of the risk of deadlock and that each member may be perceived to be favouring one party. To address this risk, under the INTEGRAL Rules where there are two members one member acts as the Presiding Member (either by agreement or as designated by the SIMC).

The CAB may:

- (i) encourage co-operation between the parties,
- (ii) assist in informal discussion and negotiation to avoid and/or resolve disputes,
- (iii) facilitate resolution via mediation,
- (iv) determine a dispute via determination,
- (v) refer any dispute falling outside the scope of its duties and/or change the mode of the dispute resolution as the CAB deems appropriate.

The powers of the CAB are listed in Rule 12 as follows:

"Without limiting the generality of the preceding Rule, the CAB shall for the purposes of Rules 5, 6, 7 or 8 of these Rules, have the power to: –

- (a) require the parties to produce any documents or materials that the CAB deems relevant in relation to the discharge of any of its functions;
- (b) order the taking of measures for protecting trade secrets and confidential information;
- (c) convene and conduct a Review Meeting, preparatory meeting or hearing in such manner as it deems appropriate, subject always to these Rules;

- (d) decide on all procedural matters arising during any Review Meeting, preparatory meeting or hearing;
- (e) direct questions to the parties, their representatives and any witnesses who may be called by the parties, in any sequence or manner it determines appropriate;
- (f) appoint one or more experts, with the agreement of the parties;
- (g) issue any procedural direction or determination even if a party fails to comply with any provision of these Rules or request of the CAB;
- (h) determine any application for interim or provisional relief in respect of any matters relating to the Contract; and
- (i) take any measures necessary to fulfil its function as a CAB."

The CAB does not have the power of to decide upon its own jurisdiction.

The dispute resolution proceedings must be kept confidential.

"Any dispute resolution under these Rules shall be conducted in confidence and on a without-prejudice basis. No transcript or formal record will be made, and none of the parties shall make any audio or video recording or take photographs of the proceedings."

If a Dispute is resolved through mediation, it is subject to a Mediated Settlement Agreement which is binding pursuant to Rule 6.

If a party fails to comply (either in whole or in part), with a Mediated Settlement Agreement or a binding and final determination:

"the other party may without prejudice to any other rights it has, refer such failure to the courts or such other forum as agreed between the parties. The courts or other forum shall have the power to summarily or by expedited procedure, make the requisite order or award (whether provisional, interim or final) to enforce the Mediated Settlement Agreement determination (as the case may be) referred to in Rule 9.1".



In other words, the matter is referred directly to the courts for enforcement. SIMC had not adopted arbitration as in the FIDIC forms of contract.

## Ad-Hoc Conflict Management

Ad-Hoc Conflict Management is of use in commercial disputes, particularly where the parties have less experience of ADR. The parties may engage with this ad-hoc process at any stage of a project, transaction, or dispute.

A single Conflict Management Consultant is appointed to review the dispute and relationship between the parties. In consultation with the parties, that Consultant will formulate an ADR Plan. The different ADR mechanisms may be applied jointly and severally.

The Consultant will help implement the ADR Plan and recommend suitable neutrals to facilitate the resolution of the dispute through mediation, non-binding determination or binding and final determination.

## Advantages of INTEGRAF

The SIMC website lists the advantages of INTEGRAF as follows.

It:

- (i) aims to guide parties towards negotiated or amicable resolution;
- (ii) can recommend and implement various ADR models for different components of a dispute;
- (iii) provides expert guidance from the CAB and Conflict Management Consultant, who will give clear recommendations, key steps and timelines, and an ADR Plan where appropriate, to ensure a clear resolution process agreed upon by all parties;
- (iv) is adaptable to any stage of a dispute's lifecycle and allows for engagement before conflicts emerge, after conflicts arise but before legal process begins, or even after arbitration or trial commences; and
- (v) provides for the parties to seek enforcement through the courts, in cases of non-compliance, without prejudice to any final determination of the merits of the underlying dispute.

## Conclusion

Singapore is a global dispute resolution centre, and well regarded for arbitration and mediation. We look forward to hearing more about INTEGRAF in due course.

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