

# Stockholm Arbitration Yearbook 2024

## Stockholm Arbitration Yearbook

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### VOLUME 6

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#### *Editors*

Christer Danielsson is an independent arbitrator based in Stockholm. After fifteen years of mainly transactional work with a leading Swedish firm, he has focused on dispute resolution in the last fifteen years as counsel and now as a full-time arbitrator. He is the previous President of the Swedish Bar Association and the Swedish Arbitration Association and is designated to the ICSID Panel of Arbitrators (Sweden).

Patrik Schöldström is a Judge of Appeal of the Svea Court of Appeal. He is also an Associate Professor of the Faculty of Law of Stockholm University. He has a doctorate in arbitration law and is a former member of the Swedish Bar. He regularly writes articles and case notes. He has extensive experience as an arbitrator – chairman, sole arbitrator, co-arbitrator and emergency arbitrator – in international and domestic disputes, ad hoc and institutional.

#### *Introduction*

The Yearbook is published under the auspices of the Stockholm Centre for Commercial Law, a part of the Stockholm University Faculty of Law. It is designed to meet the information needs of arbitration practitioners and parties from all over the world. The first volume was published in 2019.

#### *Objective*

The Yearbook is designed to meet the information needs of arbitration practitioners and parties from all over the world. It provides authoritative articles, some of them with a Swedish angle, that address current matters of global concern in arbitration. Each volume includes one or more chapters accounting for developments in Swedish case law and legislation since the previous volume.

#### *Frequency*

The publication is annual.

*The titles published in this series are listed at the end of this volume.*

# Stockholm Arbitration Yearbook 2024

Edited by

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E-mail: [customer.service@wolterskluwer.com](mailto:customer.service@wolterskluwer.com)

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# Editors

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**Patrik Schöldström** is a Judge of Appeal of the Svea Court of Appeal and an Associate Professor of the Faculty of Law of Stockholm University. He has a Doctorate in Arbitration Law and is a former member of the Swedish Bar. He regularly writes articles and case notes. He also sits as an arbitrator and has participated in a number of domestic and international arbitrations (ad hoc and institutional) as chair of the arbitral tribunal, sole arbitrator, emergency arbitrator, wing arbitrator, and counsel.

## Contributors

**David Akrad** is an advokat and associate in the dispute resolution group at Mannheimer Swartling, based in Gothenburg.

**Anastasiia Dulsk**a is an associate at Bär & Karrer, Switzerland, with more than ten years of experience in international dispute resolution. She specialises in international commercial and investor-State arbitration, cross-border disputes, internal investigations, and public international law. She is particularly focused on representing governments, state-owned entities, financial institutions, and high-net-worth individuals before international tribunals and courts. She holds Master's and Bachelor's degrees in International Law, and an LLM in International Dispute Resolution from the Humboldt University of Berlin. She also completed directed studies at the Hague Academy of International Law and the Paris Arbitration Academy. Anastasiia is recognised by Who's Who Legal as a Future Leader in Arbitration (2024).

**Aleksander Godhe** is a research associate (Dispute Resolution) at the Centre of Construction Law & Dispute Resolution, the Dickson Poon School of Law, King's College London. He is also a Visiting Fellow at the Stockholm Centre for Commercial Law, Stockholm University.

**Søren Henriksen** is a partner at Gorrissen Federspiel's dispute resolution practice in Copenhagen. Søren specialises in international arbitration, and his experience ranges across post-M&A and shareholder arbitration over IT separation disputes through international insurance and construction arbitration.

**Lord Hope of Craighead KT** is a former Deputy President of the UK Supreme Court. He is currently an international arbitrator at Brick Court Chambers, 7-8 Essex Street, London WC2R 3LD.

**Alexandra M.O. Junge** is a legal consultant at Gorrissen Federspiel's dispute resolution practice in Copenhagen. She holds a Master's in Economic Law from Sciences Po Paris Law School. Alexandra focuses on international commercial-arbitration matters.

**Aksel Kolstad** is an associate at Wikborg Rein's Oslo office, where he specialises in international arbitration. He has previously held a position as a research assistant at the Institute for Private Law at the University of Oslo, where he has also lectured on contract law.

**Mikael Linton-Wahlgren** is an advokat and founder of Linton-Wahlgren Law Firm. He is an experienced arbitrator, mediator, and adjudicator in dispute resolution boards. He has more than thirty years of experience working as in-house and external counsel supporting several multinational Swedish and foreign listed companies, including as General Counsel for the Alfa Laval Group and In-house Counsel for Skanska, ABB, Rolls-Royce and NCC. He is also a former Partner of Lindmark Welinder Law Firm. His background and industry expertise include, e.g., the handling of domestic and international disputes and business legal matters in the construction, infrastructure, energy, manufacturing, M&A, Life Science and MedTech industries.

**Kristoffer Löf** is an advokat and partner in the dispute resolution group at Mannheimer Swartling, based in Stockholm. He is also the former President of the Swedish Arbitration Association.

**Haakon Orgland Bingen** is a specialist counsel at Wikborg Rein's Oslo office, where he specialises in international arbitration. For over a decade, he has worked almost exclusively with international arbitration, acting as counsel in numerous arbitration proceedings governed by the ICC, SCC and OCC arbitration rules, as well as ad hoc arbitrations. He also regularly sits as an arbitrator.

**Paschalis Paschalidis** is a counsel in the dispute resolution practice at Arendt & Medernach. He is also an associate professor of Public Law at the University of Lyon 3 'Jean Moulin' and a Member of the Luxembourg Arbitration Association.

**Niels Schiersing** is an independent international arbitrator and a member of Arbitration Chambers. He is based in London and Dubai. Dr Schiersing is dual-qualified and admitted to practice law in Denmark and England & Wales. As such, he has in-depth knowledge of common law and civil law systems alike. His arbitrator practice focuses on commercial and construction arbitration, and he has acted as arbitrator in more than one hundred arbitrations in various jurisdictions across three continents (Europe, Asia and Africa), including as co-arbitrator, chairperson and emergency arbitrator in a number of SCC arbitrations. Moreover, Dr Schiersing conducts extensive legal research, particularly in the area of comparative contract law and international arbitration law. He holds the highest achievable Doctorate degree. Dr Schiersing only serves as arbitrator and does not act as counsel.

**Catherine Schutz** is a legal consultant at Gorrisen Federspiel's dispute resolution practice in Copenhagen. Catherine holds a Juris Doctorate (JD) from Georgia State University College of Law and is admitted to the Georgia State Bar (US). She consults on a broad range of matters related to international commercial arbitration and litigation. Prior to joining Gorrisen Federspiel, Catherine's practice focused primarily

on large-scale US litigation, including tort, commercial, contract and real estate litigation.

**Christopher Stridh** is a senior associate at Advokatfirman Delphi. He specialises in Swedish and international commercial arbitration and litigation.

**Petri Taivalkoski** is an independent arbitrator based in Helsinki. Before launching his practice as a full-time arbitrator in 2020, he practised as a litigator with a leading Nordic law firm for thirty years, including several years as the head of its dispute resolution practice in Finland. Petri has served as an arbitrator under various laws and rules, such as the ICC, the FAI, the SCC, the DIS and the Swiss Rules. He served as a member of the ICC International Court of Arbitration from 2018 to 2024 and as a member of the FAI Board from 2013 to 2018.

**Danna Zhang** is a dual-qualified disputes lawyer licensed to practice in Denmark and England and Wales. She is an associate in the Disputes and Investigations practice of Slaughter and May in London.



# Preface

Welcome to the sixth edition of the Stockholm Arbitration Yearbook!

You will find chapters on arbitration law in general and Swedish arbitration law in particular. Some contributions are by senior and well-known authors, others by more junior ones.

We are happy to receive – at any time of the year – proposals for future contributions in the form of a short abstract.

*Christer Danielsson  
Patrik Schöldström*

## CHAPTER 12

# Dispute Resolution Boards: An Efficient Dispute Resolution Method in Sweden?

*Mikael Linton-Wahlgren*

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### §12.01 BACKGROUND

This chapter aims to explore the use of dispute resolution boards (DRBs) as a dispute resolution method in Sweden. It is my view that the use of a well-developed dispute resolution board process (DRB process) could work as an attractive dispute resolution method in, e.g., major construction, infrastructural and energy projects as well as long-term product or business development projects. The use of DRB processes has gained significant attention in the Nordic countries in recent years. This has led to some initial attempts to implement DRB processes in Swedish construction contracts, which I will return to later in this chapter.

The benefits of and arguments for the implementation of a DRB process as an alternative dispute resolution (ADR) method have also been fueled by the international organization DRBF,<sup>1</sup> which has addressed the concept of DRBs at several conferences, workshops, and articles in the Nordic countries. FIDIC<sup>2</sup> has also, through the introduction of its own DRB processes, i.e., the Dispute Adjudication Board (DAB) and the Dispute Avoidance and Adjudication Board (DAAB), which are set out in its standard

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1. The Dispute Resolution Board Foundation, DRBF, is a nonprofit organization dedicated to promoting DRB processes for resolving disputes in construction and infrastructure projects. It provides resources, training, and guidance on the establishment and operation of DRBs.
  2. FIDIC stands for the Fédération International des Ingénieurs-Conseils (International Federation of Consulting Engineers) and is an industry umbrella group based in Geneva, made up of approximately one hundred national associations of consulting engineers. The organization was founded in 1913 with the goal of promoting excellence in engineering management, including thorough study and publication of industry best-practice guides.

contract forms,<sup>3</sup> established a well-renowned and used structure for the use of DRBs worldwide. Furthermore, the World Bank's adoption of the FIDIC 1999 suite of contracts concept of the DAB and the FIDIC 2017 suite of contracts concept of the DAAB in the World Bank's General Conditions of Contract section of their Standard Bidding Documents and Standard Procurement Documents, for construction contracts, has further established the DRB process as a well-recognized and appreciated tool for dispute resolution in major construction projects.

In this chapter, I intend, based on DRBF's Guide to Best Practices and Procedures,<sup>4</sup> to shed light on if and why the DRB process could be a complement to the resolution of disputes by court litigation or arbitration and how the DRB process can streamline the resolution of disputes in major construction, infrastructural and energy projects as well as in long-term product or business development projects in Sweden.

## §12.02 THE USE OF DRB PROCESSES INTERNATIONALLY

### [A] The History of DRBs

The concept of DRBs has been developed by the construction industry, dispute resolution institutions (e.g., the ICC),<sup>5</sup> organizations involved in the development of standard contract forms (e.g., FIDIC), and other stakeholders. Traditionally, contractual disputes in the construction industry have been resolved using methods ranging from litigation to ADR processes, such as arbitration, mediation, and adjudication. The introduction of DRBs into construction contracts represents a significant advancement in resolving contractual disputes.<sup>6</sup>

In the 1950s, public construction contracts in the United States became more complex due to the number of contracting parties and additional nontechnical demands, such as environmental regulations and public interest pressures. Combined with the financial instability of contractors, there was a need for more pragmatic solutions to settle claims and disputes.<sup>7</sup> Initially, arbitration became popular as it was

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3. The concept of a DAB was introduced in the FIDIC 1999 suite of contracts, which includes the Red Book (Construction), Yellow Book (Plant and Design-Build), and Silver Book (EPC/Turnkey Projects). In the FIDIC 2017 suite of contracts, the term DAB was replaced by Dispute Avoidance and Adjudication Board (DAAB). The 2017 suite includes updated versions of the Red, Yellow, and Silver Books, as well as the Green Book (Short Form of Contract) and the Gold Book (Design, Build and Operate Projects).
  4. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019). This guide updates the DRBF's previous manual and explains practices and procedures that have evolved in the application of DRBs. This guide gives special attention to recommended best practices and cautions against modifications to the process which may be acceptable only in certain circumstances.
  5. The International Chamber of Commerce provides dispute resolution services, including arbitration and mediation, and has developed rules and guidelines for the use of DRBs in international construction projects.
  6. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.
  7. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 6.

considered less expensive and faster than litigation. However, arbitration also eventually became costly and time-consuming, leading to the development of other ADR processes like mediation and, subsequently, the adoption of DRBs.<sup>8</sup>

The DRB concept continued to evolve in the United States between 1972 and the 1990s, driven by the construction industry, interest organizations, and national committees.<sup>9</sup> The success of the DRB process in the United States led to its increased use in international projects, supported by governments, professional engineering associations, and project-funding institutions like the World Bank.<sup>10</sup>

In the 1990s, several large international projects successfully utilized DRBs, such as the Channel Tunnel Project (UK/France), the new Hong Kong International Airport, and the Ertan Hydroelectric Project in China.<sup>11</sup> In January 1995, the World Bank included a mandatory three-person DRB for contracts exceeding USD 50 million in its standard bidding documents.<sup>12</sup> Later that year, FIDIC introduced the DAB concept in its “Orange Book,”<sup>13</sup> followed by the 1999 “Red Book,” which provided for a standing DRB, and the Yellow and Silver Books, which offered the option of an ad hoc or standing DRB. In 2017, FIDIC’s Rainbow suite of contracts<sup>14</sup> was revised to include the DAAB, focusing on both dispute avoidance and adjudication.<sup>15</sup>

Since the mid-1990s, there have been several significant milestones in the expansion of the DRB process, including its adoption by the Asian Development Bank and the European Bank for Reconstruction and Development in 1997 for their internationally funded projects.<sup>16</sup> In 2004, the ICC introduced its own DRB rules, which

8. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 6.

9. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 6.

10. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 6.

11. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 6.

12. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.

13. FIDIC, <https://fidic.org/books/design-build-and-turnkey-1st-ed-1995-orange-book> (1995).

14. The FIDIC Rainbow Suite of Contracts refers to a collection of standard forms of contracts published by FIDIC. Each colour of the “Rainbow Suite” represents a different type of contract tailored to specific types of work and project requirements. These include the FIDIC Red Book (1999)—designed for construction projects where the contractor is responsible for all of the engineering, procurement, and construction (EPC), the FIDIC Yellow Book (1999)—used for electrical and mechanical works, especially where the contractor designs and builds the plant or infrastructure, the FIDIC Silver Book (1999)—intended for projects delivered on a turnkey basis, the FIDIC Green Book (1999)—designed for smaller projects of relatively low value and short duration, the FIDIC Gold Book (2008)—covering projects delivered under a single contract where the contractor is responsible not only for the design and construction but also for the long-term operation and maintenance of the project, the FIDIC Pink Book (2010)—developed for use by multilateral development banks in financing projects, the FIDIC Blue Book (2017)—suited to large scale dredging and maritime engineering works and the FIDIC White Book (2017)—typically used for consultancy services where consultants provide professional services on a project.

15. FIDIC, <https://fidic.org/node/13618> (2017).

16. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.

were updated in 2015 to include concepts of dispute avoidance and facilitation with appendices in force as of 2018.<sup>17</sup> In 2005, as part of the United Nations' Millennium Goals, procurement heads from various development banks collaborated with FIDIC to develop the "FIDIC MDB Harmonised Conditions of Contract" or "Pink Book"<sup>18</sup> (updated in 2010), widely used for major infrastructure projects in developing countries, with nine MDBs globally adopting this DRB process.<sup>19</sup> The UK-based Institution of Civil Engineers also published its "Dispute Resolution Board Procedures" in 2005.<sup>20</sup>

Since 2008, Japan's International Cooperation Agency (JICA) has promoted DRBs for projects financed by JICA Official Development Assistance loans, making them mandatory in JICA's procurement guidelines and standard bidding documents.<sup>21</sup> In 2014, the UK Chartered Institute of Arbitrators extended the DRB process beyond construction contracts to any medium- or long-term project with its "Dispute Board Rules."<sup>22</sup>

DRBs are increasingly used in private-public partnerships (PPP) projects and have seen hybrid rules for large projects with multiple contracts, such as the London 2012 Olympics & Paralympics, the Rio 2016 Olympics & Paralympics, and the European Union's "Fusion for Energy" (F4E) project.<sup>23</sup>

Today, DRBs are recognized as the leading contract-management process that proactively assists parties in a project to avoid or resolve disputes in a timely and cost-effective manner. They are an integral part of many major construction projects worldwide and are increasingly being employed in other industries, such as information technology, insurance, defence, and manufacturing for large and complex contracts.<sup>24</sup>

## **[B] The Most Common Rules Used for the Formation of DRBs**

As illustrated in section §12.02[A] above, several key organizations have played a significant role in the development and promotion of DRB practices worldwide. DRBF, FIDIC and the ICC have each contributed to the development of the concept and practice of DRBs, and their guidelines are considered authoritative in the field.

These organizations and their suggested DRB process are described below.

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17. ICC, *Dispute Board Rules*, in force as from Oct. 1, 2015, with Appendices in force as from Oct. 1, 2018 (2022).

18. FIDIC, *Conditions of Contract for Construction* (Multilateral Development Bank Harmonised Ed. Version 3 (2010)).

19. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.

20. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.

21. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.

22. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.

23. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7.

24. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 7-8).

**[1]      The DRBF**

The DRBF is a nonprofit organization dedicated to promoting the DRB process for resolving disputes in construction and infrastructure projects. It provides resources, training, and guidance on the establishment and operation of DRBs. The DRBF's definitions and best practices are widely recognized in the industry.<sup>25</sup>

The DRBF's definition, in its *Dispute Board Manual*, of how a DRB should be structured is that a DRB consists of one or three independent, impartial, and respected individuals selected by the contracting parties. The DRB members are usually experienced professionals in the construction industry, such as engineers, architects, or construction lawyers. The DRB should be established at the commencement of the project and remain in place throughout its duration. The primary function of the DRB is to provide an informal and nonbinding process to resolve disputes that may arise during the course of the project. The DRB encourages the resolution of disputes at the earliest possible stage and aims to prevent disputes from escalating to arbitration or litigation. The DRBF emphasizes that the DRB process is preventative in nature, focusing on dispute avoidance and early resolution. The board typically reviews project progress, provides opinions on potential issues, and, when disputes do arise, offers recommendations or decisions to resolve them. While the DRB's decisions are not legally binding, they are generally respected and followed by the parties, helping to maintain the project's momentum and avoid costly and time-consuming legal proceedings.<sup>26</sup>

**[2]      FIDIC**

FIDIC is an international standards organization that develops and publishes contract forms for the global construction industry. FIDIC's contract documents, including the Red Book, Yellow Book, and Silver Book, contain provisions for DABs or DAABs, which are similar to DRBs. FIDIC's definitions and developed procedures for these DRBs have been highly influential and ground-breaking for the acceptance and structuring of DRBs. FIDIC does not use the term "Dispute Resolution Board" in its standard contract forms. Instead, FIDIC uses the terms "Dispute Adjudication Board" (DAB) in its 1999 suite of contracts and "Dispute Avoidance and Adjudication Board" (DAAB) in its 2017 suite of contracts. In the 2017 suite of FIDIC contracts, the concept of a DAB evolved to include dispute avoidance as well, leading to the introduction of DAAB. These boards serve a similar function to DRBs, focusing on dispute avoidance and resolution.<sup>27</sup>

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25. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 8.

26. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 14-16).

27. FIDIC, *FIDIC Contracts Guide* (2017 editions, as reprinted in 2022 with amendments) Guide 1st ed. (2022).

The abbreviations DAB and DAAB have specific meanings related to dispute resolution in FIDIC's standard form contracts. The two DRB processes, in summary, are characterized by the following:

- (a) A DAB, as defined in the FIDIC 1999 suite of contracts, consists of a panel composed of one or three independent and impartial experts appointed by the parties to the contract. The DAB is established at the outset of the project and has the authority to make binding decisions on disputes that arise during the execution of the contract. These decisions are binding on the parties until superseded by an arbitral award or court judgment. The DAB process aims to provide a swift and efficient resolution to disputes, thereby avoiding lengthy and costly arbitration or litigation.<sup>28</sup>
- (b) A DAAB consists of one or three independent and impartial experts appointed by the parties to the contract, with a dual role: to proactively work with parties to avoid disputes and to adjudicate disputes that do arise. The DAAB provides a proactive approach to dispute resolution, offering informal assistance and advice to the parties during the project and, when necessary, making decisions on disputed matters that are generally binding but can be superseded by an arbitral award or court judgment if either party is dissatisfied.<sup>29</sup>

FIDIC contracts are known for their comprehensive dispute resolution provisions, and the inclusion of either a DAB or DAAB is a key feature for ensuring the effective and timely resolution of conflicts in large construction projects. The DABs or DAABs play a crucial role in maintaining project continuity and reducing the need for more formal and lengthy dispute resolution processes.

As mentioned in section §12.02[A] above, the World Bank's standard procurement documents for construction contracts also reference the use of DRBs, which can be either DABs or DAABs, depending on the version of the used FIDIC contract form. These provisions are typically included in the General Conditions of Contract (GCC) section of the World Bank's Standard Bidding Documents (SBDs) or Standard Procurement Documents (SPDs) for construction contracts. The specific provisions regarding the establishment, composition, and procedures of the DRB will be detailed in the contract documents provided by the World Bank for each individual project. In addition, SBDs (2000 revision) provided that the recommendation of a DRB expert is binding and must be given effect unless or until an arbitral award or court judgment is rendered on the same issue.<sup>30</sup>

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28. FIDIC, 1999 FIDIC suite of contracts, clause 20, titled "Claims, Disputes and Arbitration" (1999).

29. FIDIC, the 2017 FIDIC suite of contracts, clause 21, titled "Disputes and Arbitration" (2017).

30. Jane Jenkins, *International Construction Arbitration Law*, 3rd ed. (Kluwer Law International, 2021) 125.

Both the DAB and DAAB concepts emphasize the importance of early and efficient dispute resolution in construction projects, with the aim of maintaining project progress and minimizing the impact of disputes on time and cost.<sup>31</sup>

### [3] *The ICC*

The ICC provides dispute resolution services, including arbitration and mediation, and has developed rules and guidelines for the use of DRBs in international construction projects. The ICC refers to DRBs in its standard documents and guidelines.<sup>32</sup> In these documents, the ICC defines DRBs as a standing body, typically comprising one or three independent and impartial experts, appointed at the outset of a project either jointly by the parties or, if they fail to do so, by ICC's International Centre for ADR. The DRB's primary function is to assist the parties in avoiding disputes and, where disputes arise, to provide a forum for their resolution. The ICC's DRB processes operate under various names, including DRBs,<sup>33</sup> DABs,<sup>34</sup> or Combined Dispute Boards (CDBs),<sup>35</sup> depending on their specific mandate and the rules under which they operate. The ICC provides rules and guidelines for the establishment and operation of DRBs, which are used in international construction and infrastructure projects. The ICC Dispute Board Rules offer a framework for the prevention, management, and resolution of disputes, with the aim of reducing the time and cost associated with arbitration or litigation.

### [4] *The SCC*

The Stockholm Chamber of Commerce (the SCC) provides rules and procedures for Swedish and international arbitration and other forms of dispute resolution. However, the SCC does not have a distinct set of rules for a DRB process similar to those provided by the ICC, FIDIC or DRBF. In general, the SCC focuses on administering and overseeing arbitration cases, including international commercial arbitration and investment treaty arbitration.<sup>36</sup> It is one of the leading institutions for international arbitration and is recognized for its expertise in handling complex cross-border disputes.

The closest the SCC comes to a DRB concept, while not being an actual DRB process, is the recently introduced SCC Express Rules.<sup>37</sup> The SCC states that “the aim of the SCC is to promote trade between companies. We do this by helping companies spend as little time as possible on dispute resolution, allowing them to spend more time

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31. FIDIC, FIDIC Contracts Guide, clause 21, (2017 editions, as reprinted in 2022 with amendments) Guide 1st ed. (2022).

32. ICC, Dispute Board Rules, in force as from Oct. 1, 2015, with Appendices in force as from Oct. 1, 2018 (2022).

33. ICC, Dispute Board Rules, Art. 4 (2022).

34. ICC, Dispute Board Rules, Art. 5 (2022).

35. ICC, Dispute Board Rules, Art. 6 (2022).

36. SCC, <https://sccarbitrationinstitute.se/om-scc> (2024).

37. SCC, SCC Express, <https://sccarbitrationinstitute.se/en/our-services/scc-express> (accessed Mar. 28, 2024).



on their core business.”<sup>38</sup> Furthermore, the SCC presents SCC Express as being a “service primarily aimed at parties with an ongoing contract. The priority is on the business relationship and the parties have a legal dispute they want to resolve quickly and at a fixed price. The service can also be used by parties who want to test their legal position before a settlement discussion or a decision to initiate legal proceedings through arbitration or in court.”<sup>39</sup>

Moreover, SCC Express is described as “a consent-based and confidential dispute resolution process. The contracting parties may jointly decide to choose SCC Express as the dispute resolution method, either when the contract is written or when the dispute arises. The SCC appoints a neutral legal expert to give their opinion on the merits of the case within three weeks.”<sup>40</sup> Like in a DRB process, it is said that “this assessment is neither enforceable nor binding on the parties, unless they have specifically agreed to this. The main purpose of the service is to help the parties move forward in their contractual relationship.”<sup>41</sup> The process for dispute resolution services is set out in the SCC Express Rules.<sup>42</sup>

### [C] The Basics of DRBs

While the DRB process is a relatively recent method for resolving disputes in major projects, its effectiveness is well-established. The unique attribute of the DRB process has become evident over many years of application. When adequately implemented, the DRB process offers an economical and highly efficient way to help project parties not only resolve disputes swiftly but also, more crucially, prevent disputes and attain the best possible project results.<sup>43</sup>

A DRB is usually comprised of three members, though some DRBs may have only one member. The DRB member should be a reputable and trustworthy expert chosen for expertise, experience, and impartiality in the project’s subject matter. In a construction project, a DRB typically consists of a diverse group, including engineers, contractors, architects, builders, consultants, and lawyers, all of whom are specialists in construction work. All members of the DRB must be approved by the contracting parties. It is essential that DRB members always maintain their independence and neutrality and do not represent a specific contracting party.<sup>44</sup>

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38. SCC, SCC Express, <https://sccarbitrationinstitute.se/en/our-services/scc-express> (accessed Mar. 28, 2024).

39. SCC, SCC Express, <https://sccarbitrationinstitute.se/en/our-services/scc-express> (accessed Mar. 28, 2024).

40. SCC, SCC Express, <https://sccarbitrationinstitute.se/en/our-services/scc-express> (accessed Mar. 28, 2024).

41. SCC, SCC Express, <https://sccarbitrationinstitute.se/en/our-services/scc-express> (accessed Mar. 28, 2024).

42. SCC, SCC Rules for Express Dispute Assessment (2023).

43. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 14.

44. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 14.

During the project, the DRB regularly convenes with the parties to assist in preventing and, if required, resolving issues and disputes. The DRB achieves this by offering an unbiased platform for the real-time resolution of disputes at minimal expense. The mere presence of a readily accessible dispute avoidance and resolution mechanism—utilizing mutually chosen, technically proficient, and experienced “neutrals” who are well-acquainted with the project—promotes consensus on matters that might otherwise lead to protracted and expensive arbitration or litigation.<sup>45</sup>

The DRB is typically established when the parties sign a contract for the project’s delivery. At this point, the parties also sign a formal agreement with each DRB member (DRB Agreement). However, a DRB can be established at any stage if there is mutual agreement between the parties. The DRB Agreement outlines the responsibilities of the parties as well as the roles and duties of the DRB. The costs associated with the DRB are generally split equally between the owner and the contractor.<sup>46</sup>

Regular meetings between the contracting parties and the DRB usually take place at the project site and often include a site inspection. These meetings, attended by both off-site executives and senior on-site personnel, provide the DRB with updates on the overall progress of the project. The DRB is informed about potential issues that may lead to increased costs or delays, as well as any unresolved matters that could escalate into disputes. The DRB engages in discussions and consultations with the parties to explore ways to resolve these issues.<sup>47</sup>

In between the scheduled DRB meetings, the DRB is kept informed about the project’s progress through monthly reports, meeting minutes, and any other documentation deemed necessary by the parties or the DRB to ensure that the DRB always remains fully informed.<sup>48</sup>

Should any issue under the contract remain unresolved after negotiations between the parties and discussions with the DRB, either party has the right to formally refer the dispute to the DRB for a recommendation or decision.<sup>49</sup>

The methods for selecting DRB members differ, and several widely used approaches exist. Both the owner and the contractor must select their preferred DRB candidates, considering factors such as qualifications, availability, experience, and background. Candidates may need to submit a formal statement affirming their impartiality and independence from any parties or individuals connected to the project. After the DRB nominees receive approval from the parties, the DRB is officially formed when the parties and the DRB members jointly sign a DRB Agreement.<sup>50</sup>

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45. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 14.

46. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 14-15.

47. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

48. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

49. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

50. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

In most construction contracts without a DRB, a specific dispute resolution procedure is outlined that must be adhered to in the event of a dispute. By contrast, the DRB's role in dispute avoidance is not restricted to any set process, allowing the DRB to implement the most appropriate dispute avoidance strategies for the issue at hand.<sup>51</sup>

Establishing the DRB as early as possible after the contract is signed enables the DRB to become acquainted with the project from the beginning, i.e., at a time when issues and disputes are likely to emerge. The early formation of a DRB also commits the parties to a framework designed to resolve issues and prevent disputes by fostering positive relationships and open communication at all levels.

As the DRB stays informed about the progress of the work and any ongoing issues, it is prepared to assist the parties in addressing issues in real time as they arise. Resolving issues early, before they escalate into disputes, helps maintain relationships and significantly reduces both costs and the loss of productive project time.<sup>52</sup>

In addition, the participation of senior off-site personnel in DRB meetings not only keeps the DRB better informed about the project's progress but also provides it with the opportunity to use its authority to prevent potential disputes.

However, if the parties are unable to resolve an issue and it turns into a dispute, the DRB can settle it quickly once a formal referral has been made by one of the parties. When a dispute is referred to the DRB for resolution, the DRB process is cost-effective compared to other dispute resolution methods.<sup>53</sup>

The DRB employs a variety of dispute avoidance techniques tailored to the specific issue at hand. Typically, the DRB adopts a proactive approach, promoting dispute avoidance by focusing on project management and the resolution of various issues during regular DRB meetings. The DRB inquires routinely into potential issues, claims, or disputes and reviews and monitors their status together with the parties. The DRB also encourages the parties to seek early resolution of issues and to utilize the DRB for facilitating informal sessions or special meetings with the parties or interested third parties.<sup>54</sup>

The possibility of referring a dispute to the DRB for its resolution motivates the parties to resolve issues that could escalate into disputes. Feedback from the DRB prompts the parties to critically evaluate their positions on the issue at hand.

Moreover, before formally referring a dispute to the DRB, the parties may request an informal, nonbinding advisory opinion from the DRB.<sup>55</sup> The advantage of such an advisory opinion is that it can often be provided by the DRB on short notice and

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51. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

52. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

53. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

54. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

55. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 15.

frequently leads to the resolution of an issue that might otherwise have been formally referred to the DRB for a recommendation or decision.

When the parties are unable to resolve disputes promptly on their own or with the help of the DRB, either party may formally refer the dispute to the DRB. The process leading to a recommendation or decision by the DRB is typically outlined in the DRB Agreement and/or the project contract. This process usually involves each party submitting position papers, documents, and evidence related to the dispute, followed by an opportunity for each party to respond to the other party's submissions.<sup>56</sup>

A hearing or conference is convened either by mutual agreement of the parties or at the request of the DRB.<sup>57</sup> This provides an opportunity for the parties to further articulate their positions and respond to the opposing side's arguments. Whether legal counsel to the parties are allowed during such hearings depends on the terms of the DRB Agreement.

When all relevant information has been presented and submitted, the DRB issues a written recommendation or decision, which includes the DRB's analysis and reasoning, within the timeframe stipulated in the DRB Agreement.<sup>58</sup>

Depending on the contract's terms and conditions, the DRB's issuance may be a nonbinding recommendation or a binding decision (subject only to subsequent arbitration). In either scenario, experience has demonstrated that a well-reasoned analysis of the dispute by a panel of neutral, highly experienced professionals almost always leads to the settlement of the dispute without further legal action.<sup>59</sup>

Finally, it should be noted that the interim binding nature of a DRB's decision emanates from the parties having contractually agreed that they will implement and abide by the DRB's decision until the dispute is finally resolved. The decisions are, accordingly, not enforceable in the same way as arbitral awards or judgments.

## **[D] The Benefits of Using the DRB Process**

Over time, owners and contractors engaged in significant projects have utilized various methods to resolve their contractual disputes, ranging from court litigation to various forms of ADR, such as arbitration, mediation, and adjudication. The incorporation of DRBs into the contract and dispute-management framework has also proven to be a successful innovation in the field of ADR.<sup>60</sup>

The use of DRBs has proven to be a crucial element of best-practice project management. Especially in the construction industry, major projects often entail

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56. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 16.

57. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 16.

58. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 16.

59. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 16.

60. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 8.

considerable risks for the participants, which can vary based on the project's type, complexity, duration, and allocated budget. Some of the major benefits of using DRBs as a means of avoiding or resolving disputes are listed below:<sup>61</sup>

- (a) DRBs can help the parties to facilitate agreement on contract-related matters, e.g., time and cost-related issues, and, as a result, can prevent future disputes. Accordingly, a DRB process plays an important role as a dispute avoidance process. The DRB can aid the parties in addressing contentious issues and contractual disagreements before they escalate into a formal dispute. As regards dispute resolution, the DRB offers the parties an impartial recommendation or decision on formal disputes, thereby allowing the parties to settle such matters at the project level and avoiding disruption in the progress of the project.
- (b) Unresolved and prolonged disputes can lead to delays and disruptions in the project, increasing costs and causing a breakdown in relationships and communication between the parties. In the case of public or government projects, such disputes can also lead to community and political issues (along with additional costs and delays) that may have repercussions far beyond the project's scope. By using a DRB process, a DRB decision can make the parties adopt a "comply-now, argue-later" approach. The DRB process acts as a motivation for the parties to resolve their disagreements and help the parties maintain their business relationship. Research shows that when a DRB is used in a project, up to 98 % of disputes are resolved at the project level, with the remaining 2 % being referred to arbitration or litigation.<sup>62</sup>
- (c) The parties sometimes view the use of a DRB as an added expense rather than a cost-effective management tool.<sup>63</sup> However, comparing DRBs to project insurance can highlight their value.

The parties invest heavily in various insurance policies, including general liability, professional liability, workers' compensation, builder's risk, loss of profit/production and other policies to mitigate project risks. For larger projects, party-controlled insurance programs are implemented, incurring costs beyond the actual policies for management and administration. These programs aim to prevent or reduce losses and cover any losses that occur by transferring the risk to insurers. DRBs serve a similar function but have a broader and more positive impact on project outcomes.

Insurance programs are successful if they prevent and cover losses during a project. Investing millions in insurance premiums and administrative costs is considered prudent as it mitigates and absorbs project risks. However,

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61. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 10.

62. DRBF, *Workshop on Dispute Boards in Multilateral Development Bank Financed Projects* (2021).

63. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 9.

statistics from the DRBF show that the cost of insurance on major projects almost always exceeds the cost of using a DRB by a significant margin, even before considering the additional benefits of a DRB,<sup>64</sup> e.g., preserving relationship and cooperation between the parties, limiting cash flow problems and avoiding delays in the project.

- (d) DRBs deliver decisions in a timely and cost-effective manner, serving as an efficient means to resolve disputes quickly and affordably. Conducting a cost-benefit analysis for the use of DRBs on a project involves comparing the relatively fixed costs of a DRB with the benefits of minimizing the cost and time impact of disputed issues. When conducting such a cost-benefit analysis, there are several key factors to consider, e.g., including:
  - (i) The carrying costs of a DRB relative to the project's budget are small, typically ranging from 0.05% to 0.15% of project costs.<sup>65</sup>
  - (ii) A DRB is integrated into the project's management structure to reduce project costs. For instance, the DRB often participates in senior management meetings in conjunction with DRB meetings and can arrange on-site meetings convenient for the parties aimed at optimizing project outcomes.
  - (iii) The additional marginal cost of a DRB is lower than any other formal dispute resolution process. The DRB is relatively informal, usually does not involve external consultants or lawyers, lacks a document-discovery procedure, and utilizes real-time information readily available to both the parties and the DRB.
  - (iv) Comparative studies between projects with and without DRBs almost always show positive results. Projects with DRBs, compared to those without, typically experience significantly fewer and smaller cost overruns and schedule delays.<sup>66</sup>

In summary, the cost of a DRB yields a positive return on investment due to faster project delivery times, minimizes cost overruns, prevention of most disputes, and a much lower cost of resolution for unavoidable disputes.<sup>67</sup>

- (e) DRBs offer additional “soft” benefits to a project. Regular meetings between DRBs and project teams foster open communication and collaborative behaviour, which help maintain contractual relationships. DRBs prompt parties to address potential problems early on when they are most easily resolved. Additionally, DRBs can facilitate solutions that are best for the project, minimizing cost and time overruns.

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64. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 9.

65. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 10.

66. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 10.

67. DRBF, *Dispute Board Manual—A Guide to Best Practices and Procedures* (SPARK Publications, 2019), 10.

Even when disputes arise, the DRB hearing process allows for the orderly and neutral management of conflict. The DRB process is unique among alternative dispute resolution methods as it occurs in real time. Disputes can be resolved quickly while the project continues, enabling management to concentrate on achieving better project outcomes. Furthermore, the outcomes of the DRB process uphold the contract provisions and risk allocation, as the DRB is required to apply the terms agreed upon in the contract documents.

- (f) Lastly, DRBs offer a dispute resolution process characterized by integrity and procedural fairness. The DRB process is grounded in factual records, project documentation, and applicable law. The DRB provides well-reasoned and detailed findings by experienced and independent experts who understand the project, the participants, and the facts of the dispute. This merit-based process should instil confidence in both owners and contractors.

## **§12.03 THE USE OF THE DRB PROCESS AS A COMPLEMENT TO ARBITRATION IN MAJOR INFRASTRUCTURE AND CONSTRUCTION PROJECTS IN SWEDEN**

### **[A] The Development of Dispute Resolution in Swedish Construction Project**

Based on my background as a former in-house counsel and nowadays acting as arbitrator, mediator, and adjudicator, this section sets out my views of how disputes, specifically in the construction industry, have been resolved and can be resolved in the future. When I worked for Skanska, ABB, Rolls-Royce and NCC on their international projects, I frequently had to work under the then-applicable FIDIC standard conditions. I also had the privilege to represent ABB in the contractor group (consisting of some of the other multinational electro-mechanical companies), who addressed the contractors' view on the World Bank and other MDBs intended implementation of the FIDIC's then-newly released 1999 suite of contracts.

In Swedish construction projects, as well as in construction projects around the world, conflicts frequently emerge early on due to alterations in the original scope of the contract. While technical adjustments to address the unforeseen can usually be settled through agreement between the contractor and the owner, the financial and time-delaying implications of these changes can be problematic. Stalemates on these matters can adversely impact the liquidity and cash flows of the involved parties. The Swedish standard contracts for commercial construction projects, i.e., the AB 04<sup>68</sup> and ABT 06,<sup>69</sup> which are the most frequently used standard terms in Swedish construction projects, often necessitate interpretation and legal analysis. However, legal expertise is

68. Byggnadsens Kontraktskommitté (BKK), *Allmänna Bestämmelser "FÖR BYGGNADS-, ANLÄGGNING- OCH INSTALLATIONS-ENTREPRENADER" AB 04* (2004).

69. Byggnadsens Kontraktskommitté (BKK), *Allmänna Bestämmelser "FÖR TOTALENTREPRENADER AVSEENDE BYGGNADS-, ANLÄGGNING- OCH INSTALLATIONSARBETEN" AB 06* (2006).



seldom present in the projects, leading engineers to interpret relatively complex contracts, which can result in varying outcomes. In such situations, swift interim dispute resolution by a DRB can offer an appealing solution. Ideally, a “pay-first, build-later, resolve-last” approach allows a party with a valid payment claim but weak financial standing to survive and ultimately pursue its rights in a comprehensive hearing.

In AB 04 and ABT 06, a condition has been introduced offering a simplified dispute resolution, allowing the parties, in the event of a contractual dispute, to jointly refer the matter to an appropriate impartial arbitrator. This simplified dispute resolution provision regulates, e.g., the appointment of the impartial arbitrator, the procedural rules, and the timelines for the parties’ actions and when and in what format the impartial arbitrator shall deliver the decision. The arbitrator’s decision shall be binding on the parties until they agree on another solution or the matter is finally settled by either a court of law or an arbitral tribunal, following a notice of dissatisfaction by either of the parties.<sup>70</sup>

Should the parties decide not to use the abovementioned simplified dispute resolution option in AB 04 or ABT 06 or wish to finally settle the dispute through litigation or arbitration based on a notice of dissatisfaction, this will trigger the other dispute resolution conditions set out in AB 04 and ABT 06.<sup>71</sup> These dispute resolution provisions stipulate, e.g., that disputes are to be settled in court if the value in dispute does not exceed a certain amount<sup>72</sup> and that if the value in dispute exceeds that amount, it can be settled by arbitration.<sup>73</sup>

Public authorities now tend to bring nearly all their disputes to court, resulting in an increased workload for the judiciary with construction disputes of varying sizes. There are numerous instances demonstrating that the resolution of such disputes can be notably slow, with a single district court process potentially spanning several years. Given this trend, the prospect of obtaining swift interim judgments pending a full trial becomes appealing.

Accordingly, disputes in the Swedish construction industry are still predominantly settled through litigation or arbitration. The reasons for this are probably tradition, comfort, and the lack of knowledge among the involved parties of DRBs and other ADR processes.

Sweden is, in my opinion, underdeveloped when it comes to the use of ADR methods to resolve commercial disputes. However, even if it is still early days, there are some ADR solutions that are being tried out in Sweden. Apart from a few DRBs, as mentioned below, the main ADR methods that have been tested or developed in Sweden are mediation, adjudication, and the SCC Express procedure.

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70. BKK, AB 04 and ABT 06 Chapter 10 (“SIMPLIFIED DISPUTE RESOLUTION”) § 1 (2004 respectively 2006).

71. BKK, AB 04 and ABT 06 Chapter 9 (“DISPUTE RESOLUTION”) §§ 1-3 (2004 respectively 2006).

72. The threshold being 150 price base amounts (Sw: “prisbasbelopp”).

73. In accordance with the Swedish Arbitration Act (SFS 1999:116).



As mentioned earlier in this chapter, the use of DRBs should be looked upon as both an alternative method to handle disputes as early as possible and, more importantly, as a tool to prevent disputes and conflicts with the use of one or more independent adjudicators. The three dominants of dispute prevention could be summarized as follows: the contract and its conditions should (i) offer a clear management support and guidance, (ii) have a legally and operationally easy-to-use function and setup, and (iii) be usable as a manual for all parties involved in the contract management.<sup>74</sup>

In creating a sustainable long-term contractual relationship, one should keep in mind that it is not only a matter of winning the contract but also of making sure that the contract works efficiently during the performance of the project<sup>75</sup> and delivering an outcome that both contracting parties are satisfied with. In this sense, it could, based on my own experience, be well-invested time for both parties to put extra focus on making a thorough pre-risk analysis, trying to map out all the unknowns and potential risks and disputes in a project. Furthermore, the parties should put effort into drafting and negotiating an efficient and conflict-preventive contract that will, preferably, work as a project contract manual as well.<sup>76</sup> The lawyer's role is accordingly to be not only the drafter and advocate but also a designer of the contract and problem-solver.<sup>77</sup>

Essential for dispute prevention is, accordingly, for the parties to put sufficient efforts into identifying and handling likely risks, misunderstandings, and potential disputes in the contract. In the attempt to create a well-functioning contract, the inclusion of a DRB process, like the DAB and DAAB, is, in my opinion, recommended, as it permits binding decisions on unresolved contractual matters. A DRB can either be a standing or an ad hoc DRB, but I would recommend the standing DRB because it will provide a well-updated and experienced DRB panel that can give efficient support to the parties throughout the project.

As mentioned before, the use of DRBs is highly recognized internationally in the construction industry, especially if the DRB process is based on FIDIC's DAB and DAAB rules included in its standard forms. It is important, however, to use the right version of FIDIC's standard forms and not try to squeeze in conditions and issues that could be handled better by another FIDIC standard form.<sup>78</sup>

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74. Anette Kavaleff, Licentiate in Law, owner of Oy Kavaleff Consulting AB, an energy lawyer with professional past as company lawyer, director for investments and project finance and vice president for the legal department in Imatran Voima Oy and its successor Fortum Oyj, *DRBF Webinar—"DBs in the Nordics"* (video recording from Jan. 13, 2022).

75. Helena Haapio, Contract Strategist, Lexpert Ltd, Associate Professor of Business Law, University of Vaasa, Senior Researcher, Tampere University JARGONFREE Research Group, Professor of Practice and Docent, University of Lapland, *DRBF Webinar—"DBs in the Nordics"* (video recording from Jan. 13, 2022).

76. Torbjörn Ström, Legal Counsel at Skanska Sverige AB.

77. Aisha Nadar, Attorney at law, Vice Chair at ICC Commission on Arbitration and ADR, DRBF Country Representative for Sweden, Board Member at FIDIC, *DRBF Webinar—"DBs in the Nordics—The Swedish Roundtable,"* (video recording from Mar. 18, 2022).

78. Kai Möller, Head of Export at Sweco AB, Committee member of FIDIC's Contract Committee, FIDIC Ambassador in Sweden, *DRBF Webinar—"DBs in the Nordics—The Swedish Roundtable,"* (video recording from Mar. 18, 2022).

As regards the legal effect of a DRB recommendation or decision, it is not enforceable under Swedish law like an arbitral award or judgment. However, my view is that especially a DRB decision ought to be considered as an agreed interpretation of the concerned contract condition or as an amendment to the contract.<sup>79</sup> That means that noncompliance with the agreed DRB procedure and/or the DRB's recommendations or decisions ought to be considered a breach of contract, warranting available remedies under Swedish law.

One common argument against using DRBs is that it adds unnecessary costs and diversion from the work and completion of a project. However, the use of a DRB process in a contract can, as mentioned in section §12.02[D] above, be viewed as an insurance program. Considering the previously mentioned insurance cover involved in a major construction project, the use of a DRB process should be considered an insurance that can cater for an efficient resolution of upcoming unknown and unforeseen claims or disputes.

### **[B] The Use of DRBs in Sweden**

Despite a number of major infrastructure and construction projects in Sweden during the past twenty-five years—e.g., the Öresund Bridge (completed in 2000), the City railway (*Sw*: “Citybanan”) in Stockholm (opened in 2017), the Northern Link (*Sw*: “Norra Länken”) in Stockholm (completed in 2014), the Southern Link (*Sw*: “Södra Länken”) in Stockholm (completed in 2004), the Malmö City Tunnel (*Sw*: “Citytunneln”) (opened in 2010) and the Bothnia Line (*Sw*: “Botniabanan”) (completed in 2010)—only one of them has used the DRB process.

A DRB was used in the Öresund Link projects. However, the use of this DRB was limited during the execution of that project.<sup>80</sup>

One of the main owners of Swedish infrastructure projects in Sweden is the Swedish Transport Administration (*Sw*: “Trafikverket”). Even if I know, from my own contacts with that body, that it has considered the introduction of a DRB process in some of its projects, it is currently using the dispute resolution processes based on AB 04 and ABT 06.<sup>81</sup>

However, the New Metro Administration at Region Stockholm has introduced a DRB process in its contract for the execution of the Green Line metro extension project, which is planned to be in service by 2028.<sup>82</sup> This is done by amending AB 04's Chapter. 9, section 1. Under the amended condition, a DRB consisting of three members is appointed as a standing body for dispute settlement. The DRB's recommendations or decisions in respect of disputes, not exceeding a fixed maximum value, shall be final and binding on the parties if they do not notify, within the prescribed time, that they do

79. See Christina Ramberg, Professor in civil law at Stockholm University, *DRBF Webinar—“DBs in the Nordics—The Swedish Roundtable,”* (video recording from Mar. 18, 2022).

80. Torbjörn Ström, Legal Counsel at Skanska Sverige AB.

81. Jennie Magnusson, Acting General Counsel and Acting Head of Legal and Planning Assessment at the Swedish Transport Administration.

82. Julia Tavaststjerna, Chief Legal Officer at the New Metro, Region Stockholm.

not agree with such a recommendation or decision.<sup>83</sup> In that case, the dispute shall be referred to court. Accordingly, this DRB condition seems to be similar to FIDIC's DAAB conditions.

## §12.04 CONCLUDING REMARKS

In conclusion, I have tried, in this chapter, to present the benefits and, in my view, the rationale behind using a DRB process in contracts for major construction projects. However, based on my industry experience, I am convinced that the DRB process could also be introduced in other forms of long-term contracts, e.g., cooperation, manufacturing, and product development contracts.

Despite its international success, the DRB process is not widely used in major construction contracts in Sweden. This is notable given its popularity in the US, UK and internationally, and considering its inclusion in standard contract forms by the World Bank and other MDBs.

The ICC ADR rules could also be considered. According to the Chairman of the ICC Task Force, charged with drafting the ICC ADR rules, the main factor differentiating the ICC's approach from others is that the ICC's system is intended to be adaptable to medium- and long-term contracts in any industry anywhere in the world.<sup>84</sup>

The DRB process offers several advantages:<sup>85</sup>

- (a) It provides a swift and less costly alternative to court or arbitration proceedings.
- (b) It allows projects to continue while disputes are resolved.
- (c) It enables parties to select DRB members with appropriate expertise, ensuring technically sound decisions while allowing for judicial review if necessary.

The growing recognition of the effectiveness of DRBs has led experts to suggest their broader adoption in Sweden. As stated by two Swedish commentators:

[i]t seems that roughly the same reasons that motivated the introduction of adjudication in the UK are also valid in the Swedish construction industry. However, given the reluctance of the legislator to interfere with commercial contracts and the legislator's very traditional attitude towards newer forms of alternative dispute resolution, the natural first step would be for the BKK<sup>86</sup> to introduce something similar to [DRBs] in the next version of AB and ABT.<sup>87</sup>

83. The New Metro Administration at Region Stockholm, *Administrative regulations to the AB 04 governing the Green Line metro extension project*, AB 04's Chapter 9 § 1.

84. Jane Jenkins, *International Construction Arbitration Law*, 3rd ed. (Kluwer Law International, 2021) 128.

85. Jane Jenkins, *International Construction Arbitration Law*, 3rd ed. (Kluwer Law International, 2021) 76.

86. Byggandets Kontraktskommitté.

87. Anders Ingvarsson and Daniel Holmblad, *Tvistlösning inom affärsrätten—en antologi*, (Nordstedts Juridik, 2020) 112 (translated from Swedish to English by the author).

One interesting and encouraging step towards establishing DRBs as a common ADR process in Sweden is that the New Metro Administration at Region Stockholm has adopted the DRB process by introducing a DRB into its contract for the execution of the Green Line metro extension project.<sup>88</sup>

While discussing the potential of DRBs in Sweden, it is important to note the existing efforts and their shortcomings. As highlighted in recent observations:

The BKK has already considered similar models in the form of the simplified DRB procedure currently provided for in Chapter 9 of AB 04 and ABT 06. However, this procedure has not had any impact. The reasons for this appear to be, not least, that the procedure is based on voluntariness in terms of both implementation and compliance with decisions. The rules have also been considered less well thought out.<sup>89</sup>

A particular challenge against DRBs in Sweden is the limited pool of suitable and competent individuals for DRB assignments.<sup>90</sup> Nevertheless, considering the limited number of available contractors, sub-contractors and owners in Sweden, the use of DRBs ought to be an appealing alternative, and parties should be incentivized to use a DRB process, as it is (in most cases) an effective way to preserve the parties' business relationship and facilitate the possibility of them working together in the future.

However, despite the fact that the use of DRBs has been proven internationally to be a fast and cost-effective procedure, some of the resistance in the Swedish construction industry to use DRBs is probably due to, e.g., that it is considered to compromise the transparency of the case or that the disputing parties believe that they would benefit from a more detailed presentation of evidence or hearings.

DRBs are effective in many disputes but are considered less suitable for complex issues like professional liability and final project costs. Nevertheless, they reduce insolvency risks and project delays due to payment disputes.<sup>91</sup>

In summary, the use of DRBs is, in my opinion, a process that conveniently helps the parties in a long-term contract to avoid disputes. Having a DRB process in place in a contract will assist the parties in focusing on their performance and commitments under the contract and will prevent delays in the execution of the contract due to disputes that could be resolved if addressed at an early stage, which will save costs in the long run despite upfront costs. The DRB process also promotes that all concerned parties in a project can be involved in the attempt to resolve a claim or dispute when the parties are still up to date with all the facts in the matter. Thus, by this chapter, I wish to encourage the adoption of DRB procedures in Swedish construction and long-term contracts.

88. Julia Tavaststjerna, Chief Legal Officer at the New Metro, Region Stockholm.

89. Anders Ingvarsson and Daniel Holmblad, *Tvistlösning inom affärsrätten—en antologi*, (Nordstedts Juridik, 2020) 112 (translated from Swedish to English by the author).

90. Anders Ingvarsson and Daniel Holmblad, *Tvistlösning inom affärsrätten—en antologi*, (Nordstedts Juridik, 2020) 112 (translated from Swedish to English by the author).

91. McCafferty, L., *Adjudication: Pros and Cons of Adjudication* (Thomson Reuters, uk.practical-law.thomsonreuters.com 2019). (translated from Swedish to English by the author).