



# DISPUTE REVIEW BOARD

SOUTH AFRICA

The Dispute Review Board provides a cost effective alternative to Adjudication, Arbitration and Litigation for resolving disputes on building, engineering and construction projects.

[www.drbsa.co.za](http://www.drbsa.co.za)

## Why is approaching the Dispute Review Board a great idea?

The Dispute Review Board provides an effective alternative and cost effective way of avoiding, managing and resolving conflict on construction projects in a preventative way.

The Dispute Review Board consists of a panel of contractual and technical experts that have extensive experience in their respective industries.

The Dispute Review Board can provide an **independent Opinion and Recommendation** on specific contractual or technical issues raised by a party, all in an attempt to prevent a formal dispute resolution process such as Adjudication, Arbitration or Litigation.

Such Opinion and Recommendation can be provided on the application of one party, or as jointly requested by the parties, and shall be provided to provide a proper contractual, legal or technical perspective to a party (or the parties) before considering the next step.

It will also be a cost mitigating exercise to obtain an Opinion and Recommendation from the Dispute Review Board, to obtain an independent perspective on the probabilities of success compared to the cost of proceeding to Adjudication, Arbitration or Litigation.

Alternatively, the Dispute Review Board can **create a forum, such as an amicable settlement procedure**, in which contractual issues can be addressed before they progress to the stage of actual disputes that require formal resolution. The main objective then remains to ensure that the project proceeds to completion without a delay caused by disputes.

Should the parties require, the Dispute Review Board can nominate, on application by a party (or the parties jointly) to appoint a Dispute Review Board Person appropriate for the type of dispute and the contractual agreement between the parties.

A further advantage of appointing the Dispute Review Board, is that the following matters of disputes can be effectively decided by the Dispute Review Board, if a joint mandate is given by the contracting parties:



### Low Value or Small Claims adjudication of claims and disputes

i.e. the parties agree that it would be more cost effective to have a claim or dispute reviewed and decided by the Dispute Review Board



### Home Building or Renovation projects

i.e. the parties (the home owner and the builder) agree that it would be more cost effective to have a claim or dispute reviewed and decided by the Dispute Review Board



### Contractor and Subcontractor (or supplier) claims or disputes

i.e. the parties agree that, notwithstanding the provisions of the subcontract or supply agreement, it would be more cost effective to have a claim or dispute reviewed and decided by the Dispute Review Board

# What is the purpose of the Dispute Review Board?

The primary function of the Dispute Review Board is to assist the parties to a professional services or construction, building or engineering contract to avoid a formal dispute process by:

- facilitating and improving communication; and encouraging the resolution (or narrowing) of contentious issues by the parties before they become a contractual dispute;
- to assist the contracting parties to resolve disputes quickly and cost effectively without the need for adjudication, arbitration or litigation; and
- to provide the parties with an independent opinion of their respective rights and obligations before considering a formal dispute resolution process.

In the first instance, the Dispute Review Board informally assist the parties (if they so require) to resolve any disagreements which arise during the course of the contract.

The Dispute Review Board can make recommendations or provide an independent opinion and recommendations on technical or contractual issues referred to them by any of the contracting parties. The reality is, every party to a contractual or technical dispute always proceed with the view that they have a very strong case.



The advantage of a standing Dispute Review Board (as opposed to an ad hoc Dispute Review Board) is that, whenever a dispute arises, the members of the Dispute Review Board will have a high degree of knowledge of, and familiarity with:

## **The project; its contractual context and its progress.**

This will enable the Dispute Review Board to assist the parties informally by providing recommendations, or if required, to an independent opinion within a relatively short period of time.

## What areas of expertise does the Dispute Review Board cover?

The Dispute Review Board can deal with a combination of technical and contractual enquiries or disagreements arising under the GCC, NEC, JBCC, FIDIC and bespoke contracts in the building, construction and engineering industry.

The Dispute Review Board can also deal with Opinions and Recommendations on Expert Delay Analysis in MS Projects and CCS Programming Software and various aspects of contractual delay and expense and loss claims. The members of the panel have an extensive range of experience in buildings, bridges, roads, water retaining structures, railways, geotechnical and associated construction cost consulting, in the private and public sector.

### Which type of claims and disputes can be reviewed by the Dispute Review Board?

The following matters of disputes can be effectively decided by the Dispute Review Board, if appointed by one of the parties, or a joint mandate is given by both the contracting parties: Medium or Large scale engineering, building or construction projects

- **Employer and Professional Service Provider (i.e. Architects, Engineers, etc.) disputes**
- **Low Value or Small Claims adjudication of claims and disputes**
- **Home Building or Renovation projects**
- **Contractor and Subcontractor (or supplier) claims or disputes**

The parties may agree that it would be in their best interest to have a claim or dispute first reviewed for the purpose of obtaining an Opinion and Recommendation before proceeding to Adjudication, Arbitration or Court.

The parties may agree that it would be in their best interest to proceed to Amicable Settlement, Mediation, Adjudication or Arbitration, should the provisions of the contract allow for it.



## What jurisdiction does the Dispute Review Board have?

The parties are free to determine the jurisdiction of the Dispute Review Board and the rules of procedure it should follow in resolving disputes.

It is important to consider that the Dispute Review Board is not acting in a judicial capacity but as experts. Accordingly, the Dispute Review Board can adopt an inquisitorial or investigative approach.

Generally, there will be no requirement for the Dispute Review Board to comply with the rules of natural justice. Further, there is no objective standard of fairness that must be complied with.

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Find out about the dispute review board rules on our website: [www.drbsa.co.za/dispute-review-board-rules/](http://www.drbsa.co.za/dispute-review-board-rules/)

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## What is the legal effect of a Dispute Review Board opinion or recommendation?

A Dispute Review Board's opinion and recommendations may be either non-binding, or binding. It is for the parties to decide whether they will regard the opinions and recommendations as binding or non-binding.

The very essence of the value of Dispute Review Board is to prevent disputes by providing a means of resolving a dispute in the first instance to enable the project to continue, even if following later arbitration or litigation, the result may be reversed or modified in some way.

A Dispute Review Board's decision is not an arbitral award capable of enforcement, nor does it have the status of a court judgment. Accordingly, a decision is only binding as a matter of contract between the parties if it was obtained for the purpose of an opinion, recommendation or amicable settlement proceedings.

However, if the Dispute Review Board is appointed for the purpose of Adjudication or Arbitration, then the decision of the Dispute Review Board Person will be binding on the parties to the extent as stated in the conditions of contract, and the associated Adjudication and Arbitration rules provided for in the contract.

## How do I appoint the Dispute Review Board?

The Dispute Review Board will typically comprise of a combination of technical and contractual experts with specific expertise allocated for the specific dispute or question at hand.

One or both parties to a contract may approach the Chairman of the Dispute Review Board to either (a) nominate an appropriate Alternative Dispute Resolution Person or (b) request the nomination of a specific Alternative Dispute Resolution Person to which appointment both parties have already agreed to.

The Chairman will then, upon such application, confirm the nomination of the Alternative Dispute Resolution Person, the fee structure and terms and conditions of appointment of the Dispute Review Board for the Alternative Dispute Resolution Person.

All payments by the disputing parties for the appointment of the Alternative Dispute Resolution Person is made to the Dispute Review Board for the purpose of taking care of all administration usually required between the parties and the Alternative Dispute Resolution Person, such as B-BBBEE, Tax Clearance and payment requirements.

This process has been adopted by the Dispute Review Board to reduce the administrative burden to the parties and the Alternative Dispute Resolution Person.



The Dispute Review Boards commits itself that the appointed experts that will attend to the written opinion and proposed solution will:

- be experienced in the type of project being undertaken;
- have a thorough knowledge of relevant contractual and technical issues;
- be respected for their experience and expertise; and
- be impartial and independent with no conflict of interest.

The Dispute Review Board may also be jointly appointed by the parties as part of their contractual agreement from the outset



## **Need a Mediator or Amicable Settlement Facilitator?**

Meet our ADR Professionals: [www.drbsa.co.za/list-of-adr-professionals](http://www.drbsa.co.za/list-of-adr-professionals)  
Contact the Dispute Review Board: [chairman@drbsa.co.za](mailto:chairman@drbsa.co.za)