

## Book Review

### *Dispute Board Manual: A Guide To Best Practices And Procedures*

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**Abstract:** This is a book review of the *Dispute Board Manual: A Guide to best practices and procedures*. The book, written in 2019, is a Manual by The Dispute Resolution Board Foundation (DRBF) and brings all the dispute board essentials in a practical and accessible way. It is a free download document available in English, Spanish and Portuguese. The manual is a must-read piece by all dispute resolution professionals, legal professionals and, mainly, construction professionals.

**Keywords:** Alternative Dispute Resolution. Dispute Boards. Construction. Proceedings.

**Contents:** Introduction – **1** The Book's Content – **2** The Analysis – **3** Conclusion

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## Introduction

As a reaction to judicial proceedings delay and to poor authorities' justice administration, the concept of a multi-door courthouse blossomed and evolved internationally and within domestic jurisdictions. Litigation became an option, such as conciliation, negotiation, mediation, arbitration, and dispute boards. Though the multi-door concept was first coined in 1976 by Harvard Law School Professor Frank E.A. Sander<sup>1</sup> it was long before widespread in the international sphere.

Negotiation, conciliation, mediation (including multiparty),<sup>2</sup> arbitration,<sup>3</sup> and dispute boards are alternatives to state courts and, if well-applied to a conflict, are more effective, flexible, cheaper and speedy. Also, hybrid (Med-Arb) and multi-tiered dispute resolution clauses are effective solutions depending on the dispute.<sup>4</sup>

Technology is also currently vastly applied in judicial proceedings<sup>5</sup> and alternative dispute resolution with software applications, the use of videoconference.<sup>6</sup> Also, with the proceedings' digitalization, the use of electronic evidence is increasing,<sup>7</sup> which brings risks and benefits to parties.<sup>8</sup> In a nutshell, information technology applied to ADR and online dispute resolution (ODR)<sup>9</sup> are in constant development.

Dispute Board has developed since the 70s, initially in the U.S., to resolve construction disputes that, at the time, were being directed to arbitration. Currently, the dispute board is recognized as an effective way to solve construction disputes in its ad hoc or institutional model. This is undoubtedly due to The Dispute Resolution Board Foundation – DRBF and its members. The foundation, established in 1996, is a non-profit organization composed of mainly lawyers and engineers.<sup>10</sup> In 2019, the foundation published the *Dispute Board Manual: A Guide to best practices and procedures* in English, Spanish, and Portuguese.<sup>11</sup>

The dispute board aims to avoid arbitration and judicial proceedings, and international and domestic (Brazilian) experience shows that this mission is being accomplished.

<sup>1</sup> SANDER, 2021.

<sup>2</sup> FERREIRA; SEVERO, 2021.

<sup>3</sup> See: DRAHOZAL, 2019. See also: FERREIRA; OLIVEIRA, 2019. See also: SCHMIDT; FERREIRA; OLIVEIRA, 2021.

<sup>4</sup> On hybrid and multi-tiered clauses in the Brazilian and international sphere see: FERREIRA, 2021, See also: FERREIRA; GIOVANNINI, 2020.

<sup>5</sup> MANEA; IVAN, 2022.

<sup>6</sup> FERREIRA *et al.*, 2022.

<sup>7</sup> FERREIRA; GROMOVA, 2023.

<sup>8</sup> FERREIRA; GROMOVA, 2023.

<sup>9</sup> FERREIRA *et al.*, 2022. See also: ELISAVETSKY; MARUN, 2020.

<sup>10</sup> The Dispute Resolution Board Foundation's history is available at: <https://www.drpf.org/history>.

<sup>11</sup> Available at: <https://drbf.mclms.net/en/package/3545/course/7648/view>. Access: 9 Jun. 2023.

In Brazil, several institutions already offer administered Dispute Board services, such as CBMA,<sup>12</sup> CAM-CCBC,<sup>13</sup> CIESP-FIESP,<sup>14</sup> CAMARB,<sup>15</sup> and FGV-Câmara.<sup>16</sup> The parties experiencing Dispute Boards in Brazil are giving positive feedbacks.<sup>17</sup> Also the Brazilian dispute board practitioners have published relevant literature like the *Manual de Dispute Boards, Teoria, Prática e Provocações*.<sup>18</sup>

Nevertheless, the dispute board community is somewhat restricted. The community is attempting to spread the word around the globe about this conflict solution model and the best dispute board practices. The Dispute Resolution Board Foundation – DRBF plays a central role, and publishing the Dispute Board Manual (free download) evidences this argument. Also, the realization of conferences on the topic in several countries enriches the practice and propagates dispute boards.

The *Dispute Board Manual: A Guide to best practices and procedures* has four sections and nineteen chapters. It also brings an essential glossary as an annex (relevant for readers unfamiliar with DBs).

The book is helpful for lawyers, arbitrators, engineers, mediators, students, scholars, and businesspeople interested in dispute boards in practice.

The dispute board practice, such as mediation and arbitration, is forever under discussion and evolving. Therefore, this book is an essential guide to the ADR community, and anyone interested in conflict solution best practices.

## 1 The Book's Content

Dispute boards are crucial to project management, particularly construction industry projects; this is why the central area of the book is conflict solutions intertwined with engineering and business.

The book aims to be a guide that updates and explains the best DBs practices. The *Dispute Board Manual: A Guide to best practices and procedures* has four sections and nineteen chapters. Section 1 (Background on Dispute Boards – divided into three chapters) introduces the topic explaining the historical background and the dispute board's essential elements. We must emphasize Chapter 3, which compares dispute boards with other ADR types (mediation, adjudication, and arbitration), depicting similarities and differences.

<sup>12</sup> Available at: <https://cbma.com.br/>. Access: 09.06.2023.

<sup>13</sup> Available at: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/>. Access: 9 Jun. 2023.

<sup>14</sup> Available at: <http://www.camarearbitragemsp.com.br/pt/index.html>. Access: 9 Jun. 2023.

<sup>15</sup> Available at: <https://camarb.com.br/en/>. Access: 9 Jun. 2023.

<sup>16</sup> Available at: <https://camara.fgv.br/>. Access: 9 Jun. 2023.

<sup>17</sup> On Dispute Boards in Brazil see: NETO, 2019. See also: SOUSA, 2020.

<sup>18</sup> NETO; SALLA, 2019.

Section 2 (Dispute Board Concepts – divided into three chapters) addresses vital concepts and renders a toolkit for readers who want to learn and apply dispute boards effectively. Chapter 4 enlightens the process, chapter 5 brings the DBs attributes, and Chapter 6 addresses the DRBF Code of Ethical Conduct, where readers should give special attention to its canon 1 (Conflict of Interest and Disclosure).<sup>19</sup>

Section 3 (Establishing Dispute Boards - divided into five chapters) approaches the types of Dispute Boards. Chapter 8 (Best Practice Guidelines for Contract Documents) is a cornerstone to DBs, for it addresses the Dispute Resolution Clause and the dispute board specification.

Section 4 (Dispute Boards – Implementation and Process – divided into eight chapters) addresses the dispute board operationalization since the nomination of the dispute board members (Chapter 12), passing through the hearing procedures (Chapter 16), the recommendations and decisions (Chapter 17), and finally reaching the implementation of the DB findings (Chapter 18), and the review, termination or renewal of the Dispute Board (Chapter 19). We must highlight Chapter's 18 final part, where the Manual addresses the enforcement of DB decisions in different jurisdictions.

## 2 The Analysis

The DRBF manual undoubtedly is a reference guide for DB users. Because it is written by experienced professionals (some of them with legal and engineering backgrounds), it is a practical handbook that outlines the dispute board fundamentals and best practices both for beginners and experts.

The book organization is logical and follows the whole dispute board timeline. It starts with the historical background (Chapter 1), teaches the readers to draft a dispute resolution clause (Chapter 8), goes through all the proceedings (Section 4), and finishes with the dispute board termination or renewal. Thus, it addresses, in a concise manner, all the dispute board toolbox.

The Manual is a must-read by all practitioners and dispute resolution professionals, not to mention legal professionals that practice mainly in the construction field.

The Manual fulfills its goal of being a complete dispute board guide. Nevertheless, this objective brings along a downside which is a somewhat simple approach. The Manual provides no literature review on the topic, no references, and no case law. Its next edition could dedicate a chapter on dispute board practical

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<sup>19</sup> On the arbitrator's duty to disclose in Brazil see: SANTOS; FERREIRA, 2021.

cases of its four regions and jurisprudence. As an example of this argument: the manual cites the enforcement of dispute board decisions in different jurisdictions (Chapter 18) and mentions “few reported instances of attempts to enforce decisions”; however, it does not cite these few attempts.<sup>20</sup> These cases would surely interest the audience.

Therefore, the reader looking for a more profound comprehension of the specific topics addressed by the Manual will undoubtedly have to resort to other sources, such as scientific papers. Nonetheless, the Manual suits its purpose perfectly: it is the starting point with a practical approach.

### 3 Conclusion

The *Dispute Board Manual: A Guide to best practices and procedures* is the starting point for anyone wanting to learn more about dispute boards, their fundamentals, and best practices.

Drafted by practitioners to practitioners, it encompasses all a reader needs to know on dispute boards in a quick and down-to-earth fashion. Its free download format fulfills DRBF’s mission of spreading the dispute culture around the globe and making the best dispute board practices accessible.

A suggestion for improvement (though we are not sure that is the editors’ goal) would be adding literature to the book and an annex of sources such as journals that publish pieces on dispute boards.

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