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# CONSTRUCTION DISPUTE BOARD RULES

Revised and adopted at the Fourth Meeting of the Fifth Session of  
the Beijing Arbitration Commission on January 20, 2009.  
Effective as from March 1, 2009



# Construction Dispute Board Rules of the Beijing Arbitration Commission

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## Article 1

Construction Dispute Board Rules (herein after referred to as the Rules) is formulated by the Beijing Arbitration Commission (herein after referred to as the BAC) for the purpose of preventing, reducing and timely resolving disputes arising out of the construction contract. The Rules provide for the application of the dispute review and shall be binding upon agreement by the parties to apply the Rules, unless otherwise agreed by the parties.

## Article 2

Dispute review in the Rules is the means to resolve dispute with the determination from the Dispute Board (herein after referred to as the DB) composed of experts to which the parties submit disputes arising out of the performance of the contract regarding construction projects (including but not limited to prospecting contract, design contract, construction contract, supervision contract, project management contract, and any other forms of contracts).

The parties shall agree on the scope and binding effect of the determination made by the DB before it is composed. Or if not, the Rules shall apply.

### **Article 3**

The DB shall be established in accordance with the agreement of the parties, or, if not, in accordance with the provisions of the Rules.

### **Article 4**

The DB shall be composed of three experts experienced in contract management and engineering, unless the number of DB experts is otherwise agreed by the parties.

The BAC maintains a panel of recommended experts. The DB expert may be chosen by the parties from either inside or outside the Panel of DB experts maintained by the BAC.

### **Article 5**

Each party shall appoint its DB expert within 28 days after the commencement of the construction project or 14 days after one party's receipt of notice of referral to DB for dispute resolution from the other party. The Chairman of the BAC may appoint DB experts upon the request of one party or parties if any party fails to appoint its DB expert within the time limit, unless otherwise agreed by the parties.

The third DB expert shall be nominated by the two aforementioned DB experts and jointly agreed by the parties. If the two DB experts fail to nominate the third DB expert within 5 days following their appointment or if the parties fail to agree on the appointment of the third DB expert within 5 days following the receipt of nomination of prospective DB expert, the Chairman of the BAC may appoint the third DB expert upon the request of one party or parties. The third DB expert shall be the chairman of the DB.

## Article 6

Where the parties have agreed that the DB shall have a sole DB expert, they shall jointly appoint the sole DB expert within 28 days after the commencement of the construction project or 14 days after one party's receipt of notice of referral to DB for dispute resolution from the other party, unless otherwise agreed by the parties. If parties fail to appoint the DB expert within the time limit, the Chairman of the BAC may appoint the expert upon the request of one party or parties.

## Article 7

Upon the appointment of DB experts, all the parties shall sign Dispute Board Expert Agreement with each individual DB expert regarding issues including but not limited to the scope of dispute for dispute review, the responsibility of the DB, the binding effect of DB determination, and calculation and schedule for the compensation of DB experts. Unless otherwise agreed by the parties and the DB experts concerned, if there are more than two DB experts, each Dispute Board Expert Agreement shall have substantive terms that are identical to the other *Dispute Board Expert Agreements*.

The parties may at any time jointly terminate *Dispute Board Expert Agreement* of any DB expert but shall pay the Monthly Retainer Fee to such DB expert for a minimum of three months following the termination, unless otherwise agreed by the parties and the DB experts concerned. Individual DB expert may terminate *Dispute Board Expert Agreement* at any time upon not less than three months notice in writing to the parties, unless otherwise agreed by the parties and the DB experts concerned.

## Article 8

Upon the establishment of the DB, the DB experts shall sign a declaration of independence and impartiality and send it to all parties.

If a DB expert is aware of any circumstances relating to the parties which might be of such nature as to call into question the DB expert's independence and impartiality in the eyes of the parties, the DB expert shall disclose those circumstances in writing. Unless all parties clearly express the agreement to keep the DB expert in the DB within 15 days after receiving the disclosure in writing, the DB expert shall withdraw.

Should any party wish to challenge a DB expert on the basis of any circumstances relating to the parties which might be of such nature as to call into question the DB expert's independence and impartiality in the eyes of the parties, it may, within 15 days of learning of the circumstances upon which the challenge is based, submit to the BAC a request for the withdrawal of the DB expert in writing.

When a party challenges a DB expert and the other party agrees to the challenge, or the challenged DB expert withdraws voluntarily upon being informed of the challenge, such DB expert shall no longer participate in the dispute review. In neither case does it imply acceptance of the validity of the grounds for the challenge. The Chairman of the BAC shall decide on the challenge, except in the aforementioned situation.

If a DB expert withdraws from the dispute review, that DB expert's *Dispute Board Expert Agreement* with the parties shall be terminated forthwith. The resulting vacancy shall be filled following the procedure used to appoint the challenged DB expert, unless otherwise agreed by the parties.

## **Article 9**

A DB expert shall be replaced if the DB expert becomes unable to fulfill functions in a normal or appropriate manner as a result of disease, joint request from the parties to withdraw or any other reasons.

The new DB expert shall be appointed in the same manner as the DB expert being replaced, unless otherwise agreed by the parties.

All actions taken by the DB expert being replaced prior to his / her replacement shall remain valid. When the DB is composed of three DB experts and one of the DB experts withdraws, the other two shall continue to be DB experts. Prior to the appointment of the new DB expert, no dispute review activities shall be proceeded, unless explicitly agreed by all parties.

## **Article 10**

The DB may make periodic or unscheduled site visits in the course of construction to keep informed of the progress when deemed necessary.

## **Article 11**

A party referring a dispute to the DB shall submit an Application in writing to the DB and send it to the other party and project supervisor.

An Application for DB should include but not be limited to:

1. a description of facts and circumstances of the dispute;
2. a list of the issues submitted to the DB for the determination;

3. a presentation of the referring party's opinion for dispute resolution.

The Application for DB shall be accompanied by documents, drawings and other supporting materials.

## **Article 12**

The responding party shall submit Response and opinion statement for dispute resolution in writing accompanied by supporting materials within 28 days of receiving the Application for dispute review from the referring party.

The aforementioned materials shall be sent to the referring party and the project supervisor.

Any failure of the responding party to submit Response shall not prevent the progress of dispute review.

## **Article 13**

The DB shall hold a hearing within 14 days after the expiration of the time limit for Response from the responding party and inform parties of the hearing. The parties may attend the hearing through their representatives.

If the referring party fails to appear at the hearing without any justifiable reason, the DB may decide to terminate the dispute review; if the responding party fails to appear at the hearing without any justifiable reason, the DB may decide to proceed with the hearing.



## **Article 14**

All DB experts shall attend the hearing. Unless agreed otherwise by the parties, the DB shall not hold the hearing in the absence of any DB expert.

## **Article 15**

The DB may apply any procedure or measure as appropriate to acquire information of the dispute on the basis of full consideration of the circumstance where the dispute arises, the intention of the parties and the necessity for a quick resolution of dispute, including but not limited to:

1. question the parties;
2. require supplementary materials or written statements from the parties;
3. conduct site visit;
4. take other measures to ensure normal operation of the DB.

## **Article 16**

The parties shall cooperate with the DB and provide necessary assistance.

## **Article 17**

The DB shall treat the parties equally and impartially and give each party a reasonable opportunity to present its case and avoid unnecessary delay and expenses.

Unless act in accordance with the agreement with the parties or perform the duty of the DB expert pursuant to the Rules, a DB expert shall not give advisory opinions to parties regarding issues irrelevant to the dispute, let alone act as an advisor of a party.

## **Article 18**

A DB expert shall keep confidential any information in the course of DB's activities.

A DB expert shall not act in any litigation or arbitration proceedings in the course of or after the completion DB's activities regarding the dispute or relating to the dispute, whether as an arbitrator, as a witness, or as a representative of a party.

## **Article 19**

DB shall issue a determination in writing, with reasons upon which it is based within 14 days following the hearing, unless the time limit for the determination is otherwise agreed by the parties.

## **Article 20**

When there are three DB experts, the determination of the DB shall be made by a majority decision. If there is no majority, the determination shall be made by the chairman of the DB.

The determination shall be signed by the DB experts. The DB expert who disagrees with the determination may choose not to sign but shall issue personal opinion in a separate form in writing, which shall be sent to the parties together with the determination but does not form part of the determination. Any failure of a dissenting DB expert to issue personal opinion shall not prevent the issuing of the determination.

## Article 21

Any party that is dissatisfied with a determination shall, within 14 days of receiving it, send a written notice expressing its dissatisfaction to the DB and the other party. The determination shall not be binding if any party expresses its dissatisfaction within the above prescribed time limit. If no party expresses dissatisfaction with the determination within the above prescribed time limit, the determination shall be binding on parties. The parties to the dispute shall comply with the determination.

If the parties agree that the determination shall be binding upon the date it is issued or the date the parties receive it, the parties shall comply with it even if any party expresses its dissatisfaction within 14 days of receiving it. The determination shall be binding until reversed by subsequent arbitral tribunal or court referred to by the parties.

If the determination is not binding on parties or if the DB does not issue the determination within the time limit prescribed in Article 19, or if the DB is disbanded pursuant to the Rules before the determination regarding the dispute has been issued, the parties may submit the dispute for final settlement by arbitration or litigation.

## Article 22

The DB shall terminate its function upon the expiration of *Dispute Board Expert Agreement*. For any disputes submitted to the DB within the time limit, the DB shall make the determination.

Any dispute which may arise after the DB has terminated its function or has been disbanded may be referred to arbitration or litigation for resolution.

### **Article 23**

The DB experts shall not be liable for any DB activity proceeded pursuant to the Rules, unless evidence shows that the DB activity has violated provisions of the Rules.

Neither the BAC nor its employees shall be liable for the consequences following the application of the Rules or for any management issues such as the appointment of the DB experts and the determination on termination of the DB expert.

### **Article 24**

The parties shall make payments to the DB experts in accordance with the agreement with the DB experts regarding the amount and time of payment. If the parties fail to make payment, the DB may decide to suspend the DB review.

Where administrative costs and expenses of the BAC incur in the dispute review, the parties shall make the payment pursuant to the provisions of Construction Dispute Board Fee Schedule issued by the BAC.

The aforementioned payment shall be equally borne by the parties, unless otherwise agreed by the parties or stipulated by *Construction Dispute Board Fee Schedule of the Beijing Arbitration Commission*.

### **Article 25**

The power to interpret these Rules is vested in the BAC.

### **Article 26**

The Rules are effective as of March 1, 2009.