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The Dispute Board Federation

Geneva

Excellence in Dispute Resolution Since 2001

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Latest News

- Budding Growth for Dispute Boards in Latin America
- Latin America's Skyscraper Race
- Top Roster of Speakers for Workshop in Salzburg
- Welcome New Members!
- Does your Org Have News?

Next Month: Matthew Smith of K and L Gates



Matthew Smith

Educational Opportunities:



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Exzell in Dispute Resolution: Standards and Needs

- limits to and opportunities of customised dispute resolution schemes.

A joint conference and workshop with the Forum for International Conciliation & Arbitration (FICA) to be and to ski at:



Upcoming Events

- 14-17 January 2015, Zell am See, Salzburg, Austria: ExZell in Dispute Resolution: "Standards and Needs", Customised Dispute Resolution Schemes - A joint conference/workshop of the DBF and The Forum for International Conciliation and Arbitration (FICA)

Profile: The Progress of Dispute Boards In Mexico and Latin America



Roberto Hernández García
Managing Partner
COMAD, S.C., Law Firm
Mexico City, Mexico
Comad-Abogados.com

This month's featured guest writer is Roberto Hernández García, Managing Partner of Corporación Mexicana de Asesores en Derecho, S.C. (COMAD, S.C.), and the DBF's representative for Mexico.

Mr. Hernandez specializes in public procurement, public and private construction, (public works contracts), and procedures of dispute resolution related to such topics, as well as Administrative Law in general.

Since Mr. Hernandez is very active in the

14-17 January 2015

Boutiquehotel Steinerwirt,
Zell am See, Austria

For more information and to register visit the [conference website](#) or the [Programmes](#) page on the DBF website.

Help Expand Membership in The DBF

Do you have any colleagues with expertise in the fields of law, arbitration, construction, engineering, surveying or energy that would be an asset to our membership or perhaps someone who wants to learn more about Dispute Boards? Tell them about the DBF:



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ADR community in Mexico and Latin America, his article *Dispute Boards in Latin America: Experiences and Challenges in a Promising Market* is his perspective on the establishment and steady growth of ADR and dispute boards in Latin America.

His progress report on what is happening in the region and what needs to happen in the future, is an interesting read on a budding concept in this area of the world that is starting to take hold.. In addition to the article, Mr. Hernandez also generously provides a free link for the first e-book on Dispute Boards in Latin America called "Dispute Boards in Latin America: Experiencias y Retos". You can access the article and his free e-book [by clicking here](#).

Project of the Month: Latin America's Skyscraper Race

In light of this month's focus on Latin America, the Project of the Month is Latin America's tallest building the *Torre Costanera* aka *Gran Torre Costanera* located in the Costanera Center in Santiago, Chile.



Torre Costanera in Santiago, Chile
© Javier Vieras

According to the Council on Tall Buildings and Urban Habitats (CTBUH), at a height of 300 m/984 ft., it will

eventually be eclipsed by the awarding of a contract to build the 335-meter "Polo Audiovisual," in Buenos Aires, Argentina which will become the tallest building by exceeding Torre Costanera by 35 meters.

The contract was awarded on September 10, 2014 to Riva S.a. Construcciones and will begin construction this November.

Top Speakers on the Roster for Joint Conference/Workshop with FICA in Austria.



The Forum for International Conciliation and Arbitration (FICA) has announced the roster of top speakers that will be presiding over the winter conference and workshop in Zell am See entitled: *ExZell in Dispute Resolution: "Standards and Needs" -Limits to and Opportunities of Customised Dispute Resolution Schemes.*

Some of these well-respected speakers include Sir David Steel, Judge of the Commercial and Admiralty Courts (London) 1998-2011 as well as previous Chairman of the European Commercial Judges Forum and Chairman of European Commercial Judges Forum.

Malcolm Holmes QC is a Chartered Arbitrator and senior counsel at

Eleven Wentworth Chambers in Sydney and an arbitrator member of 20 Essex Street in London and Singapore. He is an experienced international arbitrator and co-author of "The International Arbitration Act; A Commentary" published by LexisNexis in 2011.

Dr. Christoph Liebscher has over 30 years of experience in more than 300 disputes, about half of them international arbitrations. He has acted under a substantial number of different arbitral rules as counsel and arbitrator. In addition, he has appeared before Austrian and other courts in Europe as well as before international bodies.

Additional speakers will be Sir Peter Cresswell, QC, the DBF's own Ben Beaumont, and Laurent Niddam.

The conference will be held 14-17 January 2015 in Zell am See, Austria. For more information about attending this workshop please visit the [conference's website](#).

Welcome New Members!



John Shenton

Legal and Contract Consultant
Khatib & Alami (CEC)
United Arab Emirates

Expertise: A highly skillful, energetic, and solution-oriented construction contracts specialist with a sophisticated understanding of FIDIC and a Masters in Law.

Mr. Shenton is also seasoned in EPC contracts for the energy sector, design and build of hard infrastructure, fast-track fit-out, design consultancy, construction supervision consultancy, contract negotiation, assessing legal risk, contract engineering and drafting; amending and negotiating commercial agreements.



Marcela Radovic

Partner and Director
Brucke Consultores
Santiago, Chile

Expertise: Construction Law, Administrative Law, Economic Regulation and Constitutional Law.

Ms. Radovic is a professional with a broad legal background, specializing in construction law, particularly in contract and claim management and avoidance and dispute resolution.

She also has a track record of directing and/or counselling in legal and management affairs and has acted as in-house lawyer for public agencies, being responsible for providing legal support for all institution operations.

Anthony Younes

Projects Director
Al Jawad Trading & Contracting w.l.l
Hawally, Kuwait

Expertise: Anthony is currently handling projects under development in Kuwait, Lebanon, and Romania. He has a Masters in Project Management from the Bucharest University of Economic Studies and a Masters in Construction Law and Arbitration from Robert Gordon University Scotland.

Working in the construction field in different markets he has worked on several dispute resolution cases that have included subcontractors, private clients, and Ministries. He has also represented Al Jawad (which is part of the MIDEZIA Group of companies) in several arbitration cases in Kuwait, and was part of several dispute settlements throughout the years.

Have Some News For Our Members?



Would you like to highlight any news or events going on in your organization? We would love to share what's happening with our members. Please contact our new publications manager Lori Fusello at l.fusello@dbfederation.org with your news!

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Dispute Boards in Latin America: Experiences and Challenges in a Promising Market.¹

By Roberto Hernández García

As a consequence of its economic growth, it is a reality that Latin America will face in the following years the development of many relevant construction and infrastructure projects. Many of them will be performed with sophisticated financing structures or through the (many times scarce) countries' budgets.

This means that projects will have to be performed with very stringent and effective cost and time controls in order to prevent failure of the project, or prevent the project itself from becoming the beginning of failures that may affect the whole region.

In this landscape, the figure of the dispute board as a dispute resolution mechanism designed to timely solve (or even avoid) problems during the performance of a certain infrastructure/construction contract, among other benefits, will be a very relevant figure to be understood and used on a general basis and not as an exception.

It is important to say that until 2014, the Dispute Board figure in the region was not very well known. By this I mean that only certain projects, such as the Panama Canal or the ones derived from the Millennium Challenge Account in Central America (Honduras and El Salvador mainly), as a consequence of using FIDIC model contracts, started to use Dispute Adjudication Boards, which were established, operated and adjudicated several disputes with positive results for the parties. As a consequence of these successes, the dispute board figure became recognized in the law of certain jurisdictions.

¹ Roberto Hernández-García is a Mexican Construction and infrastructure Lawyer. Partner at COMAD, S.C. (a 50 year old law firm specialized in Construction Law, Public Procurement and Compliance matters). He is a former co-chair of the International Construction Projects Committee (ICP) of the International Bar Association (IBA), and currently serves as Chair of the Dispute Resolution in Infrastructure Committee of ICC México, and Steering Committee member of Division 8 of the Construction Law Forum of the ABA. He has served as dispute board adjudicator in several procedures in Central America, and is listed as an adjudicator in the Center of Dispute Resolution of the Catholic University of Peru. He is a fellow of the Dispute Board Federation. He acted as coordinator and co-author of the electronic book: "Dispute Boards en Latinoamérica: Experiencias y Retos".

One of the first pioneers in using dispute boards was Honduras, which included in its Law of Public Works, the figure of Dispute Boards as an obligatory dispute resolution system for public contracts of a certain threshold (yet to be established in regulations).

Following Honduras, Peru (after an initial failed attempt to include the dispute board figure calling it “Adjudicatory Mediation” (Conciliación Decisoria)), finally included the figure in its Public Works law, with the very efficient efforts of the Catholic University’s Center of Dispute Resolution, and the Peruvian Society of Construction Law. This too is subject to projects above a certain threshold in their regulations, which are waiting to see the light.

In Chile and Brazil the figure is spreading very quickly, as specific actors in the construction industry look for ways to implement dispute boards in relevant projects and events such as the ones to be the platform of the next Olympics, as an example in the case of the second.

In México, the International Chamber of Commerce, through its committee of Dispute Resolution in Infrastructure (originally called “Dispute Boards Committee”), not only translated the DB rules to Spanish, but have also been actively promoting the figure within private and public arenas; although the figure has not been fully understood or used widely by the government nor by the private sector. Efforts made by this organization have resulted in the establishment of Dispute Board International Meetings, as well as a Dispute Board class in the Arbitration Diploma Seminar that ICC Mexico organizes each year, and of course the follow up of the figure regarding new energy reforms.

So what is the future of dispute boards in Latin America? What has been achieved and what is still lacking?

Regarding achievements, I can say for sure that as of today, dispute boards are becoming more and more common in the discussions of relevant entities than ever before. Many people may not have had specific experiences with them; but as a result of more education on this dispute resolution method, they are becoming eager to include dispute boards in their next contract or use it in their next dispute. This has been the result of many years of preaching by whom I have baptized Dispute Board Evangelists, a group of construction lawyers and engineers committed to the process who, without any restrictions, promote it because they believe in its success of projects.

Regarding what is still lacking, in the future it is clear that employers and contractors need to take the big step and trust in the dispute board process. This means including them in their contracts, and utilizing them with a certain level of trust. It is clear that the DB figure is becoming so relevant – and people know it - that governments and companies are taking on the task with caution. The time has come to search for alternative dispute resolution methods that allow the timely resolution and achievement of successful projects, rather than the traditional means of resolution such as litigation and arbitration that are often lengthy and costly, and although they have their clear purposes, timeliness and consideration of the project is not one of them.

Finally I can note that thanks to the efforts of the “Dispute Boards Evangelists”, the first E-Book on Dispute Boards in Latin America has seen the light. It is entitled “Dispute Boards in Latin America: Experiencias y Retos”, edited by the Catholic University of Peru, and the Estudio Mario Castillo (Perú). If you are thinking of buying this document, you will be disappointed since it is a free download! You can access the book by [clicking here](#) .

In closing, the reader can see that in Latin America the Dispute Board figure is rapidly growing. In the near future all the lessons to be learned – both good and bad- will come to light, and we will be able to see how they have helped the development of infrastructure in a very important region of the world.