

The Scope for the Use of Dispute Review Boards for Resolving Construction Disputes in ASEAN Countries

Asanga Gunawansa, PhD

Department of Building, National University of Singapore, 4 Architecture Drive, Singapore 117566

bdgasan@nus.edu.sg

1. Introduction

Modern day construction projects vary from simple houses for individuals to complex infrastructure projects for governments. Some construction projects may even involve cross border movement of resources and not limited to the control of a single jurisdiction. A variety of factors, including, unfair allocation of risks, multiple contracts, unrealistic expectations and schedules, poorly drafted or inadequate contract documents, design omissions, tighter funding, the lack of experienced personnel, communication problems, and even the state of the economy, add to the complexity of construction projects. As a result, construction projects are a breeding ground for contractual disputes (Conlin, Langford & Kennedy, 1996).

It could be said that the adversarial nature of the construction industry contributes to the germination and manifestation of construction disputes. As such, the construction industry has been at the forefront of the search for effective and efficient dispute resolution mechanisms. According to Turin (1972), Aniekwu and Okpala (1988), and Ofori (1991), project procurement and construction disputes are two of the major concerns in the construction industry worldwide. There is now a wide armoury of dispute resolution methods available for resolving construction disputes. The most popular out of these being litigation and alternative dispute resolution processes such as arbitration, mediation, and conciliation. These dispute resolution processes suffer two key disadvantages, which arise from the fact that these processes only come into play after a dispute has arisen. One disadvantage is that, during the dispute resolution process, trust between the parties may be sorely tested, or even destroyed. The other disadvantage is that the time and cost of resolving a dispute may affect the expected project gains of parties concerned. In the circumstances, the current trend is to look for methods other than processes such as litigation, arbitration, mediation, and conciliation that could be put in motion before or at least, soon after a

conflict has arisen. The aim is to ensure that dispute prevention measures, or at least measures for minimizing the scope of any dispute is put in place before the parties' positions have hardened.

The use of Dispute Review Boards (DRB)¹, an evolution of the neutral expert determination process, is currently one of the much sought after mechanisms. In contrast to the traditional methods of resolving construction disputes, DRBs seek to avoid or minimize the incidence of disputes by a timely and relatively informal process which takes place while the work is in progress. Today DRBs are widely used in many jurisdictions, including the UK, USA and Australia. However, the process is yet to take strong root in the Association of South East Asian (ASEAN) countries.

The aim of this paper is to identify the key advantages as well as the drawbacks of the DRB process compared to the traditional dispute resolution methods used in the construction industry and to identify the reasons why the DRB process has so far failed to make a significant impact in resolving construction disputes in ASEAN countries.

2. What is a DRB?

A simple description of a DRB is that it is a board of impartial professionals formed at the beginning of the project to follow construction progress, encourage dispute avoidance, and assist in the resolution of disputes for the duration of the project. The owner and contractor each nominate one member to the board, and each must approve the other's nominee. The two DRB nominees (or the owner and contractor by mutual agreement) select the third member of the DRB. This said, it should be pointed out that there is nothing to prevent the parties from agreeing to appoint a single neutral. Appointment of only two members, one by each party, without a third, is unlikely as the parties would want to avoid situations where the two members appointed by each party fail to agree how to resolve a dispute.

The contract between the appointing parties outlines the DRB's role and the procedure in which it would resolve disputes. A DRB only has the authority granted to it by the parties. Using a DRB is

¹ Sometimes DRBs are called Dispute Resolution Boards.

usually a condition precedent to the commencement of binding dispute resolution processes, such as litigation or arbitration. Thus, DRB is a purely contractual institution that is created by the parties to a contract. Unlike in the case of institutional arbitration or mediation, where the procedural and administrative aspects of the dispute resolution is provided by the relevant institution, the contractual clause creating a DRB needs to specify precisely how it is constituted and how it operates, including all necessary administrative arrangements. However, this does not mean that various institutions dealing with ADR cannot have model rules applicable to DRBs. For example, the Dispute Resolution Board Foundation (DRBF) has developed a suite of documents for the operation of DRBs, which can be incorporated into a contract by reference.

A key distinction between DRBs and all other forms of dispute resolution, including adjudication, arbitration and litigation, is that a dispute board is normally set up at the outset of a project with the intention that it operates actively throughout the whole period of the contract, not only to resolve disputes but also to prevent them from happening. Other forms of dispute resolution do not come into operation unless and until a dispute arises and one of the parties triggers the process.

3. The Growing Acceptance of DRBs

The use of DRB process in the construction industry is said to have originated in the US following a study sponsored by the U.S. National Committee on Tunneling Technology in 1972 to study the contracting practices throughout the world to develop recommendations for improved contracting methods in the United States². When the report based on the above study was published in 1974, it commented on the deleterious effect of claims, disputes, and litigation upon the efficiency of the construction process. It made recommendations aimed at mitigating this problem, one recommendation being the use of a party appointed to body that will have the capacity to study and monitor the progress of a contract from its inception for the resolution of disputed that may pop up during the construction process.

²United States National Committee on Tunneling Technology (1974), "Better Contracting for Underground Construction", National Academy of Sciences.

The DRB process was first used during construction of the second bore of the Eisenhower Tunnel on I-70 in Colorado (Dispute Resolution Board Foundation (DRBF), 2007). The process reportedly worked extremely well, resulting in it being used on several other projects (Hunt, 2003). Since then, the growth in use of the process has been dramatic. The fact that the use of DRBs has been endorsed by a number of construction-related organizations speaks for its growing acceptance. Examples include the National Construction Dispute Resolution Committee of the American Arbitration Association, the Associated General Contractors of America, the Institution of Civil Engineers of the United Kingdom, the International Committee on Large Dams, and the European Bank of Reconstruction and Development.

Most institutions and organizations involved in major international construction projects now include dispute review board provisions in their standard form contracts or in their terms and conditions. For example, each of the current editions of FIDIC's Conditions of Contract for Works of Civil Engineering Construction (Red Book), Conditions of Contract for Electrical and Mechanical Works including Erection (Yellow Book) and Conditions of Contract for EPC Turnkey Contracts (Silver Book) include adjudication by a DRB as the first tier of binding dispute resolution prior to arbitration. The World Bank too has included DRB provisions in its Standard Bidding Documents, which is the standard form of contract used on large-scale civil works projects funded by the World Bank where the estimated costs exceeds US\$ 10m³. It should also be noted that in the *Master Bidding Document for Procurements of Works and User's Guide* (July 2005), prepared by the World Bank and other multilateral development banks and international financing institutions as a model for such organizations in issuing their own standard bidding documents relating to projects that they decide to finance, includes DRB provisions.

4. The Judicial Recognition of the Right to Choose a DRB Process

The contractual freedom of parties to appoint DRBs for resolution of disputes arising out of a contract is recognized by courts in both common law and civil law jurisdictions. For example, few years ago, the U.S. District Court for the Southern District of New York held in the case, *BAE Automated Systems v. Morse Diesel International*⁴, that a subcontractor was bound by the

³ World Bank, Standard Bidding Documents for Procurement of Works (May 2005).

⁴ 201 WL 547133 (S.D.N.Y. May 31, 2001).

dispute review board (DRB) procedure incorporated by reference into the subcontract. Further, under English law, the courts have stayed court proceedings in favour of a procedure where the parties have agreed to refer disputes to a panel of experts like a DRB and then to arbitration. For example, in the famous case of *Channel Tunnel Group Ltd. v. Balfour Beatty Construction and others*⁵, the House of Lords stayed proceedings brought by an employer for an injunction to restrain a contractor from suspending work, in light of a clause in the contract providing for the reference of all disputes to a panel of experts before arbitration. The holding in the *Channel Tunnel* case has since been incorporated into the English Arbitration Act of 1996, which provides that a party to an arbitration agreement may apply to stay litigation even though "the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures" (emphasis added)⁶.

When confronted with jurisdictional objections related to failure to comply with a multi-tiered dispute resolution clause, i.e. a clause that requires the parties to pursue other avenues of dispute resolution prior to resorting to arbitration, arbitral tribunals will resort to the well-known doctrine of *Kompetenz-Kompetenz*. The issue of whether a multi-tiered dispute resolution clause raises a valid condition precedent to arbitration is a question of jurisdiction. Under the *Kompetenz-Kompetenz* principle, it is a question to be ascertained by the arbitral tribunal itself. The effectiveness or ineffectiveness of the pre-arbitration dispute settlement mechanism will nevertheless depend on whether or not there is doubt about the parties' intention to resolve the dispute by arbitration if other ADR methods such as DRB fail (Dyala, 2003).

As far as national courts are concerned, the traditional common law position is that the courts or arbitrators should stay proceedings on a claim brought in breach of a multi-tiered dispute resolution clause, requiring the parties to enter into a give ADR procedure before initiating arbitration or regular court proceedings, when there is a clear intention of the parties to be bound by a previous mandatory ADR procedure. In *Cable & Wireless Plc. v. IBM United Kingdom Ltd*⁷, the British Commercial Court followed this approach. In civil law countries too the trend is for

⁵ [1993] AC 334.

⁶ Section 9 (2), Arbitration Act, 1996.

⁷ [2002] All E.R. (D) 277.

courts to enforce clauses that provide for an ADR procedure to be observed before arbitration or litigation (Seppala, 1998, and Fry, 2001). In *Peyrin v. Société Polyclinique des Fleurs*⁸, the French Court of Cassation held that non-compliance with a conciliation agreement in a multi-tiered clause prevented receiving an action on the merits until the parties attempted to resolve the dispute through conciliation.

5. Key Advantages and Drawbacks in the Use of DRBs

As Hon. J J Spigelman AC, the Chief Justice of New South Wales points out:

*“Disputation and delay diverts entrepreneurial energy. Perhaps most significantly, delay means that capital is frozen. While the party ultimately found to owe money may acquire some kind of working capital advantage, neither party can employ the capital for longer term purposes and provisions for contingencies must be increased.”*⁹

He adds that *“Much civil litigation is about dividing a pie. The effect of delay in commercial litigation is that the pie to be divided is smaller.”*¹⁰ Like litigation, it is well known that modern arbitration is not cheap, although it may not be as time consuming as litigation. Thus, engaging in arbitration too might result in the pie to be divided getting smaller.

In addition to the cost factor, one of the main disadvantages with the traditional methods of dispute resolution is that they come into play only after a dispute has arisen. Compared to the traditional methods, the main advantage of DRBs is the avoidance or minimization of the incidence of disputes by timely and relatively informal resolution process which takes place while the work is in progress. For large, complex projects, DRBs could save substantial amounts of money and time as disagreements could be settled contemporaneous with the construction project, which allows the parties to free up time and resources and allows personnel to work on

⁸ (2001) *Revue de l'Arbitrage* 749

⁹ Hon. J J Spigelman AC (2007), Chief Justice of New South Wales, “International Commercial litigation: an Asian perspective”, key note address, 20th Biennial Lawasia Conference, Hong Kong, 7 June.

¹⁰ *Ibid.*

more productive things. Further, the costs of pursuing court claims or formal ADR mechanisms such as arbitrations could be avoided.

There are intangible benefits as well. These include the prospect of reporting the project progress and disputes to a DRB, which shifts owners and contractors into a more proactive, preemptive disposition, which in turn contributes to a more positive atmosphere with regard to the project progress. Both parties tend to want to appear cooperative and to amicably settle problems before they reach the DRB. Further, preparing for a review may uncover new or better information that could lead to a settlement of the dispute by the parties themselves. When settlement cannot be reached, the DRB's recommendations may diminish the likelihood of parties feeling that they had not met justice, as the recommendation comes from a body that has been appointed by the parties themselves, and has had access to the information concerning the project and the dispute from the outset.

Despite the aforesaid advantages, it should be pointed out that the fact that DRBs need to be established by the contracting parties right at the outset of a project, and not only when a dispute has arisen, means that it may not be a cost effective dispute resolution mechanism for small construction projects. This is because, when DRBs are appointed at the commencement of a project, during the entire life cycle of the project the members of the DRB need to be retained. The cost of doing that may discourage some parties from choosing DRBs as a dispute resolution mechanism.

Another key drawback with the DRB processes concerns the issue whether determinations are to be simply advisory (nonbinding), binding unless overturned by arbitration or litigation, or fully and immediately binding as an exclusive, un-appealable remedy. Current preference seems to be to use DRB processes as a first step to resolving a dispute in a multi-tiered ADR process where arbitration may be made available for the parties to finally resolve the dispute. Thus, a DRB decision is not capable of enforcement under the New York Convention¹¹ like an arbitral award. A DRB decision is binding only as a matter of contract between the parties and thus, the appropriate method of enforcing a dispute review board's decision is by way of an action for breach of contract.

¹¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

Another drawback may be the relative newness of the concept. Although use of DRBs has spread quickly in the construction industry in many common law and civil law jurisdictions, in some countries contractors who are unfamiliar with the concept may view DRBs as simply an added cost rather than a potential mechanism for cost and time savings.

6. Could DRBs Work in ASEAN Countries?

6.1 ASEAN and its Construction Industry

The Southeast Asian nations have come a long way since its regional body, the Association of Southeast Asian Nations (ASEAN), was established in 1967 by the five original Member Countries, namely, Indonesia, Malaysia, Philippines, Singapore, and Thailand. Today, ASEAN consist of 10 Member Countries, Brunei Darussalam, Vietnam, Lao PDR, Myanmar, and Cambodia being the new additions between 1984 and 1999. Since its creation, ASEAN has evolved from a more security oriented organization towards an ASEAN Free Trade Area (AFTA), which was agreed upon on 28 January 1992 in Singapore. Today, it is focused on peaceful cooperation, and regional economic integration. With a total population of over 550 million people, ASEAN has approximately 80 million more people than the total population of the EU. While ASEAN's present share of global GDP in PPP terms is only 4% (US\$3 trillion) and is significantly smaller than the US (US \$13.2 trillion) and the EU's (US \$13.1 trillion)¹², ASEAN has a burgeoning and substantial consumer market (Teo, 2008).

Since the articulation of the ASEAN Vision 2020 in 1997, “*a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies*”, ASEAN has focused on a systematic process of development through cooperation planning, programme implementation and adopting region wide standards. The construction industry in the region is one of the key sectors that have been identified for achieving sustainable development. The decline of trade restrictions following the regional initiatives for cooperation has facilitated the free movement of construction-related goods, services, knowledge, investments, and staff between member

¹² Asian Development Bank (2005), Asian Development Outlook.

countries. As a result, today, most East Asian countries are in the upturn stage of the building investment cycle as a result of sustained economic growth, foreign direct investment, and the upswing in the investment cycle¹³.

The rising property prices in Singapore serve as a proxy of investors' confidence in the business conditions in Singapore and its construction industry. To give another example, Vietnam's economy has been growing at an average of eight percent a year over the past decade, which is one of the fastest rates in Asia. Accompanying its robust growth is the expanded needs for infrastructure development and new construction projects. Vietnam is currently building about six deep-sea ports in joint ventures with leading port and shipping companies. It also plans to construct an international airport for five million tonnes of cargo and 80 million passengers¹⁴. This construction boom in ASEAN is likely to attract not only cross border movement of investment and services but also foreign direct investment and construction industry related services from outside the region. When construction projects involve actors from different jurisdictions and different legal traditions, it is likely that any contractual disputes arising out of such projects would be more complex than usual. Thus, it is important that the ASEAN countries take effective initiatives towards providing a legal environment that facilitates the smooth development of the construction industry in the region.

6.2 ASEAN way of Dispute Resolution

Not every country ASEAN follows the same legal tradition. For example, Singapore, Malaysia and Brunei follow the common law tradition (Anglo-American Law). Philippines, Thailand, Indonesia and Laos follow the civil law tradition. Vietnam follows a socialist tradition of law. Further, the legal systems in the region are not as integrated as in Europe or North America. Thus, significant differences are likely to persist shaped by social factors which are likely to continue to be different in each country.

The preference for settling disputes in the member countries of ASEAN tends to be more consensual and less confrontational. As Tham and Kwek (2007) points out, the consensual and

¹³ BIS Shrapnel's Shrapnel's Building and Construction in Asia 2006-07 to 2011 report series

¹⁴ Enterprise One Focus (October, 2007). <http://www.business.gov.sg> accessed 1 July 2008.

non-confrontational approach to settlement of disputes between ASEAN countries is not a natural situation. It is the result of years of hard work, visionary leadership and dedicated diplomacy. Adherence to ASEAN family attributes and principles have contributed to this favorable state of affairs, such as, mutual respect for sovereignty, non-interference in the internal affairs of one another, decision-making by consensus and “prosper thy neighbor” philosophy. These principles have fostered a confident and secured atmosphere for the conduct of enduring bilateral and multilateral relations in Southeast Asia (Tham and Kwek, 2007).

The aforesaid preference for consensual and non-confrontational dispute resolution amongst the ASEAN countries could also be found in their national mechanisms for dealing with local as well as international dispute resolution (Low, 1996). In the practice of many Asian countries such as China, Japan, Korea, Taiwan, Indonesia, Korea, Hong Kong and Singapore, there can be a unique combination of mediation and arbitration in the same proceeding¹⁵. For this combination of conciliation and arbitration in the same proceeding to work, the concerned parties’ agreement or consent seems to be the common requirement. For example, Article 17 of the Singapore International Arbitration Act provides inter alia that:

*“(If all parties to any arbitral proceedings consent in writing and for so long as no party has withdrawn his consent in writing, an arbitrator or umpire may act as a conciliator.”*¹⁶

In Indonesia, the Arbitration Law requires the arbitral tribunal to seek a settlement between the parties at the first hearing¹⁷. In the event that a settlement is not reached, the arbitrators appointed are not deemed to have prejudiced their position as they do not participate in the settlement process¹⁸. It should also be noted that on 11 September, 2003, the Chief Justice of the Supreme Court of Indonesia, issued a Supreme Court Regulation concerning the procedure for mediation in the Courts. It requires judges to order parties in any civil suit submitted to a court of first instance

15 M. Scott Donahey (1995), “The Asian Concept of Conciliator / Arbitrator: Is it Translatable to the Western World?”, 10 ICSID Review (Spring), p.120.

16 Article 17(1), International Arbitration Act, Cap. 143A.

17 Law No. 30 of 1999.

18 Article 45.

to attempt to mediate their dispute before the first hearing can be held in the court¹⁹. Similarly, in Thailand, under the Arbitration Rules²⁰, before commencing arbitration the Director of the Arbitration Institute must convene the parties to try to reach a settlement. If the Director deems it appropriate and the parties agree, a conciliator is appointed and conciliation is conducted under the Conciliation Rules. Basically, under the conciliation procedure an impartial conciliator mediates the parties' dispute and arrives at a mutually agreeable settlement.

As opposed to the ASEAN culture, the western tradition is that conciliation and arbitration are two different routes to be kept separate from each other. A clear reflection of the western tradition of treating conciliation as a stand alone approach to settlement of disputes can be found in the United Nations Commission on International Trade Law (UNCITRAL) Rules of Conciliation²¹. In particular, Article 19 of the said rules provides that:

“The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.”

This confirms that under the UNCITRAL Rules, arbitration and conciliation are to be treated as two different and unique approaches (Chan and Gunawansa, 2008).

6.3 A Case for Using DRBs in ASEAN Countries

The ‘ASEAN way’ of dispute resolution as explained above, provides a perfect platform for parties to use a non-confrontational method such as the DRB process for resolving their construction disputes. However, up to now, save in the case of large scale infrastructure development projects financed by funding entities such as the World Bank or projects using standard forms of contracts issued by the Fédération Internationale Des Ingénieurs-Conseils

19 No. 02 of 2003 (“PerMA 02/03” or the “Regulation”)

20 Arbitration Rules and Conciliation Rules, 1990.

21 20 I.L.M. 301 (1981).

(FIDIC) or World Bank/ADB type development agency recommended forms of contracts, ASEAN countries have not grown accustomed to the use of DRBs for resolving construction disputes. Especially, when it concerns domestic construction contracts, it could be said that the preference of the contracting parties appear to be to choose various standard forms issued by local agencies which do not contain provisions for the use of DRBs but, promote more traditional methods such as arbitration for dispute resolution.

Taking Singapore as an example, the most prevalent standard form used in the private sector “traditional” construction projects is the Singapore Institute of Architects Articles and Conditions of Building Contract (SIA Articles and Conditions), which was introduced in 1980. The latest version is the 7th Edition, which was issued in 2005. The dispute resolution clause of the SIA Articles and Conditions does not provide for multi-tiered dispute resolution and only makes provision for final resolution of the dispute by arbitration²².

For public sector construction contracts, Singapore uses the Public Sector Standard Conditions of Contract (PSSCOC), now on in its 2006 edition. It provides for multi-tier process of dispute resolution, the first tier being the submission of the dispute for determination by the Superintending Officer appointed for the purpose of contract supervision by the employer (cl. 34.1). However, there is no provision for the use of DRBs

It should be noted that the PSSCOC was modeled on FIDIC and the UK Institution of Construction Engineers (ICE) forms. FIDIC has adopted the approach of incorporating DRB processes into its contracts²³, replacing the engineer’s traditional role as a decision maker and transferring those powers to an independent and impartial third party. As far as ICE is concerned, prior to 2004, all the ICE Conditions provided for a mandatory Reference to the Engineer for a Decision as a condition precedent to referring a dispute to Arbitration (cl. 66). The ICE Conditions were however revised in 2004 omitting the Engineer’s Decision entirely and introducing a series of non-mandatory options comprising of negotiation, conciliation and

²² cl. 37.

²³ cl. 67.

mediation at the choice of parties²⁴ and Adjudication²⁵. In February 2005, ICE produced its Dispute Resolution Board Procedure, First edition. It could be argued that these changes were the result of the recognition of the criticism that has been levelled against the Engineer's role in construction contracts where he is given the power to determine certain issues between the parties, the main criticism against the Engineer being that he is appointed by the employer and thus, often unable to act fully independently and impartially. Although, both FIDIC and ICE forms have introduced DRB processes into their contracts, the PSSCOC or SIA forms are yet to under go any changes in this respect. Same could be said of the other standard forms of contracts used in the region, including the Pertubuhan Arkitek Malaysia (PAM 2006) form of Malaysia.

In Singapore's context, it could be said that the introduction of legislation enabling statutory adjudication of disputes relating to progress payments in construction contracts²⁶ in April 2005 has also contributed to the lack of interest among parties to adopt DRB processes. The availability of statutory adjudication makes it possible for parties affected by delays or non payment of progress claims to seek swift adjudication. Given that most of the disputes that arise out of a construction project are payment related, the availability of statutory adjudication may limit the need to introduce DRB processes into construction contracts.

If more disputes are resolved outside of courts, then the states would gain as that would contribute to reducing laws delays and the efficiency of the judiciary. However, if disputes that come for institutional arbitration is reduced due to parties resolving disputes by the use of other alternatives such as DRBs, there would be no gain for the institutions facilitating arbitration. This is because their revenue inflow would be adversely affected. Thus, it is in the interest of arbitration institutions that parties fail to resolve their disputes by alternative methods such as DRBs, which can be used by parties to a dispute without the aid of an institution. However, this does not mean that all arbitration institutions are averse to having rules on the use of DRBs or that contracting parties would not be interested in such rules. For example, the American Arbitration Association publishes its own Construction Industry Disputes Review Board Procedures that

²⁴ cl. 66A(2).

²⁵ cl. 66B

²⁶ Building and Construction Industry Security of Payment Act, Cap 30B

parties can adopt. The International Chamber of Commerce (ICC) has introduced its own Dispute Board Rules in September 2004. The arbitration institutions in ASEAN countries however have so far not introduced any DRB rules or procedures. As a result, currently, there is no backing from established institutions facilitating dispute resolution, for the use of DRBs in ASEAN countries. It could be argued that this too has contributed to the lack of use of DRBs for the resolution of construction disputes in ASEAN countries.

Conclusion

ASEAN is a region that is working towards strengthening its regional integration and swiftly moving towards a fully fledged Free Trade Area. Under the ASEAN Vision 2020, construction industry has been rightly picked as a focus area for sustainable development in the region. Given the current level of interest in the construction sector in the region, it is likely that the construction sector will continue to grow. However, for a region with much cultural diversity, it would be difficult to avoid differences and disputes when cooperating in construction contracting.

DRBs could be used as an effective tool in minimizing the risk of delays and cost-overruns due to disputes between parties. DRBs may have inherent weaknesses such as the non-binding nature of the decisions, however, if used effectively in a multi-tiered dispute resolution process, DRBs could be useful in settling many a dispute efficiently and effectively, without the parties having to engage in more costly and time consuming arbitration. For large, complex projects, DRBs can save enormous amounts of money and time. Disagreements are settled contemporaneous with the construction project, which allows the parties to free up time and resources and allows personnel to work on more productive things. The costs of pursuing court claims are avoided.

The introduction of standard forms of building and construction contracts with region wide application and the harmonization of laws applicable to the construction sector would help the ASEAN countries in finding a synthesis of the provisions of different legal systems in the region and a balance of the economic interests of the contracting parties, when developing regional infrastructure projects as well as the development of national construction sectors. If and when such measures are taken, introduction of a ADR methods such as the DRB process should be given serious consideration given its various advantages that have been discussed in this paper.

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