

Clause 21: Disputes and Arbitration

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Clause 20 of 1999 Yellow Book which covered the multi-tier dispute resolution provisions, has been divided into two parts in the 2017 Yellow Book, clause 20 and clause 21. Clause 20 of 2017 Yellow Book now covers the Claims to the Engineer and Clause 21 covers Disputes and Arbitration.

The dispute resolution mechanism in the 2017 Yellow Book still contains the following steps:

- Making a claim to the Engineer,
- Referring to the DAB,
- Attempting Amicable Settlement, and
- ICC Arbitration.

The main differences introduced by the 2017 Yellow Book are as follows:

- There is now a Dispute Avoidance/Adjudication Board (DAAB) rather than a Dispute Adjudication Board (DAB).
- There is now a standing DAAB rather than an ad hoc DAB. The DAAB is appointed at the outset unless Parties otherwise agree.
- If one Party refuses to sign a DAAB agreement within 14 days of the other Party's request to do so, then the appointing entity or official named in the Contract Data appoints the member after which the Parties and the member(s) are deemed to have signed the DAAB Agreement.
- Similar to the 2008 Gold Book, a new sub-clause for avoidance of disputes has been introduced. This allows the parties to ask the DAAB to

provide assistance and/or informally discuss and attempt to resolve any issue or disagreement.

- Reference of a dispute to the DAAB will be deemed to interrupt the applicable limitation period unless prohibited by the law.
- The amount awarded by the DAAB or the Arbitral Tribunal to any party shall become immediately payable without any certification or Notice.
- The DAAB decisions are now expressly binding on the Engineer.
- A Notice of Dissatisfaction (NOD) can be drafted in respect of parts of the DAAB's decision. The parts specified in the NOD and any parts affected by such part, are deemed to be severable from the rest of the decision. The rest of the DAAB's decision shall be final and binding on the Parties.
- Non-compliance with the binding but not final decision of the DAAB can be directly referred to Arbitration under the 2017 Yellow Book and the Arbitral Tribunal has the power to issue an interim or provisional measure or an award enforcing the decision. The provisional measure or an award is subject to the express reservation that the rights of the Parties are reserved until the merits of the dispute are resolved by an award.
- The amicable settlement period has been reduced from 56 days to 28 days.

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