



# **SINGAPORE INFRASTRUCTURE DISPUTE- MANAGEMENT PROTOCOL**

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A COMPREHENSIVE DISPUTE MANAGEMENT TOOL

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**2018**





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## PREAMBLE

The Singapore Infrastructure Dispute-Management Protocol (SIDP) 2018 sets out a carefully-tailored procedure for the appointment and involvement of a Dispute Board (DB) to assist in the effective management of differences or disputes that may arise in the context of mega construction or infrastructure projects.

The SIDP is designed and recommended for construction or infrastructure projects of more than S\$500m in value, and can be easily incorporated into any construction or infrastructure contract using the standard clause provided in the Appendix.

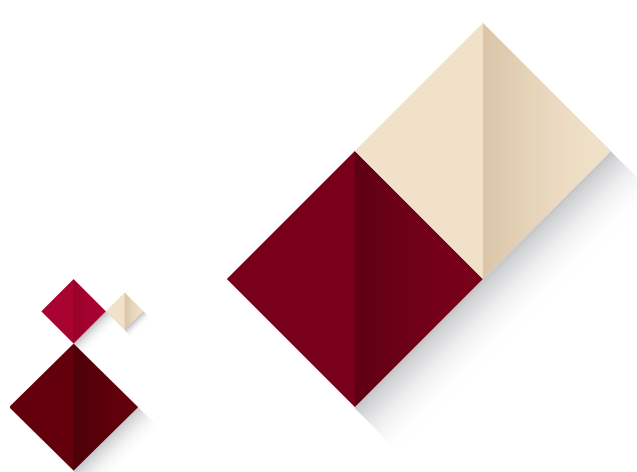
It is strongly recommended that the SIDP be adopted from the start of the project, as a collaborative tool, to enable early and efficient resolution of differences and disputes.

The SIDP provides parties with the flexibility to opt for a DB comprising one, two or three expert professionals depending on the complexity and needs of the project. The members of the DB can be selected by agreement of the parties or failing such agreement, they may be appointed by the Authorised Appointing Body (as defined in the SIDP).



# CONTENTS

1.0	INTERPRETATION	1
2.0	APPLICATION	2
3.0	APPOINTMENT AND CONDUCT OF DB	2
4.0	DB MEETINGS AND SITE VISITS	4
5.0	ASSISTANCE FOR RESOLUTION OF DIFFERENCES	5
6.0	RESOLUTION OF DISPUTES	5
7.0	SUBMISSION TO MEDIATION	6
8.0	ISSUE OF AN OPINION	7
9.0	DETERMINATION OF THE DB	7
10.0	ENFORCEMENT	8
11.0	PROTOCOL BINDING ON PARTIES	9
12.0	PROTOCOL BINDING ON DB MEMBER	9
13.0	POWERS OF THE DB	10
14.0	STATUTORY ADJUDICATION	11
	APPENDIX	A-1



## 1.0 INTERPRETATION

1.1 *Reference:* This document sets out the Singapore Infrastructure Dispute-Management Protocol 2018 ("Protocol"). The provisions of the Protocol are divided into Articles. Within each Article, the provisions are divided into Clauses. Within each Clause the provisions are divided into paragraphs.

1.2 *Definitions:* For the purpose of this Protocol:

- (a) "Agreed Panel" shall mean an agreed panel of candidates from which DB Members shall be appointed by the Parties or the Authorised Appointing Body ("AAB");
- (b) "Agreement" shall mean the terms agreed (whether contained in the Contract and/or in other documents) by the Parties for the establishment of the DB in accordance with this Protocol;
- (c) "Authorised Appointing Body" or "AAB" shall mean the body, being the Singapore International Mediation Centre or Singapore Mediation Centre, to which the request for the appointment of a DB shall be made pursuant to the Agreement;
- (d) "Contract" shall mean the contract for the carrying out of construction works or the provision of services or the supply of components, goods and materials to which Parties intend the Protocol to apply under the Agreement;
- (e) "day" shall mean a calendar day construed by reference to the Gregorian calendar;
- (f) "DB Meeting" shall mean the meetings between the DB and the Parties to address the issues, differences, disputes and such other matters as provided in this Protocol;
- (g) "Dispute" shall mean any difference or dispute between the Parties which either or both Parties have referred to the DB in accordance with Article 6 of this Protocol;
- (h) "Dispute Board" or "DB" shall mean the Dispute Board constituted under the Protocol and may consist of one, two or three members;
- (i) "Dispute Board Member" or "DB Member" shall mean a person appointed by a Party or the AAB for the purpose of constituting a DB;
- (j) "Mediated Settlement Agreement" in relation to a mediation, means an agreement by the Parties settling the whole or part of the Dispute to which the mediation relates, and includes an agreement that may be recorded as an order of court under the Mediation Act 2017 (No. 1 of 2017);
- (k) "Presiding Member" shall mean the DB Member appointed to act as such in accordance with Clause 3.6(b), Clause 3.6(c) or Clause 3.7(c) of this Protocol;

- (l) "Request" shall mean a request to the AAB to appoint one or more DB Members under Article 3 of this Protocol; and
- (m) "Site Visit" shall mean the periodic visit by the DB and the Parties to any place where the works, services and/or supplies under the Contract are performed for the purpose of this Protocol.

## **2.0 APPLICATION**

- 2.1 This Protocol applies where the Parties have agreed to establish a DB for the purpose of matters which form the subject of the Parties' Agreement.
- 2.2 The DB may have one, two or three members as provided in the Agreement.
- 2.3 Except where the Parties expressly agree otherwise and without limiting the scope of its duties, the DB shall have the power to undertake one or more of the following activities as may be appropriate: –
  - (a) encourage the Parties to co-operate as fully as possible to ensure the timely and proper completion of the works to which the Contract relates;
  - (b) assist the Parties in avoiding or resolving differences through informal discussion and negotiation to prevent these from developing into disputes;
  - (c) facilitate the resolution of a Dispute through Mediation;
  - (d) facilitate the resolution of a Dispute by issuing an Opinion; and/or
  - (e) determine a Dispute by issuing a Determination.

## **3.0 APPOINTMENT AND CONDUCT OF DB**

- 3.1 *Request to Appoint DB:* The Request to appoint a DB may be made at any time to the AAB by the Parties jointly or any of the Parties acting singly.
- 3.2 *Requirements of the Request:* The Request shall: –
  - (a) comply with rules that the AAB may prescribe; and
  - (b) be accompanied by the necessary application fee.
- 3.3 *Appointment by the AAB:*
  - (a) Where the Request is made jointly by the Parties, subject to the Request complying with Clause 3.2, the AAB shall proceed to appoint the DB in accordance with Clauses 3.5, 3.6 or 3.7, as the case may be, depending on the number of DB Members in the DB.

- (b) Where the Request is made by one of the Parties, the AAB shall invite the other Party for comments within 7 days from the receipt of the Request. The AAB shall issue its decision on whether or not to proceed with the Request within a further 14 days.

3.4 *Persons who may be appointed as DB Members: –*

- (a) Where parties have agreed that DB Members are to be appointed from an Agreed Panel, DB Members shall be appointed from that Agreed Panel unless Parties subsequently agree otherwise.
- (b) In any other case, subject to any subsequent agreement of the Parties, DB Members shall be appointed from the Panel of DB Members of the AAB as prevailing at the time of the Request.

3.5 *DB constituted by a sole DB Member:* Where the Parties have agreed that the DB shall comprise a sole DB Member, they shall jointly nominate the sole DB Member and the AAB shall appoint the DB Member accordingly. If Parties cannot agree on the sole DB Member within 14 days of the Request, the sole DB member shall be appointed by the AAB.

3.6 *DB constituted by two DB Members: –*

- (a) Where the Parties have agreed that the DB shall comprise two DB Members or where Parties have not agreed on the number of DB Members, the DB shall be constituted by a Presiding Member and one other DB Member.
- (b) Unless Parties otherwise agree, the AAB shall determine which of the two Members shall serve as Presiding Member after taking into account each Member's experience and availability and the AAB shall appoint the DB Members accordingly.
- (c) If Parties cannot agree on one or both of the DB Members within 14 days of the Request, the relevant DB member(s) shall be appointed by the AAB. The AAB shall designate one of the DB Members so appointed as the Presiding Member in accordance with paragraph (b).

3.7 *DB constituted by three DB Members:* Where Parties agree that the DB shall comprise three DB Members: –

- (a) Each of the Parties shall nominate one DB Member. If any Party fails to nominate its DB Member within 14 days of the Request or within any other time period agreed upon by the Parties, the relevant DB Member shall be appointed by the AAB.
- (b) The third DB Member shall be proposed to the Parties jointly by the first two DB Members within 14 days following the completion of appointments of the first and second DB Members. If a Party objects to the proposed third DB Member within 14 days of receiving the proposal, or if the first two DB Members fail to agree on and/or propose the third DB Member, the third DB Member shall be appointed by the AAB within 14 days.

- (c) The third DB Member shall act as Presiding Member of the DB unless all DB Members agree for one of the other DB Members to serve as the Presiding Member with the consent of the Parties.

3.8 Unless the Parties agree otherwise, a replacement DB Member shall be appointed if a DB Member declines to act, is unable to act as a result of death, illness, disability, resignation or termination of appointment, or otherwise. The replacement DB Member shall be appointed in the same manner as the replaced DB Member was required to have been selected or agreed, as described in this Article.

#### **4.0 DB MEETINGS AND SITE VISITS**

4.1 The DB shall commence its work by meeting the Parties to establish a schedule of DB Meetings and Site Visits. The frequency of DB Meetings and Site Visits shall be decided by the DB (in consultation with the Parties) after considering the performance requirements of the Contract, having regard to the number and complexity of the issues which are likely to arise during the course of the Contract. During the scheduled DB Meetings and Site Visits, the DB shall review the performance of the Contract with the Parties and may assist the Parties in avoiding or resolving differences and disputes as provided in this Protocol.

4.2 Unless Parties agree otherwise, there shall be no fewer than three DB Meetings and three Site Visits every 12 months as follows: –

- (a) Site Visits shall be conducted at the site or sites where the Contract works are being carried out.

- (b) A DB Meeting may, but need not, be held in conjunction with a Site Visit.

- (c) If Parties agree, DB Meetings can be held by tele- or video-conference.

4.3 In addition to the scheduled DB Meetings and Site Visits, any Party may request the DB to hold an urgent DB Meeting or Site Visit. The DB, where satisfied that there is sufficient urgency, shall use its best efforts to convene the requested urgent DB Meeting or Site Visit as soon as is practicable, and in any event within 21 days of receiving the request.

4.4 Unless Parties agree otherwise, the DB shall proceed with each DB Meeting and Site Visit as follows: –

- (a) Not later than 14 days before the date fixed for each DB Meeting or Site Visit, any Party may raise matters in respect of which Parties may have expressed differences, to be avoided or resolved before developing into disputes.

- (b) Not later than 7 days before the date fixed for each DB Meeting or Site Visit, the DB may issue directions for a difference to be resolved as a Dispute in accordance with Article 6.

4.5 Parties and the DB shall attend all DB Meetings and Site Visits.

- (a) If a Party fails to attend a DB Meeting or Site Visit, the DB may, if it considers appropriate, decide to proceed and notify the absent Party accordingly.
- (b) DB Meetings or Site Visits may proceed notwithstanding the absence of a DB Member, provided that the DB consists of more than one DB Member and the Parties agree to proceed.
- (c) At the conclusion of every DB Meeting or Site Visit, the sole DB Member or Presiding DB Member shall prepare a DB Report which shall include a record of the persons in attendance, the date of the DB Meeting or Site Visit and the matters addressed by the DB. The DB shall not be bound by any views or positions expressed orally during the DB Meetings or Site Visits or recorded in the DB Report, for the purposes of an Opinion or Determination it may render under this Protocol.

## **5.0 ASSISTANCE FOR RESOLUTION OF DIFFERENCES**

5.1 Where Parties have raised differences with the DB as provided in the preceding Article, or where it appears to the DB during the course of a DB Meeting or a Site Visit that there may be a potential difference between the Parties, the DB may discuss with senior representatives of the Parties and provide assistance to enable the Parties to proceed or continue with their negotiations to avoid or resolve the difference on their own without any further reference to the DB.

5.2 Without limiting the scope of assistance which may be provided by the DB for the purpose of this Article, the DB may: –

- (a) meet senior representatives of the Parties informally;
- (b) assist Parties in clarifying, scoping and articulating the ambit of their differences;
- (c) review with Parties the risks and consequences arising from the differences for the performance of the Contract; and
- (d) recommend specific processes and measures to resolve the differences.

5.3 For the purpose of this Article, the DB may indicate that it is prepared to assist Parties in Mediation, or provide an Opinion or Determination in accordance with this Protocol if the Parties cannot avoid or resolve the difference on their own.

## **6.0 RESOLUTION OF DISPUTES**

6.1 *Request for Dispute Resolution:* A difference or dispute may be referred by any Party ("Referring Party") by filing a Referral of Dispute ("the Referral") notifying the DB and the other Party that a Dispute has arisen, regardless of whether it concerns a difference or dispute which was previously raised at a DB Meeting or Site Visit or not ("the Dispute").



- 6.2 In the Referral, the Referring Party shall further apply to the DB for the Dispute to be resolved in one of the following ways: –
- (a) by Mediation with the DB Member(s) acting as Mediator(s) as provided in this Protocol;
  - (b) by the DB rendering an Opinion on the matter as provided in this Protocol;
  - (c) by formal Determination as provided in this Protocol; or
  - (d) by any of the modes stated in Clauses 6.2(a) to (c) as the DB deems appropriate.
- 6.3 Where the Referring Party applies in its Referral for the DB to resolve the Dispute by any of the modes set out in Clause 6.2 and no other Party objects within 7 days of receiving the Referral, the DB shall proceed accordingly.
- 6.4 Where the other Party objects to the Referral within 7 days of receiving it, the DB shall issue directions as to the mode of resolving the Dispute including but not limited to Mediation, the rendering of an Opinion or Determination, as may be appropriate to the nature of the Dispute, and which would facilitate the performance of the Contract or reduce the risk of disruption.

## **7.0 SUBMISSION TO MEDIATION**

- 7.1 The following provisions apply: –
- (a) where Parties jointly apply to the DB for the Mediation of a Dispute; or
  - (b) where the DB directs pursuant to Article 6 that the Dispute which is the subject of the Referral should be resolved through Mediation.
- 7.2 Each Party shall submit to the DB and the AAB a Mediation Summary which shall contain a brief statement of facts and the positions of the Parties in accordance with the directions of the DB.
- 7.3 Unless otherwise directed by the DB, Parties shall meet with the DB no later than 14 days from the date directed by the DB for the filing of the Mediation Summary. The DB shall have access to the records that are material to the Dispute. The Mediation shall be conducted in joint sessions only, with the Parties present at all times and in accordance with such further directions as the DB shall issue, without private caucuses.
- 7.4 Any Mediated Settlement Agreement reached pursuant to Article 7 shall be binding on the Parties.

## **8.0 ISSUE OF AN OPINION**

8.1 The following provisions apply: –

- (a) where Parties jointly apply to the DB to render an Opinion; or
- (b) where the DB directs pursuant to Article 6 that the Dispute which is the subject of the Referral should be resolved through the rendering of an Opinion.

8.2 The DB shall proceed to issue directions to enable it to render its Opinion and shall issue the Opinion within such time limit as prescribed in the directions.

8.3 A Party may, within 28 days of receiving the Opinion, serve on the DB and the other Party a notice of objection to the whole or part of the Opinion, with reason(s) for such dissatisfaction ("NOO"). The serving of the NOO shall render such part(s) of the Opinion (as objected to) non-binding.

8.4 Any part of an Opinion which is not duly objected to in accordance with Clause 8.3 shall become binding on the Parties, but not final, and must be complied with fully unless and until an arbitral tribunal or court decides otherwise.

## **9.0 DETERMINATION OF THE DB**

9.1 The following provisions apply: –

- (a) where Parties jointly apply to the DB to issue a Determination under this Protocol; or
- (b) where the DB directs pursuant to Article 6 that the Dispute which is the subject of the Referral should be resolved through Determination.

9.2 The DB shall proceed to issue directions to enable it to render its Determination and shall issue the Determination within such time limit as prescribed in the directions.

9.3 A Determination is binding on each Party upon its receipt by that Party. The Parties shall comply with it forthwith, notwithstanding any objections raised by either Party pursuant to this Article.

9.4 Unless objected to pursuant to Clause 9.5, the Determination shall become final. Parties agree not to contest a Determination that has become final.

9.5 A Party may, within 28 days of receiving the Determination, serve on the DB and the other Party a notice of objection to the whole or part of the Determination, with reason(s) for such dissatisfaction ("NOD"). The part(s) of the Determination that are not objected to shall become final.

- 9.6 If a Party duly objects to any part of the Determination in accordance with Clause 9.5, or if the DB does not render its Determination within the time limit prescribed in the directions issued under Clause 9.2, or if the DB is disbanded before a Determination has been rendered, the Dispute shall be finally resolved by arbitration (if this recourse has been agreed to by the Parties) or the courts. Unless and until an arbitral tribunal or court decides otherwise, the Parties remain bound to comply with any Determination rendered by the DB.
- 9.7 No Party shall be restricted to the evidence or submissions put before the DB, or to the reasons stated in a NOO served pursuant to Article 8 or a NOD served pursuant to this Article, in any proceeding before the arbitral tribunal or court.

## **10.0 ENFORCEMENT**

- 10.1 Parties shall comply with any: –
- (a) Mediated Settlement Agreement which is binding pursuant to Article 7;
  - (b) Opinion of the DB which has become binding on the Parties pursuant to Article 8; or
  - (c) Determination of the DB (whether it is binding, or final and binding) pursuant to Article 9.
- 10.2 If a Party fails to so comply (either in whole or in part), the other Party may without prejudice to any other rights it has, refer such failure to the courts or arbitration (as the case may be). The courts or arbitral tribunal shall have the power to summarily or by expedited procedure, make the requisite order or award (whether provisional, interim or final) to enforce the Mediated Settlement Agreement, Opinion or Determination (as the case may be) referred to in Clause 10.1.
- 10.3 Any such order or award made in relation to a binding but not final:
- (a) Mediated Settlement Agreement;
  - (b) Opinion; or
  - (c) Determination of the DB,
- shall not prejudice either Party's right to have the merits of the Dispute finally determined in court or arbitration.
- 10.4 A Party shall not raise any issue as to the merits of the underlying Dispute as a defence in any action for enforcement under this Article.

## **11.0 PROTOCOL BINDING ON PARTIES**

11.1 Parties agree that they shall: –

- (a) fully cooperate with the DB and in the DB's discharge of its duties under this Protocol; and
- (b) comply with all requirements of the AAB in connection with this Protocol including prompt payment of fees and disbursements of the DB Members and concurrently submitting copies of submissions to the DB and the AAB.

11.2 Parties shall comply with all directions issued by the DB pursuant to this Protocol.

11.3 As soon as the DB is constituted, the Parties shall brief the DB on the particulars of the Contract and keep the DB informed of the performance of the Contract. The DB may specify the manner, interval and form of site reports which the DB requires from the Parties during the course of the Contract.

11.4 Where the DB requests any Party for any information, drawing, programme, document or other material ("the Requested Materials") relating to the work of the DB, the Party to whom the request is directed shall provide the same within 7 days or such other period as may be prescribed by the DB unless the Party does not have in its possession the Requested Materials or the Party is prevented by law or a specific obligation to a third party from disclosing the Requested Materials.

11.5 Where the DB so requests, the Parties shall, whether through the AAB or otherwise, provide for the use of the DB, during the course of DB Meetings and Site Visits, appropriate working space, accommodation, means of communication, administrative support and the use of all necessary office and information technology equipment to enable the DB to fulfil its functions.

## **12.0 PROTOCOL BINDING ON DB MEMBER**

12.1 Unless otherwise agreed by the Parties and the DB: –

- (a) each DB Member undertakes to carry out his or her responsibilities in accordance with the Protocol; and
- (b) each DB Member shall not act in any judicial, arbitral or similar proceedings relating to the Contract, whether as a judge, an arbitrator, an expert witness or a representative or adviser of a Party.

12.2 Unless waived or otherwise agreed by the Parties or required by any applicable law, any information obtained by a DB Member during the course of the DB's activities (to the extent that the same is not available in the public domain) shall be used by the DB Member only for the purposes of the DB's activities and shall be treated by the DB Member as confidential.

### 13.0 POWERS OF THE DB

- 13.1 The DB shall direct proceedings before the DB as it deems appropriate, subject always to this Protocol.
- 13.2 Without limiting the generality of the preceding Clause, the DB shall for the purposes of Articles 5, 6, 7, 8 or 9 of this Protocol, have the power to: –
- (a) require the Parties to produce any documents or materials that the DB deems relevant in relation to the discharge of any of its functions;
  - (b) order the taking of measures for protecting trade secrets and confidential information;
  - (c) convene preparatory meetings, DB Meetings, Site Visits and hearings;
  - (d) decide on all procedural matters arising during any meeting, Site Visit or hearing;
  - (e) examine the Parties, their representatives and any witnesses who may be called by the Parties, in any sequence or manner it determines appropriate;
  - (f) appoint one or more experts, with the agreement of the Parties;
  - (g) issue any procedural direction, Opinion or Determination even if a Party fails to comply with any provision of the Protocol or request of the DB;
  - (h) determine any application for interim or provisional relief in respect of any matters relating to the Contract; and
  - (i) take any measures necessary to fulfil its function as a DB.
- 13.3 The DB shall decide on the issuance of any direction, Opinion or Determination as follows: –
- (a) Where the DB is a single-member DB, all decisions shall be taken by the sole DB Member.
  - (b) Where the DB is a two-member DB, all decisions shall be made by the Presiding Member in consultation with the other Member. In the event that the other Member of the two-member DB disagrees with the decision of the Presiding Member, the other Member may issue a dissenting view or a dissenting opinion (in the case of an Opinion or Determination).
  - (c) Where the DB is a three-member DB, all decisions shall be made by majority vote. If there is no majority, the decision shall be made by the Presiding Member alone.

#### **14.0 STATUTORY ADJUDICATION**

- 14.1 Nothing in this Protocol shall preclude a Party from making an adjudication application under the Building and Construction Industry Security of Payment Act (Cap. 30B) or any other equivalent statutory instrument as may be applicable (hereinafter "Security of Payment Legislation"). Parties shall be entitled to pursue their rights under the applicable Security of Payment Legislation while concurrently initiating action or taking steps to pursue any of the routes of dispute avoidance or resolution provided in this Protocol, subject to the provisions of the applicable Security of Payment Legislation.
- 14.2 The provisions of this Protocol shall not be construed as a means to contract out of or amend statutory timelines prescribed by the applicable Security of Payment Legislation.

## APPENDIX

Parties who wish to use the SIDP should include an appropriate clause in their contract. A standard clause that falls within the meaning of “Agreement” as defined in Clause 1.2(b) of the SIDP, which parties should adapt to suit their needs, is provided as follows:

*[Parties shall establish a Dispute Board in accordance with the Singapore Infrastructure Dispute-Management Protocol 2018 (“the SIDP”), which is incorporated by reference. The Dispute Board shall comprise of [one/two/three] member[s]. The Dispute Board shall assist parties in preventing, managing and resolving differences or disputes in accordance with the terms of the SIDP.]*

