

Dispute Resolution Board (DRB): An agile, safe and economically viable alternative for conflict resolution.



The Dispute Board, Resolution or Dispute Board (DB) or Dispute Resolution Committee (CRD) is a heterocompositive method focused on resolving disputes and one of these alternatives where a third party acts neutrally, using objective criteria.

The use of the CRD is optional and such choice can be made by interested parties (individuals or legal entities) through the convention represented by the arbitration clause (previously inserted in the contract).

Our legal system does not allow that, on the one hand, one of the parties will be severely harmed due to extraordinary factors verified and proven during the execution of the object.

In any case, even if there is a perfect contract, external factors change the conditions, thus bringing imbalance to the contracts. Anything can happen during its run. It would be strange to say that nothing will change in a contract, even if it is perfect.

The causes and motivators of disputes are varied factors, however the appropriate analysis methodology is essential for a successful conclusion between the parties. Another common problem is the division of responsibilities for the event generating the impact under analysis.

These controversies normally contain a large number of documents generated over time in addition to other diverse facts, and therefore become complex to be analyzed.

Resolution No. 125 of 2010 of the CNJ - National Council of Justice, which established the National Public Policy for the Adequate Treatment of Interests within the scope of the Brazilian Judiciary, encourages the use of conciliation and mediation as mechanisms for the adequate treatment of conflicts.

Dispute Resolution Committees (Dispute Boards) are methods of consensual conflict resolution, avoiding litigation and related costs, as provided for in § 3 of art. 3rd of the Brazilian Civil Procedure Code.

It is worth noting that Conflict resolution using DB cannot work alone or without legal support. A good contract with very well-defined and complete clauses is necessary. The FIDIC is an example of this, which contains a standard contract in its various formats (books per type of contract) with all annexes already linking with the DB. This avoids errors and legal problems.

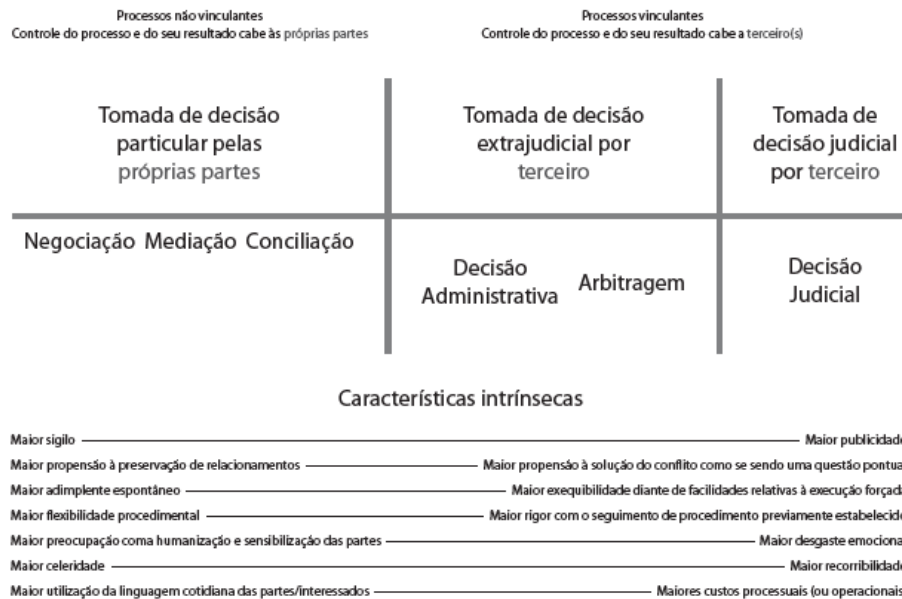
Decisions handed down by a Dispute Resolution Committee, when the contracting parties have agreed to their mandatory adoption, bind the parties to their compliance until the Judiciary or the competent arbitration court issues a new decision or confirms it, if any. to be provoked by the non-conforming party.

The fundamental principle of contractual relations between contractors and contractors is financial balance, which is the relationship between the contractor's costs and the contractor's remuneration, which must be maintained during the contract period.

It is important to note that the so-called economic financial imbalance of the contract refers only to these initial conditions and cannot be attributed to possible contract mismanagement.

One way to understand the different methods of Appropriate Dispute Resolution is to organize them with their characteristics and results as highlighted in figure 1 with definitions and concepts that are simple to understand.

Figure 1: Dispute Resolution Methods



Source: Judicial Mediation Manual

The decision which method should be used is related to the dispute (conflict) and the parties in each case. The legal and contractual bases are created through the contract.

With Law No. 9307/96, arbitration in Brazil gained greater space in its application. Regarding objective arbitration, that is, which hypotheses can or cannot be used, it is limited to conflicts involving available property rights and cannot, under any circumstances, be applied to issues of public order.

The Code of Civil Procedure presents a series of indications in this regard, such as the conciliator and the mediator being auxiliaries of justice (art. 149) and the creation of judicial centers for consensual conflict resolution (art. 165). In fact, these indications reflect infra legal standards established in the CNJ, such as Recommendation 50/2014 and Resolution 125/10, respectively.

At the Municipal level, Municipal Law No. 16,873/2018 of São Paulo recognizes and regulates the installation of a Dispute Prevention and Resolution Committee in ongoing administrative contracts signed by the City of São Paulo.

Law No. 206/2018 is being processed in the Federal Senate, aiming to regulate the installation of Dispute Prevention and Resolution Committees in ongoing administrative contracts celebrated by the Union.

The OAB/MG Arbitration Commission spoke to the Federal Senate in PL n° 559/2013 (later PL6814/2017), which aims to reform Law n° 8666/93. This Project recognizes the relevance of alternative means of conflict resolution for administrative contracts, including Dispute Boards (DBs), alongside measurement, Conciliation and Arbitration.

The Supreme Court of Justice has already expressly ruled on the possibility of establishing a Dispute Resolution Committee (Resp. no. 1,569,422/RJ, Rapporteur Minister Marco Aurélio Belizze).

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The use of Dispute Resolution Committees (Dispute Boards), with the insertion of the respective contractual clause, is recommended for construction or infrastructure works contracts, as a mechanism aimed at preventing disputes and reducing related costs, allowing immediate conflict resolution.