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ARBITRATORS, MEDIATORS  
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# **The International Congress of Maritime Arbitrators (ICMA XX)**

**September 25-29 2017 Copenhagen, Denmark**

## **Dispute Resolution Clauses**

***'Combined dispute resolution processes – trends and challenges – heresy or what the market may want?'***

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# Heresy

**'Opinion profoundly at odds with what is generally accepted'**

- What is the arbitrator's role, if any, in facilitating settlement and how does this fit with more collaborative dispute resolution methods?
- Contemplate –  
Justice → (Dispute) Resolution → Dispute/Conflict Avoidance



# The Market Need

A relaunch for International Arbitration

The need for party control, (Cost) efficiency, combinations of adjudicative and non-adjudicative processes?



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# Hybrid Processes

Dispute Review Boards

Dispute Adjudication Boards

Conflict Avoidance Panels

Mediation-Arbitration (Med-Arb)



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# Dispute Review Boards – Clauses The ICC Dispute Board Rules (1 October 2015)

“All disputes arising out of or in connection with the present Contract shall be submitted – in the first instance – to the DRB in accordance with the Rules. For any given dispute, the DRB shall issue a Recommendation in accordance with the Rules”.



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# Dispute Adjudication Boards Clauses FIDIC 'Red Book' Conditions of Contract for Construction – For Building and Engineering Works Designed by the Employer

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Board's Decision*]. The Parties shall jointly appoint a DAB by the date stated in the Appendix to Tender.

The DAB shall comprise, as stated in the Appendix to Tender, either one or three suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DAB shall comprise three persons.

If the DAB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as Chairman.



# Conflict Avoidance Panels – Clauses – Transport For London

“W2.A.2 Subject to clause W2.1, any Dispute may in the first instance be referred to a Conflict Avoidance Panel by notice in writing from the referring party to the other party. The parties to the Dispute endeavour to agree upon (a) the person(s) whom they would consider suitable to act as the member(s) of the Conflict Avoidance Panel (which as a general principle depends upon the issues in dispute but is always an odd number). In the event of the parties to the Dispute failing to reach such agreement within 14 days of receipt by the responding party of notice pursuant to this clause W2.A.2, either party to the Dispute may request the RICS to nominate the member(s) of the Conflict Avoidance Panel (including determining the number of member(s) of the Conflict Avoidance Panel, which as a general principle depends upon the issues in dispute but is always an odd number). Any person selected to act as a member of the Conflict Avoidance Panel (a) is a natural person acting in his personal capacity and (b) is not an employee of any of the parties to the Dispute and declares any interest, financial or otherwise, in any matter relating to the Dispute.



## **Conflict Avoidance Panels – Clauses – Transport For London (contd.)**

W2.A.5 Within 7 days of receipt of the response pursuant to clause W2.A.4 (or such longer period as may be agreed by the parties to the Dispute), the Conflict Avoidance Panel notifies the parties to the Dispute of its recommendation(s) for avoiding or resolving the Dispute. The notice is in writing and includes a summary of the Conflict Avoidance Panel's findings and a statement of its reasons for the recommendation(s). The recommendation(s) is (are) not binding upon the parties to the Dispute".



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# The Society for Computers and Law Speedy Dispute Resolution Procedure

- Expert Determination; or
- Adjudication; or
- Recommendation (non-binding)
- 42 Days
- Standardised approach across the industry
- Ad hoc appointment or a panel for the neutrals
- Should there be a mediation stage?



# Q & A Session

## Thank you!

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