



CONTRACT & CLAIMS
MANAGEMENT AUSTRIA

PREVENTION OF DISPUTES VS LEGAL PROCEEDINGS

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1. THE DISPUTE

- Dispute follows disagreement and negotiation
- Not an ashamed sickness
- Various causes, but often a lack of communication and on a personal level
- Often hidden during a long time for various reasons whether personal or not

2. REQUIRED SERVICES IN DISPUTE PREVENTION & RESOLUTION

- Balanced contract, contract management structure , direct negotiation
- Indirect negotiation by external neutral
- Mediation
- Dispute Boards
- Adjudication
- Arbitration, Civil Court proceedings

3. LEGAL PROCEEDINGS

- Legal proceedings may be necessary, but ultimate step and a lot of thoughts...
- Proceedings are long, require a lot of efforts.
Consequences: high ext./int. costs
- In international contracts arbitration is the solution but ...
- **Everything should be done to prevent it!**

4. CONTRACT NEGOTIATION AND MANAGEMENT, NEUTRAL EXPERTISE

Balanced contract with sufficient data and information and not one-sided contract

Professional Contract management

- Contract Management Cell
- Monthly delays management
- Follow-up of contract's requirements

5. MEDIATION / ADJUDICATION

Mediation

- Indirect negotiation, old as the world
- Modern approaches exists today
- Depending on the specific context
- Difficulty: find and appoint the mediator

Adjudication

- First instance arbitration, decision to be implemented, no suspensive effect
- Appeal possibility to arbitration

6. DISPUTE BOARDS (DB)

What is a Dispute Board?

- A modern/continuous approach to prevent disputes from the outset of the project
- A tribunal made of independent professionals
- 3 approaches: DRB, DAB, CDB

How it works?

The 2 major steps: informal assistance and formal referrals, recommendation or decision

Experiences?

over 90% successful, but little use and experience in civil law countries...

7. CONCLUSIONS / RECOMMENDATIONS

- Prevention, a major tool in successful Contract management
- Use of specialists in prevention of disputes CCM
- Take care of differences civil-common laws
- Use of the new ICC DB Rules (01.10.2015)