

**STUDY ON THE PROMOTION OF
DAB ADJUDICATORS
IN
THE ASIAN REGION**

Final Report

October 2008

JAPAN INTERNATIONAL COOPERATION AGENCY

**KYOTO UNIVERSITY
ASSOCIATION OF JAPANESE CONSULTING ENGINEERS (AJCE)**

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Abbreviations

AAA	:	American Arbitration Association
AAW	:	FIDIC Adjudicators Assessment Workshop
ACE	:	Association of Consultancy and Engineering, UK
ADR	:	Alternative Dispute Resolution
AJCE	:	Association of Japanese Consulting Engineers
APA	:	FIDIC Assessment Panel for Adjudicators
ASPAC	:	FIDIC Members Association in Asia Pacific Region
CDB	:	Combined Dispute Board
CEAI	:	Consulting Engineers Association of India
CECOPHIL	:	Council of Engineering Consultants of the Philippines
DAB	:	Dispute Adjudication Board
DB	:	Dispute Board
DRB	:	Dispute Review Board
DRBA	:	Dispute Resolution Board of Australia Inc.
DRBF	:	Dispute Resolution Board Foundation
FIDIC	:	International Federation of Consulting Engineers
ICC	:	International Chamber of Commerce
ICE	:	Institution of Civil Engineers, UK
JBIC ¹	:	Japan Bank for International Cooperation
JICA	:	Japan International Cooperation Agency
MA	:	FIDIC Member Association
MDB	:	Multilateral Development Bank
NEC	:	New Engineering Contract
PCA	:	Philippine Construction Association
PDRCI	:	Philippine Dispute Resolution Center, Inc.
PICAM	:	Philippine Institute of Construction Arbitrators and Mediators, Inc.
POCB	:	Philippine Overseas Construction Board

¹ Beginning October 1st 2008, the Overseas Economic Cooperation Operations (OECOs), a part of JBIC providing Japanese ODA loans, has been merged with the JICA.

Study on the Promotion of DAB Adjudicators in the Asian Region

SUMMARY

Outline of the Study

1. The Conditions of Contract for Works of Civil Engineering Construction (so called Red Book) issued by International Federation of Consulting Engineers (FIDIC) has been widely used for the projects financed by Multilateral Development Banks (MDBs) and Japan Bank for International Cooperation (JBIC). FIDIC made a major revision of Red Book in 1999 and Dispute Adjudication Board (DAB) was introduced in the process of dispute resolution. MDBs published MDB Harmonized Edition as their standard bidding documents in 2005 based on FIDIC Red Book 1999 and JBIC (JICA) are also currently reviewing its Sample Bidding Documents with use of MDB Harmonized Edition.
2. In such circumstances, it is expected that the project employing DAB will be increasing. However, most of the adjudicators are living in the countries being far from the countries where JBIC ODA loan is applied at present hence it is essential to increase adjudicators in the Asian region where most JBIC ODA loan projects are conducted in view of cost saving and smooth implementation of those projects. To cope with these requirements, the study has been made under the following Terms of Reference (TOR).
 - 1) Holding the seminars in and out of Japan including preparation of the seminar materials
 - 2) Study of the promotion scheme of DAB adjudicators in Asian region
 - 3) Providing advices and recommendations for JBIC ODA loan projects
 - 4) Preparation of the study report
3. The study has been carried out by the joint venture between Kyoto University and the Association of Japanese Consulting Engineer (AJCE) with the following time schedule.
 - 1) Contract Agreement : 03 April, 2008
 - 2) Inception Report Submission : 24 April, 2008
 - 3) Overseas Investigation (UK) : 28 April to 1 May, 2008
 - 4) DRBF Conference 2008 (South Africa) : 02 May to 04 May, 2008
 - 5) DRBF Training Workshop (South Africa) : 05 May to 06 May, 2008
 - 6) DAB Seminar (Kyoto) : 11 July, 2008
 - 7) DAB Seminar (Tokyo) : 18 July, 2008
 - 8) DAB Seminar (Delhi) : 22 August, 2008
 - 9) DAB Seminar (Manila) : 28 August, 2008
 - 10) FIDIC Annual Conference 2008 : 08 September to 10 September , 2008

- 11) Draft Final Report Submission : 30 September, 2008
 12) Final Report Submission : 31 October, 2008

Fact-Finding Survey on DB

4. The fact-finding survey has been conducted with the various organizations to confirm present status of DAB/DB utilization, practice of training for fostering adjudicators, and possibility of cooperation with these organizations for training of adjudicators. The outline of survey is summarized below;

No.	Organization	Survey Result
1	King's College of London University (UK)	<ul style="list-style-type: none"> • Possibility of future cooperation with Kyoto University on education program of construction dispute resolution was confirmed
2	Institute of Civil Engineer (ICE, UK)	<ul style="list-style-type: none"> • Actual status of use of standard conditions of contract for construction in UK was confirmed. • Actual practice of adjudication in UK was confirmed. • ICE's activities on promotion of DB was confirmed.
3	Association of Consultancy and Engineering (ACE, UK)	<ul style="list-style-type: none"> • Dispute Resolution Panel to be set up by ACE was surveyed • Registration procedure of adjudicators (Dispute Resolution Programme) was investigated. • Possibility of future cooperation with AJCE on preparation of Adjudicator National List was confirmed.
4	Corbett Law Office (UK)	<ul style="list-style-type: none"> • Opinions on criteria for registration of adjudicators were exchanged. • Training method of adjudicator candidates was discussed.
5	The 8 th DRBF International Conference (Cape Town)	<ul style="list-style-type: none"> • Actual status and trend of DB were confirmed. • Four topics, i.e. 1) Constituting a DB under MDB/FIDIC, 2) Organizing Periodic Site Visits, (3) Referrals and Advisory Role of DB, 4) The Costs of Dispute Boards, were studied.
6	DRBF Training Workshop (Cape Town)	<ul style="list-style-type: none"> • Actual practice on training of adjudicator candidates was confirmed.
7	Meeting with DRBF Asian Group (Cape Town)	<ul style="list-style-type: none"> • Situation of adjudication in Asian countries was investigated. • Possibility of future cooperation on training of adjudicator candidates was discussed.

Dispute Board Seminars

5. Aiming at the followings, seminars were held in Japan (Kyoto and Tokyo) and foreign countries (Delhi, Manila, and Quebec).

- Explanation on the actual condition that dispute resolutions performed by DB are increasing.

- Promoting the understanding of the basic knowledge and system of DB.
- Explaining actual application examples of DB and promoting the understanding of DB's effect.
- Explanation about the framework of the promotion plan of adjudicators.
- Listening opinions on DB operation from participants that will be used as references for drafting promotion plan.

6. The outlines of seminars are as follows;

No.	Venue	Date	Nos. of participants	Remarks
1	Kyoto	July 11	9	<ul style="list-style-type: none"> • Conducted with 2-fold program (Session-1:Revision of JBIC procurement documents, Session-2: Fundamentals and Practice of DAB) • Questionnaire survey on DAB was conducted.
2	Tokyo	July 18	123	<ul style="list-style-type: none"> • Conducted with 2-fold program • Questionnaire survey on DAB was conducted.
3	Delhi (India)	August 22	16	<ul style="list-style-type: none"> • Supported by FIDIC's Member Association in India (CEAI). • A presentation on the present condition of dispute resolution in construction contracts in India was made by Mr. G. Sharan, Director of the Ministry of Shipping and Road Transportation.
4	Manila (Philippines)	August 28	111	<ul style="list-style-type: none"> • Supported by a DRBF representative in Philippines (Mr. Salvador Castro). • Six Pilipino organizations concerning construction dispute backed up the seminar. • Mr. Gordon L. Jaynes, APA (Assessment Panel of Adjudicators, FIDIC) and an FIDIC President List adjudicator, gave presentation. • A presentation on the present condition of dispute resolution in construction contracts in Philippines was made by Mr. Victor P. Lazatin, the former chairman of PICAM.
5	Quebec (Canada)	September 9	about 30	<ul style="list-style-type: none"> • In the ASPAC General Assembly Meeting, a draft action plan on promotion of DAB adjudicators was presented. • Out of 19 ASPAC countries, 10 countries were participated. • Holding of DAB seminars in Indonesia, Pakistan and Bangladesh was requested by each country representative.

7. In the above seminars, the study team made presentation on "Fundamentals of Dispute Board"

and “Practice of Dispute Board”. Seminar materials distributed contain the following subjects.

- 1) Fundamentals of Dispute Board
 - Bidding Documents Published by JBIC
 - Relationship between ADR (Alternative Dispute Resolution) and DB (Dispute Board)
 - Types of DB
 - Difference Between Full-term DB and Ad-hoc DB
 - DAB in FIDIC Conditions of Contract
 - General process of claims and dispute resolution in FIDIC Conditions of Contract
 - Explanation on DB related clauses in the FIDIC Red Book, 1999 version
 - Major difference between FIDIC Red Book, 1999 version and MDB Harmonized Edition

- 2) Practice of Dispute Board
 - Actual application of DB based on study conducted by DRBF
 - Difference between DB and other methods of dispute resolution
 - Criteria for DB qualification
 - Selection of DB members and establishment of DB
 - Sample of DB agreement
 - Purpose of site visit and cases of implementation
 - Prevention function of dispute
 - Costs and cost-benefit
 - Present condition of registration in FIDIC President’s List of Approved Dispute Adjudicators
 - Methods of education, training and certification of adjudicators
 - Action plan for promotion of adjudicators in Asian Region
 - Case study (China, Madagascar, Japan)

8. During the 2008 FIDIC annual conference, exchange of opinions on promotion of DAB was made with FIDIC’s executives (FIDIC president : Dr. John Boyd, FIDIC president elect : Mr. Gregs Thomopulos, and FIDIC Managing Director, Mr. Enrico Vink) on September 9. It was confirmed that establishment of newly proposed Adjudicators Training Institution (e.g., sub-institution under Graduate School of Management, Kyoto University) and AJCE’s role of maintaining Japan National List were acknowledged and supported by FIDIC.

9. To understand the participants’ interest and awareness of DB, how they assess themselves in satisfying the DB qualification criteria, which helps to find potential adjudicators and make the policy of adjudicator educating program, the survey was conducted in the form of a questionnaire. 51 participants out of 132 who attended either Kyoto or Tokyo seminar answered

the questionnaire. Fifty one % of the respondents want to do or are interested in DB. On the other hand, only 23 % of those who are interested in DB think they satisfy the qualification criteria for FIDIC adjudicator. This means both self-development and assistance from outside are essential for adjudicators' promotion.

The Promotion Plan of DB Adjudicators in Asian Region

10. As an international organization related to DB, there exist DRBF, FIDIC, ICC etc. They provide manuals or set up certification systems of adjudicators for the promotion of DB. In addition, some of the organizations that provide services of arbitration, mediation and other ADR have also recognized DB as a new method of Dispute Resolution and are initiating supporting activities such as assisting in introducing DB and, making guidelines of DB etc. The promotion plan of DB adjudicators in the Asian region has been elaborated taking actual practices made by these organizations into consideration.

11. The training of adjudicator candidates will be implemented based of the following policies.

1) The Candidates of the Training

In Japan and Asia, the persons who are interested in DB and satisfy the minimum requirements will be screened and considered as the candidates of the Training. The screening criteria would be 1) experience in overseas project, 2) proficiency in English, and 3) qualifications or experiences in contract management, dispute resolution, arbitration etc.

2) Facilities and Places of Training

In order to underline the leadership of training program in Asian region, it is preferable to establish a new platform like a training center to support training, qualification certification, dissemination and other activities. The Graduate School of Management of Kyoto University has a sub-organization named the Management Research Center which performs various research activities. Under this Research Center, establishment of "Construction Law & Economics Circle in Asian & Pacific Rim (CLECAP)" is being planned.. Therefore CLECAP, would serve as the body to execute the adjudicator promotion program (seminar) and the qualification certification workshop.

3) Programs

For the training and continuous education of qualified adjudicators, development and implementation of three kinds of programs, i.e. "the adjudicator training program", "continuous education program", and "DB popularization program" is required. Furthermore, "the adjudicator training program" would be composed of three sub-programs, i.e. "introduction program", "basic program" and "practical program".

4) Qualification Requirements & Certification System

It is preferable that the qualification assessment (or examinations) are carried out by CLECAP as the assessment is subject to availability of facilities and reliable examiners while keeping impartiality of the assessment process. Following the results of assessment, FIDIC's Member Association such as AJCE will publicize and maintain National List.

5) Lecturers for training-the-trainers

Potential candidates of the lecturers would be DB adjudicators, lawyers, arbitrators, expert practitioners etc. The lectures should be familiar with FIDIC's contract documents and have abundant practical experiences in contract management and dispute resolution.. Based on the importance in practical experience, experienced practitioners on DB should be appointed as lecturers. In addition, it will be desirable to recruit lecturers in the Asian region from economical aspect.

6) Training Fees

To implement training activities, following costs are necessary for 1) establishment and operation of the training body, 2) development of education materials, and 3) holding seminars and training courses. Should the training body try to cover all the costs such as lectures' remunerations, qualification examination and registration fees by students' tuitions only, the students' burden might be so heavy that they may lose incentive. Therefore, it would be most practical to find ways for financial support from JBIC and other development banks.

12. Based on the above, the study team proposes ① establishment of new training organization for training, qualification & certification of adjudicators, ② maintenance of National List by FIDIC Member Association, AJCE in particular that are elaborated in the action plans as shown below:

Action Plan I: Establishment of new organizations aiming at training and assessment of adjudicators

- I-1 : Establishment and maintenance of new organizations
- I-2 : Hold Seminars and training workshops
 - < Introduction Program >
 - < Basic Program >
 - < Practical Program >
- I-3 : Hold introduction seminars for popularization of DB in the Asian region
- I-4 : Provide information to persons and candidates who are interested in DB; Hold conferences regularly (to say, every year)
- I-5 : Hold qualification screenings of adjudicators in the Asian region

Action Plan II: Support the maintenance of FIDIC adjudicators' National List

- II-1 : Maintain FIDIC National List in Japan
- II-2 : Support the maintenance of FIDIC National List in Asia
- II-3 : Support nomination of DB that based on the National Lists

Challenges on the Promotion of Adjudicators

13. Regarding execution of DB promotion programs, challenges are listed as follows:

1) Implementation of Education Linked to Practice

In practice of DB, not only the knowledge of contract and technology, but also abundant experience in dispute resolution is indispensable. FIDIC places an importance on practice in qualification examination and training. Education program in this study also proposes to formulate lectures based on practice and relevant case studies as much as possible. In addition, it is indispensable to actually experience adjudication in projects.

Therefore, it is important for candidates to actually participate in DB adopted projects as trainees and experience DB training. It is also important to secure such practical projects. In addition, it is recommended that many practitioners are invited as lecturers for training as well as seminars and workshops.

2) Cooperation with FIDIC and DRBF

Present DB promotion and dissemination programs are linked to FIDIC's promotion of National List.. As the DRBF is also studying qualification & registration and listing, it may conflict with

those of FIDIC. It is a great concern to eliminate double qualifications/ standards, so as to maintain mutual collaborative relationships.

3) Financial Issues

Funding from lenders like JBIC and other public and private development banks is indispensable for the activities of newly proposed training organization. It is necessary to estimate initial and operating costs for the training organization from the planning stage and to request JBIC and other development financing institutions for sounding the possibility of financing. It is important to resolve financing issue as it is the basis of this project.

4) Enhancement of Awareness of Stakeholders including Clients

In developing countries, it is considered that awareness of bilateral contracts and the firm implementation of the contracts is uncertain as compared with those in developed countries. It is feared that even if DB clauses are integrated in contract documents, owners may twist DB terms in their favors, which lead to the consequences that DB may not function effectively. There are cases as observed in India that the DB system conflicts with domestic law and culture. In order to function positive and effective use of DB, not only owners but also all the persons working for projects such as contractors and consultants need to strengthen awareness. With regard to remediate the constraints between institutional frame works of DB, law and culture, they have to be compromised each other.

Therefore, as mentioned in the action plan, it is important not only to promote and continue education of DB, but also to hold introductory seminars for all the stakeholders. In addition, it is necessary to examine by legal experts how DB functions with reference to laws in each country.

Chapter 1 Outline of the Study

1.1 Background of the Study

Japan Bank for International Cooperation (JBIC) issued the “Sample Bidding Documents for Civil Works under JBIC ODA Loans (hereinafter referred as “the Sample Bidding Documents”)” in 1999, which are based on the “Conditions of Contract for Works of Civil Engineering and Construction (hereinafter referred as “the Red Book”)” issued by the International Federation of Consulting Engineers (FIDIC) in 1987 (updated in 1988 and 1992). And the Sample Documents are widely used for the contracts of civil works under JBIC ODA Loan. On the other hand, FIDIC has revised the Red Book in 1999 then in 2005 in cooperation with World Bank (WB) and other Multilateral Development Banks such as Asian Development Bank (ADB). The 2005 version is called as the “MDB Harmonized Edition” and widely used for the projects financed by those banks. JBIC is planning to revise its Sample Bidding Documents reflecting the Red Book MDB Harmonized Edition, taking the opportunity of consolidation with Japan International Cooperation Agency (JICA) in 2008.

The notable difference between the Red Book 1987 (which is currently used in the JBIC Sample Bidding Documents) and 2005 (MDB Harmonized Edition) is newly introduced DAB clause under which DAB is mandatory for the settlement of contractual dispute while it is an option in 1987 version. However, DAB is considered to be expensive especially on travel expenses, because most of the adjudicators are living in countries being far from the countries where JBIC ODA loan is applied. After the revision of the Sample Bidding Documents, the projects employing DAB are expected to be popularized hence it is essential to increase adjudicators in the Asian region where most JBIC ODA loan projects are conducted for smooth implementation of those projects.

At the same time, stakeholders of the projects such as implementation agencies, counterparts, contractors and consultants are required to be familiar with DAB.

Based on such situations, JBIC decided to conduct this study.

1.2 Terms of Reference

The Terms of Reference (TOR) of this study contains the following four activities..

- (1) TOR 1 : Holding the seminars in and out of Japan including preparation of the seminar materials
 - Inviting implementing agencies of the ODA Loan projects, Contractors and Consultants, holding multilateral discussions on the actual condition and effect of DAB in and out of Japan, seeking for understanding from the people concerned.
 - Preparing seminar materials which can be used by JBIC and its overseas offices for the

explanations to the implementing agencies of the JBIC financed projects.

(2) TOR 2 : Study of the promotion scheme of DAB adjudicators in Asian region

- Investigating the detailed procedures of adjudicator assessment and approval by FIDIC and identifying essential requirements for adjudicators.
- Based on the above investigation, examining effective strategies for fostering DAB in the Asian region with JBIC's support which will outline the action plan for implementation. Such examination should be made in consideration of discussions with the organizations concerned with DAB in the Asian countries, and such options whether to develop adjudicators under the current FIDIC approval system, or to establish another approval system should be studied.
- Reporting the action plan in the ASPAC General Assembly Meeting which will be held as a part of FIDIC Annual Conference in September 2008, and seeking for understanding and cooperation from people concerned on the implementation of the action plan.

(3) TOR 3 : Providing advices and recommendations for JBIC ODA loan projects

- During the study period, when JBIC examines the establishment of DAB for dispute prevention and security reinforcement for ODA Loan projects, the Study Team should give advices to JBIC including presentation of recommend list of adjudicators.

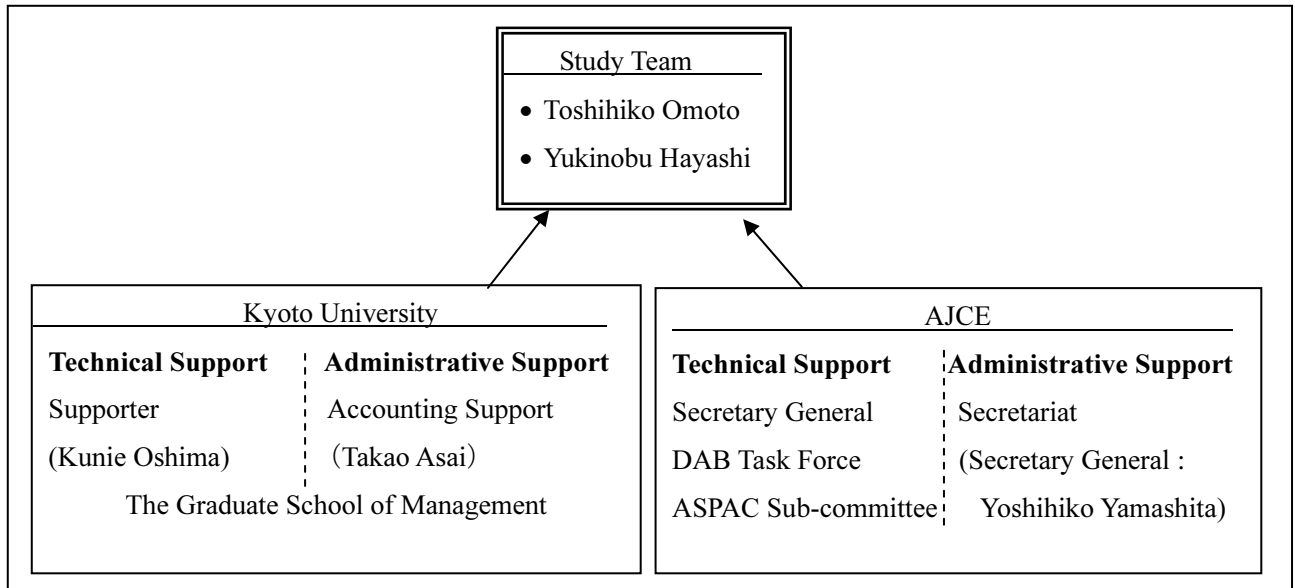
(4) TOR 4 : Preparation of the study report

1.3 Study Team

The study has been carried out by the joint venture between Kyoto University and the Association of Japanese Consulting Engineer (AJCE), and the following persons conducted the study.

Work	Name	Belonging
Team leader/Expert on international contract	Toshihiko Omoto	Kyoto University
Expert on project management	Yukinobu Hayashi	AJCE
Support	Kunie Oshima	Kyoto University

The Kyoto University and AJCE provided necessary support to the study team as below;



1.4 Time Schedule of the Study

The study has been made in Japan, United Kingdom, South Africa, India, Philippines and Canada from April, 2008 to October, 2008. The major events during the study are as follows:

- | | |
|--|--------------------------------------|
| 1) Contract Agreement | : 03 April, 2008 |
| 2) Inception Report Submission | : 24 April, 2008 |
| 3) Overseas Investigation (UK) | : 28 April to 1 May, 2008 |
| 4) DRBF Conference 2008 (South Africa) | : 02 May to 04 May, 2008 |
| 5) DRBF Training Workshop (South Africa) | : 05 May to 06 May, 2008 |
| 6) DAB Seminar (Kyoto) | : 11 July, 2008 |
| 7) DAB Seminar (Tokyo) | : 18 July, 2008 |
| 8) DAB Seminar (Delhi) | : 22 August, 2008 |
| 9) DAB Seminar (Manila) | : 28 August, 2008 |
| 10) FIDIC Annual Conference 2008 | : 08 September to 10 September, 2008 |
| 11) Draft Final Report Submission | : 30 September, 2008 |
| 12) Final Report Submission | : 31 October, 2008 |

Chapter 2 Fact-Finding Survey on DB

2.1 King's College, London

2.1.1 Summary

On Apr 28th 2008 (17 : 00~18 : 30) , Ms. Luise Barrington, Director of the Centre of Construction Law and Dispute Resolution in King's College conducted hearing and exchanged opinion with Mr. Robert Knutson, lawyer of construction disputes, and exchanged their opinions on dispute resolution.

2.1.2 Contents of the Opinion Exchange

- 1) Though FIDIC Silver Book is available for Turnkey Contracts, there are also opinions that sharing of responsibility between contracting parties is not appropriate. The ICC Model Turnkey Contract for Major Projects in which Mr. Knutson participated in its editing, is characterized; to be fair on both sides of the contracting parties; the scope of the work is clear; and the risk allotment is perfect.
- 2) King's College may be able to cooperate in the adjudicator promotion project in the Asian region. Since a course named "Construction Law and Arbitration" has already been held under the cooperation between Singapore National University and King's College, it is possible to conclude an agreement for a joint research between King's College and Kyoto University.

2.2 The Institution of Civil Engineers (ICE)

2.2.1 Outline

On Apr 29th 2008 (10 : 00~12 : 30) , Study team held an interview at the London office of ICE with Mr. John Hawkins, the Manager of the Management Procurement and Law, and listened approach of dispute resolution of ICE.

2.2.2 Contents of the Hearing

- 1) In Britain, ICE's contract document, which is the base of the FIDIC's contract document, has been used for many years, but since the latter half of the 90's, New Engineering Contract(NEC) document has become widely used and it is predominant at present.
- 2) From the 80's to the 90's, the construction industry came into a recession and situations such as nonpayment and payment delay occurred. At that time, according to the Latham Report, it was provided by law that disputes on the contract should be resolved through Statutory Adjudication. Under this situation, the NEC which specifies improved payment condition in its general condition as well as adjudication was drafted. National government recommended its use after which it was adopted by local governments.
- 3) Under the NEC clauses, the "Engineer's Decision" in the ICE clauses (FIDIC 4th version) was deleted and the disputes are resolved through Statutory Adjudication. As for the implementation

management of the contract, “Project Manager” is set up as the agent of Owners. As a result, subject of project administration was changed from contract management to project management. Its English expression is plain so as not to bring misunderstanding.

- 4) Before the Law of Statutory Adjudication was made, ICE participated in over 50 cases of arbitrations every year. At present, this number has decreased to 2~3 cases.
- 5) Twenty eight persons are listed as DB Adjudicators. Till now, there were only two cases that did not nominate DB Adjudicators. As Statutory Adjudication has been successfully implemented, it is difficult to balance with juridical Adjudication.
- 6) As for international deployment, ICE is planning to make National Lists through its Country Representatives.

2.3 Association of Consultancy and Engineering (ACE)

2.3.1 Summary

On Apr 29th 2008 (13 : 00~14:45), Study team held an interview in the London office of ACE (Association of Consultancy and Engineering) with Ms. Nora Fung (Legal Director) on the approach of dispute resolution of ACE.

2.3.2 Contents of the Hearing

- 1) Based on demands form construction industry, ACE is now preparing for the establishment of own Dispute Resolution Panel. The panel will be established into three types: adjudication, mediation and arbitration. In addition, expert witnesses will be registered and certified separately.
- 2) The ACE will first make the list of Statutory Adjudicator to comply with construction law which was enacted in Britain in 1996. It is expected that potential candidates for the registration exist in about 300 member firms of ACE.
- 3) Due to the above-mentioned reason, ACE is now making a Dispute Resolution Program in which items that related to Adjudication are as follows:
 - ACE Adjudication Panel – criteria for admission
 - Application Procedure for ACE’s Panel of Adjudicators
 - Criteria for acceptance on ACE’s Adjudicator training programme
 - Procedure to be followed when ACE is asked to act as an ANB
 - ACE Adjudication Rules
 - Fees to ACE
- 4) Application is limited to the member firms of ACE, and the procedure of application is largely divided into two phases. The first phase is the participation to the Adjudication Assessment Workshop, In the second phase; the applicants should submit an application of 6 pages at most.

They will be registered after passing the interview performed by the Dispute Resolution Group.

- 5) As ACE doesn't offer Adjudicators Assessment Course, it is outsourced to external organizations such as the Ladymead Projects and the Center for Effective Dispute Resolution.
- 6) The final version of the adjudicator's assessment criteria is expected to complete in June, 2008. So as the completion of final version of the mediator's assessment criteria in August, 2008. As for the Assessment Panel, it is planned to be held once a year.
- 7) Regarding the realization of FIDIC's DB Adjudicator National List, it is preferable to proceed with the cooperation and partnership with other Member Associations of FIDIC such as AJCE etc, if necessary. When there is a nomination request of DB Adjudicators to ACE, appropriate members will be chosen from the Arbitrators, Mediators and Adjudicators who are registered in the Dispute Resolution Panel.

2.4 Corbett Law Office

2.4.1 Summary

On Apr 29th 2008 (17 : 00~18:30), Study team held an interview with Mr. Edward Corbett (Solicitor, International Construction Lawyer) in the Corbett Lawyer's Office (Corbett & CO) which is specialized in construction disputes. Opinions were exchanged on the problems in dispute resolution. Mr. Corbett is the author of "FIDIC Legal Guide" which is the reference used for drafting FIDIC Red Book, 1987 version.

2.4.2 Contents of the Opinion exchange

- 1) As for making Adjudicator National List, screening criteria of Adjudicator National List should be equivalent to that of FIDIC President's List.
- 2) In the process of drafting education and training programs, it would be preferable to consider a case like "If a Japanese consultant who is experienced in contract management wants to become a DB member, what kind of additional education and training are necessary?"
- 3) Though the decisions of DAB have binding power, there are cases that renegotiations have to be carried out, e.g., nonpayment occurs due to employer's own reason. Both parties go into negotiation based on DAB's decision or recommendation after which both parties reach agreeable compromise.. If both parties go into arbitrations after DAB's resolution, there may be cases that opposite decision would be made at Summary Judgments. Then, government (employer) will get back paid money from the contractor. This kind of difficult problem may be a reason why the Owners are unwilling to adopt DAB.

2.5 DRBF International Conference

2.5.1 Summary

From May 2nd to 3rd, 2008, Study team participated in the 8th International Conference of DRBF (Dispute Resolution Board Foundation) which was held in Cape Town, South Africa and confirmed the present and future directions of DB in the world. National Representatives of DRBF from 16 countries attended the conference and the total number of the participant was about 140.

2.5.2 Contents of the Conference

The DRBF conference proceeded in accordance with the program shown in Appendix 1.1 and the topics discussed in the conference are as below;

(Day 1)

Following to the opening address by Mr. Gwyn Owen, President of DRBF, a key note speech was given by Mr. Mansoor Parker of the South African organizing committee for the 2010 FIFA World Cup.

There presentations were made in relation to the operation of DB as below;

- 1) DB in a port construction project in Madagascar (Mr. Chris Beaumont/Rio Tinto)
- 2) ADR and DB for International Chamber of Commerce (Ms Melanie Meilhac/ICC)
- 3) Use of DB in Africa (Mr. Ahmed Mohamed Benbarka/AfDB, Dr. Gaston Kenfack Douajni/APAA)

(Day 2)

Two presentations were made in relation to the operation of DB in African countries.

- 1) Practical experience in Francophone Africa (Mr. David Brown, Mr. Jean-Francois Boucly, Mr. Mark Frilet)
- 2) Practical experience in Anglophone Africa (Mr. David Keyser, Dr. Muthadir Ali, Mr. Paul Taggart)

(Day 3)

Dividing the attendees into four groups, the following topics were discussed. The session chair moved between groups so that everyone had the opportunity to participate in all of the group discussion.

- 1) Constituting a DB under MDB/FIDIC (Chaired by Mr. Cyril Chern)
- 2) Organizing Periodic Site Visits (Chaired by Mr. Romano Allione)
- 3) Referrals and Advisory Role of DB (Chaired by Mr. Mark Hachett)
- 4) The Costs of Dispute Boards (Chaired by Nicholas Gould)

2.6 DRBF Training Workshop

2.6.1 Summary

After the DRBF International Conference, Study team participated in the 2-day (from May 4th to 5th, 2008) Training Workshop on “Successful Use of Dispute Boards under FIDIC MDB Harmonized Conditions of Contract”, and confirmed the actual practice of education and training for the promotion of DB . This workshop was collaboratively held by DRBF and FIDIC and about 50 persons from 19 countries participated. Professor Omoto served as the Workshop Convener.

2.6.2 Contents of the Workshop

1) First day

General explanation of the workshop was explained by Professor Omoto. (refer to the Appendix-1-2) Then, essential feature of the Article 20 “Claim, Dispute and Arbitration” of FIDIC MDB Harmonized Edition was presented by Mr. Gordon L. Jaynes.

In this seminar, 5 areas having a close ties to construction disputes were specified as follows. The tutors having abundant experience in solving construction dispute presented causes of disputes in the specified areas.

	area of dispute	tutor
1	Management of construction works, Insurance, Financing, Possession of Site and Taking Over	Mr. Robert J Smith, Mr. Akerman Senterfitt Wickwire Gavin FIDIC adjudicators
2	Design, Climatic and Ground Conditions	Mr. James J Brady, B-U Corporation President-elect of DRBF
3	Instructions, Pricing and Variations	Mr. Andy Griffis, Goba (Pty) Ltd. Representative of DRBF, South African
4	Escalation and Price Variation	Mr. Murray Armes, Probyn Miers Limited Representative of DRBF, United Kingdom
5	Delay Analysis and Extension of Time	Ms Marianne C Ramey, Project Advisors International Director, DRBF

In discussion, participants were divided into 5 groups in which a tutor participated in each group. Based on the above 5 subjects, participants studied through role plays and discussed & learned how to solve disputes as an adjudicator. In the first day, training about 2 of the above issues were carried out. Each session took 1 hour and 45 minutes.

2) Second day

In the second day, the training about the rest of 3 issues was exercised. After the training, each tutor made general comments on each session. At the end of training, participants were given diplomas.

It was confirmed that methods of training used for this workshop are effective for participants to keep their motivation, and can be a good sample for the further training program.

2.7 Meeting with DRBF Asian Group

2.7.1 Summary

Meeting with Asian group was held at 14:00~15:30, May 3rd, 2008 during the DRBF conference, participants from Asia and Oceania exchanged ideas of the promotion of DB. The participants of the meeting are as follows:

Philippine	: Mr. Salvador P. Castro Jr. (SPCastro and Associates, Inc)
Singapore	: Mr. Chris Redfearn (Commercial Solutions International)
Australia	: Mr. Graeme M. Peck (G.M. Peck & Associate PTY. Ltd. And Chairman of DRBA) Mr. Graham Easton (G R Easton PTY. Ltd.)
Japan	: Dr. Toshihiko Omoto (Professor, Kyoto University) Mr. Yukinobu Hayashi (Vice Chairman, Professional Development Committee, AJCE)

2.7.2 Exchange of ideas

- 1) As a foreign body of DRBF, there exists Dispute Resolution Board of Australasia Inc (DRBA) which targets on Australia and New Zealand. It now has 62 members, and 35 of them are members of DRBF. Seminar was held on March 1st, 2008 for the purpose of the promotion of DB members. It is not easy to promote DB member.(According to the information on the website, there are 13 cases of application projects of DB in Australia and New Zealand.)
- 2) There were only two cases of DB application in Philippine, and one of them was canceled. How to promote DB members in Philippine is a pressing issue.
- 3) DB is not well known in Singapore, therefore, promotion of DB members is a challenging issue..

- 4) The seminar on FIDIC Contract Document was held on August 26th~27th, 2008 under the auspices of CECOPHIL and DRBF-Manila. JBIC DAB Seminar in Manila was held in support of DRBF-Manila, Mr. Castro in particular by utilizing this FIDIC seminar on Contract Document.

Chapter 3 DB Seminars

3.1 The Purpose and Targets of the Seminars

Aiming at the followings, seminars were held in Japan (Kyoto and Tokyo) and foreign countries (Delhi, Manila, and Quebec).

- Explanation on the actual condition that dispute resolutions performed by DB are increasing.
- Promoting the understanding of the basic knowledge and system of DB.
- Explaining actual application examples of DB and promoting the understanding of DB's effect.
- Explanation about the framework of the promotion plan of adjudicators.
- Listening opinions on DB operation from participants that will be used as references for drafting promotion plan.

The seminars were planned for employees of development assistance bodies, owners of the ODA Loan projects, contractors, plant engineering companies, consultants, contractors associations, trading firms, academics and lawyers, and the seminar program was developed for these targets.

3.2 Kyoto Seminar

3.2.1 Outlines

Promotion Seminar was held in Kyoto University on July 11th 2008 (14 : 00~17 : 00) . Materials distributed for the Seminar are shown in Appendix -2

3.2.2 Participants

Nine persons attended, who were contractors (2 persons), plant engineering companis (2 persons), consultant (1 person), academics (4 persons).

3.2.3 Program

The program was two-folds. In the first part, JBIC presented Procurement Guidelines which is under revision and Standard Bidding Documents (Civil Engineering) that introduces DB. In the second part, basic and practical knowledge of DB were explained by the Study Team. Following the presentation, panel discussion and Q&A were conducted.

【The First Part】

- 1 . Revision of JBIC Guidelines and Standard Bidding Document (Mr. Taisuke Miyao, Director, JBIC)

【The Second Part】

- 2 . Promotion Plan of DAB/ Adjudicators in Asian Region (Mr. Taisuke Miyao, Director,

JBIC)

3. Detail explanation of DAB in FIDIC Conditions of Contract (Mr. Yukinobu Hayashi, Vice Chairman, Professional Development Committee (PDC), AJCE)
4. Practice of DAB (Prof. Dr. Toshihiko Omoto, Kyoto University ·)
5. Panel Discussion

3.2.4 Contents of the Lecture

- 1) Detail Explanation of DAB in FIDIC Conditions of Contract (Mr. Yukinobu Hayashi, Vice Chairman of PDC, AJCE)

In order to deepen understanding about the basic knowledge of DB, the following subjects were explained.

- Relationship between ADR (Alternative Dispute Resolution) and DB (Dispute Board)
- Type of DB
- Difference between full-term DB and ad hoc DB
- DAB in FIDIC Conditions of Contract
- Background of the introduction of DB in FIDIC Conditions of Contract
- Present condition of the introduction of DB in the Standard Bidding Document
- General process of claims and dispute resolution in FIDIC Conditions of Contract
- Explanation on DB related clauses in FIDIC Red Book, 1999 version
- Major differences between FIDIC Red Book, 1999 version and MDB Harmonized Edition

- 2) Practice of DAB (Prof. Toshihiko Omoto, Kyoto University)

In order to deepen participants' understanding about the practical use and effects of DB, the following subjects were explained.

- Some statistics of DB reported by DRBF
- Difference between DB and other methods of dispute resolution
- Criteria for DB qualification
- Selection of DB members and establishment of DB
- Sample DB agreement
- Purpose of site visits and cases of implementation
- Preventive function of disputes by DB
- Costs and cost-benefit
- Present condition of registration in FIDIC President's List of Approved Dispute Adjudicators
- Methods of education, training and certification of adjudicators
- Action plan for promotion of adjudicators in Asian Region
- Cases of DB, e.g. China Madagascar, Japan

3.2.5 Panel Discussion

After the presentations, panel discussions were conducted among the following participants:

- (1) Mr. Taisuke Miyao, Director, JBIC
- (2) Dr. Toshihiko Omoto, Professor, Kyoto University (Moderator)
- (3) Mr. Yukinobu Hayashi, AJCE
- (4) Mr. Satoru Tsutae, General Manager, Civil Engineering Department, International Operations, Taisei Corporation

Study Team conducted following comments and explanations during panel discussion and Q&A.

- 1) A full-term DB was adopted in the “Straits Crossing Railroad Project” in Turkey in stead of ad-hoc DB which is originally stipulated in FIDIC Silver Book which is the conditions of contract for the project.
- 2) Though DB needs to be formed within 28 days after the contract date, it is often difficult to set up DB within such a period. As a result, in many cases projects start without DB. So it is necessary to prepare establishment of DB prior to contract agreement
- 3) According to DRBF’s survey, 98% of the projects that adopted DB did not escalate the disputes into arbitration. It indicates effectiveness of DB as preventive measures against disputes.
- 4) The decisions made by DB are counted in the arbitrations and litigations. Therefore, the decision by DB often becomes the final.
- 5) DB can point out the problems that may develop into disputes. All parties related to the project clearly consider and share the problems which lead to solutions at early stage.

In addition, following comments and opinions on DB implementation were provided from the panel and the floors.

- 1) Case of dispute in a road project in Slovakia was introduced. Though the construction itself was such a success, received a prize, dispute arose because of payment problems. Contractor learnt the lesson and finds it necessary to, (1) select proper contract schemes such as cost-plus-fee to avoid disputes, (2) adopt DB to prevent disputes from escalating into arbitrations. In comparison with Japanese contractors, those of foreign firms gain higher profit rate. This difference may be attributable to the fact that Japanese firms cannot deal with claims adequately in international projects.
- 2) Effectiveness of DB has not yet acknowledged in our firm. It maybe because we are not sure whether we can find appropriate adjudicators who can make fair decisions.
- 3) If it can be guaranteed that appropriate adjudicators can be selected, the Contractors may be willing to adopt DB in projects.

3.3 Tokyo Seminar

3.3.1 Outlines

The seminar was held on July 18th 2008 (14 : 00~17 : 00) at the headquarters of Japan Bank for International Cooperation. Materials used for this Seminar are shown in Appendix -3. (As the contents of the presentation materials are similar to those of Kyoto Seminar, only the details of the seminar was attached.)

3.3.2 Participants

Totally 123 persons attended the seminar. They are contractors (39 persons), plant engineering companies (17 persons), consultants (43 persons), contractors association (8 persons), finance (2 persons), academics (2 persons), trading firms (6 persons) and others (6 persons).

3.3.3 Program

The seminar was conducted by following the same program as the Kyoto Seminar.

3.3.4 Contents of Presentation

Contents of the seminar was same as those of Kyoto Seminar.

3.3.5 Panel Discussion

Following the presentations, panel discussions were conducted among the following participants:

- (1) Mr. Taisuke Miyao, Director, JBIC
- (2) Dr. Toshihiko Omoto, Professor, Kyoto University (Moderator)
- (3) Mr. Yukinobu Hayashi, AJCE
- (4) Mr. Shoji Ando, Operating Officer, General Manager, Overseas Branch, Daiho Corporation

In the followings are summary of dialogues between Study Team and floor in panel discussion and Q&A.

- 1) Moderator pointed out following 3 subjects as the key points throughout the seminars: (1) DAB is considered to be effective, but owners' understanding is important, (2) as the effect of DAB, dispute resolution and dispute prevention can be expected, (3) necessity of introducing DAB relates to effective solution of engineer's dilemma (having dual-role as an Employer's agent and as an impartial certifier), and contributes to smooth execution of projects.

- 2) There are various means of dispute resolution, above all ,ability and quality of neutrals are important. Preventive function of DAB against dispute is expected. therefore, practicing this function and acquiring achievements are demanded.
- 3) Engineer's duty to perform fair determinations for claims do not change.
- 4) The cases of adopting the Silver Book are increasing, but many of those who promote DAB insist that use of ad-hoc DB described in FIDIC Yellow Book and Silver Book is not preferable. In the Kyoto Seminar held last week, a wonderful project was reported, in which the contract was based on the Silver Book, however, contracting parties introduced full-time DB in stead of ad-hoc DB by mutual agreement which resulted in smooth project implementation.

In addition, following comments and opinions were raised from the panel and the floor on the operation of DB:

- 1) Adoption of DAB on the Madagascar harbor project was reported. World Bank and local funds financed this project in which full-term DAB was adopted from the beginning and resulted in great success. In the third site visit, the DB panel decided not to carry out the fourth site visit unless some problems arise. The Retainer period was not changed but the parties and DB also agreed to cut down half of the Retainer Fee. The reason for this success is attributable to the fact that three related parties were in accordance with the objectives, "For the Project".
- 2) (There was a question whether the contracting parties had difficulty in selecting appropriate DAB members on the above-mentioned project) To comply with this demand, DAB members were chosen from FIDIC's President List. Professor Omoto was chosen by the Japanese Contractor. This was a project in which the Employer's understanding and discerning were high. On the other hand, importance of reliable list was confirmed.
- 3) There was a contract based on the FIDIC Yellow Book, in which one person is selected for ad-hoc DAB. However, the nominee of DAB was specified to be the chairman of the arbitration association in the subject country. As the result, disputes escalated into arbitration. So it is important to prevent one-sided contracts from the beginning of projects.
- 4) As an example ,the Retainer Fee for one person was shown about USD\$6,000/month; and the Daily Fee is about USD\$3,000/person. How to persuade local Owners is expected problem.
- 5) As for the opinion that the Engineers are unnecessary because of DB, by no means will this happen. It is the Engineer that supervise the construction operation everyday. It is reasonable to consider that DB won't be able to work efficiently if the Engineers can not perform their duties functionally. Engineers' importance will increase by adopting DAB.

3.4 Delhi Seminar

3.4.1 Outlines

The Seminar was held on Aug 22nd 2008 (16:00~18:00) in the India Habitat Center of New Delhi. Materials of this Seminar are shown in Appendix -4. This seminar was held in support of Mr. K.K.Kapila, the chairman of Consulting Engineers Association of India (CEAI: FIDIC's member association of India). In this seminar, a presentation on the present condition of dispute resolution in construction contracts in India was made by Mr. G. Sharan, Director of the Ministry of Shipping and Road Transportation.

3.4.2 Participants

Totally 16 persons attended the seminar. They are organization of owner (1 person), private sectors (2 persons), experts on dispute resolution (6 persons), Japan Bank for International Cooperation (5 persons) and others (2 persons).

3.4.3 Programs

The seminar was composed of the following programs:

1. Opening Address (Mr. K.K.Kapila, Chairman, CEAI)
2. Opening Address (Mr. Hidetoshi Irigaki, Representative of JBIC Delhi Office)
3. JBIC's New Sample Documents and DAB in FIDIC 1999 and MDB Harmonized Conditions for Construction (Mr. Yukinobu Hayashi, Vice Chairman, Professional Development Committee (PDC), AJCE)
4. Practice of Dispute Boards (Dr. Toshihiko Omoto, Professor, Kyoto University)
5. Practice for Dispute Resolution in India (Mr. G. Sharan, Director General, Road Development & Special Secretary, Ministry of Shipping and Road Transport)

3.4.4 Contents of Presentation (Study Team)

- 1) JBIC's New Sample Documents and DAB in FIDIC 1999 and MDB Harmonized Conditions for Construction (Mr. Yukinobu Hayashi, Vice Chairman of PDC, AJCE)

In order to deepen the understanding of the participants about the bidding documents published by JBIC and the basic knowledge of DB, followings were explained.

- Bidding Documents Published by JBIC
- Relationship between ADR (Alternative Dispute Resolution) and DB (Dispute Board)
- Types of DB

- Difference Between Full-term DB and Ad-hoc DB
- DAB in FIDIC Conditions of Contract
- General process of claims and dispute resolution in FIDIC Conditions of Contract
- Explanation on DB related clauses in the FIDIC Red Book, 1999 version
- Major difference between FIDIC Red Book, 1999 version and MDB Harmonized Edition

2) Practice of Dispute Board (Dr. Toshihiko Omoto, Professor, Kyoto University)

In order to deepen participants' understanding about the practical use and effect of DB, followings were explained.

- Actual application of DB based on study conducted by DRBF
- Difference between DB and other methods of dispute resolution
- Criteria for DB qualification
- Selection of DB members and establishment of DB
- Sample of DB agreement
- Purpose of site visit and cases of implementation
- Prevention function of dispute
- Costs and cost-benefit
- Present condition of registration in FIDIC President's List of Approved Dispute Adjudicators
- Methods of education, training and certification of adjudicators
- Action plan for promotion of adjudicators in Asian Region
- Case study (China, Madagascar, Japan)

3.4.5 The Present Condition of Dispute Resolution in India

Following knowledge was gained about the present condition of dispute resolution in India through this seminar:

- 1) In CEAI, training seminars for the management of FIDIC contracts are held actively. Supported by FIDIC, seminars are performed about 4 times a year in Delhi and Mumbai. The establishment of a FIDIC Training Center is also being planned in the future.
- 2) As a method of dispute resolution, adjudication is not yet popular in India. Therefore, there is no adjudicator list at present.
- 3) The common process of dispute resolution in India is to pass through the Dispute Review Board, Arbitration and the Court. Arbitrations are conducted in accordance with the Arbitration and Conciliation Act 1996.
- 4) From the facts that the recommendations given by the Dispute Review Board are not enforceable,

and the awards or arbitration are not respected as a trend, it becomes a challenging problem that a dispute resolution tends to be prolonged.

- 5) However, CEAI agrees with promotion of adjudicators for international DAB and it would like to provide necessary support for that.

3.5 Manila Seminar

3.5.1 Outlines

This seminar was held on Aug 28th 2008, in The Linden Suites of Manila. Materials of this Seminar are shown in Appendix -5.

This seminar was held under the support by Mr. Salvador P. Castro, the Philippine representative of DRBF. He has also served as the chairman of CECOPHIL (Council of Engineering Consultants of the Philippines, FIDIC's member association of Philippine) in the past, and now he is serving as the executive committee member of ASPAC (FIDIC's regional group for Asia and Pacific member associations). By his acquaintances, this seminar was able to get the support from the following associations:

- DRBF's (Dispute Resolution Board Foundation) Member Association of Manila
- CECOPHIL (Council of Engineering Consultants of the Philippines)
- PCA (Philippine Construction Association)
- PDRCI (Philippine Dispute Resolution Center, Inc)
- PICAM (Philippine Institute of Construction Arbitrators and Mediators, Inc.)
- POCB (Philippine Overseas Construction Board)

Mr. Gordon L. Jaynes, an international construction lawyer, a grand person in the field of construction contract management has also participated in this seminar as a presenter of the Study Team. He presented "Becoming a Dispute Board Member". Mr. Jaynes is now serving as a member of the APA (Assessment Panel for Arbitrators, the adjudicator examination committee of FIDIC).

In addition, as for the present condition of dispute resolution of construction contracts in the Philippine, a presentation was given by Mr. Victor P. Lazatin, the former chairman of PICAM.

3.5.2 Participants

Totally 111 persons attended the seminar. They are organizations of the owners (7 persons), international financial institutions (12 persons), IRR-B (Implementing Rules and Regulations of Republic Act No. 9184) , Work Committee (7 persons), contractors (18 persons), consultants (27 persons), foreign guests (5 persons), Judge (1 person), academics (2 persons), Professional Association (10 persons), law firms (8 persons) and experts of dispute resolution (14 persons).

3.5.3 Programs

The seminar was composed of the following programs:

1. Invocation (Mr. Sonia T. Valdeavilla, POCB)
2. Welcome Address (Mr. Dean Custodio O. Pariade, PDRCI)
3. Opening Remarks (Mr. Hiroshi Togo, Representative of JBIC in Manila)
4. Introduction of Resource Speaker (Mr. Salvador P. Castro, DRBF)
5. JBIC's New Sample Bidding Documents and DAB in FIDIC 1999 and MDB Harmonized Conditions for Construction (Mr. Yukinobu Hayashi, Vice Chairman of PDC, AJCE)
6. Practice of Dispute Boards (Dr. Toshihiko Omoto, Professor, Kyoto University)
7. ADR Practice in the Philippines and Use of DAB/DRB/DB in Philippine Construction Projects (Mr. Victor P. Lazatin, PDRCI)
8. Becoming a Dispute Board Member (Mr. Gordon L. Jaynes, FIDIC)

3.5.4 Contents of Presentation (Study Team)

- 1) JBIC's New Sample Documents and DAB in FIDIC 1999 and MDB Harmonized Conditions for Construction (Mr. Yukinobu Hayashi, Vice Chairman of PDC, AJCE)

The same presentation as conducted in the Delhi Seminar.

- 2) Practice of Dispute Boards (Dr. Toshihiko Omoto, Professor of Kyoto University)

The same presentation as conducted in the Delhi Seminar.

- 3) Becoming a Dispute Board Member (Mr. Gordon L. Jaynes, FIDIC)

Explanation on the criteria of DB member was presented.

- Outlines of FIDIC's Conditions of Contract, 1999 version.
- Basic requirements for a DB adjudicator.
- Process for the registration of the FIDIC President's List
- Contents of the FIDIC Adjudicator Assessment Workshop
- Criteria for the registration of the Adjudicator National List
- About the Training Program (Module 1~4)

3.5.5 Q&A

Following to the presentation mentioned above, "Q and A" session was provided between the forum

attendees and presentation speakers.

Q1 : Is decision given by DB enforceable?

A1 : Since such legal framework like “Convention on the Recognition and Enforcement of Foreign Arbitral Awards (so called New York Convention)” is not available for the decision given by Dispute Board, there remain possibilities that the party does not comply with DB’s decisions. However, DB’s decisions tend to be more respected in many countries based on the fact that parties have agreed to be bound by the DB’s decisions under their contract.

Q2 : Does accomplishment of Modules under FIDIC contract seminars exempt the applicants for adjudicator of FIDIC President’s List from some part of examination under FIDIC Adjudicators Assessment Workshop (AAW)?

A2 : The examination under AAW is a must to be approved as an adjudicator of FIDIC President’s List.

Q3 : What will happen, if DB could not be established within the time stipulated in the contract?

A3 : Non compliance in the single contract clause does not give significant effect to the whole contract, however, every effort should be exercised by the parties to establish DB as early as possible. One proposal for avoidance of such situation is to stipulate in the loan agreement that lenders including MDBs and JBIC will not disburse the money for the first payment (advance payment) unless and until DB is established.

Q4 : Is DB clause adopted in the standard consultancy agreement ?

A4 : For example, FIDIC consultancy agreement (White Book) does not use DB for dispute settlement between client and consultant. The first attempt to solve the dispute should be made by amicable settlement. If not to be reached to the agreement, then the dispute will be settled in arbitration.

Q5 : How the employer can obtain cost for DB?

A5 : DB costs are financeable by MDBs and JBIC loan

Besides, various discussions such as reduction measure of DB costs and how to assure impartiality of DB were made.

3.5.6 Present Condition of Dispute Resolution in Philippine

Following knowledge was gained about the present condition of dispute resolution in the Philippines through this seminar.

- 1) As for the ADR (Alternative Dispute Resolution) in the Philippines, there are Mediation, Early Neutral Evaluation, Mini-Trial, Med/Arb and Arbitration according to the ordinances.

- 2) However, DB concept has not been widely accepted in the Philippines and the government does not adopt DB clause proactively at present.

3.6 Quebec Seminar

3.6.1 Outlines

This special seminar was held in the general assembly meeting of ASPAC (FIDIC's regional group for Asia and Pacific member associations) which was held as a part of FIDIC 2008 annual conference on September 9th, 2008 (8:00~14:00). In the ASPAC general assembly meeting, the outline of this study was reported in which the purpose of this presentation was to conduct effective promotions of DB adjudicators.

Through this seminar, it was confirmed that the acquisition of contract management practices in construction projects, as well as implementation of dispute resolution including the Dispute Board are becoming big subjects for the Member Associations. There were requests for holding DB seminars from many countries.

3.6.2 Participants

Ten countries (Japan, South Korea, China, India, Pakistan, Australia, New Zealand, Bangladesh, Indonesia and Sri Lanka) of ASPAC's signatories (19 countries in total) have participated in this seminar.

3.6.3 Contents of Presentation

According to the Appendix-6, Professor Omoto presented the purpose and progress of this study and action plan for promotion of adjudicators.

3.6.4 Q&A

Following Q&A was exchanged between the presenter and floor after the seminar.

Q1 : Will the seminars be held continuously in the future?

A1 : Seminars were held in Delhi and Manila in August. Though it is not yet settled, future seminars in Hanoi, Bangkok and Jakarta are being examined.

C1 : Please realize the seminar in Indonesia by all means.

C2 : Please also carry out a seminar in Pakistan.

C3 : Also in Bangladesh, please.

Q2 : Is it possible to obtain the materials of this seminar?

A2 : This study is implemented under the commission of JBIC, so it is necessary to consult with

JBIC regarding supply of the materials.

Q3 : Are the contents of seminars brief or technically exclusive?

A3 : The seminar held this time is not programmed for promoting adjudicators. The purpose of seminars is to disseminate concept of Dispute Board. As for the trainings, they will be carried out separately according to candidate's level of knowledge and experience.

(Q : Question, A : Answer, C : Comment)

3.7 Meeting with FIDIC Executives

3.7.1 Outlines

Exchange of opinions with FIDIC's executives was held on Sep 9th (7:30~8:40) for promoting DB adjudicators in Asian region. Meeting was aimed at 1) reporting to FIDIC the contents and progress of JBIC DAB study, 2) requesting FIDIC's cooperation for the promoting adjudicators in Asian region.

As a result, it is confirmed that establishment of newly proposed Adjudicators Training Institution (e.g., sub-institution under Graduate School of Management, Kyoto University) and AJCE's role of maintaining Japan National List were acknowledged and supported by FIDIC.

The recent activities of FIDIC in relation to the promotion of DB are reported in its publication, "The FIDIC Annual Review for 2007-2008". (refer to Appendix-6)

3.7.2 Participants

The participants of the above mentioned meeting were as follows:

FIDIC	Dr. John Boyd (President)
	Mr. Gregs Thomopulos (President elect)
	Mr. Enrico Vink (Managing Director, FIDIC Secretariat)
JBIC	Mr. Shigeo Nakagawa (Project development department, Investigator)
Kyoto Univ.	Dr. Toshihiko Omoto (Professor)
AJCE	Mr. Akihiko Hirotsu (Chairman)
	Dr. Yoshihiko Yamashita (Secretary General)
	Mr. Yukinobu Hayashi (Vice Chairman, Professional Development Committee)

3.7.3 Minutes of Meeting

- 1) Professor Omoto explained about the progress of the Study as well as Action Plan for promoting adjudicators in Asian region (Refer to Appendix-6).
- 2) Dr. Boyd mentioned that promoting adjudicators is FIDIC's global challenge. It is emphasized and confirmed that FIDIC not only expands President's List but also encourage developing National

List. In this connection, President's List could be used for big projects whereas National List is for small-scale projects. Further Assessment Workshop of President's List will be held in April, 2009.

- 3) The National List is being drawn up in Hungary, Germany, and Poland. Since FIDIC does not regulate certification of National List, securing quality of adjudicators is critical for effective and reliable operation of DAB. In this sense, assessment of adjudicator candidates to be made by the new organization proposed in the action plan is agreed by FIDIC
- 4) In Asia, FIDIC has been supporting its member associations such as China and India for training engineers on contract management and consulting practice. In China, the FTC Training Center (FIDIC-Tsinghua-CNAEC) has been established in Tsinghua University. In India, establishment of FIDIC Training Center is also being planned. The adjudicators need to be trained by a practitioner with abundant practical experience.
- 5) Regarding development of Regional List (for example, ASPAC List), FIDIC showed the concern about complication of its operation. , but it is confirmed that FIDIC will provide necessary support to AJCE for preparation and maintenance of National List of adjudicators.

3.8 The Result of the Questionnaire Survey

3.8.1 Purpose of the Survey

To understand the participants' interest and awareness of DB, how they assess themselves in satisfying the DB qualification criteria, which helps to find potential adjudicators and make the policy of adjudicators educating program, the survey was conducted in the form of a questionnaire.

The questionnaire and the summary data are shown in Annex-7.

3.8.2 Result of the Survey

51 participants out of 132 who attended either Kyoto or Tokyo seminar answered the questionnaire. The outline of the result is shown below.

1) The Reason to Attend the Seminar

The interest for the revision of JBIC Sample Bidding Documents and doing (or planning to do) the contract administration / claim and dispute settlement are the two major reason to attend the seminar. More participants who belong to plant engineering companies / manufacturers answer "Although I'm not doing any job like contract administration, claims and dispute settlement or DAB, I think these kinds of knowledge necessary for the job I'm doing now." compared with contractors and consultants, which may means even non-professional contract / claim / dispute administrators (e.g. technical experts) can communicate more and more with DB (or settle the claims and disputes) in this field.

2) Interest in DB

Fifty one (51) % of the respondents want to do or are interested in DB. Looking at their job, sole proprietors and consultants have the highest interest, which are followed by contractors and plant engineering companies / manufacturers. However, more than 40 % of those who belong to plant engineering companies / manufacturers, the lowest category, are interested in DB. To develop more adjudicators from various professional fields, more trainees with wide variety of background including manufacturers and plant engineering companies are expected to be convened.

As for the self check of the FIDIC Adjudicators Assessment Workshop (AAW), no more than 23 % of those who are interested in DB answered they think they satisfy the qualification criteria, which means both self-development and assist from outside are necessary for growing adjudicators. Two major items which they don't think to satisfy are "Successful experience in dispute resolution" and "Sufficient practice in contract administration", which means they think they are lacking more in experience. Although experience can not be acquired in classroom lecture, it can partly be provided through case study or on-the-job training. On the other hand, 23 % of those who are interested in DB answered they think they satisfy the qualification criteria. They may shortly become adjudicators with proper supporting program. It should be noted that those answers are only self-certification and it might not reflect the actual situation.

As for the financial burden, all the sole proprietors and 1 consultant answered "I want to take part in this workshop even if I will have to bear all the payment.", but no contractors and plant engineering companies / manufacturers answered so. Furthermore, the consultant who answered above is the president, which means all the employees are expecting some financial aids from the company etc.

Considering the possibility of the aids from the company, belonging to a company might conflict with the DB's policy to be neutral, and adjudicators tend to go into private practice. A probable career plan of potential adjudicators who currently belong to a company is to gain sufficient experiences, qualify as an adjudicator and set up their own practice, either quitting the job or after the retirement, but it seems to be hard for the companies to have incentive to assist this kind of career plan. Therefore, it's more practical and reasonable to ask those entities which need DB like JBIC, various industry groups and associations, rather than the private companies, to assist the trainees. Also, it can be one solution to hold the seminars and workshops in Japan or Asian region, to reduce the travel expenses of the attendees. Of course, it is recommended to set the attendance fee itself cheaper, getting the assistant from those entities, to encourage the trainees to attend more easily.

3) Free comments and the other things

There are a number of positive opinions about DB educating and promoting program which JBIC are planning. As for the program, there is one suggestion that "Make own adjudicator list of JBIC, which

shall be the first step to try FIDIC adjudicator list” other than “Holding the DB seminar”. Not only financial aspect but also from the aspect of the candidates’ feeling, founding an organization beside FIDIC to hold seminars and workshops in Asian region will make the candidates to attend more freely, which will be effective for DB education and promotion.

On the other hand, there are a number of opinions which request the public relations activities to spread DB, especially discussions including the employer organizations. The employers’ understandings as well as the contractors and the consultants are essential for wide and effective use of DB. However, more participants seemed to feel that the employers in developing countries where most ODA projects are conducted lack understandings. Therefore it is important that doing public relations activities, especially including employers’ organizations, as well as educating and promoting program. The DB seminars held in Manila and Delhi in August 2008 by the Study Team are considered as part of those public relations activities, it is expected to continuously hold the seminars like this.

3.9 Advice and Recommendations for JBIC ODA Loan Projects

Since there was no opportunity to study about establishment of DAB for the actual project financed by JBIC which task is set out in TOR , the study team did not make advice or recommendation on this matter.

Chapter 4 Promotion Plan of DB Adjudicators in Asia Region

4.1 Trends of the Organizations Concerned and the Situations in Asia

As an international organization related to DB, there exist Dispute Resolution Board Foundation (DRBF), International Federation of Consulting Engineers (FIDIC), International Chamber of Commerce (ICC) etc. They provide manuals or set up certification systems of adjudicators for the promotion of DB. In addition, some of the organizations that are providing services of arbitration, mediation and other ADR have also recognized DB as a new method of Dispute Resolution and are initiating supporting activities such as assisting in introducing DB and, making guidelines of DB etc.

4.1.1 Dispute Resolution Board Foundation (DRBF)

With its headquarters settled in Seattle USA, the DRBF is a nonprofit organization aiming at the promotion of DRB and the prevention/ resolution of disputes, and has over 600 registered members from 31 countries. On its homepage, “DRBF Practices and Procedures Manual” is shown, which is followed with the concept of DRB, an introduction manual and a name list of registered members. Various seminars and training workshops are also being held.

Several courses are provided in the Training Workshop, such as the course to acquire the basic knowledge for DB users, the course to acquire necessary knowledge and techniques for becoming DB members, the course for becoming DB chairpersons and also the course for running a one-person DRB. DB is widely used in U.S.A. in civil engineering projects in the states and the nation. For instance, DRBF also offers support staff trainings for public authorities such as the California State Transportation Bureau (Cal Trans) and the Colorado State Traffic Bureau. Interactive Training Software is open on the web by the Cal Trans for self-study prior to attending a training course. DRBF also holds seminars out of America through the Member Associations or Country Representative of each country. The sponsorship in the FIDIC Training Course that will be mentioned in the next paragraph is a part of this activity. Though DRBF does not provide qualification certification, it is being studied so as DRBF President’s List of DB Adjudicators.

As one of the national Member Associations (not yet a formal Member Association of DRBF), there is DRBA (Dispute Resolution Board of Australasia Inc). It has 62 members, 35 of whom are members of DRBF. Similar to DRBF, DRBA also aims at the promotion of DRB and the prevention/ resolution of disputes. On March 1, 2008, DRBA held a workshop.

4.1.2 International Federation of Consulting Engineers (FIDIC)

Placing headquarters in Geneva, Switzerland and having member associations from 78 countries and about 20,000 companies, FIDIC is the world’s biggest association of consulting engineer. FIDIC

supports reinforcement and the expansion of consulting engineers' business and is active in various fields such as contract and selection of consultants by quality, environment, integrity and risk management. About contract documents, FIDIC publishes standard forms of conditions of contract including civil engineering works, client/consultant model service agreement, plant and design build for electrical and mechanical plant, EPC/turnkey, Design/ Build and Operate projects etc, which are used globally.

Most of the above standard forms adopt DB. FIDIC is also providing assessment of adjudicators, holding seminars and training workshops, and appointing DB members from its President's List of Approved Adjudicators. Seminars are being conducted in cooperation with outside seminar provider such as ECV and with the sponsorship of DRBF. The four Modules, which are: Module 1 Manual of FIDIC Condition Book; Module 2 Objection Management/Dispute Resolution Techniques; Module 3 DAB Process Management and Module 4 Contracts Management and Administration, have been provided throughout the world. Fee depends on days and the contents of the seminars, but is generally about US\$1,000 to US\$2,000. When an approved adjudicator serves as one of the DAB members, the Mentoring system can be introduced to let candidates actually participate in the project site of DAB. The assessment of FIDIC adjudicators is conducted after document screenings through an assessment workshop (AAW: Adjudicator Assessment Workshop) for two days by the Assessment Panel of Adjudicators (APA). Generally, the contents of the workshop are as follows:

The examinees will stay overnight from the previous night of the first day, and attend examination workshop for two days. Examinees from neighbors can arrive at the examination room in early morning of the first day, and return home next day after the end of the workshop (one night stay); examinees from remote areas will have to stay for three nights. The number of the examinees is about ten to twenty whereas that of examiners is three (APA: Assessment Panel for Adjudicators).

In the morning of the first day, after a brief self-introduction of all the examiners and examinees, the examiners will freely walk around the examinees' U-shaped desks and conduct oral tests for all the examinees on their knowledge and understanding on FIDIC's 1999 version of contract documents including DB provisions and dispute resolution. Another test on multiple-choice questions will be carried out in the afternoon. After supper, a case study to examine ability of contract interpretation will be presented after which a homework assignment is given that is due before nine o'clock in the next morning.

The second day from the morning to 4:00 PM: Mock DAB hearing and judgment of DAB decisions are conducted. Understanding of DAB and ability of contract interpretation will be tested through role play. After 4:00 PM, with two examiners playing role as disputing parties and the third one playing as the DB, a mock DB hearing will be performed. The two parties will read their Position Papers (copies are unavailable). The examinees take notes and submit DAB's decisions to the APA by mail in two

weeks after they return home.

Based on the results of these tests, the qualified candidates will be recommended to the Chairman of FIDIC by the APA, and will be registered in the list of the FIDIC President's Approved Dispute Adjudicators after the Chairman's approval.

The lecture fee is 1,500 Swiss francs (about 150,000 yen). The examinee should pay 200 Swiss francs (about 20,000 yen) as the registration fee if he has passed the workshop, and his name will be registered in the President's List. Reassessments will be held every 3 years concerning actual experiences as DB members etc. The renewing registration fee of the list is 100 Swiss francs (about 10,000 yen).

There are few international institutions that issue certification. However, as many projects are run under the FIDIC Conditions of Contract with the provisions of DB, it is expected that DB members tend to be selected from FIDIC's List. At present there are only 38 adjudicators registered in FIDIC's List, but most of them belong to Europe whose average age is about 65 and the youngest adjudicator is 47. Lack of qualified persons in Asia, Africa, and Latin America, etc. is a problem. In this regard, FIDIC is planning expansion of President's List and is going to hold an Adjudicator Assessment Workshop in April, 2009.

Moreover, FIDIC is now encouraging promotion of national lists of adjudicators through its Member Associations in each country. While the President's List that is maintained by FIDIC is mostly used for large projects, the National Lists that is maintained by Member Associations of each country are expected to be used for comparatively small projects. Because FIDIC does not directly take part in the assessment of the candidates for National Lists, it would be important to secure the quality of adjudicators in the National Lists. Currently, National Lists exist in Hungary, Germany, and Poland.

4.1.3 Other Institutions

- International Chamber of Commerce: ICC

One of the most important activities of I.C.C is providing services for resolution of international commercial disputes. ICC, International Court of Arbitration is the center of international arbitration for international commercial disputes. ICC is also providing services for ADR (Alternative Dispute Resolution), and the introduction of DB (DRB, DAB, CDB) which includes publishing rules and serving as an appointing authority for arbitrators, mediators, other neutrals and DB members.

- American Arbitration Association: AAA

In AAA (American Arbitration Association), a DB panel (list) is being made. Though it is not opened to the public, this list will be used in the appointment of DB members as Appointing Authority.

4.1.4 Asian Region

In the Asian Region, The Member Associations of FIDIC and the Country Representatives of DRBF often become the windows of DB information. In October, 2007, the Philippine Member Association of DRBF held a seminar in Manila to improve the recognition and publicity of DB. Moreover, in August, 2008, a training seminar to explain the use of FIDIC's 1999 version and MDB version of red book was held under the co-sponsorship of CECOPHIL (The Council of Engineering Consultants of the Philippines) and DRBF Philippines, the Member Association of FIDIC in the Philippines. In this seminar, the function and know-how of DB were introduced, and the Training of adjudicators was also mentioned.

In addition, as an education of contract management in Asia, FIDIC is providing support for the Chinese association and the Indian association. In China, the FTC Center (FIDIC-Tsinghua-CNAEC) has been established in Tsinghua University, and such establishment of FIDIC Center is also being planned in India. However, because of lacking in lecturers and other problems, the activity of the FIDIC Center at Tsinghua University has been interrupted.

FIDIC MDB Harmonized Edition, in which the establishment of DB is mandatory, is the Conditions of Contract for the projects of the World Bank and the Asian Development Bank. This time, the FIDIC MDB Harmonized Edition is planned to be adopted in JBIC (JICA)'s projects. From these facts, we can see that the interest for DB is also rising in the Asian region. During this study, nearly 100 persons from the Philippines and each Asian country participated in the Manila seminar in August, 2008 under the sponsorship of JBIC. The response of the participants was quite receptive. Moreover, in the ASPAC general assembly meeting held in the FIDIC Annual Conference in Quebec in September, 2008, the revision of JBIC's Sample Bidding Documents was announced and the presentation of the action plan for the promotion of DB adjudicators in the Asian region was made. Report on the JBIC DAB seminars in India and the Philippines was also made at that time, there were demands to hold similar seminars continuously in other Asian country (to say, Indonesia, Pakistan and Bangladesh) and the awareness of the necessity of DB and the promotion of adjudicators could also be recognized among the people concerned.

There seem to exist quite a few projects that actually adopted DB in the Asian region. However, there are no statistics that gather related information, the actual situation is not clear. In contrary,, data on DAB Adjudicators are obtained from outside of these regions. Anyway, the spread of DB and the promotion of DAB adjudicators are still big challenge. In India, the system of DB is conflicting with the domestic law and only DRB, therefore, is allowed.

4.2 Policy of Training

As mentioned above, although the awareness of DB is increasing in the Asian region, popularization of DB is slow in the region and the candidates of the DB members are also insufficient. However, according to the questionnaire surveys conducted in Tokyo and Kyoto seminars, among the participants, there are persons who meet FIDIC's qualification requirement for adjudicator, and also persons who are interested in DB though they do not meet all the requirements. So it can be thought that there are considerable number of potential candidates. In addition, in the areas where international arbitral tribunals are prosperous, such as Hong Kong and Singapore, arbitrators who are specialized in construction disputes also exist, and such experienced persons might also be leading candidates of DB member.

In order for these potential persons to take active part of DB, participation to education programs to gain experience and knowledge that will lead to qualification certification will be necessary. Most seminars and assessment workshops held by FIDIC and DRBF are in European and American regions that are far from Asia, so the financial burden for participation fee and traveling expenses for Asian people has become a big problem. It also appeared in the questionnaire survey that people tends to hesitate to participate in the FIDIC's adjudicators Assessment Workshop because of its high cost. Therefore, it is desirable to have seminars and assessment workshops in Japan or Asia to reduce these travelling expenses for Asian people to the reasonable extent.

As for the contents of the educational program, basic programs such as understanding of contract clauses of FIDIC documents and the study of DB's process, practical programs such as case study and mock DB hearings, and English training program are necessary. Fostering of adjudicators could be achieved not only by classroom lectures but also by education and training by experienced practitioners. Since there have been many opinions in the questionnaire survey that the lack of practical experiences is the critical shortcoming for adjudicator's qualification requirements. In these programs, practice-based training by experienced practitioners is of great importance. Moreover, these programs should be supplemented by on-going seminars programmed by FIDIC, if necessary.

As for the qualification, since FIDIC is now encouraging establishment of National Lists by FIDIC Member Associations, it may be effective to tie with this movement. Member Associations of FIDIC (for example, AJCE in Japan) can become qualification registration organizations for making and maintain the national lists. As for the qualification screening, on account of using referees and other resources efficiently and keeping their impartiality, screening can be held by the same organization that holds the above-mentioned training seminars. The persons who passed the exam can receive recommendation from the training organization after which will be registered in the national lists maintained by the respective Member Association. System and the requirements of the screening can basically follow FIDIC's Guidelines for National Lists.

In order to promote DB, together with the promotion of adjudicators, publicity to stakeholders is also important. In domestic and foreign seminars held during this study, demand to hold similar seminars continuously in Asian country is raised in the ASPAC's general assembly meeting in September, 2008. Therefore, with the support from JBIC and Multi-lateral Development Banks, it is desirable that the above-mentioned educational institution serves as the training and assessment center and continuously hold seminars that aim on the publicity, popularization and information exchange of DB.

The policies are listed as follows:

(1) Candidates of the Training

In Japan and Asia, the persons who are interested in DB and satisfy the minimum requirements will be screened and considered as the candidates of the Training. For instance, the following matters can be thought as requirements for the screening.

- Experience as a contractor / engineer / purchaser/ others in overseas projects:
Experience for more than 15years etc.
- English proficiency: More than 800 in TOEIC score or equivalent in TOEFL test, etc.
- Qualifications or experiences in contract management, dispute resolution, arbitration etc. as a:
Negotiator, Lawyer, arbitrator, judge etc.

(2) Facilities and Places of Training

In order to underline the leadership of training program in Asian region, it is preferable to establish a new platform like a training center to support training, qualification certification, dissemination and other activities in the Asian region. When using existing institutions such as ECV, who holds FIDIC's seminars, the Assessment Panel of Adjudicator, the screening committee of adjudicators, and the DRBF, the leadership will be taken by the Europeans and Americans anyway because the headquarters of these institutions are in those regions. Moreover, other problems that the adjustments take time and decline the mobility and the increase in traveling expenses should also be taken into account.

The Graduate School of Management of Kyoto University has a sub-organization named the Management Research Center which performs various researching activities. At present, the establishment of "Construction Law & Economics Circle in Asian & Pacific Rim (CLECAP)" is being planned by this center. Concerning problems of various construction laws (including dispute resolution) and economics, this conference aims to grope for the approach of problem solving, including problem submission, problem sharing and the methodology of problem solving, through various Multi-disciplinary and Multi-cultural discussions between specialists in Asian and Pacific region. The conference is led by Kyoto University and with the cooperation from other universities of Asian &.

Pacific Region such as Malaysia (Malaysian international Islam University), Thai (Chula Ron Kon University), China (Tsinghua University), U.S.A.(University of Hawaii) etc. Besides Japanese specialists, its members also include researchers and experts from these cooperating universities, specialists of law and contract & dispute resolution. Therefore, by making this conference the mother body of the adjudicator promotion organization, it is possible to execute the adjudicator promotion program (seminar) and the qualification certification workshop. In that case, the headquarter of the organization might be settled in Japan (Kyoto University), but through the cooperating universities in each countries, the base and network of information and personal relationships can be made, various seminars and workshops can also be held through out the Asian region as well as in Japan.

(3) Programs

The Adjudicator Training Program

<Introduction Program>

- Explanation and understanding of FIDIC contract clause
- Studying on the process of DB

<Basic Program>

- Case study
- DB hearing simulation, Decision making
- Ethics and communications
- Language ability of English

<Practical Program>

- DB training (actually participate in a project as trainees: Mentoring)

The participant can select the courses from these training programs according to their own ability. Except the Practical Program, the period for one seminar can be 1~3 days. All and a part of the Introduction Program, Basic Program and Practical Program can be included. What's more, the form of web correspondence courses (e-learning) which combines online lecture delivery and report submitting/correcting by mail can also be taken into consideration.

It is necessary to prepare the teaching material for not only the e-learning but also all the programs. It is also necessary to studying on the possibility of making use of FIDIC-ECV's Module 1~3 and the possibility of making original education materials.

Continuous Education Program

As a part of the continuous education, a regular meeting should be held between the DB adjudicators, experts and other stakeholders to exchange opinions and information.

DB Popularization Program

Hold seminars to improve the publicity, understanding and the popularization of DB. These seminars should be different from training/continuous education and provide not only the candidates of the adjudicators, but also all the stakeholders containing the purchasers. And the contents can be similar to the DB seminars held during this study inside and outside the country. Moreover, making the FIDIC version of Interactive Training Software as was made and used by the California State Transportation Bureau (CALTRANS) for the training of its staffs, studying on making it possible for individuals to attend the lectures from the homepage of the above-mentioned training institution (or the homepage of JBIC).

(4) Qualification Requirements &. Certification System

It is preferable that the qualification assessment (or examinations) are carried out by CLECAP as the assessment is subject to availability of facilities and reliable examiners while keeping impartiality of the assessment process. Following the results of assessment, FIDIC's Member Association such as AJCE will publicize and maintain National List. This is exactly the National List that FIDIC recommends, and as a result, the cooperation between the training/qualification certification that the study team proposed and FIDIC's Qualification certification will be promising.

As for the qualification requirements, the qualification requirements and the method of certification are already mentioned in FIDIC's Guidelines for National Lists and those policies should be governed. The content of the qualification requirement should roughly conform to the one of the President's List and pay enough attention on practical experiences as the training. The summary of the pertinent part in the guideline is shown as bellow. However, for the original, please refer to FIDIC's homepage: <http://www1.fidic.org/resources/contracts/adjudicators/list.html#guidelines>

Guidelines for National List (excerpted)

3. Information

It is preferable that the registrants' CV should contain enough information about the registrants' career, qualifications, language ability, experiences of DB etc, and should always be made the latest so as to improve the convenience of the National List.

4. Quality Control

It is necessary for the Member Associations to establish the mechanism for securing ability of the registrants. As for the screening, it is preferable that the interview should be performed by the screening organization with reference to recommendations from the member firms, and also written proofs of the applicant's qualifications. Moreover, a mechanism to secure regular communication such as to update

CV etc. should be established updated registration status.

5. Criteria for Admission

The applicant's requirements should be decided by the Member Associations. FIDIC's Guideline is listed as below.

Member of a FIDIC Member Association, either as an individual or as an employee (or retired employee) of a member firm, or (as an individual or as an employee of) an Affiliate or Sustaining Member of FIDIC.

Appropriate academic and/or professional qualifications as an engineer in any of the principal disciplines of engineering, or equivalent professional qualifications.

At least ten years successful practice as a principal engineer (or equivalent profession) in the field of contract administration and/or disputes, in a consulting engineering body or in a firm specializing in construction law.

Knowledge and experience in FIDIC documentation generally, familiarity with and supportive of the forms of contract FIDIC published in and after 1999, and detailed understanding of their disputes procedures.

- Good inter-personal and communication skills.
- Commitment to, and availability for, appointment as a FIDIC adjudicator.
- Ability to be impartial and objective.
- Being possible to participate in an appropriate casualty insurance.
- Being proficient in the language of the country (reading, writing and speaking)
- Being able to participate in the continuance education program.
- Being able to participate in the Adjudication Assessment Workshop that held by the Member Associations, and is indispensable to receive the interview by the Dispute Resolution Committee (or other equivalent groups).

6. Certification Procedures

This part can be referred to the certification and registration procedure of FIDIC's President's List.

(5) Training Lecturers

Potential candidates of the lecturers would be DB adjudicators, lawyers, arbitrators, expert practitioners etc. The lectures should be familiar with FIDIC's contract documents and have abundant practical experiences in contract management and dispute resolution. Based on the importance in practical experience, experienced practitioners on DB should be appointed as lecturers. In addition, it will be desirable to recruit lecturers in the Asian region from economical aspect. As there are members

of DRBF, lawyers, arbitrators in each Asian country, and also many European and American lawyers live in the Asian region, so the potential candidates are considered to be sufficient. However, if we cannot secure enough lecturers at the beginning, we might have to invite them from Europe and America. In that case, to secure enough lecturers in Asian region for the long term, it might be necessary to examine promotion of lecturers as well as adjudicators. If the training/adopting of adjudicators advances in the Asian region, the number of the experienced candidate lecturers will also increase. Therefore, it is thought that the promotion of adjudicators and the dissemination of DB will lead to stable procurement of the lecturers.

(6) Training Fees

As for the Training Fees, the following costs are thought to be necessary:

- Cost for the establishment and maintenance of the training institutions
- Cost for drawing up the materials for the education
- Cost for holding seminars and training courses.

(education materials, lectures, meeting places, participants' expenses for traveling, lunch and lodging)

Should the training body try to cover all the costs such as lecturers' remunerations, qualification examination and registration fees by students' tuitions only, the students' burden might be so heavy that they may lose incentive. From the result of the domestic questionnaire survey, the cost that the candidates can bear to participate in FIDIC's Adjudicators Assessment Workshop is from several ten thousand Yen to a hundred thousand Yen, the highest (Because the population parameter is so few, it is necessary to hold another survey to understand the accurate data). Travel expenses and travel time that the participants bear can be greatly reduced by holding the seminars and the screenings in Asian region, and it is also necessary to reduce the expenses for attending seminars by some kinds of external financing.

JBIC has stipulated the establishment of DB in ODA projects by the revision of its Standard Bidding Documents, so they are studying how to support increase of adjudicators. Establishment of DB is also becoming standard in JBIC, ADB and World Bank projects. So we can probably say that the increase of adjudicators is also an urgent matter for these institutions. As ADB financed projects are basically executed in Asian countries, securing adjudicators in the Asian region is a mutual problem between ADB and JBIC. Therefore, it would be most practical to find ways for financial support from JBIC and other development banks. In addition, it is also possible to receive support of information, experts and other resources from organizations which are promoting the expansion of DB, such as DRBF and FIDIC. Further from the contractor organizations which are expecting implementation of DB. As FIDIC recommends the maintenance of National Lists, and is positive on the establishment of education and

screening institutions in the Asian region, other supports such as information and experts are promising.

4.3 Action Plan

4.3.1 Action Plan of Promoting Adjudicator

Based on the above, the study team proposes ① establishment of new training organization for training, qualification & certification of adjudicators, ② maintenance of National List by FIDIC Member Association, AJCE in particular that are elaborated in the action plans as shown below:

Action Plan I: Establishment of new organizations aiming at training and assessment of adjudicators

I-1: Establishment and maintenance of new organizations

I-2: Hold Seminars and training workshops

<Introduction Program>

<Basic Program>

<Practical Program>

I-3: Hold introduction seminars for popularization of DB in the Asian region

I-4: Provide information to persons and candidates who are interested in DB; Hold conferences regularly (to say, every year)

I-5: Hold qualification screenings of adjudicators in the Asian region

Action Plan II: Support the maintenance of FIDIC adjudicators' National List

II-1: Maintain FIDIC National List in Japan

II-2: Support the maintenance of FIDIC National List in Asia

II-3: Support nomination of DB that based on the National Lists

Chapter 5 Challenges on the Promotion of Adjudicators

Regarding execution of DB promotion programs, challenges are listed as follows:

(1) Implementation of Education Linked to Practice.

In practice of DB, not only the knowledge of contract and technology, but also abundant experiences in dispute resolution is indispensable. FIDIC places an importance on practice in qualification examination and training. Education program in this study also proposes to formulate lectures based on practice and relevant case studies as much as possible. In addition, it is indispensable to actually experience adjudication in projects. Therefore, it is important for candidates to actually participate in DB adopted projects as trainees and experience DB training. It is also important to secure such practical projects. Through lenders like MDB and JBIC, organizations like FIDIC and DRBF, it is necessary to find DB members who are put on DAB of the projects and request them to accept for mentoring the candidates. In addition, it is recommended that many practitioners are invited as lecturers for training as well as seminars and workshops. At present, qualified DB is small in number and they are in charge of many projects at the same time. So it is a big problem to secure lecturers with abundant practical experiences. However, we can request lenders or stakeholders for supporting traveling expenses of adjudicators for such training programs. If this option is realized, it will be possible to secure the lecturers.

(2) Cooperation with FIDIC and DRBF

Present DB promotion and dissemination programs is linked to FIDIC's promotion of National List.. As the DRBF is also studying qualification & registration and listing, it may conflict with those of FIDIC.

Though FIDIC is positive in making National Lists, Regional Lists such as the ASPAC Lists are thought to be undesirable at present because their operations are too complicated. So if FIDIC's activities cannot be well arranged and adjusted with the activities of the independent new organization, FIDIC and the other organization may possibly conflict with each other.

It is a great concern to eliminate double qualifications/ standards, so as to maintain mutual collaborative relationships.

(3) Financial Issues

Funding from lenders like JBIC and other public and private development banks is indispensable for the activities of newly proposed training organization. It is necessary to estimate initial and operating costs for the training organization from the planning stage and to request JBIC and other development financing institutions for sounding the possibility of financing. It is important to resolve financing issue as it is the basis of this project.

(4) Enhancement of Awareness of Stakeholders including Clients

In developing countries, it is considered that awareness of bilateral contracts and the firm implementation of the contracts is uncertain as compared with those in developed countries. It is feared that even if DB clauses are integrated in contract documents, owners may twist DB terms in their favors, which lead to the consequences that DB may not function effectively.

There are cases as observed in India that the DB system conflicts with domestic law and culture.

In order to function positive and effective use of DB, not only owners but also all the persons working for projects such as contractors and consultants need to strengthen awareness.

With regard to remediate the constraints between institutional frame works of DB, law and culture, they have to be compromised each other.

Therefore, as mentioned in the action plan, it is important not only to promote and continue education of DB, but also to hold advocacy introductory seminars for all the stakeholders. In addition, it is necessary to examine by legal experts how DB functions with reference to laws in each country.

DRBF
Annual International Conference
and
Training Workshop
Program

Annual Conference Held on 2nd to 4th May 2008

Training Workshop Held on 5th and 6th May 2008



The Dispute Resolution Board Foundation
Fostering common-sense dispute resolution worldwide

DRBF 8th Annual International Conference

Cape Town 2 - 4 May 2008

Dispute Resolution in Africa Programme

Day 1 : Friday 2 May

Introduction

08:00 09:15 Registration (*with morning coffee served*)
09:15 09:30 Gwyn Owen, DRBF President - Welcome
09:30 10:00 Dr. Danny Jordans, CEO, World Cup 2010 South Africa Local Organising Committee

10:00 10:30 *Coffee Break*

10:30 10:35 Richard Appuhn, Conference Chairman - Introduction

Dispute Avoidance: What Does the DB Process Offer?

10:35 10:40 Introduction by Session Chairman: Gordon Jaynes
10:40 11:00 Mr. Chris Beaumont, General Manager Construction for Rio Tinto's Madagascar Ilmenite Project
11:00 11:20 Ms. Mélanie Meilhac, Manager ADR and DBs for the International Chamber of Commerce

Dispute Boards in Africa: What terrain do they find? What needs to be done?

11:20 11:40 Introduction by Session Chairman: Volker Jurowich, DRBF Director
11:40 12:00 Mr. Ahmed Mohamed Benbarka, Procurement Specialist, Former Head of Procurement Department, African Development Bank, Cote d'Ivoire
12:00 12:20 Dr. Gaston Kenfack Douajni, Deputy Director, Ministry of Justice, Yaounde, Cameroon and President of the Association for the Promotion of Arbitration in Africa (APAA)
12:20 13:00 Open Floor Discussion for First Day Sessions

Organized Tours - Winelands – City and Table Mountain – Cape Peninsula – Robben Island

Day 2 : Saturday 3 May

Practical Experience in Francophone Africa

09:00 09:10 Introduction by Session Chairman: James Perry, Country Representative, France
09:10 09:30 David Brown, Paris Managing Partner, Shadbolt & Co LLP
09:30 09:50 Jean-François Boucly, Avocat, Falque & Associés
09:50 10:20 Marc Frilet, Avocat, Frilet et Associés

10:20 10:50 *Coffee Break*

Practical Experience in Southern and Anglophone Africa

10:50 11:00 Introduction by Session Chairman: Andy Griffiths, Country Representative, South Africa
11:00 11:20 David Keyser, TCTA Head of Engineering
11:20 11:40 Dr. Muthadir S M Ali, Presidency Affairs PIU, Sudan
11:40 12:00 Paul Taggart, Consultant
12:00 12:45 Open Floor Discussion for Second Day Sessions

Organized Tours - Winelands – City and Table Mountain – Cape Peninsula – Robben Island

Gala Dinner – Moyo, an African Theme Venue located at the Spier Wine Estate, Stellenbosch

19550 International Blvd. South, Suite 314 • Seattle, WA 98188 USA
Office 206-878-3336 • Facsimile 206-878-3338 • Toll-free USA 888-523-5208
eMail: info@drb.org • website: www.drb.org



The Dispute Resolution Board Foundation
Fostering common-sense dispute resolution worldwide

Day 3 : Sunday 4 May

Practical Applications in the Dispute Resolution Process

08:50 – 09:00 Introduction by Session Chairman: Nicholas Gould
4, 25 minute breakout sessions will be conducted. Delegates will be invited to divide themselves into four groups such that the Session Chairpersons will move from group to group repeating the breakout sessions 4 times each thereby allowing the Delegates to avail themselves of all of the 4 sessions.

09:00 10:30 Session A: Constituting a DB under MDB/FIDIC: Chaired by Cyril Chern
Session B: Organizing Periodic Site Visits: Chaired by Romano Allione
Session C: Referrals and Advisory Role of DB: Chaired by Mark Hackett
Session D: The Costs of Dispute Boards: Chaired by Nicholas Gould

10:30 11:00 *Coffee Break*

11:00 11:40 Session A Chair Summary
Session B Chair Summary
Session C Chair Summary
Session D Chair Summary

11:40 12:10 Open Floor Discussion

Conference Closure

12:10 12:20	Andy Griffiths	Country Representative for South Africa
12:20 12:30	Pete Douglass	Immediate Past President
12:30 12:40	Jim Brady	President Elect
12:40 12:50	Dick Appuhn	Conference Chairman

Accrediting Institutions for Continuing Professional Development

American Arbitration Association	Institution of Civil Engineering Surveyors
Chartered Institute of Arbitrators	Royal Institution of Chartered Surveyors
French Bar Association	Royal Institution of British Architects
Institution of Civil Engineers	UK Bar Council

DRBF INTERNATIONAL CONFERENCE

Delegate List

First Name	Last Name	Work Country	Work City	Company
Ludger	Hasenauer	Germany	Essen	HOCHTIEF Construction AG
David	Glendinning	Botswana	Gaborone	ABCON
Graeme	Peck	Australia	Seaforth	G.M Peck & Associates Pty Ltd
Toshihiko	Omoto	Japan	Kyoto	Kyoto University
Richard	Appuhn	Italy	Rome	Richard A. Appuhn
Derek	Griffiths	Wales	Llandello	Derek Noel George Griffiths
Uwe	Krenz	Germany	65189 Wiesbaden	Biffinger Berger AG Major International Projects
Tarek	Naja	South Africa	Gauteng	Eskom
Harold	McKittrick	USA	Oakton	McKittrick & Associates, Inc.
Lu	Lushan	China	Beijing	Sinohydro Corporation
Peer	Dalland	Australia	Kilcare	Dalland Associates Pty Ltd
James	Brady	USA	Charleston	B-U Corporation
William	Baker	USA	Calistoga	William B. Baker P.E.
Cyril	Chern	United Kingdom	London	Crown Office Chambers
David	Richards	United Kingdom	Warminster	David Richards CDS LLP
Gaston	Kemack Douejni	Cameroun	Maputo	Ministry of Justice, Yaounde, Cameroun
Miguel	Gomez	Mozambique	Wrexham	Conduril S. A.
Gwyn	Owen	United Kingdom	London	G. Owen
Murray	Armes	England	London	Probyn Miers Ltd
Henry	Musonda	Zambia	Ndola	
Andrew	Griffiths	South Africa	Sunninghill	Goba Moahloli Keeve Steyn (Pty) Ltd
Andrew	McJannett	South Africa	Bedfordview	Group Five Civil Engineering Pty Ltd
Krzysztof	Woznicki	Poland	Komorow	
Robert A.	Rubin	USA	New York	McCarter & English, LLP
Clement	Harrington	Peru	Lima	Electricidad Andina
Julien	Vince	South Africa	Gauteng	Eskom
Nicolae	Calinoiu	Romania	Bucharest	
Graham	Easton	Australia	Greenwich	Graham R. Easton
Helmut	Koeniges			
Leon	Bester	South Africa	Cape Town	HHO Africa - Infrastructure Engineers
Mark	Entwistle	Wales	Cwmbran	Mark Entwistle
Peter	Steyn	South Africa	Johannesburg	ABSA
Michael	Meeson		London	39 Essex Street Chambers
Tony A.	Nwabufo			CDHRVTA - NGO
Kit	Hubback	South Africa	Johannesburg	Parsons Brinckerhoff
Theodore	Ahier	South Africa	Johannesburg	TBC Ahier Consulting Engineer & Construction Law Consultant CC
Daniel	Rowe	United Kingdom	Crowborough E. Sussex	Jackson Rowe Associates
Steve	Fox	USA	Seattle	DRB Foundation
Nigel	Lowe	United Kingdom	Perth	Nigel Lowe Holdings Ltd
Hamish	Macdonald FRICS FCIARB	United Arab Emirates	Abu Dhabi	Systech International
John	Wright	United Kingdom	London	Lane & Partners
Robert	Blythe	South Africa	Cape Town	HHO Africa - Infrastructure Engineers
Mark	Spinner	South Africa	Johannesburg	Alstom Africa Holdings
Salvador	Castro Jr.	Philippines	Pasig	SPCastro and Associates, Inc.
Emhemmed	Ghula	Libya	Tripoli	
Clyde	Oakes	South Africa	Johannesburg	ABSA
Ralph	Ellis	USA	Gainesville	University of Florida
Ann	McGough	USA	Hickory	DRBF
Roger	Thornton	Australia	Wagstaff Point	R.G. Thornton & Son Pty Ltd
Liu	Kai	China	Beijing	Sinohydro Corporation
Stewart James	Wilson	South Africa	Pietermaritzburg	South African National Roads Agency Ltd
Corrie	Moll	South Africa	Johannesburg	Friese Moll & Partners
Mihai	Nica	Romania	Bucharest	Septembrie Consulting SRL
Ahmed	Ellyeb	Sudan	Khartoum	Dams Impementation Unit (DILU)
Jonathan	Ely	South Africa	Elandsfontein	Murray & Roberts Construction (Pty) Ltd

First Name	Last Name	Work Country	Work City	Company
Rabo	Adikwu	Nigeria	LAGOS STATE	CDHRVTA - NGO
Olivier	Buisson	France	Neully sur Seine	Arbitris International
William	Buyse	Belgium	Bocholt	C.E.M. Consulting
L.E.	Moahloli	South Africa	Johannesburg	Imbani Projects
Dick	Shadbill	United Kingdom	Reigate Surrey	Shadbill & Co. LLP
Ulrich	Juenemann	Germany	Essen	Hochtief Aktiengesellschaft
Gordon	Jaynes	United Kingdom	Virginia Water, Surrey	Gordon L. Jaynes Esq.
Christopher	Miers	United Kingdom	London	Probyn Miers
Tony	Pilgrim	United Kingdom	Knutsford	Alstom Power Ltd
Marianne	Ramey	USA	Fairfax Station	Project Advisors International, LLC
Volker	Jurowich	Germany	Stuttgart	JuCon International GmbH
Mohd Suhaimi	Mohd Danuri	Malaysia	Kuala Lumpur	University of Malaya
Christiana Remilekun	Jegede	Nigeria	Lagos State	CDHRVTA - NGO
Volker	Mahnken	Germany	Offenbach	Siemens AG
Mark	Hackett	United Kingdom	London	Davis Langdon-Global Legal Support Partner
Edward	Corbett	United Kingdom	Teddington	Corbett & Co.
Nigel	Grout	United Kingdom	Bedford	Nigel Grout
Christopher	Redfearn, Chartered Arbitrator	Singapore	Singapore	Commercial Solutions International Ltd
Shola Taoreed	Oniru	Nigeria	Lagos State	CDHRVTA - NGO
Nigel	Nilen	South Africa	Witkoppen	Nilen Civil Engineering Services
Nicholas	Gould	England	London	Fenwick Elliott LLP
Alastair	Collins	United Kingdom	London	Davis Langdon-Global Legal Support Partner
John	Bellhouse	United Kingdom	London	White & Case (Europe) LLP
Guenher	Raberger	Switzerland	Effretikon	Raberger Consulting
James	Perry	France	Paris	James C. Perry
Peter	Eley	United Kingdom	Chippennyham	Leach Consultancy LTD
Maria	Modestus	Namibia	Windhoek	Nam Power Pty Ltd
Yukinobu	Hayashi	Japan	Tokyo	Nippon Koei Co., Ltd.
Kelly	Phala	Botswana	GABORONE	Botswana Government - Department of Roads
Gloria Basil	Edward	Nigeria	LAGOS STATE	CDHRVTA - NGO
Sanjeev	Migliani	Botswana	Gaborone	Project Consultancy
Mudathir Sulleman Mohammed	Ali	Sudan	Khartoum	Project Implementation Unit (PIU), Khartoum New International Airport
Patrick	O'Connor		Providenciales	
Kerry	Lawrence	USA	Seattle	Lawrence & Finkelstein, PLLC
Xin	Zongyi	China	Beijing	Sinohydro Corporation
Molly	Martins	USA	Danvers	Martins Construction Company
Denise	Stevens	United Kingdom	Crowborough	Jackson Rowe Associates
Andor	Ginder	Botswana	Gaborone	
Angelo	Perrone	Italy	Rome 00045	
Riaan	De Witt	Namibia	Walvis Bay	De Witt Consulting
John	Papworth	United Kingdom	Bridgwater	John Papworth Limited
Jonathan	Mitchell	South Africa	Cape Town	Arbitration Services
Malcolm	Kelly	United Kingdom	Taunton	M Kelly Consulting
Gianni	Porta	Italy	Sesto San Giovanni - Milano	Impregilo S.p.a.
Romano	Allione	Italy	Arese	Romano Allione
John	Evans	South Africa	Gauteng	Eskom
Liliana-Niculina	Radu	Romania	Bucharest	Septembrie Consulting SRL
KWAKU	GYAMFI	Ghana	Accra	BONDZ ENTERPRISE
Paul	Taggart		Bothwell, Glasgow	Construction Contract Services LLP
Idowu Olalekan	Olalunde	Nigeria	LAGOS STATE	CDHRVTA - NGO
Simon	Fegen	South Africa	Cape Town	Birmingham Copeland & Associates
Julio Cesar	Bueno	Brazil	SAo Paulo	Pinheiro Neto Advogados
John	Madden	Ireland	Dublin 2	Madden Mediation & Arbitration Ltd.
Jean-Francois	Boucly	France	Paris	Falque & Associates
Salim	Amod	South Africa	Johannesburg	Development & Engineering Consultants (Pty) Ltd
Simon	Delves	United Kingdom	Reigate	Shadbill & Co. LLP
Hezekiah	Awaseb	Namibia	Windhoek	Roads Authority
Victor	Smith	Thailand	Bangkok	Charndell Associates Co., Ltd.
Mario	Guimaraes	Mozambique	Maputo	Condutill S. A.
Sean	McManamon	Spain	Barcelona	Consultant

First Name	Last Name	Work Country	Work City	Company
Hrs:	Roeltgen	Germany	Essen	Hochtief Construction AG
Edward	Gaughan	Germany	Duesseldorf	
Laleef Oyebola	Olorun	Nigeria	LAGOS STATE	CDHRVTA - NGO
Francois	Rohmer	France	St. Quentin - Yvelines	Bouygues Batiment Int'l
Emeka	Ogbogo	South Africa	Lynnwood Ridge	
Ahmed	Benbatka		Cote d'Ivoire	
Frank	Crowley	South Africa	Haitway House	
SAMUEL	LEKUKU	South Africa	MARGATE	MISALEK MARKETING
Peter	Elliot	United Kingdom	Thorne	
Ryszard	Dubno	Poland	Sulejowek	
Peter	May	United Kingdom	Uttweiler	May Associates
Linda	Bier	Netherlands	Vught	Dr. L. Bier Advocaat
Michiel	Nardin	Switzerland	St-Sulpice	PMG Consulting Engineers and Economists
Nigel	Sessions	South Africa	Cape Town	Davis Langdon-Global Legal Support Partner
Robert	Smith P. E., Esq.	USA	Madison	Akerman Senterfitt Wickwire Gavin
Roberto	Aimone	Italy	Ravenna	CMC DI RAVENNA
Philsa	Ndzamela-Qaba	South Africa	Port Elizabeth	Coega Development Corporation
Herman	Glaassens	South Africa	Braamfontein	National Ports Authority of South Africa
David	Brown	France	Paris	Shedbolt & Co LLP
Ibrahim	Haroon	Sudan	Khartoum	Dams Impementation Unit (DIU)
Ali	Mohamed	Sudan	Khartoum	Dams Impementation Unit (DIU)
David	Barnes		London	39 Essex Street Chambers
IDUN	LENA EWURABAFOSUA	Ghana	Accra	BONDZ ENTERPRISE
Mutaz	Musa	Sudan	Khartoum	Dams Impementation Unit (DIU)
SAMUEL	LEKUKU	South Africa	MARGATE	MISALEK MARKETING
Anthony	Tasker	Italy	Ravenna	CMC DI RAVENNA



OVERVIEW

**Professor Toshihiko Omoto, Dr.Eng.
Kyoto University
Training Workshop Chairman**

The 1999 edition of FIDIC's "Conditions of Contract for Construction" are being used increasingly by the international construction industry throughout the World. In Europe, they are used by the European Commission for all their projects throughout Central and Eastern Europe.

On an even broader scale, the Multilateral Development Banks ("MDB"), including The World Bank, The African Development Bank, and the Islamic Bank for Development – all of whom are financing projects in Africa -- have agreed to use a modified version of those 1999 Conditions

After years of work by their Heads of Procurement, the MDB's, in collaboration with FIDIC have developed the MDB Harmonised Edition of those 1999 Conditions, which the MDBs now use under special license from FIDIC. These are covered in this Workshop.

This Workshop provides practical knowledge for owners, engineers, contractors quantity surveyors and others involved in contracts using the MDB Harmonised Edition, as well as those who wish to serve on Dispute Boards established under the MDB Harmonised Edition.

Gordon Jaynes will introduce Clause 20 [Claims, Disputes and Arbitration] of that Edition.

Five tutors will deal with five problematic areas of the Conditions, in the following order:

Robert Smith: Care of Works, Insurance, Financing, Possession of Site and Taking Over

James Brady: Design, Climatic and Grounds Conditions

Andy Griffiths: Instructions, Pricing and Variations

Murray Armes: Escalation and Price Variation

Marianne Ramey: Delay Analysis and Extension of Time

Following their presentations, the Training Workshop will form into groups of Participants and the Tutors will lead the Participants through hypothetical fact situations involving these five areas, exploring examples of problems which a Dispute Board can face.



Programme

	<u>Day 1- 5 May 2008</u>
08:30	Registration Registration for the Workshop is limited so that Delegates can be divided into 5 small groups, each of which will attend an interactive work exercise session on each of the 5 typical problem areas. This will be done 5 times during the two days with each of the groups attending one session of each tutor.
09:00 – 09:15	Introduction to the Workshop and its Methodology by Professor Toshihiko Omoto , Professor of Conflict Management, Kyoto University, Japan; DRBF Country Representative , Japan
09:15 – 09:30	Introduction to Clause 20 [Disputes] FIDIC MDB Harmonized Edition, Gordon Jaynes . The Workshop focuses on five frequent problematic areas in contracts using these Conditions and how Dispute Boards assist proactively in avoiding formal disputes in those areas and when formal disputes are unavoidable how best to present positions to the DB,.
09:30 – 09:55	<ul style="list-style-type: none"> • Robert Smith – Care of Works, Insurance, Financing, Possession of Site and Taking Over.
09:55 – 10:20	<ul style="list-style-type: none"> • James Brady- Design, Climatic and Ground Conditions
10:20 – 10:45	Coffee/Tea by DRBF
10:45 – 11:10	<ul style="list-style-type: none"> • Andy Griffiths- Instructions, Pricing and Variations
11:10 – 11:35	<ul style="list-style-type: none"> • Murray Armes- Escalation and Price Variation
11:35 – 12:00	<ul style="list-style-type: none"> • Marianne Ramey- Delay analysis and Extensions of Time
12:00 – 12:30	Plenary group discussion regarding the morning's presentations of Clause 20 and the introductions to the 5 problem areas.
12.30-13.30	<u>Lunch Break</u>
13.30 – 15:15	<u>Session 1 – Work Exercises</u> Workshop participants will be divided into five groups, each group led by a DRBF Tutor. The groups will be asked to deal with at least two real-life dispute scenarios.
15.15-15.45	Coffee/Tea by DRBF
15.45-17.30	<u>Session 2 – Work Exercises</u>
17.30	<u>End Day 1</u>
	<u>Day 2- 6 May 2008</u>
09.00 – 10:45	<u>Session 3 – Work Exercises</u>
10:45 – 11:15	Coffee/Tea by DRBF
11:15 – 13:00	<u>Session 4 – Work Exercises</u>
13.00 – 14:00	<u>Lunch Break</u>
14:00 – 15:45	<u>Session 5 – Work Exercises</u>
15.45 – 16:05	Coffee/Tea by DRBF
16:05 – 17:30	<u>Session 6 – Summary of Work Exercises by Tutors and Open Floor Discussion with Participants</u>
17.30	<u>End of Workshop</u>

Seminar Handouts

(Kyoto Seminar)

Held on 11th July 2008



Japan Bank for International Cooperation
Kyoto University
Association of Japanese Consulting Engineers

DAB (Dispute Adjudication Board) Seminar Program

Kyoto Seminar : Kyoto University, 11th July 2008

13 : 30~14 : 00 Registration

14 : 00~14 : 05 Opening Address JBIC Project Development Department

[Session I]

14 : 05~14 : 55 JBIC's revision of Guideline and Sample Bidding Documents

Taisuke MIYAO Director, JBIC Procurement Policy and Supervision Division,
Project Development Department

14 : 55~15 : 10 - Coffee Break -

[Session II]

15 : 10~15 : 15 Promoting Scheme of DAB Adjudicators in Asian Region

Taisuke MIYAO Director, JBIC Procurement Policy and Supervision Division,
Project Development Department

15 : 15~15 : 45 DAB in FIDIC 1999 and MDB Harmonized Conditions for Construction

Yukinobu HAYASHI Association of Japanese Civil Engineers (AJCE)

15 : 45~16 : 15 Practice of Dispute Boards

Toshihiko OMOTO Professor of Kyoto University Graduate School of Management

16 : 15~16 : 55 Panel Discussion

Moderator : Toshihiko OMOTO

Panelist : Taisuke MIYAO, Toshihiko OMOTO, Yukinobu HAYASHI

Satoru TSUTAE Taisei Corporation General Manager of Civil
Engineering Department

16 : 55~17 : 00 Closing Address JBIC Project Development Department

Moderator :

Kunie OSHIMA Kyoto University Graduate School of Management

Taisuke MIYAO : Director, JBIC Procurement Policy and Supervision Division Project Development Department

Graduate from Kyoto University in 1988 and joined the Private Bank. Acquire LLM degree at Law School of the University of Pennsylvania and New York Lawyer license in 1992. Joined OECF (current JBIC) in 1996, worked for Bangkok office assistant chief, and current position from Jul., 2006.

Toshihiko OMOTO : Professor, Kyoto University Graduate School of Management

Graduate from Kyoto University Graduate School of Engineering, Civil Engineering Course in 1974 and joined Taisei Corporation. Worked for contract administration and dispute resolution in international civil projects. Studied at London University from 1988 to 1991 and acquired Master degree of “Construction law and mediation”. Have Fellow of CIARB (FCIARB). Left Taisei corporation in 2000 and started “Omoto Toshihiko Project Consultant” company. Acquired Doctor degree of Engineering at Kyoto University in 2002. Are current position from Apr. 2006. Only adjudicator listed on FIDIC President’s list in Japan.

Yukinobu HAYASHI : General Manager, Nippon Koei Co., Ltd. PPP Project Department, Urban Development Division, Overseas Consulting Administration

Graduate from Saitama University Faculty of Mechanical Technology in 1977 and joined Nippon Koei. Worked mainly for project management in overseas development project. Worked for Technical Training Committee in AJCE and involved in the translation works of FIDIC Red Book 1999th edition, FIDIC Yellow Book 1999th edition and FIDIC Guide for Contract

Satoru TSUTAE : General Manager, Taisei Corporation International Operations Headquarters, Civil Engineering Department

Graduated from Hokkaido University Faculty of Engineering, Civil Engineering Course in 1976 and joined Taisei Corporation. Acquired Master degree at Graduate School of Cornell University in 1987. Worked for the projects in Saudi Arabia, Indonesia, Pakistan, etc., and currently working in Japan assisting and supervising international projects. Associate Member of CIARB.

Kunie OSHIMA : Graduate Student, Kyoto University Graduate School of Management

Graduate from Kyoto University Graduate School of Engineering, Civil Engineering Course in 2002 and joined Pacific Consultants. From 2004, moved to Pacific Consultants International and worked for bridge design and study for overseas projects especially in Vietnam. Left the company in 2006 and entered in Kyoto University Graduate School of Management. Currently studying under Prof. Omoto.

Refer the Handouts of Delhi and Manila Forum for the Contents of the Seminar Handouts.

Seminar Handouts

(Tokyo Seminar)

Held on 18th July 2008



Japan Bank for International Cooperation
Kyoto University
Association of Japanese Consulting Engineers

DAB (Dispute Adjudication Board) Seminar Program

Tokyo Seminar : Japan Bank for International Cooperation Auditorium 18th July 2008

- 13 : 30~14 : 00 Registration
- 14 : 00~14 : 05 Opening Address Takayuki OGAI Director, JBIC Project Development Department
- [Session I]
- 14 : 05~14 : 55 JBIC's revision of Guideline and Sample Bidding Documents
Taisuke MIYAO JBIC Director of Procurement Policy and Supervision Division,
Project Development Department
- 14 : 55~15 : 10 - Coffee Break -
- [Session II]
- 15 : 10~15 : 15 Promoting Scheme of DAB Adjudicators in Asian Region
Taisuke MIYAO JBIC Director of Procurement Policy and Supervision Division,
Project Development Department
- 15 : 15~15 : 45 DAB in FIDIC 1999 and MDB Harmonized Conditions for Construction
Yukinobu HAYASHI Association of Japanese Civil Engineers (AJCE)
- 15 : 45~16 : 15 Practice of Dispute Boards
Toshihiko OMOTO Professor of Kyoto University Graduate School of
Management
- 16 : 15~16 : 55 Panel Discussion
Moderator : Masamitsu ONISHI Assistant Professor, Kyoto University Graduate
School of Engineering
Panelist : Shoji ANDO Operating Officer, Daiho Corporation Overseas Branch
General Manager, Taisuke MIYAO, Toshihiko OMOTO, Yukinobu
HAYASHI
- 16 : 55~17 : 00 Closing Address Yasuhiko TACHIKAWA Expert Advisor, JBIC Project Development
Department

Moderator : Yoshihiko YAMASHITA Secretariat, Association of Japanese Consulting Engineers

Taisuke MIYAO : Director, JBIC Procurement Policy and Supervision Division Project Development Department

Graduate from Kyoto University in 1988 and joined the Private Bank. Acquire LLM degree at Law School of the University of Pennsylvania and New York Lawyer license in 1992. Joined OECF (current JBIC) in 1996, worked for Bangkok office assistant chief, and current position from Jul., 2006.

Toshihiko OMOTO : Professor, Kyoto University Graduate School of Management

Graduate from Kyoto University Graduate School of Engineering, Civil Engineering Course in 1974 and joined Taisei Corporation. Worked for contract administration and dispute resolution in international civil projects. Studied at London University from 1988 to 1991 and acquired Master degree of “Construction law and mediation”. Have Fellow of CI Arb (FCI Arb). Left Taisei corporation in 2000 and started “Omoto Toshihiko Project Consultant” company. Acquired Doctor degree of Engineering at Kyoto University in 2002. Are current position from Apr. 2006. Only adjudicator listed on FIDIC President’s list in Japan.

Yukinobu HAYASHI : General Manager, Nippon Koei Co., Ltd. PPP Project Department, Urban Development Division, Overseas Consulting Administration

Graduate from Saitama University Faculty of Mechanical Technology in 1977 and joined Nippon Koei. Worked mainly for project management in overseas development project. Worked for Technical Training Committee in AJCE and involved in the translation works of FIDIC Red Book 1999th edition, FIDIC Yellow Book 1999th edition and FIDIC Guide for Contract

Shoji ANDO : Operating Officer, Daiho Corporation Overseas Branch General Manager

Graduate from Gifu University Faculty of Engineering,, Civil Engineering Course in 1972 and joined Daiho Corporation. Worked mainly for domestic road project and acquired Professional Engineer (Construction). Moved to Overseas Branch in 2000 and involved in Taiwan high-speed rail C220 project.

Masamitsu ONISHI : Assistant Professor, Kyoto University Graduate School of Engineering, Department of Urban Management

Graduate from Kyoto University Graduate School of Engineering in 2003, further acquired Doctor degree in 2005. Major in Construction Management, especially public procurement framework design based on economic theories. Studying on Construction Contract and Dispute Resolution with Prof. Omoto and wrote many academic papers. Be awarded the prize by Japan Society of Civil Engineering in 2005 and 2007.

Yoshihiko YAMASHITA : Secretariat, Association of Japanese Consulting Engineers (AJCE)

Graduate from University of Hawaii Graduate School of Marine Engineering and acquired PhD in 1980 and joined CTI Engineering Co., Ltd. Have Professional Engineer and APEC Engineer. Worked mainly for water environment projects. Member of FIDIC Environment Committee from 1992, and other committees. Working for AJCE Technical Training Committee from 1991 and involved in Translation works of FIDIC Guideline for Environmental Policy, FIDIC Red Book 1999th edition, FIDIC Sustainability Evaluation Guideline, etc. Current job from Oct. 2007.

Seminar Handouts

(Delhi Forum)

Held on 19th August 2008

Agenda of Forum
Forum for the Adjudicator / Adjudication Board under JBIC
Promotion of Adjudicators in Asian Region

Date: 22nd August, 2008

Time: 16.00 Hrs.

Venue: India Habitat Center

Item 1 - Welcome Address by the President- CEAI and Introduction of participants

Item 2 - Opening Address

Mr. Hidetoshi Irigaki, Chief Representative, JBIC Representative Office
in New Delhi

Background and objective of the meeting

Item 3 - Presentation

Mr. Yukinobu Hayashi, vice chair, Professional Development committee,
AJCE. General Manager of Nippon Koei

Subject: JBIC's New Sample Bidding Documents and DAB in FIDIC Red
Book (1999 and MDB versions)

Item 4 - Presentation

Dr. Toshihiko Omoto, Professor, Kyoto University, FIDIC's President List of
Adjudicator

Subject: Practice of Dispute Boards and promotion of DB concept and DB
adjudicators in Asian region

Item 5 - Presentation

Mr. G. Sharan, Director General (Road Development), & Special Secretary,
Ministry of Shipping and Road Transport, Government of India

Subject: Practice for Dispute Resolution in India

Item 6- Interaction with stakeholders and other participants

Item 7- Closing Address and Conclusion

Dr. Toshihiko Omoto, Professor, Kyoto University, FIDIC's President List of
Adjudicator

There will be small break during the meeting for Tea. After conclusion of the meeting a
dinner will be held, where participants can further interact with one and other.



DAB (Dispute Adjudication Board) Forum

JBIC's New Sample Bidding Documents and DAB
in FIDIC 1999 and MDB Harmonized Conditions
for Construction

India Habitat Center
Delhi, India

22 August 2008
Association of Japanese Consulting Engineer
Yukinobu Hayashi

JBIC DAB Seminar 2008

2

Topics

- JBIC Procurement Documents
- Dispute Settlement Procedures in FIDIC Contracts
- Basic Knowledge of DAB/DB in FIDIC Contracts
- Differences between FIDIC Red Book 1999 and MDB Edition in Relation to DAB/DB



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JBIC Documents related to Procurement of Works

1. Guidelines for Procurement under JBIC ODA Loan (1999)
2. Sample Bidding Documents
 - Prequalification Documents for Works, Major Equipment, Industrial Installations and Turn Key Contracts (Nov. 1999)
 - Procurement of Civil Works (Nov. 1999)
 - Supply and Installation of Plant and Equipment (Oct. 2006)
 - Civil Works – Smaller Contract (Mar. 2000)
3. Guide Book and Check List
 - Handbook for Procurement under JBIC ODA Loans (Jan. 2005)
 - Evaluation Guide for Prequalification and Bidding (Jun. 2000)
 - Check List for One Sided Contracts (Dec. 2006)

(All available at JBIC WEB site)



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JBIC Sample Bidding Documents - Civil Works

- Current version
 - issued in 1999
 - General Conditions : FIDIC RedBook 1987 (4th Edition)
 - DAB: optional
- New version
 - scheduled to be issued in 2008
 - General Conditions : FIDIC RedBook MDB harmonised edition
 - DAB(DB) : standard



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ADR (Alternative Dispute Resolution) and DAB

- Arbitration
- Mediation
- Conciliation
- Dispute Board*1
 - Dispute Review Board
 - Dispute Adjudication Board
 - Combined Dispute Board

*1: Classification of ICC-Dispute Board Rule 2004



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Dispute Board

- Dispute Review Board, DRB
 - DRB issues recommendations.
- Dispute Adjudication Board, DAB
 - DAB issues decisions.
 - called as DB (Dispute Board) in MDB edition
- Combined Dispute Board, CDB
 - CDB issues recommendations.
 - however, CDB may issues decisions, if any Party (Employer and Contractor) so requests. The CDB has the power to do so even if the other party objects.



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Types of DB

□ Full-term (standing) DB

- appointed just after conclusion of the construction contract
- periodical site visit regardless of dispute
- adopted in Red Book 1999 and MDB edition

□ Ad-hoc DB

- appointed after occurrence of dispute
- adopted in Yellow Book 1999 and Silver Book 1999

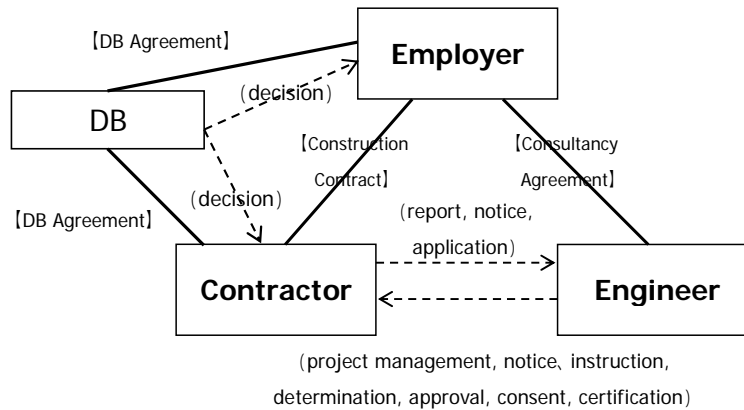


Comparison : Full-term and Ad-hoc DB

	Full-term	Ad-hoc
Total DB cost	higher	lower
Function of dispute prevention by DB	Yes	No
Time for issuing decision after dispute	short	long



Three Party System and DB in FIDIC



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Dispute Settlement Procedures in FIDIC Contracts

- Red Book 1987
 - The Engineer makes determination of claim and decision of dispute
 - Same in Yellow Book 1987
- Red Book 1999 and MDB edition
 - The Engineer makes determination of claim, and DB makes decision of dispute
 - Same in Yellow Book 1999
- Silver Book 1999
 - The Employer makes determination of claim, and DB makes decision of dispute



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FIDIC Contract Provisions related to DB (1)

(Conditions of Contract for Construction)

20 Claims, Disputes and Arbitration

- 20.1 Contractor's Claims
- 20.2 Appointment of DB
- 20.3 Failure to Agree DB
- 20.4 Obtaining DB's Decision
- 20.5 Amicable Settlement
- 20.6 Arbitration
- 20.7 Failure to Comply with DB's Decision
- 20.8 Expiry of DB's Appointment



FIDIC Contract Provisions related to DB (2)

(Documents for Employment of DB)

- General Conditions of Dispute Board Agreement
- Procedural Rules
- Dispute Board Agreement



20.2 Appointment of DB

- The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons.
- In case of 3-member DB, each Party nominate one member for approval of the other Party, if they fail to jointly appoint the DB.
- The first two members shall recommend and the Parties shall agree upon the third member, who shall act as a chairman.
- If an adjudicator list is provided in the Contract and agreed by the Parties, the member shall be selected from the list.
- DB's fee and expense shall be evenly paid by both Parties.
- If both Parties so agree, they can jointly seek opinion of DB at any time.



20.3 Failure to Agree DAB

- If Parties can not appoint DB member or agree DB member, an entity or official named in the Contract Data shall appoint member(s).
- Such appointment shall be final.
- The two Parties evenly share the remuneration of appointing entity or official.



20.4 Obtaining DB's Decision (1)

- Either Party may refer the dispute in writing to DB, if a dispute arises in connection with the Contract or execution of the Works including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer.
- Both Parties shall make available to the DB related information and access to the Site.
- Within 84 days after receiving such reference, DB shall give its decision. The decision shall be binding on both Parties, unless and until it shall be revised in the amicable settlement or arbitral award.



20.4 Obtaining DB's Decision (2)

- If either Party is dissatisfied with DB's decision, either Party may give notice to the other Party of its dissatisfaction within 28 days and intention to commence arbitration.
- If DB has given its decision and no notice of dissatisfaction has been given by either Party within 28 days, then the decision shall become final and binding upon both Parties.



General Conditions of Dispute Adjudication Agreement(1)

- This agreement is a tripartite agreement among the Employer, the Contractor and DB member.
- The DB member shall warrant that he shall be impartial and independent of the Employer, the Contractor and the Engineer.
- When appointing the member, the both Parties relied upon the member's representation that he/she is:
 - experienced in similar work
 - experienced in contract documentation
 - fluent in the language for communication



General Conditions of Dispute Adjudication Agreement(2)

- The DB member shall be paid as follows:
 - monthly retainer fee
 - daily fee
 - expenses (travel expense, hotel, telephone, etc.)
 - taxes in the Country
- The retainer fee shall be reduced by 1/3 after Taking-Over Certificate is issued.
- The Contractor shall pay DB member's invoice in full and shall apply to the Employer for reimbursement of 1/2 of the amount.



Procedural Rules

- The DB shall visit the site at the interval of not less than 70 days and not more than 140 days, unless otherwise agreed by the Parties.
- The purpose of site visit is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and ,as far as reasonable, to endeavour to prevent potential problems or claims from becoming dispute
- The DB shall prepare a report before leaving the site.
- If any dispute is referred to the DB, the DB shall:
 - act fairly and impartially, giving the Parties a reasonable opportunity of putting his case and responding to the other's case,
 - adopt procedures suitable to the dispute, avoiding unnecessary delay or expense



Differences between FIDIC Red Book 1999 and MDB (1)

- In MDB version, the Board is called as DB (Dispute Board), not DAB (Dispute Adjudication Board)
- In MDB version, if the Engineer does not respond to the claim within the timeframe specified in the Contract, any of the Parties may consider that the claim is rejected by the Engineer and any of the Parties may refer to DB in accordance with SC 20.4.
- In MDB version, essential requirements to the members ,i.e. experience in similar works and contractual documents, and communication capability are spelled out in SC 20.2, besides DB General Conditions.



Differences between FIDIC Red Book 1999 and MDB (2)

- Appointment procedure of DB in MDB version:
 - The Parties should first consider together who shall serve as the DB.
 - The first two members recommend the third member who will act as a chairman.
- In MDB version, the reduction of retainer is 1/3 rather than 1/2.
- In MDB version, the following text is added in respect of purpose of the site visit by DB:
 - “,as far as reasonable, to endeavour to prevent potential problems or claims from becoming dispute”



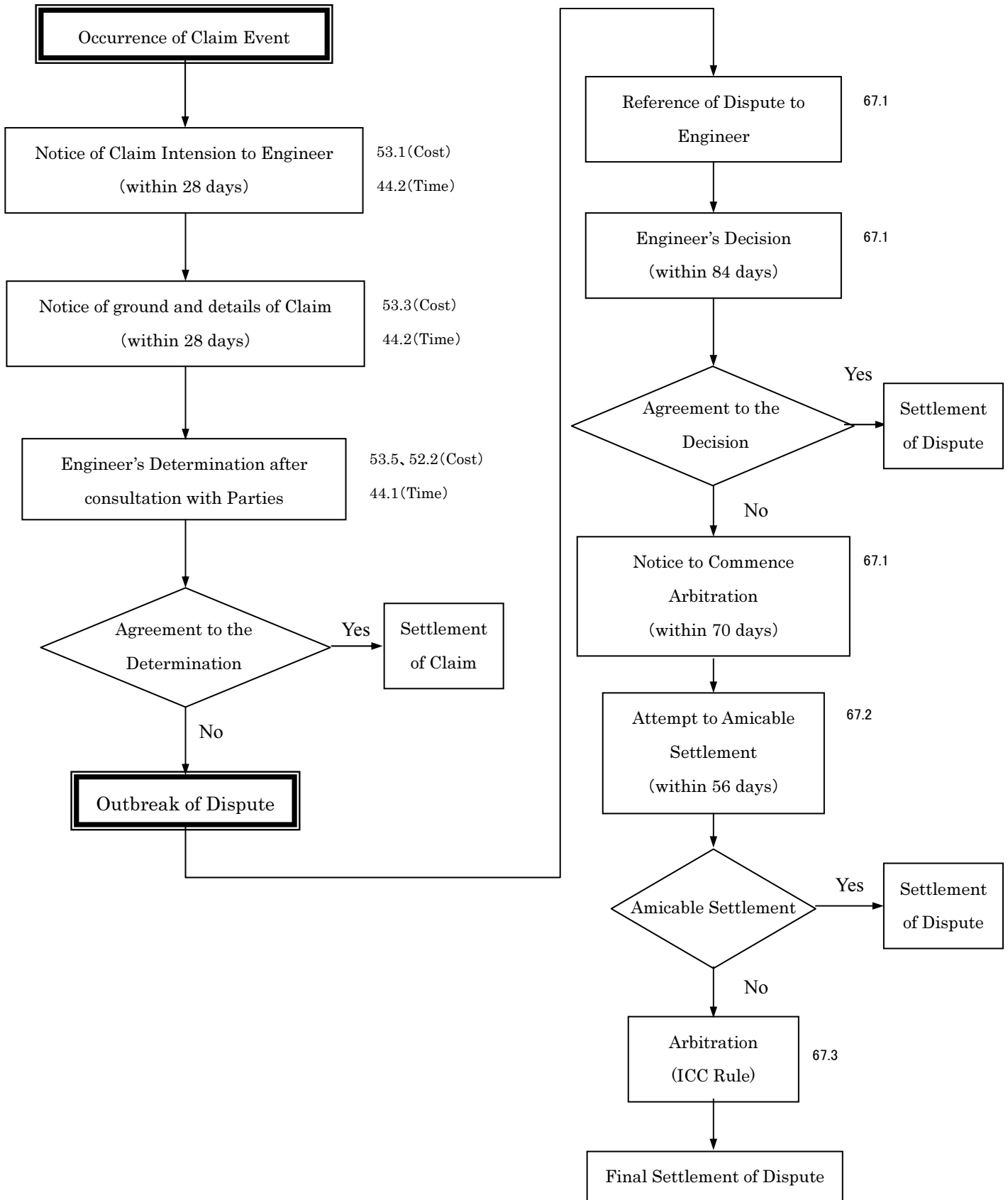
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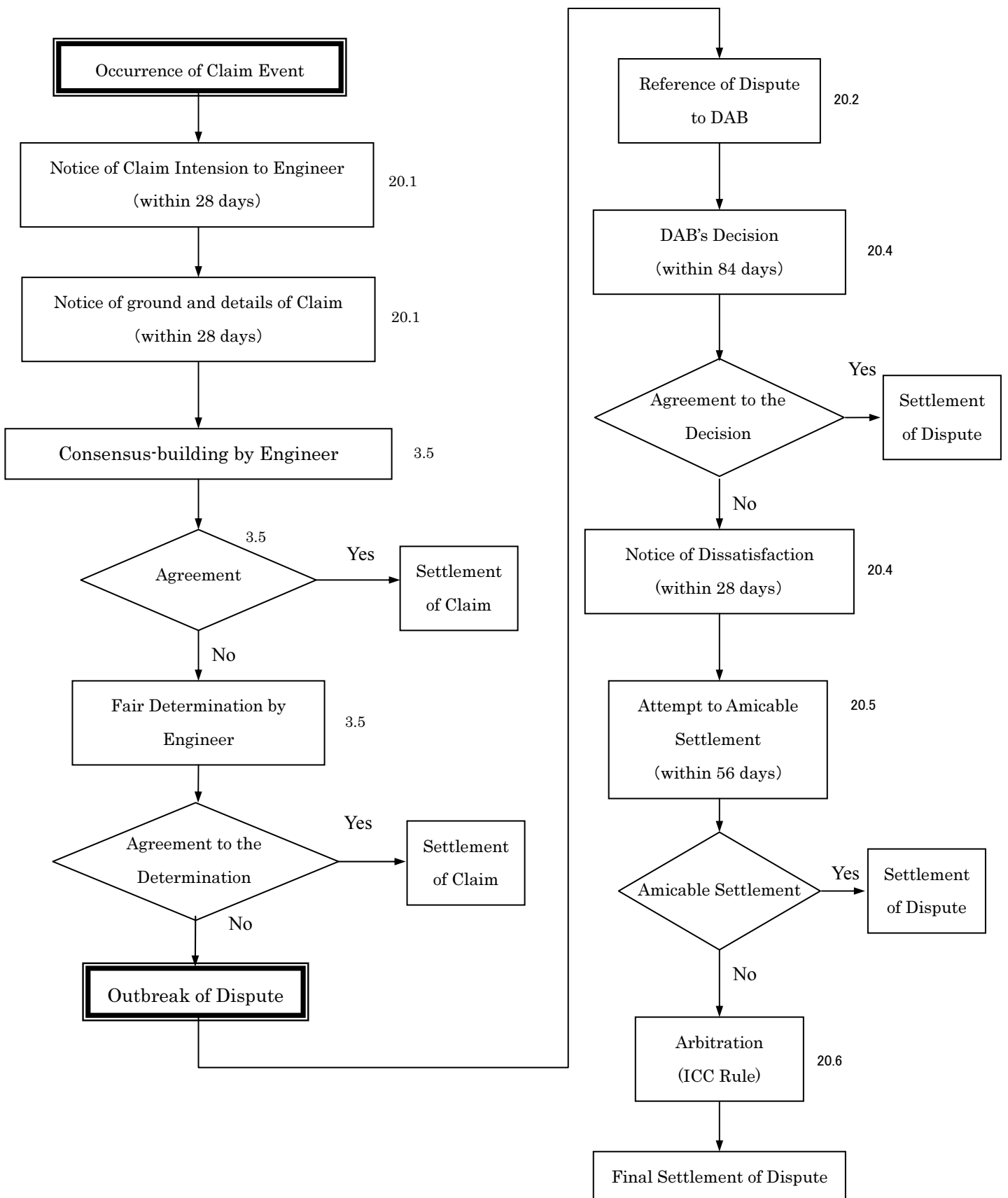
The End

Thank you !!

Attachment-1 Procedure of Claim and Dispute Settlement (FIDIC Red Book 1987)



Attachment-2 Procedure of Claim and Dispute Settlement (FIDIC Red Book 1999 and MDB)





DAB (Dispute Adjudication Board) Forum

Practice of Dispute Boards

India Habitat Center
Delhi, India

22 August 2008
Graduate School of Management,
Kyoto University
Professor Toshihiko Omoto, Dr.Eng.

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Today's Topics: Dispute Boards

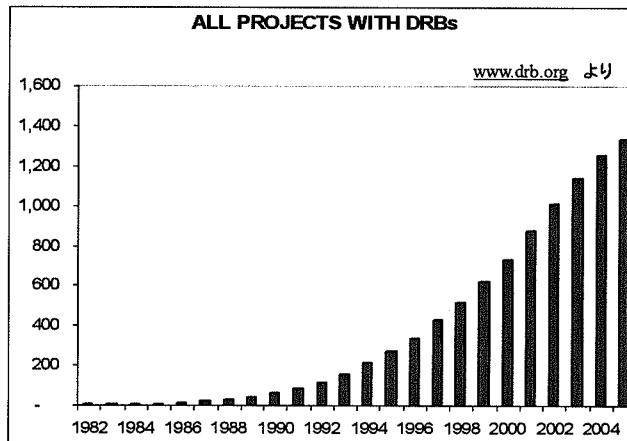
- The Present State of DB's Propagation
- The Operation of DB
- The Effects of DB
- The Costs of DB
- The Examples of DB
- Promotion of DB members



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The Present State of DB's Propagation DRBF's Report



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The Present State of DB's Propagation DRBF's Report

- Reported projects are almost in USA
- DB is widely used in public sectors
 - California: The authority of transportation
 - Florida: The authority of transportation
 - Seattle: Metro
 - Alaska: The authority of electricity
 - Federal government: The ministry of energy
- DRB used in 1,200 projects in 2005
 - 1.2 references/ project to DRB
 - 2% of references to arbitration/litigation
 - 1% of above resolved before award/judgement



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The Present State of DB's Propagation outside the USA

- Urtan Hydropower Project (China)**
 - US\$2 billion: 3,300 MW
 - 40 references to DAB, no claim to arbitration
- Hong Kong International Airport**
 - US\$ 15billion
 - 6 references to DAB, 1 to arbitration, upheld
- Katse Dam (South Arfica)**
 - US\$2.5 billion
 - 12 references to DAB, 1 to arbitration, upheld
- Docklands Light Railway, UK**
 - US\$500 million
 - No reference to DAB
- Saltend Private Gas Turbine Power Plant, UK**
 - US\$200 million
 - No reference to DAB
- Many, Many more!**



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The Operation of DB Difference Between Other Means of Dispute Resolution

- Selection of DB members is agreed by both parties
- DB provides on site dispute resolution
- DB is established before disputes take place
- DB provides regular site visits and documents review to remain conversant with project development
- DB is more like part of project management, rather than means of dispute resolution
- Key to a successful DB; DB members to gain trust and regards for their neutrality, impartiality and capability
- Early settlement of disputes
- Preventing disputes from taking place or escalating to real disputes



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The Operation of DB

Qualifications of DB members

- FIDIC Rules
 - Language ability
 - experience in the kind of Work
 - experience in drafting and interpreting contract documents
 - Availability for site visits
 - Free from conflict of interest with both contracting parties and Engineer
 - Free from conflict of interest with the contract itself
 - Engineers or lawyers?
-



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The Operation of DB

Selection of DB Members/Establishment of DB

- Each party nominate one for the other party's approval, two members nominate the third member for both parties' approval → Chairperson
(The chairperson should be of different nationality from the two contracting parties.)
 - The two parties can make the selection together with the Engineer.
 - DB members can be selected from a ballot of several candidates.
 - Qualifications can be set down in advance (Example)
 - Selecting from FIDIC President's List
 - 2 Engineers + 1 Lawyer (chairperson)
-



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The Operation of DB

Information to be disclosed in making DB contracts

- Records of any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the contract forms part
- Records of any employment as a consultant or otherwise by the Employer, the Contractor or the Engineer
- Besides, information about the warranty on the impartiality and independence from the Employer, the Contractor and the Engineer



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The Operation of DB

Example of Disclosure

- In this case, the candidate had been employed by one of the parties until 10 years ago for 7 years then no involvement since then
- The candidate warrants his independence on the party

Vice President

Company Ltd.

Dear Sir,

This Project
Appointment of DAB

Thank you for your letter dated [redacted] inviting me to provide a statement of availability to serve on a DAB to be constituted under this Contract.

I have reviewed the your letter and am pleased to advise you of my availability to serve on a DAB for this Contract and that, on the basis of the Project information contained in that letter;

1. I have no financial interests with, and am independent of the Parties and the Engineer.
2. I am familiar with the Conditions of Contract.
3. I am fluent in the language of the Contract.
4. I have extensive experience in the type of work that is being undertaken.

I understand that you have obtained my CV from the list of approved adjudicators published by FIDIC.

As a matter of disclosure, the Parties and the Engineer should be made aware that between the years 1990 and 1997 I was employed in [redacted] in the position of Contracts Manager for the Far East. As part of the duties in that position I prepared Joint Venture Agreements and Subcontracts for projects on which [redacted] was involved. [redacted] often tendered for contracts in joint venture with [redacted] and on at least one occasion subcontracted work to this Company. The last involvement of this nature was 13 years ago in 1995 in connection with the [redacted] Hydroelectric Project in [redacted]. I left the employ [redacted] in 1997 have not had contact with [redacted] since that time and consider that any previous involvement with this Company will not affect my independence should I be selected to serve as a member of the DAB for this Project.

Thank you for this consideration and I look forward to hearing back from you.

Sincerely,
JBIC

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The Operation of DB Three-Party Agreement

- **Three-Party Agreement**
 - Signatures of the 3 parties
 - Assignment of DAB procedures
 - Payment
 - Retainer Fee
 - Daily Fee

DISPUTE BOARD AGREEMENT

PROJECT

Employer: _____ Contractor: _____ Member: _____

Whereas the Employer and the Contractor have entered into a contract (Specifically the "Contract Documents" for the

herein after referred to as the "Contract") and desire jointly to appoint the Member to act as one of the three persons who are jointly called the "DB".

The Employer, Contractor and Member jointly agree as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the: General Conditions of Dispute Adjudication Agreement and "Procedural Rules" that are in Volume 1, Section VII, pages 106 to 114 of the Contract; all other terms of the Contract that apply to the work of the DB; and the following provisions. In these provisions words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.
2. In accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member shall be paid as follows:
A retainer fee of _____ per month,
plus a daily fee of _____ per day.
3. In consideration of these fees and other payments to be made by the Employer and the Contractor in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member undertakes to serve, as described in this Dispute Adjudication Agreement, as one of the three persons who are jointly to act as the DB.
4. The Employer and the Contractor jointly and severally undertake to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement.
5. This Dispute Adjudication Agreement shall be governed by the law of the Contract.

SIGNED by:	SIGNED by:	SIGNED by:
_____	_____	_____
for and on behalf of the Employer	for and on behalf of the Contractor	the Member

Date: _____ Date: _____ Date: _____



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The Operation of DB-Acquaintance With the Project The First Site Visit

- **Logistics**
 - Basis: the DB should be seen as a member of the project team
 - Introduction of DB members (The participation of the head office?)
 - Participants' roles in the DB meeting
 - Confirmation of contract documents
 - Contract Agreement/Conditions of Contract/Bills of Materials/Drawings/Programme/other relevant documents
 - Secure contract documents for DB
 - One set of copies on the site
 - An A-5 subsized version for each DB individual
 - Building of communication network
 - Arrangements & Preparations (Arrangement of hotel, vehicles, meeting rooms and equipments)
 - Deciding the date of Site Visits (based on the expected progress of the project)



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The Operation of DB-Acquaintance With the Project The First Site Visit (continued)

- Discovering potential disputes areas**
 - Seeds of problems planted at bidding, contract negotiation and signing stage
 - Incompletion in the changed or added terms
 - Problems appear right after signing of the contract
 - Corporation registration
 - Work permit
 - Issues in relation to local labors or subcontractors
 - Problems of Importing and exporting materials and equipments
 - Delay of preceding construction
 - Delay of drawing issuance
- Establishing Problem Solving Project Team**
 - for the project
 - Documentations(Claims) come later



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The Operation of DB-Acquaintance With the Project Site Visits

- Frequency: Every 3~4 months
- Length-of-stay: No shorter than three days
 - Day 1: Site inspection
 - Day 2: Hearing
 - Employer, Contractor, Engineer
 - The persons concerned besides the parties (If necessary, the subcontractors, the designer etc.)
 - Day 3: Site Visit Report
 - Draft and Review/Correction
 - Signing and Distribution before leaving Site
 - Deciding the date of next Site Visit



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Site Visit Agenda (6 – 10 July 2008)

Date	Time	Place	Contents	Responsible	Participants
Monday 7	08:00	Hotel	DB picked up to Site I Briefing & tour	Mr. X	DB, Emp, Cont, Eng
	12:30	Site Office	Lunch	Mr. Y	DB, Emp, Cont, Eng
	13:30		Tour to Site II & III	Mr. X	DB, Emp, Cont, Eng
	18:30	Camp Canteen	Dinner & to Hotel	Mr. Y	DB, Emp, Cont, Eng
Tuesday 8	09:00	Hotel	DB picked up to Site I Emp office for meeting	Mr. X	DB, Emp, Cont, Eng, Sub A&B
	12:30	Site Canteen	Lunch	Mr. Y	DB, Emp, Cont, Eng, Sub A&B
	13:30 18:30		Afternoon session & to Hotel	Mr. X	DB, Emp, Cont, Eng, Sub A&B
Wednesday 9	09:00	Hotel	DB picked up to Site office & prepare report		DB
	16:00		Deliver/review of report & to Hotel	DB	DB, Emp, Cont, Eng, Sub A&B



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The Operation of DB-Acquaintance With the Project Work Between Site Visits

Sending of Documents

- Monthly reports
- Main Variations
- Claim Notices
- Updated Programme
- Important Letters other than claim related

Methods of Sending

- File sending service
- Opening of ftp:// sites



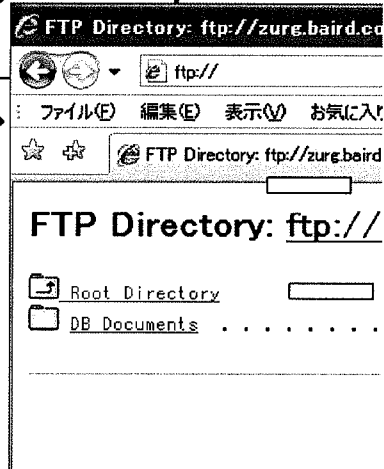
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Methods of Sending (Sample)

Put on to the web site →



Use file sending service
such as www.yousendit.com etc.

(Not expensive, free up to 100MB)



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The Effects of DB Dispute Resolution

- Disputes that cannot be solved among the parties and engineers are referred to DB (Reference)
- DB being well informed of progress/contractual issues
 - Taking advantage of regular Site Visits
 - Voluminous documents and formal presentation unnecessary (Simple Position Papers suffice)
 - Solves disputes at the site level
 - Legal representatives are unnecessary (Should lawyers be permitted to participate?)
 - Swift decisions
- Claims and disputes will not be left unsolved
 - The progress of construction will not be hindered
 - Disputes will not escalate
 - Collaborative relationship is established and maintained between the parties (for the project)



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The Effect of DB Prevention of Disputes

Effects of Site Visits

■ The first Site Visit

- Identifying, and efforts for solving, the problems appeared before and right after the signing of the contract
- Discovering potential dispute areas and promoting dispute prevention

■ Site Visits

- Discovering problems and efforts for dispute prevention
- Sometimes technical advices are also available (sensitive to the parties' obligation)
- Improvement of the relationships (individuals and groups) among the parties, the Engineer and other concerned persons
- Make use of the influence to the third person (subcontract, designer, relevant government offices and others departments)
- Helps maintaining parties' integrity



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The Effect of DB Prevention of Disputes (continued)

DB to be kept informed between Site Visits

- Sensing the parties' changes in attitude and provide advices about improvement
- Improving understanding of the contract by Q&A

Informal/advisory opinion

- DB obtains the trust on neutrality and fairness through Site Visits etc.
- Informal/advisory opinions are easy to be accepted.



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The Effect of DB Informal/advisory opinion

- Informal/Advisory Opinion**
 - DB is not a consultant
 - But, DB may give advice under the parties' mutual agreement
 - No binding effect (neither on the two parties/Engineer nor on DB)
 - Can become base for negotiations between the parties
 - Disputes are settled before escalating
 - Is not equal to DRB's recommendation
- For example**
 - Incompletion in the changed or added terms:
Adjustment of interpretation and making of new draft
 - Advice on solution that involves the third party (such as the subcontractor)



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The cost of DB FIDIC's Explanation

- Retainer**
 - If required, a business trip to the Site within 28 days is possible
 - DB members are to be conversant with the situation of the site, and maintain the related documents.
 - Covers office expenditure and other costs
- Daily Fee**
 - Daily fee for site visit
 - Days of stay + maximum two days for each way for travel
 - Days needed for documents reviewing for the reference
- Reasonable expenses** such as airfare, hotel fee etc.



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The cost of DB

Difference Between FIDIC 1999&MDB Edition

- About the Retainer Fee During the Warranty period
 - 1999: "shall be reduced by 50%"
 - MDB: "shall be reduced by one third"

- About the Retainer/Daily Fee, when no description in the contract, and agreement cannot be reached between the parties
 - 1999: No description
 - MDB: the "appointing entity/official" may make the decision



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The Cost of DB: ICSID (International Centre for Settlement of Investment Disputes) 's Rule

FIDIC: Fee by ICSID can be agreed

Adjudicators Fees

FIDIC does not recommend fees scales for either adjudicators or for the administration for adjudicators. An indication of acceptable terms and conditions is provided by the World Bank's International Center for Settlement of Disputes (ICSID) - see [Memorandum of Fees and Expenses for ICSID Arbitrators](#), 8 March 2004 - that applies for members of Arbitral Tribunals constituted under the ICSIDD Convention.

ICSID's Rule: US\$3,000/day

Fees and Expenses of Conciliators, Arbitrators and *ad hoc* Committee Members

3. In addition to receiving reimbursement for any direct expenses reasonably incurred, conciliators, arbitrators and *ad hoc* Committee members are entitled to receive, unless otherwise agreed between them and the parties, a fee of US\$3,000 per day of meetings or other work performed in connection with the proceedings, as well as subsistence allowances and reimbursement of travel expenses within limits set forth in Administrative and Financial Regulation 14.



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The cost of DB Payment to DB members

- Retainer
 - Payment of three months in advance
 - If no special mutual agreement, no change for 24 months
- Daily Fee/Actual expenses such as the travel expenses
 - Right after the end of the Site Visit
- Methods of payment
 - The Contractor pays 100% at first
 - Reimbursement of 50% through payment through progress payment
 - In other words, the Employer can pay by loans



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The cost of DB Cost-effectiveness

- Project without DB - 1**
 - The exchange of letters is a heavy work, hindering problems from being solved
 - Each one pursues his own profit
 - The contracting parties/Engineer don't get along well with each other
 - Claims are left unsolved
 - Tiny disputes may also escalate (global claims, additional problems of interest and exchange rates)
 - Production and assessment of claim packages



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The cost of DB Cost-effectiveness (continued)

Project without DB - 2

■ Production and assessment of claim packages

- increase of lawyers, specialists and employees (for long time)
- Enormous cost occurs even if there is no litigation or arbitration
- Disputes arise between the Employer and the Consultant on the additional cost of claim assessment/evaluation work



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The cost of DB Cost-effectiveness – (continued)

Project without DB - 3

■ More enormous cost occurs if disputes escalate into litigation and arbitration (lasts for years)

- (Example) Japan:
5 lawyers for each side
- (Example) International:
2 Barristers+3 Solicitors for each side
2 Experts (1 geologist + 1 consulting firm)



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The cost of DB Cost-effectiveness (Continued)

Projects with DB

- The cost of DB will be no more than the cost estimated by experienced Employer/Engineer and Contractor for production and assessment of claim packages
- Prevention of gambling in contract management, improvement of certainty
 - Prevention of irrational assessment by the Employer/Engineer
 - Engineer acts fairly and reasonably
 - Prevention of the Contractor's unjustified claims
 - Helps maintaining integrity of the parties
 - Stability of bidding price



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Cases of DB Cases of DAB, Example of wisdom

Water-supply tunnel project in China

- JBIC loans
- 13 times of site visits from Mar 2003 to Mar 2007
- The defect liability period ended in Feb 2008
- **The DAB contract was extended from Mar 2008 to the end of final discharge of all obligation**

Selecting of DAB members

- The Employer: A Japanese engineer (FIDIC President's List, advised by Japanese consulting firm)
- The Contractor: An American engineer (DRBF President)
- The Chairman: International construction lawyer (FIDIC President's List, American)
 - Recommended by co-members' agreement
 - Chosen by the agreement between the parties



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Cases of DB

Cases of DRB, Example of wisdom

- Port construction project in Madagascar
 - World Bank (20%) and private co-financing
 - Site visits were discontinued after the third time
 - **However, retainer contract being maintained**
- Selecting of DB members
 - Parties agreed to select from FIDIC President List
 - The Employer and the Contractor agreed on the selection



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Cases of DB

Cases of DRE (One-person DRB)

- Japan
 - A gas turbine plant operation and maintenance (o/m) contract for 15 years
 - Apply DRE (Dispute Review Expert) or One Person Dispute Review Board for the last 10 years
 - Meetings are held once every three months
 - No retainer fee, but documents review/drafting recommendation etc. will be paid by hourly rate
- Selecting of the Experts
 - A mediation was held on the fifth year of the contract under the ADR rule of ICC
 - **After the mediation concluded successfully, the Neutral was selected for the DRE**



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Promotion of DB Adjudicators Listing Status

- FIDIC Accredited Adjudicators
 - FIDIC President's List of Approved Dispute Adjudicators
 - 38 Listees
 - Civil Engineers, Architects, Quantity Surveyors, Mechanical Engineers, Lawyers etc.
 - Qualification Criteria
- AAA (American Arbitration Association) DB Panel
- Under preparation
 - DRBF Approved Adjudicators
 - ICE,ACE
 - Other National List



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Promotion of DB Adjudicators Education/Training/Accreditation

- FIDIC
 - FIDIC Contract Education/Training (commercially operated)
 - Module 1: Practical use of the FIDIC Conditions of Contracts
 - Module 2: The management of claims and dispute resolution procedures
 - Module 3: Management of Dispute Adjudication Board procedures
 - Module 4: Contract management and administration
 - Training Pupilage
 - Admission: through Assessment Workshop by APA (Assessment Panel for Adjudicators)



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Promotion of DB Adjudicators Education/Training/Accreditation

- DRBF
 - Workshops: very often
 - For users
 - For serving as a DB member
 - For serving as a Chairperson
 - Cooperation with public authorities
 - Qualification for listing: criteria being prepared
 - Tentative Listing: being prepared
- National Lists



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Promotion of DB Adjudicators Education/Training/Accreditation

- According to FIDIC Website
 - Germany (VBI)
 - Hungary (AHCEA)
 - Philippines (CECOPHIL)
 - Poland (SIDR)
 - Romania (ARIC):
 - South Africa (SCAACE)
 - UK (ACE) in formation
- India?



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Promotion of DB Adjudicators in Asia

- Potential DB Adjudicators available
 - Because a lot of experts for dispute resolution (arbitrators, mediators, adjudicators etc.)
 - UK/USA/Developed EU countries
 - Australia/New Zealand
 - Hong Kong/Singapore
- Needs education/training from basics
 - Because of few arbitration/litigation, few experts
 - Asia (including Japan, of course)
 - Former East Europe
 - Africa
 - South and Middle America (?)



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Promotion of DB Adjudicators Action Plan

- Currently only 1 Asian in FIDIC List
- Plan in Japan/Asia
 - Explore potential candidates
 - Consulting engineers, civil engineers from contractors and plant engineering companies
 - Education/training of basics, preparing for assessment (National or FIDIC AAW)
 - English
 - FIDIC 1999/MDB Harmonized Conditions
 - Claims
 - Moc DB hearing
 - Decision writing
 - Ethics



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Promotion of DB Adjudicators Education/training Programme

- Education/training Workshop
 - Text Book
 - Venue
 - Lecturers/trainers
 - Candidates
- New Proposed Accreditation Institute
 - Qualification criteria
 - Assessment panel
 - Assessment workshop programme



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Promotion of DB Adjudicators Education/training Programme

- Japan/Asia
 - Education/training
 - (e.g.)New Institute/Center
 - Assistance by experienced DB members
 - Cooperation with/Assistance by FIDIC
 - e.g. Japanese National List
 - AJCE (Association of Japanese Consulting Engineers)
 - Asian countries
 - FIDIC Member Associations: National Lists



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Practice of Dispute Board

Thank you for your attention

The End



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List of Participants

22 August, 2008 Habitat World, New Delhi

	Name and Title	Remarks
1	Mr. G. Sharan- Director General (RD), Ministry of Shipping, Road Transport & Highways, Govt. of India, Transport Bhawan, New Delhi.	Gov sector
2	Mr. J. Ganguly, Senior Vice President, Larsen & Toubro Ltd. Chennai.	Private sector
3	Mr. V.M. Dharap, Technical Director, Gammon India Ltd.	
4	Mr. K.K. Sarin, Former DG, RD.	Dispute Review Experts & Arbitrators
5	Mr O P Goel, Former DG, CPWD	
6	Mr. N. Koshi, Former DG, RD	
7	Justice S. Narayan (Retd.).	
8	Mr. A.D. Narain, Former DG, RD & Executive Director, ICT	
9	MR. P.B. Vijay, Former DG, CPWD	
10	Mr.Krishna Kumar, Mumbai	Title unknown
11	Mr. A. K. Baneyee	
12	Prof. Toshihiko Omoto, Kyoto University	JBIC Study Team
13	Mr. Yukinobu Hayashi, AJCE	
14	Mr. Hidetoshi Irigaki, Chief Representative, JBIC Representative Office in New Delhi	JBIC
15	Mr. Shintaro Nakayama, Procurement Policy and Supervision Div.	
16	Mr. Mihir	
17	Mr. Sanjeer	
18	Mr. M. P. Singh	