

Seminar Handouts

(Manila Forum)

Held on 28th August 2008



Japan Bank for International
Cooperation



Japan International
Cooperation Agency



Dispute Resolution
Board Foundation

Present a

Forum on Experiences in the Use of Dispute Boards and the Introduction of the JBIC New Conditions of Contract

28 August 2008 • The Linden Suites , Pasig City, Philippines

Focusing on actual experiences in the practical use of Dispute Boards (DBs) in FIDIC Contracts, including those with Multilateral Development Banks (MDBs), this Forum will also highlight the JBIC new conditions of contract that were patterned after the 1999 FIDIC contract conditions, which included the use of DBs. This is Part Two (2) and a sequel to last year's forum, which focused mainly on the introduction to the DAB/DRB/DB.

A Special Advocacy Project in collaboration with



The Council of Engineering Consultants
of the Philippines



International Federation of
Consulting Engineers



Philippine Constructors Association



Philippine Dispute Resolution
Center, Inc.

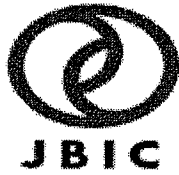


Philippine Institute of Construction
Arbitrators and Mediators



Philippine Overseas Construction
Board

FORUM ORGANIZERS



The Japan Bank for International Cooperation has a statutory mandate to undertake lending and other operations for the promotion of Japanese exports, imports and economic activities overseas; for the stability of international financial order; and for economic and social development as well as economic stability in the developing economies, thereby contributing to the sound development of the Japanese economy as well as international economy. JBIC operates under the principle that it will not compete with financial institutions in the private sector.

JBIC operates on two fronts in undertaking Japan's external economic policy and economic cooperation. On one front it conducts International Financial Operations, which include export loans, import loans, overseas investment loans, untied loans and equity participation in overseas projects of Japanese corporations.

JBIC's overseas Economic Cooperation Operations provide financial assistance including loans. The basic tenet of these operations is to provide concessionary long-term, low-interest funds needed for the self-help efforts of developing countries, including social infrastructure development and economic stabilization. More specifically, JBIC provides assistance in various forms attuned to the existing needs, Private-Sector Investment Finance Supporting business activities in developing countries, and development-related research.

JBIC Manila Representative Office :
31st Floor, Citibank Tower, Valero corner Villar Streets
Makati City, Metro Manila, Philippines



Founded in 1974, the Japan International Cooperation Agency is an implementation agency for technical assistance, focusing on institution building, organization strengthening, and human resources development that will enable developing countries to pursue their own sustainable socio-economic development.

JICA's work is broad in scope and reflects international concerns and changing needs in developing countries.

JICA Philippines Office - Planning & Coordination Section :
40th Floor, Yuchengco Tower, RCBC Plaza, Ayala Avenue
Makati City, Philippines



The Dispute Resolution Board Foundation, a non-profit organization, is dedicated to promoting the avoidance and resolution of disputes worldwide using the unique and proven Dispute Resolution Board (DRB) method. The DRBF provides assistance with the worldwide application of the DRB method by providing general advice and suggestions tailored for the conditions and practices existing in local areas. The DRBF helps users of the method by providing information about establishing successful DRBs in the U.S., or in other countries, and critical information on setting up a Board and finding appropriate professionals.

Philippine Representative Office :
c/o of SPCastro and Associates, Inc.
6th Floor, The Linden Suites, San Miguel Avenue
Ortigas Center, Pasig City

COLLABORATING ORGANIZATIONS



Organized in Oct 1976, the **Council of Engineering Consultants of the Philippines (CECOPHIL)** is considered as one of the leading organizations of its kind in the local consulting industry, consisting of very active and well-established Filipino and multi-national engineering firms doing various technical consulting work for both the government and private sectors here and abroad.

CECOPHIL's core purpose is to facilitate the development of member firms towards global competitiveness and to be a major player in the dynamics of the construction industry while adhering to the values of Professionalism, Integrity and Objectivity.

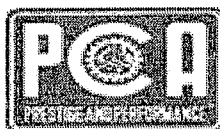
CECOPHIL is also the Member Association of FIDIC in the Philippines.



The **Federation Internationale des Ingenieurs Conseils (International Federation of Consulting Engineers (FIDIC))**, represents globally the consulting engineering industry. As such, the Federation promotes the business interest of firms supplying technology-based intellectual services for the built and natural environment.

FIDIC is charged with promoting and implementing the industry's strategic goals on behalf of some 80 national Member Association.

Member firms endorse FIDIC's statutes and policy statements and comply with FIDIC's Code of Ethics which calls for professional competence, impartial advice, and open and fair competition.



The **Philippine Constructors Association, Inc. (PCA)** is the umbrella organization of Filipino contractors, suppliers, manufacturers, distributors of construction materials and equipment, and allied organizations.

As an organization concerned in promoting and protecting the interest and development of the construction industry, business concerns and problems confronting the construction industry are brought to the attention of the government agency/ies concerned for appropriate action.

As the recognized "voice of the construction industry", PCA is being represented in a number of government bodies tasked with policy formulation and implementation, drafting of laws, rules and regulations, and administrative directives.



The **Philippine Dispute Resolution Center, Inc. (PDRCI)** is a non-stock, non-profit organization incorporated in 1996 out of the Arbitration Committee of the Philippine Chamber of Commerce and Industry for the purpose of promoting and encouraging the use of arbitration as an alternative mode of settling commercial transaction disputes and providing dispute resolution services to the business community. Its membership is composed of prominent lawyers, members of the judiciary, academicians, arbitrators, bankers, and businessmen.



The **Philippine Institute of Construction Arbitrators and Mediators, Inc. (PICAM)** is a non-stock non-profit organization of all CIAC-accredited Arbitrators and Mediators. The organization is composed of men of distinction in the field of law, various disciplines of engineering, commerce and allied professions who have undergone extensive trainings in construction arbitration conducted by CIAC.



The **Philippine Overseas Construction Board (POCB)** is an implementing arm of the Construction Industry Authority of the Philippines (CIAP) which is attached to the Department of Trade and Industry whose main functions are to : [a] accredit Philippine contractors and consultants for overseas construction projects; [b] monitor their overseas work performance; and [c] provide marketing assistance as they may need.

**"Forum on Experiences in the Use of Dispute Boards,
and the Introduction of the JBIC New Conditions of Contract"**

*A Special Advocacy Project of JBIC/JICA and DRBF
In collaboration with CECOPHIL, FIDIC, PCA, PDRCI, PICAM, and POCB*

28 August 2008, The Linden Suites, Pasig City, Philippines

PROGRAMME

- 0800HR Registration
- 0830HR National Anthem
- 0835HR Invocation **Sonia T. Valdeavilla**
Officer-in-Charge, POCB
- 0840HR Welcome Address **Dean Custodio O. Parlade**
*President Emeritus, PDRCI
Board of Advisers Member, PDRCI*
- 0900HR Opening Remarks **Hiroshi Togo**
*Manila Office Chief Representative,
Japan Bank for International Cooperation*
- 0925HR Introduction of Resource Speakers **Salvador P. Castro, Jr.**
*Country Representative, DRBF
Member, Executive Committee, FIDIC Asia Pacific*
- PANEL DISCUSSION :**
- 0940HR JBIC's New Sample Bidding Documents and
DAB in FIDIC 1999 and MDB Harmonised
Conditions for Construction **Yukinobo Hayashi**
*Member, Association of Japanese
Consulting Engineers (AJCE)*
- 1010HR Practice in Dispute Boards **Toshihiko Omoto**
*Professor, Kyoto University
Member, FIDIC President's List of Approved Dispute Adjudicators
Japan's Country Representative, DRBF*
- 1055HR **COFFEE BREAK**
- 1110HR Becoming a Dispute Board Member **Gordon L. Jaynes**
*Member, FIDIC Assessment Panel for Adjudicators
Member, FIDIC President's List of Approved Dispute Adjudicators
Recipient, DRBF Al Mathews Award for Dispute Board Excellence*
- 1155HR ADR Practices in the Philippines and
Use of DAB/DRB/DB in Philippine
Construction Projects **Victor P. Lazatin**
*Immediate Past President, Philippine Institute of
Construction Arbitrators & Mediators
Board of Trustees Members, PDRCI*
- 1225HR **LUNCH**
- 1300HR **OPEN FORUM**
Moderators : **Floro O. Adviento**, *Manager, JBIC*
Daisy P. Arce, *Member, DRBF*
Arthur A. Autea, *Board of Trustees Member, PDRCI*
Anthony L. Fernandez, *President, PCA*
Michael P. Reyes, *President, CECOPHIL*
- 1330HR Summary and Synthesis **Arthur A. Autea**
Board of Trustees Member, PDRCI
- 1345HR Presentation of the Plaques of Appreciation
- 1400HR Closing Remarks **Miyao Taisuke**
Director, Japan Bank for International Cooperation

Mr. Salvador P. Castro, Jr.

DRBF Country Representative and FIDIC Asia Pacific Executive Committee Member

Master of Ceremonies



Forum on Experiences in the Use of Dispute Boards and the Introduction of the JBIC New Conditions of Contract
JBIC's New Sample Bidding Documents and DAB in FIDIC 1999 and MDB Harmonized Conditions for Construction

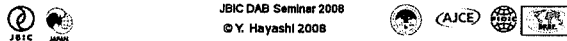
August 28, 2008
Association of Japanese Consulting Engineer
Yukinobu Hayashi

JBIC DAB Seminar 2008

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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

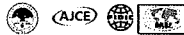
- CDB issues recommendations.
- however, CDB may issues decisions, if any Party (Employer and Contractor) so requests. The CDB has the power to do so even if the other party objects.

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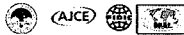
Types of DB

- 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

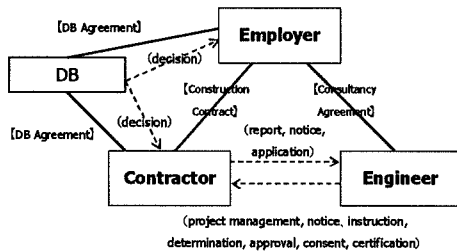


Comparison : Full-term and Ad-hoc DB

	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









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FIDIC Contract Provisions related to DB (2)

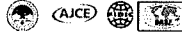
(Documents for Employment of DB)

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



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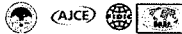
20.2 Appointment of DB

- 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.



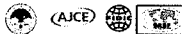
20.3 Failure to Agree DAB

- 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.



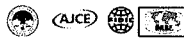
20.4 Obtaining DB's Decision (1)

- 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"

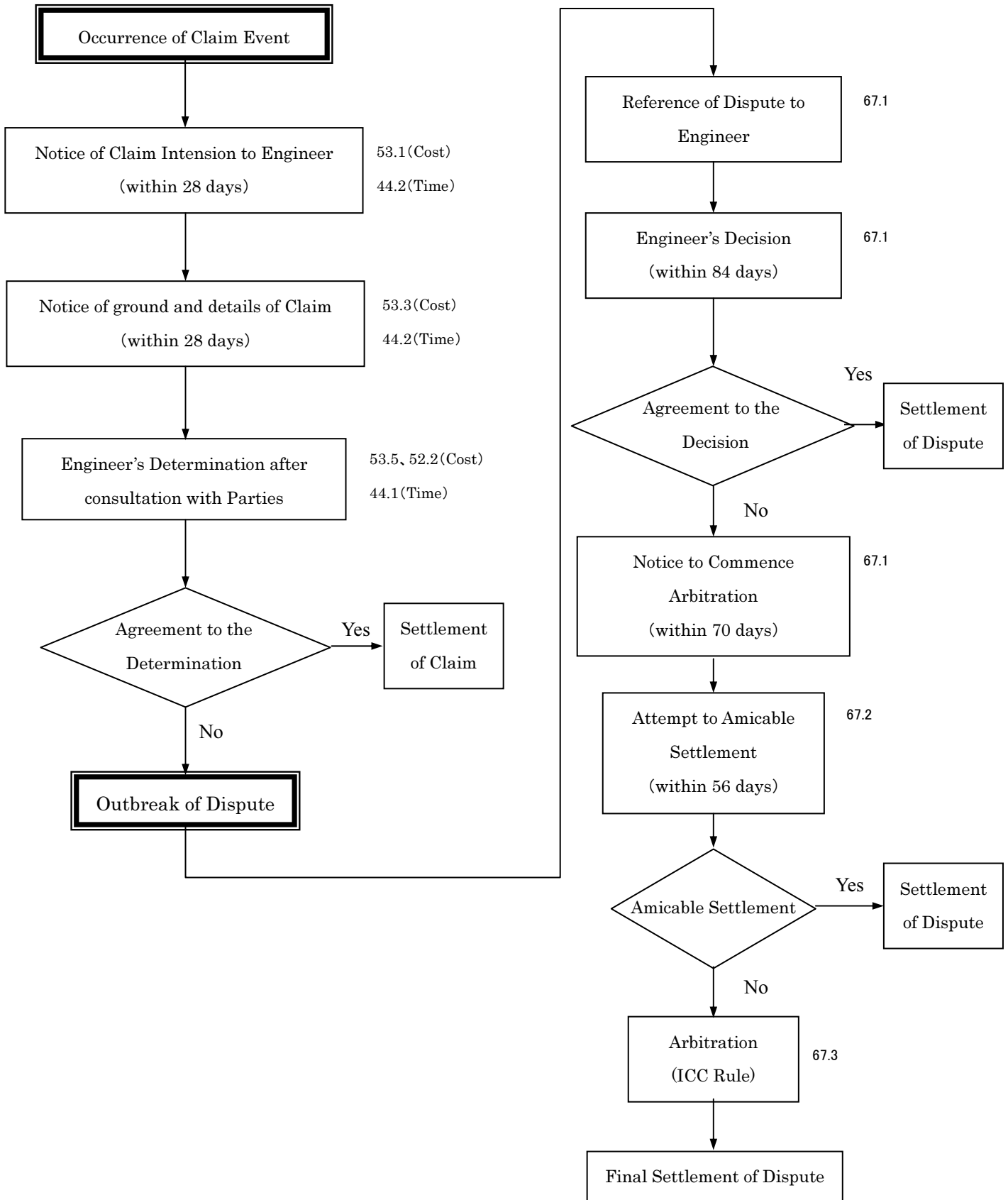


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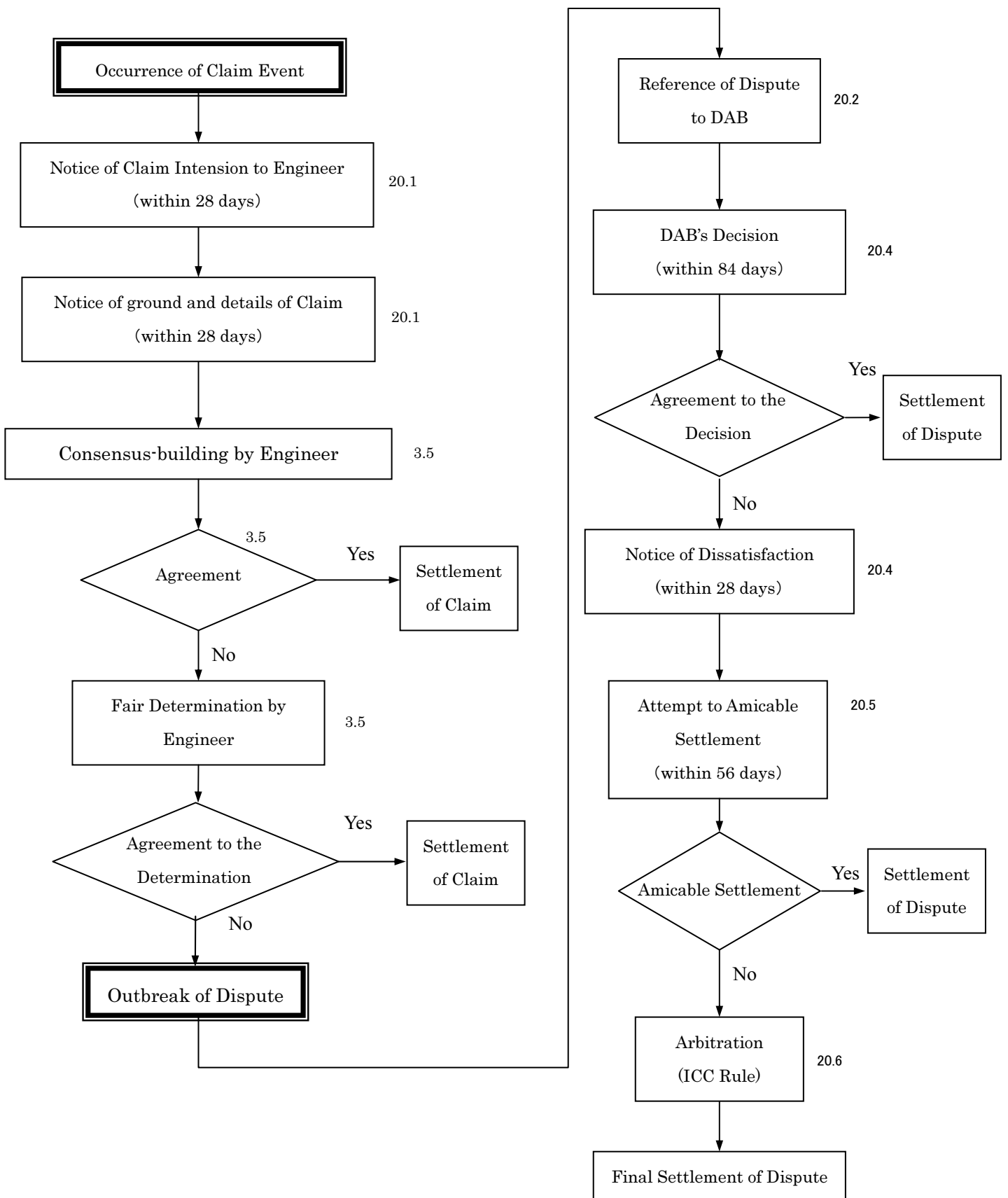
Thank you !!


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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)





**Forum on Experiences in the Use of Dispute Boards and
the Introduction of the JBIC New Conditions of Contract**

Practice of Dispute Boards

The Linden Suites
Pasig City, Philippines

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

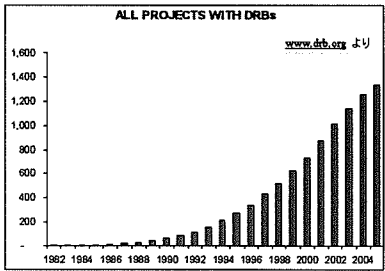
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Today's Topics: Dispute Boards

- 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 Africa)**
 - 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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Vice President
Company Ltd.

The Operation of DB Example of Disclosure

Dear Sir,

I have reviewed the your letter and am pleased to advise you of my availability to serve on a DAB to be constituted under this Contract.

I have no financial interests with, and am independent of the Parties and the Employer.

I am familiar with the Conditions of Contract.

I am fluent in the language of the Contract.

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.

In a matter of disclosure, the Parties and the Employer should be made aware that between the years 1990 and 1993 I was employed in the position of Contract Manager for the Employer. As part of the contract that position I prepared these Variation Agreements and Substitutions for projects on which I had no involvement when rendered for contracts in joint venture with the Employer at that time. I was not involved in the preparation of the Variation Agreements and Substitutions for projects on which I had no involvement in 1997. I have not had contact with the Employer since that time and consider that my previous involvement in this Contract will not affect my independence should I be invited 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,
JBK

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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

Whereas the Employer and the Contractor have entered into a contract (hereinafter the "Contract") for the execution of the Project and have jointly agreed to constitute a Dispute Adjudication Board (DAB) to resolve any disputes that may arise in connection with the Contract;

The Employer, Contractor and Member jointly agree as follows:

1. The Employer, Contractor and Member jointly agree to constitute a Dispute Adjudication Board (DAB) to resolve any disputes that may arise in connection with the Contract.
2. The Employer, Contractor and Member jointly agree to constitute a Dispute Adjudication Board (DAB) to resolve any disputes that may arise in connection with the Contract.
3. The Employer, Contractor and Member jointly agree to constitute a Dispute Adjudication Board (DAB) to resolve any disputes that may arise in connection with the Contract.
4. The Employer, Contractor and Member jointly agree to constitute a Dispute Adjudication Board (DAB) to resolve any disputes that may arise in connection with the Contract.

Witnessed and signed by the Employer, Contractor and Member on this day of _____ 2008.

For the Employer: _____
For the Contractor: _____
For the Member: _____

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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 sized 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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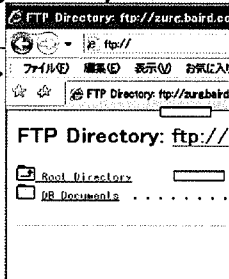


Methods of Sending (Sample)

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 fee 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 *Handbook of Fees and Expenses for ICSID Arbitrators*, 8 March 2004 - that applies for members of Arbitral Tribunals constituted under the ICSID Convention.

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

Fees and Expenses of Conciliators, Arbitrators and of the Committee Members
3. In addition to receiving reimbursement for any direct expenses reasonably incurred, conciliators, arbitrators and of the 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

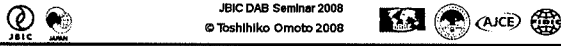


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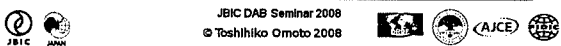
Cases of DB
Cases of DRB, Example of wisdom

- 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



Cases of DB
Cases of DRE (One-person DRB)

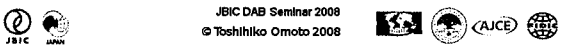
- Japan
 - A gas turbine plant operation and maintenance (o/m) contract for 15 years
 - Apply DRE (Dispute Review Expert) or One Person Dispute Review Board for the last 10 years
 - Meetings are held once every three months
 - No retainer fee, but documents review/drafting recommendation etc. will be 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**



Practice of Dispute Board

Thank you for your attention

The End





Forum on Experiences in the Use of Dispute Boards and the Introduction of the JBIC New Conditions of Contract

Becoming a Dispute Board Member

28th Aug. 2008
Gordon L. Jaynes

JBIC DAB Seminar 2008

Who are the people who serve on Dispute Boards? ²



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Who are the people who serve on Dispute Boards? ³

- Experienced in the work which the Contractor is to carry out under the Contract
- Impartial, accepted and trusted by both Parties
- A truly independent expert with the ability and freedom to act impartially
- Able to develop a spirit of teamwork within the DAB and make fair and unanimous decisions
- Good inter-personal and communication skills and the ability to be impartial and objective
- Has not spent entire career working for same type of Party
- Of appropriate nationality and fluent in the language of the Contract



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FIDIC President's List of Approved Adjudicators ⁴

- At least 10 years successful practice in the field of contract administration and/or disputes
- Proven experience as a construction dispute resolver either as an arbitrator or an adjudicator



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Should I try to become a Dispute Board Member? ⁵



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How can I start building toward becoming a Dispute Board member? ⁶



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Join the DRB Foundation



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Join the Society of Construction Law



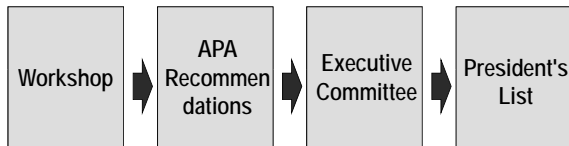
Society of Construction Law



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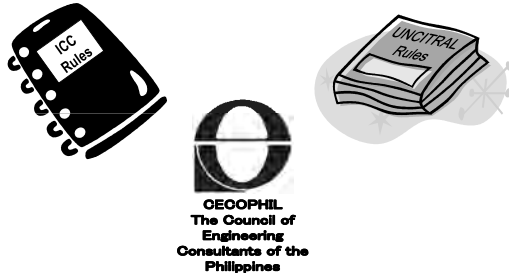
What is the FIDIC President's List of Approved Adjudicators?



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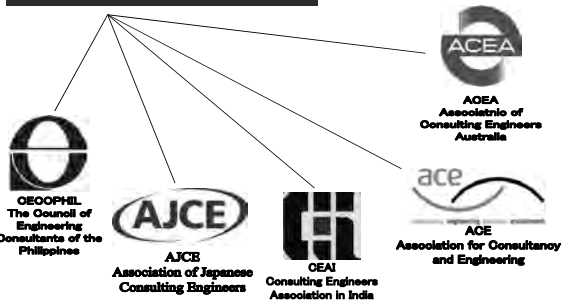
Should I apply for assessment by the APA? ¹⁰



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What are FIDIC National Lists? ¹¹



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FIDIC Guidelines for National Lists ¹²

- ❑ As a minimum, the assessment [for listing] should require documented proof of claimed qualifications and publications, references from member firms in support of the application, supplemented where feasible, by a personal interview of the applicant by the persons designated by the association to decide upon applications for listing.
- ❑ FIDIC recommends that any listing of adjudicators for serving on a DAB under a FIDIC contract require that applicants have specific training in adjudication under FIDIC DAB rules before listing...FIDIC also recommend that the association requires a personal interview as part of the prequalification for listing, because much of the success of a DAB is dependent upon interpersonal skills.



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Becoming a Dispute Board Member

Thank you for your attention!

The End



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BECOMING A DISPUTE BOARD MEMBER

Gordon L. Jaynes
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People who aspire to be newspaper reporters are told to learn and use the five “W”s which must be answered early in any successful news story: Who? What? Where? When? Why?

When it comes to Dispute Boards, we have heard in this Seminar “What” a Dispute Board is, “Where” it is used, “When” it serves, and “Why” it is successful, and thus important to understand how to use it successfully. In the time allotted to me today, I want to address the “Who.”

Who are the people who serve on Dispute Boards? How are they chosen? Should I try to be a Dispute Board member? If so, how do I go about it?

Who are the people who serve on Dispute Boards?

Those of you who like “cowboy films” may have seen the film “Butch Cassidy and the Sundance Kid”, starring Paul Newman and Robert Redford as a couple of bank robbers in the Wild West days. One memorable scene of the two of them is when they are being persistently pursued by a determined posse on horseback which they have been unable to elude; gazing at the posse in the distance as it continues to pursue them, the Sundance Kid says to Butch Cassidy, “Who *are* these guys!”

If you think of the power which the Contract parties have vested in the Dispute Board members, you cannot but pause to ask the same question: “Who *are* these guys?” They are going to make decisions on contractual issues, with which the Parties have agreed to comply; and, they cannot ordinarily be removed except with the agreement of both Parties.

Clause 20.1 of the FIDIC Conditions simply states that Dispute Board members are “suitably qualified persons.” This was explained more fully later in *The FIDIC Contracts Guide*, at p. 307: “In order to maximise the DAB’s chances of success in avoiding arbitration, its member(s) must be suitably qualified, impartial, and accepted and trusted by both Parties...Each Party should endeavour to nominate a truly independent expert with the ability and freedom to act impartially, develop a spirit of teamwork within the DAB, and make fair unanimous decisions. Essentially, each member should have good inter-personal and communication skills and the ability to be impartial and objective, although he or she may find it easier to understand the finer points of the arguments being propounded by the party of the type which he or she has spent most of her career. The Parties may consider it advantageous to appoint a one-person DAB who has spent parts of his or her career working for each type of

Party; and such a person may be a better DAB member than one who has spent all his/her career working for the same type of Party.”

On the selection of a Chairperson, the *Guide* adds, on the same page, “The Parties may consider it advantageous to appoint as chairman of a three-person DAB either a person who has spent parts of his or her career with each type of Party, or a lawyer with considerable practical experience in construction law.”

Further guidance appears on p. 309 of the *Guide*: “Unless the Employer and the Contractor (including all members of a joint venture) are from the same country, it is usually preferable for each member of the DAB to be of a different nationality to each other, and not of the same nationality of the Employer, the Contractor, or any member of a joint venture Party.” I would emphasise the wording “usually” preferable: the reason is obvious. However, consideration of costs, and of “capacity building” in developing countries, there is growing support for having at least one DAB member be of the nationality of the country of the project to which the Contract relates. This makes FIDIC’s initiative of establishing National Lists especially important. We shall return to the subject of those National Lists.

So far, however, we have not found guidance on the meaning of a “suitably qualified person.” For that, we must look to the “Appendix” to the FIDIC Conditions, “General Conditions of Dispute Board Agreement, at paragraph 3, “Warranties”, where it is stated that the Parties have relied upon the Member’s representation that he/she is: “(a) experienced in the work which the Contractor is to carry out under the Contract, (b) experienced in the interpretation of contract documentation, and (c) fluent in the language for communications defined in the Contract.” FIDIC’s *Guide* adds that the experience in contract documentation is to include familiarity with the FIDIC Conditions which are incorporated into the Contract. (*Guide*, p. 321)

Pausing at this point, we see these answers have emerged in response to “Who are these guys?”:

Experienced in the work which the Contractor is to carry out under the Contract

Impartial, accepted and trusted by both Parties

A truly independent expert with the ability and freedom to act impartially

Able to develop a spirit of teamwork within the DAB and make fair and unanimous decisions

Good inter-personal and communication skills and the ability to be impartial and objective

Has not spent entire career working for same type of Party

Of appropriate nationality and fluent in the language of the Contract

Quite a collection of criteria! If you ever were a Boy Scout, you may be reminded of measuring yourself against the 12 Boy Scout Laws: “A Boy Scout is Trustworthy, Loyal, Helpful, Friendly, Courteous, Kind, Obedient, Cheerful, Thrifty, Brave, Clean,

and Reverent.” Few young boys are comfortable that they have all of those characteristics at all times! Similarly, you may hesitate to think that you are a “suitably qualified person” to serve on a DAB; and you may think that it seems challenging to find candidates who are!

FIDIC also has given a more specific indication of “suitably qualified” on its website in which it outlines the requirements to be assessed for entry to the FIDIC President’s List of Approved Adjudicators:

www.fidic.org/resources/contracts/adjudicators/admission_27jan07.html

The requirements include “at least 10 years successful practice as a principal engineer (or equivalent profession) in the field of contract administration and/or disputes, in a consulting engineering firm or in a firm specialising in construction law.” Further, applicants for assessment must demonstrate “proven experience as a construction dispute resolver, either as an arbitrator or as an adjudicator.” The seriousness of FIDIC on these criteria is evidenced by the requirement that applicants have both a Proposer and a Secunder, each of whom themselves satisfy the requirements for membership on the FIDIC President’s List, and each of whom must write to FIDIC in support of the applicant.

So, we have a clearer picture of the level of experience required for the FIDIC President’s List of Approved Adjudicators:

At least 10 years successful practice in the field of contract administration and/or disputes

Proven experience as a construction dispute resolver either as an arbitrator or an adjudicator

However, please note that these are requirements for entry onto the List. One does not have to be on the List to serve as a DAB member. If a person has the qualities described earlier, and set forth in the FIDIC Conditions, that will suffice for service on a DAB.

Should I try to become a Dispute Board Member?

This question provokes memories of a remark of the late U.S. President Kennedy when speaking about the decision on whether to try to land an astronaut on the Moon, to the effect that people asked him why should he undertake such a program and he replied “Why not?”

Dispute Boards are a feature of all of the FIDIC forms of Conditions of Contract, including the FIDIC MDB Harmonised Conditions which have been adopted by all of the major multilateral development banks and many of the international financial institutions involved in financing of construction contracts in developing countries. Dispute Boards also now are promoted by the International Chamber of Commerce and its National Associations, for use not only in the engineering and construction industry but also in any form of long term or complex contractual relationship; for example, in long term licensing of intellectual property. What is attracting the

increasing use of Dispute Boards is their capability for helping the Contract parties to *avoid* conflict, and to prevent disagreements from escalating into formal disputes.

So, Dispute Boards are fact of your professional life. Nothing will assist you and your firm in successful use of Dispute Boards as much as your having personal experience of service on at least one Dispute Board.

For those of you who are independent consultants, or who are looking ahead to a retirement where you are not committed to full time work but do not want to withdraw totally from professional life, you may be drawn to making Dispute Board service a significant professional activity for yourself.

How can I start building toward becoming a Dispute Board member?

You already have! You have come to this Seminar; probably you have attended the two day seminar which preceded this workshop. So, you have taken the first steps.

You should join the DRB Foundation and participate in the Foundation Chapter where you live – for most of you, that is the Philippines Chapter. Full membership information is available at this seminar. The membership subscription is modest, and it entitles you to full use of the DRB Foundation website, which includes access to the DRBF Manual, and entitles you to list your c.v. on the website, the most active Dispute Board website extant. Members also receive the quarterly publication, Foundation Forum, which provides relevant news, and an opportunity to publish your work.

Be an active member of your Chapter; assist in organising and presenting seminars and workshops, training others about successful use of Dispute Boards. These training efforts should be not only for new Chapter members but also for organisations which have to establish Dispute Boards, such as developers and others involved as Owners in construction projects, both private and public. In some countries, Foundation members have persuaded government agencies to use Dispute Boards on all of their construction projects.

Recruit new members to the Foundation. When possible, attend the Foundation's annual International Conferences, which usually are accompanied by Workshops accredited for Continuing Professional Development credits in organisations which require continuing professional education. Write about dispute resolution and the use of Dispute Boards and submit your manuscripts not only to the Foundation Forum but also to other professional journals.

Consider joining your national member organisation of the International Chamber of Commerce and take an active part in publicising and training others about the ICC Dispute Board Rules.

Broaden your contact with materials relating to construction law, especially the part of it which is related to dispute resolution. An excellent way to do that, no matter where in the World you live, is to join the Society of Construction Law. Membership enables access to a very valuable series of monographs on various topics of dispute resolution, and discussions of emerging case law in the field of engineering and

construction. Visit the Society's website and see for yourself: go to www.scl.org.uk ; during your visit to the website be sure to click on the bar labelled "international" at the top of the home page. When you get to "international", explore "e-membership" especially if you are on a restricted budget!

If any of you, or your colleagues, are lawyers, such should be active members of the International Bar Association, which has an active section specialised in international construction projects, as well as energy and natural resources projects. www.ibanet.org is the relevant website.

All of these steps will raise your visibility as a person interested and active in the successful use of Dispute Boards. In addition to such public activity, dedicate some of your time to studying some of the leading texts on the FIDIC Conditions of Contract, and some of the books on Dispute Boards. If your professional organisation does not subscribe to the International Construction Law Review try to persuade it to become a subscriber so that you can browse in its articles, many of which relate to Dispute Boards, international arbitration, and other matters of interest on contractual and legal problems in international construction projects. Society of Construction Law members are eligible for a discount on the subscription price.

What is the FIDIC President's List of Approved Adjudicators?

You will recall that Clause 20.3 of the FIDIC Conditions deals with "Failure to Agree Dispute Adjudication Board" and to avoid disabling of the DAB process, provides that the "appointing entity or official named in the Appendix to Tender" is to make the appointment(s) required to complete the DAB. The official often chosen by the Parties is the President for the time being of FIDIC. For the convenience of the President in making such appointment, the Executive Committee of FIDIC oversees the operation of the FIDIC Assessment Panel for Adjudicators, or "APA." The APA assesses all applicants for listing and reports its assessments to the Executive Committee, which typically approves those who have been recommended by the APA. I have the honour of having served on the APA since its inception.

The APA developed the requirements and procedures for those seeking assessment, which are found on the FIDIC website at the internet location mentioned above. Also, we developed a rigorous assessment process in a "workshop" format. Attendance requires having completed the application process published on the website. The workshop format does not involve any instruction, and assumes that all applicants are familiar with the FIDIC Conditions. In the past the workshop has begun with a multiple choice quiz designed to test in detail the applicant's familiarity with the Conditions for Construction. There are also essay type questions involving hypothetical dispute situations in which applicants are to identify the issues and give their opinions on how the FIDIC Conditions work in respect of those issues. Many of the issues may not have a "correct" answer under the facts; the focus of the assessment is on the skill and thoroughness of identifying the issues and relating them to the relevant FIDIC provisions.

During the two days of the assessment, there also are "mock" Dispute Board sessions, with applicants serving as Dispute Board Members. There are individual private interviews of each applicant, with all three members of APA present. During the

evening of the first day, applicants are required to deal with another hypothetical case and prepare an analysis for submission to APA the following morning, thus creating the typical DAB situation of Members having to work long hours under stressful conditions. Additionally, applicants are given yet another hypothetical case which they are to take home at the conclusion of the workshop and on which they are to prepare a written decision which must be returned to the APA within 14 days.

All of this work is done in the English language, which is the official language of the FIDIC Conditions.

All three members of APA read all applicants' papers, and liaise with one another regarding the individual interviews of the applicants and the "performances" of the applicants in the "mock" DAB scenarios. A few moments' consideration will indicate that this is a lengthy process and especially as the APA members are busy people, significant time elapses following the workshop before the assessment is complete.

To date, APA has been able to reach consensus on all applicants and to make unanimous recommendations to FIDIC's Executive Committee. Recommendations may be to list forthwith, or to list after further experience has been acquired as an Adjudicator (or arbitrator), or to propose to the applicant to re-sit the assessment because the applicant seems duly experienced and suitable for some reason (perhaps nervousness) did not do the written work to an acceptable standard, or the APA may recommend against listing.

Should I apply for assessment by the APA?

If you intend to seek appointments to DABs on a continuing basis, my advice is that you should seek listing. Not only is the List used by FIDIC's President but also it is posted on FIDIC's website, as are the c.v.s of those on the List. The List and the c.v.s are open to the public and I know that they are consulted by those seeking candidates for appointments by the Parties.

If you are hesitant to apply because you consider that you do not have enough experience in serving as a DAB Member or an arbitrator, you should consider devoting some effort to increasing your chances of becoming an arbitrator, by familiarising yourself with the ICC Rules and the UNCITRAL Rules, not only by reading them but also by studying some of the more prominent texts on arbitrating under both sets of Rules, and by being active in your country's National Committee of the ICC, focusing your activity on your National Committee's work in ICC arbitration matters.

Also become involved in the Philippine Institute of Construction Arbitrators and Mediators ("PICAM") and seek accreditation with the Construction Industry Arbitration Commission. Investigate membership in the Chartered Institute of Arbitrators, which has a "mentoring" program in which its members can work with an experienced arbitrator in an actual arbitration. The Institute has branches in various parts of the World. Visit the Institute's website and consider joining the organisation: www.arbitrators.org. You will see that there are branches in Malaysia and Thailand, but to date, not in the Philippines. Now, there's an opportunity to raise your profile!

Coming back to the process of applying for assessment by FIDIC's APA, it is important to give FIDIC early written notice of your wish to be assessed, as there are no set dates for assessments and instead they take place when sufficient requests for assessment have accumulated. My understanding is that the next assessment is likely to take place April 2009; judging from past experience, the next assessment after that is unlikely to occur until after an interval of about two years. This may change if, as is hoped, the growing number of FIDIC National Lists leads to persons on those Lists seeking assessment for entry on the FIDIC President's List.

What are FIDIC National Lists?

A full explanation can be found at www.fidic.org/directory/list.html. In brief, since December 2002 has been encouraging its Member Associations, such as CECOPHIL, to set up and maintain national lists of approved Adjudicators. These lists are very helpful to people seeking dispute resolution services from both inside and outside a country. Interjecting a personal opinion, I think they will be of special value to persons outside the country who may have few, if any, avenues for locating in-country professionals suitable for service on a DAB. Such professionals will have extensive experience of the country which can be of great value even if the language of the Contract and the DAB proceedings is English. Such professionals also afford the opportunity to have a suitably qualified DAB member who is resident in the country and for whom there will be no expense of international travel to the country.

Also relevant to considerations of economy is the opportunity which National Lists afford to locate suitably qualified candidates from a neighbouring country to the country of the Contract.

The FIDIC website location cited also sets out the "FIDIC Guidelines for National Lists." Summarising some of the principal points:

As a minimum, the assessment [for listing] should require documented proof of claimed qualifications and publications, references from member firms in support of the application, supplemented where feasible, by a personal interview of the applicant by the persons designated by the association to decide upon applications for listing.

FIDIC recommends that any listing of adjudicators for serving on a DAB under a FIDIC contract require that applicants have specific training in adjudication under FIDIC DAB rules before listing...FIDIC also recommend that the association requires a personal interview as part of the prequalification for listing, because much of the success of a DAB is dependent upon interpersonal skills.

In the Philippines, the DRB Foundation is taking the lead in the development of a FIDIC National List, working closely with FIDIC's Member Association in the Philippines, the Council of Engineering Consultants of the Philippines ("CECOPHIL"). Mr. Salvador P. Castro, Jr., of SPCastro and Associates, the DRB Foundation Country Representative for the Philippines, is in charge. For details of the procedure for listing, he can be contacted at spcastro@spcastro.com. The firm is located at 6th Floor, The Linden Suites, San Miguel Avenue, Ortigas Center, Pasig City 1603. Telephone, (632) 637-5951 or 5952; fax -5763.

Part of the requirement for listing is the completion of a 4 module training program:

Module 1: Practical Use of FIDIC Conditions, including the FIDIC MDB Harmonised Edition of the Conditions for Construction;

Module 2: Claims and Resolution of Disputes under FIDIC Conditions, including the MDB Harmonised Edition;

Module 3: Roles and Responsibilities of DB Members;

Module 4: Chairing of Dispute Boards.

Modules 1 and 2 of the training were held initially in 2005, and Module 1 was repeated this week. Modules 3 and 4 will be presented next year by the DRB Foundation. So, it is still possible for you to be among the first persons whose names will appear on the Philippines' National List. Even if you do not wish to be on the List, attendance at the Modules is an excellent way to increase your knowledge and understanding of Dispute Boards and how to use them successfully to avoid formal disputes.

Conclusion

Dispute Boards are an important part of today's international engineering and construction industry, and the indications are that they will become even more prominent in the future. They are a proven technique for the avoidance of formal disputes, and when formal disputes are unavoidable, Dispute Boards have an unequalled record of providing determinations which enable the Parties to resolve their disputes amicably without proceeding to arbitration or litigation.

The challenge is to enable all users of Dispute Boards to employ them effectively and in a manner that allows the Boards to prevent and resolve the inevitable disagreements. Meeting that challenge requires education, education, education...and training, training, training. As professionals, please help in that education and that training: and help yourself become the best possible educator and trainer on successful use of Dispute Boards:

Become a Dispute Board Member!

o00o

**Forum on Experiences in the Use of Dispute Boards and the
Introduction of the JBIC New Conditions of Contract**

28 August 2008, 8:00am to 2:00pm, The Linden Suites

LIST OF CONFIRMED GUESTS

As of 1300hr, 27 August 2008

	Institution	Name	Title	Sponsor
IMPLEMENTING AGENCIES				
1	Department of Public Works and Highways	Ms. Catalina Cabral	Assistant Secretary	JBIC
2	Department of Public Works and Highways	Mr. Emerson Benitez		JBIC
3	Department of Public Works and Highways	Emerson Benitez	Project Director	JBIC
4	Department of Transportation & Communications	Ms. Raquel P. Desiderio	Director, Legal Dept.	JBIC
5	Department of Transportation & Communications	Atty. Frederick M. Fern		JBIC
6	Department of Transportation & Communications	Cesar Sarmiento	Assistant Secretary	JBIC
7	Department of Transportation & Communications	Elmer Soreja		JBIC
8	National Irrigation Administration	Mr. Antonio A. Galvez	Assistant Secretary	JBIC
9	BCDA	Atty. Regina Salve R. Lapuz	Project Manager	DRBF
10	North Luzon Railways Corp.	Maria Carla Q. Suarez	Vice President for Legal	DRBF
OVERSIGHT AGENCIES				
11	Department of Budget and Management	Mr. Mario L. Relampagos	Undersecretary	JBIC
12	Department of Finance - IFG	Mr. Eriwn Sta. Ana	PO3	JBIC
13	Department of Finance - IFG	Mr. Rommel Herrera	PO4	JBIC
14	Department of Trade and Industry	Atty. Peter Mendoza		JBIC

	Institution	Name	Title	Sponsor
DONORS / IFI				
15	World Bank	Cecilia Vales	Head Contracts Administration	JBIC
16	JBIC	Hiroshi Togo	Chief Representative	JBIC
17	JBIC	Miyao Taisuke	Director	JBIC
18	JBIC	Floro O. Adviento	Manager	JBIC
19	JICA	Mr. Norio Matsuda	Resident Representative	JBIC
20	JICA	Mr. Kenzo Iwakami	Deputy Resident Representative - Program Operations	JBIC
21	JBIC	Akira Ogawa		JBIC
22	JBIC	Ms. Abegail M. Castillo		JBIC
23	JBIC	Mr. Alfred Bernarte		JBIC
24	ADB	Thatha Lha	Economist	JBIC
IRR-B WORKING GP MEMBERS				
25	Private Consultant	Mr. Teodoro Encarnacion	Consultant	JBIC
GOVERNMENT ATTACHED AGENCIES				
26	CIAC	Sammy Lazo	Commissioner	CIAC
27	POCB	Roger Lombos	Board Member	POCB
28	POCB	Enrico Quiambao	Board Member	POCB
29	POCB	Sonia T. Valdeavilla	Officer-in-Charge	POCB
CONTRACTORS				
FOREIGN				
30	Obayashi Corporation	Mr. Hiroshi Kato	General Manager	JBIC
31	Shimizu Corporation	Mr. Honami Noto	General Manager	JBIC
32	Zenitaka Corporation	Mr. Norihiro Nishimori	Project Development Manager	JBIC
33	Toa Corporation	Mr. Hironobu Takeuchi	General Manager	JBIC

	Institution	Name	Title	Sponsor
34	Tobishima Corporation	Mr. Toshiaki Takeuchi	Chief Representative	JBIC
35	Nishimatsu Construction Co., Ltd.	Mr. Koji Nakao	General Manager	JBIC
36	Hazama Corporation	Mr. Yoichi Inoue	Deputy Project Manager	JBIC
37	Fujita Philippines Construction	Mr. Shigeki Ihara	Managing Director	JBIC
38	Sumitomo Mitsui Construction Co., Ltd.	Mr. Hiroaki Iai	General Manager	JBIC
39	Sumitomo Mitsui Construction Co., Ltd.	Mr. Jiro Hashimoto		JBIC
40	Hazama Corporation	Youichi Inoue	Deputy Manager	JBIC
41	Tobishima Corporation	Toshiaki Takeuchi	Chief Representative	JBIC
43	Taisei Corporation	Joselito Manzo	Business Development Manager	JBIC
44	PT Adhikarya Persero-Indonesia	Pradigdo, Dolly Adhi	Project Manager	Indonesia
45	Toyo Construction Co., Ltd.	Espie Pastor		JBIC

CONTRACTORS

LOCAL

46	EEl Corporation	Atty. Ma. Luisa R. Miranda	Sr. Legal Counsel	PCA
47	F.R. Sevilla Industrial	Felizardo Sevilla	President	PCA
48	A.M. Oreta & Co., Inc.	Engr. Jose L. Paragas IV	AVP Engineering	PCA
49	Resource Partners	Jesus J. Bien Jr.	Contracts Officer	POCB
50	Meralco Industrial Engineering Service Corp.	Voltaire E. Valencia	Contracts Engineer	POCB
51	Meralco Industrial Engineering Service Corp.	Reyuben J. Vales	Head Contracts, Administration	POCB
52	Primary Structures Corporation	Atty. Vergencee Marree A. Abrenica	Counsel	POCB
53	Primary Structures Corporation	Anastacio G. Ardiente, Jr.	Administrative Dept Head	POCB
54	Primary Structures Corporation	Merle Alviar	Engineering Dept Head	POCB
55	Inphase Construction Co., Inc.	Rogelio M. Avenido		PCA
56	C.M. Pancho Construction, Inc.	Rozalina Abital	Office Engineer	PCA
57	First Balfour, Inc.	John Villegas	Legal Counsel	PCA

	Institution	Name	Title	Sponsor
CONSULTANTS				
FOREIGN				
58	Pacific Consultants Co., Ltd	Mr. Ichiro Miyakoshi	Branch Manager	JBIC
59	Nippon Koei Co., Ltd	Mr. Akira Ogawa	General Manager	JBIC
60	Sanyu Consultants Inc.	Mr. Itsuo Kihara	Team Leader	JBIC
61	Philkoei International Inc.	Renato A. Sabado	Manager	CECOPHIL
62	Philkoei International Inc.	Zenaida Abad		CECOPHIL
63	United Caddtech Philippines, Inc.	Eliseo I. Evangelista	President	CECOPHIL
64	Penta-Ocean Construction Co. Ltd.	Isao Michishita	General Manager	JBIC
65	Katahira & Engineers International	Masami Kimishima	Vice President	CECOPHIL
66	Katahira & Engineers International	Einora Grace A. Abinales	Deputy Project Manager	CECOPHIL
67	Katahira & Engineers International	Eric R. Ruiz	Deputy Project Manager	CECOPHIL
68	Katahira & Engineers International	Diego O. Espina	Deputy Project Manager	CECOPHIL
69	Katahira & Engineers International	Anthony Gourley	Sr. Structural Engineer	CECOPHIL
70	VIAP Inc. Asia Pacific	Joseph Phillips	Strategic Communication Officer	USA
71	VIAP Inc. Asia Pacific	Gabriel Z. Everisto	General Manager	DRBF
72	VIAP Inc. Asia Pacific	Angela R. Tiangco	Director for Business Capacity Development	DRBF
73	VIAP Inc. Asia Pacific	Philip San Jose		
74	Uform Consultants	Tilak Kolonne	Quantity Surveyor	Sri Lanka
75	Posco Engineering & Construction	Ji Hwang Kim	Legal Counsel	Korea
76	CPG Consultants Pte Ltd	David Wong	Country Manager	Singapore
77	SGS Gulf Limited	Jet Salaguinto		JBIC

	Institution	Name	Title	Sponsor
CONSULTANTS				
LOCAL				
78	Pacific Consultants International Asia, Inc.	Rex Munsayac	Business Development Manager	CECOPHIL
79	SPCastro and Associates, Inc.	Roger G. Antonio	Contract Administrator	DRBF
82	SPCastro and Associates, Inc.	Pinky C. Roxas	Business Development – Director	DRBF
81	SPCastro and Associates, Inc.	Wilma A. Garcia	SVP	DRBF
82	SPCastro and Associates, Inc.	Romeo M. Motol	SVP	DRBF
83	TCGI	Bede Altura		CECOPHIL
FOREIGN GUESTS				
84	Public Works Dept., Ministry of Devt, Brunei	Awg Haji Omarali bin Haji Mohd Jafaar	Jurutera Kerja Kanan	Brunei
85	Public Works Dept., Ministry of Devt, Brunei	Dyg Norhayati bte Hj Mohammad Yaakub	Jurutera Juruukur Barhan	Brunei
86	AJCE	Yukinobu Hayashi		Japan
87	Kyoto University	Toshisiko Omoto		Japan
88	FIDIC / DRBF	Gordon L. Jaynes		United Kingdom
JUDICIARY				
89	Supreme Court	Atty. Sygrid Promentilla		DRBF
90	Supreme Court PHILJA	Joey Name		DRBF
ACADEME/RESEARCH INSTITUTES				
91	Asian Institute of Management	Mr. Francis Estrada	President	JBIC
92	Nomura Research Institute, Manila Branch	Mr. Kengo Mizuno	General Manager & Sr. Consultant	JBIC

	Institution	Name	Title	Sponsor
PROFESSIONAL ORGANIZATIONS				
93	DRBF	Salvador P. Castro, Jr.	Country Representative	JBIC
94	CECOPHIL	Michael Roberto P. Reyes	President	JBIC
95	COFILCO	Mr. Armando N. Alli	President	DRBF
96	COFILCO/ Primex, Inc.	Ms. Elvira Ablaza	Director Ex-Officer/ President - CEO	DRBF
97	PICE	Roddy Penalosa		DRBF
98	PDRCI	Dean Custodio O. Parlade	President Emiritus	PDRCI
99	PDRCI	Salvador Panga Jr.		
100	Philippine Construction Association	Mr. Manolito Madrasto	Consultant, PCA	PCA
101	First Balfour, Inc.	Atty. John Villegas	Legal Counsel	PCA
LEGAL - LAW OFFICES				
102	ACCRA	Victor P. Lazatin	Senior Partner	JBIC
103	Arthur P. Autea and Associates	Arthur P. Autea	Partner	JBIC
104	Arce Law Offices	Daisy P. Arce	Partner	DRBF
105	Puyat Jacinto & Santos Law Offices	Norman T. Golez	Associate	PDRCI
105	Morallos Law Office	Jesusito Morallos	Partner	CIAC
105	Syquia & Syquia Law Offices	Atty. Jose Tomas C. Syquia	Managing Partner	PDRCI
105	Castillo Laman Tan Pantalleon	Atty. Ray Anthony Pinoy	Partner	PDRCI
ADR PRACTITIONERS				
106	PICAM	Beda G. Fajardo	President	PICAM
107	ESCA, Inc.	Ernesto S. de Castro	CEO	PICAM
108	PICAM	Wenfredo A. Firme		PICAM
109	PICAM	Paulino M. Noto		PICAM
110	PICAM	Joven B. Joaquin		PICAM

	Institution	Name	Title	Sponsor
111	PICAM	Felicitas A. Pio Roda		PICAM
112	PICAM	James S. Villafranca		PICAM
113	PICAM	Romeo C. David	Arbitrator / Mediator (Trustee)	PICAM
114	PICAM	Leandro A. Viloria		PICAM
115	PICAM	Primitivo C. Cal	Lawyer / Engineer	PICAM
116	PICAM	Regulus E. Cabote		PICAM
117	PICAM	Joven B. Joaquin		PICAM
118	PICAM	Felisberto GL Reyes		PICAM
119	PICAM	Estelita Y. Gutierrez	Engineer	PICAM
120	PICAM	Tony Y. Balde II	Architect	PICAM
121	PICAM	Ramon Allado		PICAM
122	PICAM	Jesus M. Reyes	Architect	PICAM

APPENDIX -6

Seminar Handouts

(Quebec Seminar)

Held on 9th September 2008



Aug, 2008
ASPAC Note-008

ASPAC Member Associations
ASPAC Executive Committee

ASPAC General Assembly Meeting 2008

Dear Sir;

The International Federation of Consulting Engineers [FIDIC] Annual Conference 2008 is held at Québec on 7-10 September 2008. FIDIC Member Associations in the Asia-Pacific Region [ASPAC] shall participate it and we are organizing ASPAC General Assembly Meeting on 9 September 17:00-18:30pm.

The meeting will discuss our future activity, “ASPAC Capacity Development Program” and “ASPAC Young Professionals Forum”. Please find attached a draft meeting agenda, and the documents.

If there is special subject that you would like to offer, please contact to our secretariat freely. (info@ajce.or.jp)

Please confirm your participation and send filled ASPAC Country Report. We can utilize ASPAC Country Report to share information about your future activity and policy issue. In the report, there are also some questions about Training program, Activity for young engineers etc...

I hope that we can share valuable information each other for our business possibility and promotion in Québec.

I appreciate your kind cooperation,

Yours, Sincerely,

(Akihiko Hirotani)
Chairman, ASPAC



ASPAC General Assembly Meeting

9 September 2009 17:00p.m. –18:30p.m.
Jacques Cartier, Le Chateau Frontenac Hotel, Québec

- 1. Opening Address by Chairman** (17:00pm-17:05pm)
- 2. Confirmation of minutes of ASPAC GAM at Singapore**
- 3. ASPAC Activities** (17:05pm-17:35pm)
 - 3-1 Capacity Development Program**

Capacity of consulting engineers and government officials should be developed in the zones of most dynamic economic development at ASPAC to catch up with developed countries in any kind of way.

We will discuss what kind of training program is necessary for MA and will select some target countries.
 - 3-2 ASPAC YPF (Young Professionals Forum)**

It is a kind of Capacity Development Program for young consulting engineers. It is proposed to set up the place for YP to communicate and enlighten each other in order to innovate in the industry for our future.
 - 3-3 Progress of the Action Plan**

Progress of the Action Plan will be reported and ask the member associations to cooperate to collect information of each member.
- 4. Special Seminar** (17:35pm-18:05pm)

The JBIC has the special presentation about “Promotion of adjudicators in Asian region and its action plan”
- 5. Open Discussion and Others** (18:05pm-18:25pm)
- 6. Closing Remarks by Executive Committee of FIDIC**



ASPAC General Assembly Meeting

Promotion of Adjudicators in Asian Region & Action Plan

09 Sep. 2008

Graduate School of Management (MBA),
Kyoto University

Professor Toshihiko Omoto, Dr.Eng.

JBIC's Terms of Reference for the Tasks

**Joint Venture (Kyoto Univ. & AJCE)
to perform investigation/study
for promoting DB Adjudicators in Asia**

- Hold the seminars in and out of Japan including preparation of the materials
- Study the promotion scheme of DB Adjudicators in Asian region
 - Investigate current status of various parts of the world
 - Propose action plan for promoting DB Adjudicators in Asian region



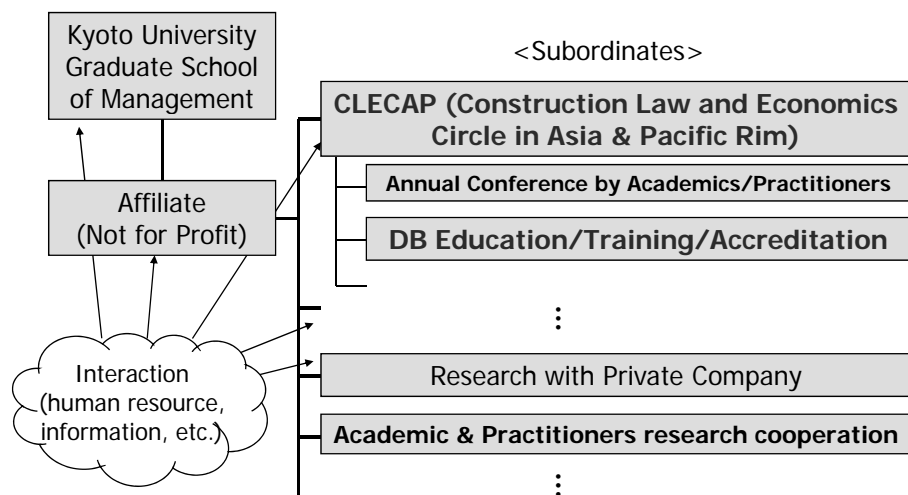
What's been done so far?

**Joint Venture (Kyoto Univ. & AJCE)
has performed the following tasks so far**

- 4 seminars:
 - at Kyoto University, Kyoto, 11 July 2008
 - at JBIC, Tokyo, 18 July 2008
 - at Habitat Center, Delhi, 22 August, 2008
 - at Linden Suites, Manila, 28 August, 2008
- Investigation/Hearing
 - at ICE, ACE, DRBA, CEAI, CECOPHIL, DRBF, King's College, etc.
 - participated in DRBF Workshop



(proposed) Framework of the New Institution



Action Plan (Proposed)

1. Inauguration of the New Institution for Educating/Training/Accrediting Adjudicators in Asian region

- Hold the seminars to improve the awareness of Dispute Board concept among the project stakeholders
- Hold the seminars to educate potential adjudicators.
- Provide information about DB / adjudicators to those who are interested.
- Hold the assessment workshop to accredit adjudicators for establishing National Lists
- All these activities to be performed in cooperation with FIDIC and Member Associations



Action Plan (Proposed)

2. To help Establishment of FIDIC National Lists of Adjudicators by Member Associations

- FIDIC Member Associations may need accreditation by an independent organization when they prepare their National Lists.
 - FIDIC APA can provide this accreditation
 - The proposed new institution can also do, successful candidates will be recommended to Member Associations for inclusion in their National Lists



Action Plan (Proposed)

3. To ask for assistance by MDBs, JBIC etc.

- Urgent increase in number of DB adjudicators in Asia needed as FIDIC Conditions of Contract (1999 and MDB Harmonised Edition) will be used more. (JBIC (JICA) adopts MDB Harmonised Edition as its Sample Bidding Documents.)
- Costs for education/training materials, assessment workshop materials, tutors



Promotion of Adjudicators in Asian Region & Action Plan

Thank you for your patience!



Action plan for promoting DB adjudicators in the Asian region

1. Background

Japan Bank for International Cooperation (JBIC) issued the “Sample Bidding Documents on Civil Works under JBIC ODA Loans (hereinafter referred to as “the Sample Documents”)” in 1999, which are based on the “Conditions of Contract for Works of Civil Engineering and Construction, 1987 (revised 1988 and 1992) (hereinafter referred to as “the Red Book”)” issued by the International Federation of Consulting Engineers (FIDIC). While the Sample Documents have been widely used for the contracts on civil works under JBIC ODA Loan, FIDIC published a new edition of the Red Book, 1999. The World Bank (WB) and other Multilateral Development Banks such as Asian Development Bank (ADB) in corporation with FIDIC published in 2005 the Standard Bidding Documents based on the FIDIC Conditions of Contract 1999. The 2005 version is called as the “MDB Harmonized Edition” and widely used for the projects under those banks’ finances. Therefore, JBIC is planning to revise its Sample Bidding Documents to reflect the FIDIC MDB Harmonized Edition, taking the opportunity of consolidation with Japan International Cooperation Agency (JICA) this year.

One of the biggest differences between the Red Book 1987 (which is currently used for JBIC Sample Bidding Documents) and 2005 (MDB Harmonized Edition) is the DAB clauses; in 2005 Edition, DAB is mandatory while it is an option in 1987 edition. However, DAB is considered as expensive especially for their travel expense, because most of the adjudicators are living in those countries far apart from JBIC ODA loan project countries: mostly located in Asian region.

After revising the Sample Bidding Documents, the number of projects with DAB is expected to increase hence it is essential to promote training and qualifying DAB adjudicators for smooth implementation of the projects in Asian region where most JBIC ODA loan projects are to be performed. At the same time, those stakeholders of the projects such as implementation agencies, counterparts, contractors and consultants are required to become familiar with DAB process.

Because of the situation described above, JBIC awarded a contract to a Joint Venture formed between Kyoto University and AJCE (Association of Japanese Consulting Engineers) including, among others the following tasks:

- (1) Holding seminars in and out of Japan including preparation of the materials.
- (2) Studying the promoting scheme of DAB Adjudicators in Asian region.

2. Action Plan

(1) Holding seminars in and out Japan

- ◇ 4 seminars so far
- ◇ at Kyoto University, Kyoto, 11 July 2008
- ◇ at JBIC, Tokyo, 18 July 2008
- ◇ at Habitat Center, Delhi, 22 August 2008
- ◇ at Linden Suites, Manila, 28 August 2008

The characteristic of these seminars is that the participants came from multi-disciplinary fields such as academics, Dispute Resolution societies, consultants, contractors, plant engineering companies, heavy industries, architects, quantity surveyors. All seminars were very interactive and often run short of time for Q&A and discussions. I believe all these seminars help the awareness of Dispute Boards well. We are still planning to do more seminars in other parts of Asia like Vietnam, Thailand and Indonesia.

(2) Action Plan for Promoting DB Adjudicators

- ◇ Basic Principle: Promotion of National Lists
- ◇ Investigation on situation of each country
- ◇ Help education/training
- ◇ Help accreditation

Some of the FIDIC Member Associations are establishing their National Lists in line with the FIDIC recommendation. ACE, UK and CECOPHIL, the Philippines, are the one of such associations. We carried out the interviews with ICE, ACE and Dispute Resolution Board of Australia. We participated in the DRBF International Conference in Cape Town, South Africa. We experienced a two-day Workshop there. In the Philippines, they are utilizing ECV's training programme Module 1 thro 4 for education and training the candidates. They have finished Module 2 and plan to carry out Module 3 and 4. Here we have a question, is it OK to list the successful participants of these Modules in the National List automatically? I was told by Mr. Salvador Castor, who is leading the CECOPHIL, that they needed some third person or organization to accredit the candidates before listing and I fully agree with this idea.

One way is that upon request by the Member Association, FIDIC APA carries out Assessment Workshop for accreditation. But, APA will be busy!

Another way is to establish a center for education/training and accreditation of DB Adjudicators in academic institutions. For example, there is the FIDIC Center in Tsinghua University in China, we may utilize this.

We are planning to inaugurate the “Construction Law and Economics Circle in Asia and Pacific Rim”, under which we can establish the SECRETARIAT to manage such tasks. Tasks include:

- (1) To prepare education/training and assessment materials,
- (2) To hold seminars to improve the awareness of DB concept among the project stakeholders,
- (3) To hold seminars to educate/train potential adjudicators,
- (4) To hold assessment workshop to accredit DB adjudicators to assist in establishing National Lists

All these activities shall be performed in cooperation with FIDIC and Member Associations. CECOPHIL of the Philippines and CEAI of India agreed to cooperate with us in accordance with our plan. Please let me know if there are other Member Associations which is interested in working together.

3. Costs of activities for education/training and accreditation

As pointed out in the JBIC’s analysis of current status of DB adjudicators in Asia, promotion of adjudicators is quite an urgent matter, because urgent increase in number of DB adjudicators in Asia is needed as FIDIC Conditions of Contract (1999 and MDB Harmonised Edition) will be used more. (JBIC (JICA) adopts MDB Harnmonised Edition as its Sample Bidding Documents)

- (1) Education/training materials**
- (2) Assessment workshop materials**
- (3) Travel and expenses of tutors**
- (4) Other costs**

We will be prepared to make estimate of the above and ask for assistance by the Banks.

**Toshihiko Omoto, Dr.Eng.
Professor
Graduate School of Management
Kyoto University**

Activities of FIDIC in Relation to DAB Promotion

(extracted from The FIDIC Annual Review for 2007-2008)

One major risk factor receiving much attention are disputes during a works project, whether Design-Bid-Build construction, Plant and Design-Build, EPC/Turnkey, or DBO. To mitigate the risks and to recognize the difficulties faced by the engineer to the contract or the equivalent, the Employer's Representative, FIDIC introduced Dispute Adjudication Boards (DAB's). DABs are not only intended for the resolution of disputes but, more importantly, to prevent disputes from arising. For larger and more complex projects, FIDIC advocates the appointment of DABs at the outset of a project, in order to review risk profiles for potential problems. Promoting DAB's is therefore a strategic goal. Guidelines on the use of DAB's are available from FIDIC. At the regional level, FODOC ASPAC Asia-Pacific has helped organize an Adjudicators forum with CECOPHIL-Philippines and the Dispute Review Board Foundation, with support from AJCE-Japan and the Japanese development bank, JBIC. In the Balkans, the International Finance Corporation has finalized an agreement with FIDIC to support alternative dispute resolution services, including adjudication. In the Middle East, FIDIC has presented DAB's at international dispute resolution conferences organized by SCE-Saudi Arabia. Finally, the FIDIC-ICC Contracts and Dispute Resolution Conference (Houston, TX, USA; May 2008) was the venue for the first major expose by FIDIC of its DBA procedures in the Americas.

The FIDIC Assessment Panel for Adjudicators (P.H.J.Chapman, UK, APA, Chair, G.L. Jaynes, UK/UAS; I. Leto, Italy) helps maintain and oversee the FIDIC President's List of Approved Dispute Adjudicators from which the President, as a last resort, can make appointments under the terms of a FIDIC contract. With FIDIC's encouragement, several FIDIC Member Associations have established lists of FIDIC National Adjudicators offering experienced and qualified adjudicators capable of working in their own language and understanding the local situation. The lists follow FIDIC guidelines, with FIDIC maintaining an access point for information at FIDIC maintaining an access point for information at FIDIC.org/DAB. With the growing use of FIDIC at the national level, there is heavy demand for training. FIDIC has responded by organizing DBA training through all of the types of events (intensive courses; courses; workshops; seminars; conferences) that make up the FIDIC International Training Programme. It is planned to collaborate in some of these events, notably intensive courses, with the insurance industry in view of the risk management aspects.

Questionnaire Data

- 7-1 Self-Check List for DAB Adjudicators
- 7-2 DAB Questionnaire
- 7-3 Summary of the Answers

- Self-Check List for DAB Adjudicators



FIDIC's Qualification Criteria

- 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 office 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.
- Proven experience as a construction dispute resolver, either as an arbitrator or adjudicator.
- Formal dispute adjudication assessment comprising a three-day Adjudicators Assessment Workshop provided by FIDIC.
- Good inter-personal and communication skills.
- Commitment to, and availability for, appointment as a FIDIC adjudicator.
- Ability to be impartial and objective.

Terms for the Admission of FIDIC Adjudicators Assessment Workshop

Documents:

- Nominating Letter
 - From a FIDIC Member association, Affiliate Member or Sustaining Member (Nominating Letter).
 - From 2 persons who satisfy the membership criteria (Proposer's Letter and Seconder's Letter).
- Documents for application:
 - Family name
 - First name
 - Address
 - Date of birth
 - Fax number
 - E-mail address
 - Engineering (or equivalent) qualifications
 - Legal and dispute training
 - Speciality (including branch of engineering)
 - Curriculum vitae (including details of employment, of experience in contract administration and disputes, and of involvement on projects which incorporated FIDIC Conditions of Contract: with dates and with names and types of projects)
 - Dispute resolution experience (including as member of Dispute Adjudication Board/Dispute Review Board), with names and addresses of at least two people who have personally witnessed the applicant's performance as an arbitrator or adjudicator, and who may be called upon to provide further references as to the applicant's suitability.
 - Language capability
 - Publications
 - Signatures of Applicant, Proposer and Seconder
- Fees
 - Fee for three-day Dispute Adjudication Assessment Workshop:
Swiss francs 1500.-
 - Fee for Application for Inclusion on the President's List of Approved Dispute Adjudicators:
Swiss francs 250.-
 - Fee for renewal of Inclusion on President's List of Approved Dispute Adjudicators:
Swiss francs 100.-

*Swiss Francs: 1 CHF = 0.93 USD (as of Aug. 2008)

DAB Questionnaire

Study Group of JBIC DAB Promoting Project

Q1. Why did you attend today's DAB seminar? (Please check *all* that apply)

- (1) Because I want to know the outline of JBIC's revision on its sample bidding documents.
- (2) Because I'm now working on the contract administration. / I'm going to do the jobs of this kind in the future.
- (3) Because I'm now working on claims and/or dispute settlement on construction projects. / I'm going to do the jobs of this kind in the future.
- (4) Because I'm a DAB adjudicator now. / I wish to be a DAB adjudicator in the future.
- (5) Although I'm not doing any job listed above, I think this kind of knowledge necessary for the job I'm doing now.
- (6) Others ()

Q2. What do you think of the DAB after today's lecture?

- (1) I'm interested in the job of DAB adjudicator. / I'd like to be a DAB adjudicator.
- (2) I'm not interested in the job of DAB adjudicator. / I don't want to be a DAB adjudicator.

Q3. (For the persons who have selected (1) in Q2)

About FIDIC's Adjudicators Assessment Workshop,

3-1 Do you think you satisfy FIDIC's qualification criteria for the admission?

(About the qualification criteria, please refer to "The Self-checklist for DAB Adjudicators")

- (1) Yes, I satisfy the qualification criteria.
- (2) No, I don't satisfy all the qualification criteria.

The terms that are not satisfied:

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3-2 Would you like to take part in the Adjudicators Assessment Workshop? For the person who has selected (2) in Q3-1, please suppose that you satisfy all the qualification criteria when answering this question.

- (1) I want to take part in this workshop even if I will have to bear all the fee.
- (2) I want to take part in this workshop if my company etc. will assist me with the cost.

(I can afford a payment up to \$_____on my own.)

- (3) I don't want to take part in this workshop.

(Reasons)

- I don't think the qualification is necessary to become a DAB adjudicator.
- It takes too much time for the preparation and participation.
- I have other qualifications. / I'd like to have other qualifications*.

*Names of the other qualifications (if any)

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Q4. (For the persons who have selected (2) in Q2.)

4-1. Please check the reason why you don't want to be a DAB adjudicator. (Please check *all* that apply)

- (1) Because it seems to be difficult / tiring.
- (2) Because I don't think I am suited for DAB adjudicator.
- (3) Because I'm satisfied with my present job.
- (4) Because the payment is not so attractive.
- (5) Other reasons ()

Q5. Regarding the growing importance of DAB, JBIC is now considering the supporting scheme of developing DAB adjudicators. About the contents of this scheme, please describe your opinions freely.

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Q6. If you have any other opinion or comment on today's seminar, please describe freely.

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Thank you very much for taking your time..

Your Name	
Company/ Affiliation	
E-mail or Tel number	

DAB (Dispute Adjudication Board) Seminar
Summary of the Questionnaire

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

[Kyoto Seminar]

Date : 14:00 ~ 17:00, Friday 11th July 2008

Venue : Case Study Room, Kyoto University

[Tokyo Seminar]

Date : 14:00 ~ 17:00, Friday 18th July 2008

Venue : 9th Floor Auditorium, JBIC

			Kyoto	Tokyo	Answers	Numbers/Total
Number of the Participants			9	123	132	
Number of the Answers			1	50	51	
Q1	The reason to attend the seminar (Multiple answers allowed)	(1) Because I want to know the outline of JBIC's revision on its sample bidding documents			31	61%
		(2) Because I'm now working on the contract administration. / I'm going to do the jobs of this kind in the future.			20	39%
		(3) Because I'm now working on claims and/or dispute settlement on construction projects. / I'm going to do the jobs of this kind in the future.			13	25%
		(4) Because I'm a DAB adjudicator now. / I wish to be a DAB adjudicator in the future.			5	10%
		(5) Although I'm not doing any job listed above, I think this kind of knowledge necessary for the job I'm doing now.			13	25%
		(6) Others			4	8%
Q2	Interest in DAB	(1) I'm interested in the job of DAB adjudicator. / I'd like to be a DAB adjudicator.			26	51%
Q3-1	Qualification criteria for AAW admission	(1) I satisfy the qualification criteria.			6	12%
		(2) I don't satisfy all the qualification criteria.			20	39%
Q3-2	Eagerness for AAW	(1) I want to take part in this workshop even if I will have to bear all the fee.			5	10%
		(2) I want to take part in this workshop if my company etc. will assist me with the cost.			16	31%
		(3) I don't want to take part in this workshop.			2	4%
Q2	Interest in DAB	(2) I'm not interested in the job of DAB adjudicator. / I don't want to be a DAB adjudicator.			24	47%
Q4	The reason not to want to become DB (Multiple answers allowed)	(1) Because it seems to be difficult / tiring.			9	18%
		(2) Because I don't think I am suited for DAB adjudicator.			11	22%
		(3) Because I'm satisfied with my present job.			6	12%
		(4) Because the payment is not so attractive.			0	0%
		(5) Others			4	8%

AAW : Adjudicators Assessment Workshop

Free Comments

				Number		
Q1	The reason to attend the Seminar	(6)	Others	4	DAB will become very important for my job	
					The JBIC-financed project I'm involved in might adopt DAB	
					To study the possibility of the adjudicators	
					Now making research of DAB and adjudicators	
Q3-1	Qualification criteria for AAW admission	(2)	Don't satisfy (Multiple answers)	16	Experiences of dispute resolution	5
					Experiences of contract administration	1
					Experiences	2
					Academic degree of engineering, professional qualification	1
					Non-member of AJCE / FIDIC, not familiar with FIDIC documents	4
Q3-2	Eagerness for AAW	(1)	Will bear all the fee	5	Professor	1
					Sole proprietor	3
					President of the consulting firm	1
		(2)	With any assist with the cost	16	Contractor	6
					Consultant	5
					Other	4
			Can pay up to		5,000 yen	1
					20,000 yen	1
					30,000 yen	2
					50,000 yen	2
					100,000 yen	2
					500,000 yen	1
Q4	The reason not to want to become	(5)	Others	4	Different from my work field	1
					Not satisfy the criteria	3
Q5	Comments and requests for JBIC				Holding the basic / introduction seminar	Viscas Daiho
					Holding the periodical seminar	Anonymous
					Cost cut	
					Make the employers more understanding	
					PR activity of DB	
					I feel the company should have the person familiar with DAB inside, and education and development of DAB is very helpful.	NHK ITEC
					Develop the monitoring systems that JBIC (Render) conduct periodical monitoring to check the fund utilization and project progress, and encourage the use of DB.	Shimizu corporation
					Make an adjudicators list limited to JBIC (ODA) project, as the first step to try FIDIC list.	Sole proprietor
					Try to make Japanese standard become international	Tohichi engineering consultants
					Expect across-the-board discussions including the employers in developing countries	Student
					I wonder if I can make advisory work making use of my experience and know-how for the smaller projects which don't adopt DAB	IHI
Q6	Comments and impression of the seminar				It was very useful / helpful	8
					Very interesting	
					I will do my job making use of the lectures today	IHI
					It was good to hear both ideal and real situation	NHK ITEC
					It was good to know JBIC's opinion	
					I want hear the middle east case where the economy is booming with oil money	Viscas
					I think it is the field for the consultants	Tohichi engineering consultants
					I feel the schedule was too tight	
					I wanted the panel discussion longer	Mitsui engineering & shipping Hazama corporation
					I understand that understandings of the employers are important	OCAJI
					counterparts' understandings and selection of DB member will be the issue	Oriental consultants
					It is the issue if the employer agree the DAB	Hazama corporation
					From my experience, I could make good relationship with the contractor if we adopted DAB	M & Y consultants
					It will be interesting if partnering and DB can be related	Sole proprietor

Breakdown by the job

			Kyoto	Tokyo	Answers	Job					Numbers / Total	
						Contractor	Consultants	Plant / manufacturer	Sole proprietor	Trading / financial firm		Others / anonymous
Number of the Participants			9	123	132	48 (36.4%)	39 (29.5%)	22 (16.7%)	3 (2.3%)	11 (8.3%)	9 (6.8%)	
Number of the Answers			1	50	51	20 (39.2%)	13 (25.5%)	7 (13.7%)	3 (5.9%)	2 (3.9%)	6 (11.8%)	
Q1	The reason to attend the seminar (Multiple answers allowed)	(1) Because I want to know the outline of JBIC's revision on its sample bidding documents	31 (60.8%)	13 (65.0%)	8 (61.5%)	4 (57.1%)	2 (66.7%)	1 (50.0%)	1 (16.7%)		61%	
		(2) Because I'm now working on the contract administration. / I'm going to do the jobs of this kind in the future.	20 (39.2%)	9 (45.0%)	5 (38.5%)	4 (57.1%)	0 (0.0%)	0 (0.0%)	2 (33.3%)		39%	
		(3) Because I'm now working on claims and/or dispute settlement on construction projects. / I'm going to do the jobs of this kind in the future.	13 (25.5%)	5 (25.0%)	3 (23.1%)	2 (28.6%)	1 (33.3%)	1 (50.0%)	1 (16.7%)		25%	
		(4) Because I'm a DAB adjudicator now. / I wish to be a DAB adjudicator in the future.	5 (9.8%)	0 (0.0%)	1 (7.7%)	1 (14.3%)	2 (66.7%)	0 (0.0%)	1 (16.7%)		10%	
		(5) Although I'm not doing any job listed above, I think this kind of knowledge necessary for the job I'm doing now.	13 (25.5%)	6 (30.0%)	3 (23.1%)	3 (42.9%)	0 (0.0%)	0 (0.0%)	1 (16.7%)		25%	
		(6) Others	4 (7.8%)	1 (5.0%)	0 (0.0%)	1 (14.3%)	0 (0.0%)	0 (0.0%)	2 (33.3%)		8%	
Q2	Interest in DAB	(1) I'm interested in the job of DAB adjudicator. / I'd like to be a DAB adjudicator.	26 (51.0%)	9 (45.0%)	9 (69.2%)	3 (42.9%)	3 (100.0%)		2 (33.3%)		51%	
Q3-1	Qualification criteria for AAW admission	(1) I satisfy the qualification criteria.	6 (23.1%)	0 (0.0%)	2 (22.2%)	1 (33.3%)	2 (66.7%)		1 (50.0%)		12%	
		(2) I don't satisfy all the qualification criteria.	20 (76.9%)	9 (100.0%)	7 (77.8%)	2 (66.7%)	1 (33.3%)		1 (50.0%)		39%	
Q3-2	Eagerness for AAW	(1) I want to take part in this workshop even if I will have to bear all the fee.	5 (19.2%)	0 (0.0%)	1 (11.1%)	0 (0.0%)	3 (100.0%)		1 (50.0%)		10%	
		(2) I want to take part in this workshop if my company etc. will assist me with the cost.	16 (61.5%)	7 (77.8%)	7 (77.8%)	3 (100.0%)	0 (0.0%)		0 (0.0%)		31%	
		(3) I don't want to take part in this workshop.	2 (7.7%)	2 (22.2%)	1 (11.1%)	0 (0.0%)	0 (0.0%)		0 (0.0%)		4%	
Q2	Interest in DAB	(2) I'm not interested in the job of DAB adjudicator. / I don't want to be a DAB adjudicator.	24 (47.1%)	11 (55.0%)	4 (30.8%)	4 (57.1%)		2 (100.0%)	3 (50.0%)		47%	
Q4	The reason not to want to become DB (Multiple answers allowed)	(1) Because it seems to be difficult / tiring.	9 (37.5%)	6 (54.5%)	1 (25.0%)	2 (50.0%)		0 (0.0%)	0 (0.0%)		18%	
		(2) Because I don't think I am suited for DAB adjudicator.	11 (45.8%)	2 (18.2%)	4 (100.0%)	2 (50.0%)		1 (50.0%)	2 (66.7%)		22%	
		(3) Because I'm satisfied with my present job.	6 (25.0%)	2 (18.2%)	1 (25.0%)	2 (50.0%)		1 (50.0%)	0 (0.0%)		12%	
		(4) Because the payment is not so attractive.	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)		0 (0.0%)	0 (0.0%)		0%	
		(5) Others	4 (16.7%)	2 (18.2%)	0 (0.0%)	1 (25.0%)		0 (0.0%)	1 (33.3%)		8%	

AAW: Adjudicators Assessment Workshop

List of References

List of References

	Title	Author	Publisher	Year	Remarks
1	Dispute Boards : procedures and practice	Gwyn Owen/Brian Totterdill	Thomas Telford Publishing,	2007	ISBN: 978-0-7277-35089
2	Chern on Dispute Boards - Practice and Procedure	Cyril Chern	Blackwell Publishing	2008	ISBN-13:978-1-4051-7062-8
3	Practice and Procedure	The Dispute Resolution Board Foundation (DRBF)	DRBF	2007	Available at WEB site of DRBF
4	Construction Dispute Review Board Manual	R.M. Matyas/ A.A. Mathews/ R.J Smith/ P.E. Sperry	McGraw-Hill	1996	ISBN: 0-07-0410606-7
5	Dispute Board Rules	International Chamber of Commerce (ICC)	ICC	2004	ISBN: 92-842-1345-2