

STUDY ON THE REINFORCEMENT OF THE FRAMEWORK FOR INTRODUCTION AND DISSEMINATION OF DAB/ADJUDICATORS IN THE ASIAN REGION

STUDY REPORT

MARCH 2011

JAPAN INTERNATIONAL COOPERATION AGENCY

NIPPON KOEI CO., LTD.

ASSOCIATION OF JAPANESE CONSULTING ENGINEERS

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ABBREVIATIONS

ADB	:	Asian Development Bank
ADR	:	Alternative Dispute Resolution
AJCE	:	Association of Japanese Consulting Engineers
APA	:	Assessment Panel for Adjudicators
ARIC	:	Asociatia Romana A Inginerilor Consultanti (Romanian Association of Consulting Engineers)
AW	:	Assessment Workshop
CECOPHIL	:	Council of Engineering Consultants of the Philippines
DAB	:	Dispute Adjudication Board
DB	:	Dispute Board
DRB	:	Dispute Review Board
DRBF	:	Dispute Resolution Board Foundation
FIDIC	:	Fédération Internationale Des Ingénieurs-Conseils (International Federation of Consulting Engineers)
ICC	:	International Chamber of Commerce
IDB	:	Inter-American Development Bank
IFI	:	International Financing Institution
JICA	:	Japan International Cooperation Agency
MA	:	FIDIC Member Association
MDB	:	Multilateral Development Bank
ODA	:	Official Development Assistance
SIDiR	:	Stowarzyszenie Inżynierów Doradców i Rzeczoznawców (Polish Association of Consulting Engineers)
TW	:	Training Workshop
VBI	:	Verband Beratender Ingenieure (German Association of Consulting Engineers)
WB	:	World Bank

Chapter 1 Outline of the Study

1.1 Background of the Study

Japan International Cooperation Agency (JICA) revised its “Sample Bidding Documents under Japanese ODA Loans - Procurement of Works” in June 2009, harmonizing the procurement process with other international organizations. It also adopted the “Conditions of Contract for Construction, MDB Harmonised Edition” issued by the International Federation of Consulting Engineers (FIDIC) in cooperation with the Multilateral Development Banks (MDB). In the MDB Harmonised Edition, the Dispute Board (DB)¹ is introduced as a new resolution instrument for contract disputes.

Under this situation, JICA has carried out the following studies as part of the preparation for the introduction and dissemination of DB in Japanese ODA loan projects.

- 1) In 2008: Study on the Promotion of DAB Adjudicators in the Asian region
 - Survey on use of DAB
 - Holding of DAB promotion seminars in Japan, India and Philippines
 - Examination of effective measures for cultivation of adjudicators in the Asian region
- 2) In 2009: Study on the Introduction and Dissemination of DAB/Adjudicators in the Asian region
 - Holding of DAB promotion seminars in Vietnam, Cambodia, Indonesia, Sri Lanka and Bangladesh
 - Development of training kit for adjudicator candidates
 - Drafting of qualification procedure for adjudicators (draft version)
 - Preparation of roadmap for introduction and dissemination of DAB in Japanese ODA loan projects

Through these studies, it has been recognized that additional measures listed below would be evidently useful and effective in realizing the introduction and dissemination of DB in Japanese ODA loan projects:

- 1) Conduct case research regarding training and assessment of adjudicators in countries where these activities are already implemented
- 2) Survey the actual status of DB operation in projects financed by MDBs which introduced DB in their projects earlier than JICA
- 3) Conduct pilot Japanese ODA loan projects, which specify introduction of DB
- 4) Deliver trial adjudicator assessment workshop in Japan with assistance extended by JICA

In this study, above items 1), 2) and 4) are to be carried out for the reinforcement of the

¹ Dispute Adjudication Board (DAB), which was introduced in FIDIC Red Book 1999 edition, was redefined as Dispute Board (DB) in FIDIC MDB edition. The roles of DAB and DB are basically identical. In this report, DB is adopted in principle; however, DAB is used when referring to past events.

framework that will enhance the introduction and dissemination of DB.

1.2 Objective of the Study

This study aims to reinforce the framework for full-scale introduction and dissemination of the DB system in Japanese ODA loan projects by means of 1) case research and analyses regarding training and assessment of adjudicators in countries which are advanced in this area, 2) determining actual status of DB operation in the projects financed by MDBs, 3) execution of training workshops and subsequent assessment workshops in Japan for adjudicator candidates, and 4) drawing up recommendations for the next steps.

1.3 Study Team

The study has been carried out by the joint venture between Nippon Koei Co., Ltd. and the Association of Japanese Consulting Engineers (AJCE). Consequently, the following three members were assigned for the study:

Table 1.1 Study Team Members

	Position	Name	Organization
1	Team Leader/Expert on International Contract (1)	Yukinobu Hayashi	Nippon Koei
2	Expert on International Contract (2)	Toshihiko Omoto	Nippon Koei (Dr. Toshihiko Omoto, Construction Management & Dispute Resolution)
3	Expert for Planning and Coordination	Yoshihiko Yamashita	AJCE

In addition, the following four experienced contract experts, who are among those in the FIDIC President's List of adjudicators, were invited, through FIDIC, to conduct adjudicator training and assessment workshops.

- 1) Adjudicator Training Workshop
 - Mr. Gordon Jaynes
 - Mr. Richad Appuhn
- 2) Adjudicator Assessment Workshop
 - Mr. Volker Jurowich
 - Dr. Sebastian Hök

1.4 Time Schedule of the Study

The study was carried out for five months from November 2010 to March 2011. The major events in the course of the study are as follows:

- | | |
|--------------------------------|---------------------------|
| 1) Contract Date | : November 9, 2010 |
| 2) Inception Report Submission | : November 12, 2010 |
| 3) Field Survey-I | : November 15 to 24, 2010 |

(Poland, Germany and Romania)

- | | |
|--|----------------------------------|
| 4) Adjudicator Training Workshop | : December 15 to 18, 2010 |
| 5) Adjudicator Assessment Workshop | : December 20 to 22, 2010 |
| 6) Field Survey-I and II (Philippines) | : January 26 to 28, 2011 |
| 7) Field Survey-II and III (USA) | : January 31 to February 4, 2011 |
| 8) Study Report Submission | : March 22, 2011 |

(Notes)

- Field Survey-I: Case research on training and assessment for adjudicators
- Field Survey-II: Research on status of DB in MDB-financed projects
- Field Survey-III: Research on Dispute Resolution Board Foundation (DRBF) regarding Dispute Board operation. (This survey was additionally conducted to investigate in particular the status of Dispute Review Board in USA.)

Chapter 2 Field Survey - I (Case Research on Training and Qualification Assessment of Adjudicators)

2.1 Objectives of the Field Survey

FIDIC started its qualification program for adjudicators in 1999 when it published four new conditions of contract for using dispute adjudication board (DAB) as a dispute resolution mechanism. The adjudicators qualified by FIDIC are registered for inclusion in a list called FIDIC President's List, which is released on the FIDIC website. FIDIC conducts qualification assessment almost every three years and accordingly, 47 adjudicators are presently registered in the list.

To cope with the increasing demand of adjudicators, FIDIC has encouraged its Member Associations (MAs) to establish their own national list of adjudicators, in addition to the President's List. Thus, FIDIC has given necessary support for such undertaking. According to the FIDIC website, the MAs that presently have national lists are Germany, Hungary, the Philippines (in preparation), Poland, Romania, South Africa and the United Kingdom.

Under this survey, the actual status of the national list was investigated in four countries including Germany, Poland, Romania and the Philippines to identify lessons to be learned for future cultivation of adjudicators and their assessment in the Asian region.

2.2 Survey Contents

The survey focused on the 1) profile of the association; 2) present status of the national list; 3) training of candidate adjudicators; 4) assessment method; and 5) registration procedure. The study team sent a questionnaire (Attachment 2.1) to each MA listed below in advance and confirmed their responses during the meetings. The date, place and participants of the meetings are recorded in Attachment 2.2.

- 1) Germany: Verband Beratebder Ingenieure (VBI)
- 2) Poland: Stowarzyszenie Inzynierow Doradcow I Rzeczoznawcow (SIDiR)
- 3) Romania: Asociatia Romana A Inginerilor Consultant (ARIC)
- 4) Philippines: Council of Engineering Consultants of the Philippines (CECOPHIL)

2.3 Outcome of the Survey

2.3.1 General

A summary of the outcome of the survey is shown in Attachment 2.3.

Among four countries, only the German association, VBI, has been providing annual qualification assessment for adjudicators. The assessment of VBI is carried out through a three-day assessment workshop which is the same process adopted by FIDIC headquarters for the President's List. A panel comprised of three qualified assessors is responsible for the assessment

and two of them are in the FIDIC President's List of Adjudicators. Regarding training for candidate adjudicators, Nestar, a FIDIC-accredited training provider, has developed a comprehensive training program. VBI meanwhile provides various kinds of seminars systematically and periodically using said training program.

It is recognized that the practice of VBI would be a good example when Asian countries, including Japan, conduct assessment of adjudicators.

2.3.2 Germany

1) Profile of the Association

VBI, the German association of consulting engineers, has a long history since its establishment in 1903. VBI has about 3,000 member firms and a total of 45,000 members.

2) Status of National List

VBI has been providing qualification assessment for adjudicators annually from 2007. It has six adjudicators registered in its National List presently. Two out of the six belong to companies while the remaining four are self-employed consultants. The average age of the six adjudicators is 55 (youngest: 46 years old, oldest: 69 years old). With regard to their professional careers, five are engineers and one is a lawyer.

In Germany, public works projects do not use the FIDIC Conditions of Contract, and thus, they do not adopt DB. The FIDIC contract is also not the standard form of contract in German ODA projects financed by KfW, etc. Accordingly, domestic demand for adjudicators is limited to some of the large privately-financed infrastructure projects. Thus, it is expected that the main arenas for the national list adjudicators are international construction projects outside Germany.

3) Training for Adjudicator

VBI delegates the following training programs to Nestor Bildungsinstitut, FIDIC-accredited training provider, for education on the FIDIC Conditions of Contract.

Table 2.1 VBI's Training Program on FIDIC Contracts

Course	Contents	Duration	Fee
Basic course	Concept and use of conditions of contracts	1 day	EUR 675
Main course	Basic knowledge about the FIDIC Red Book and Yellow Book	2 days	EUR 1,450
Concentration course-1	Claims and disputes	2 days	EUR 1,550
Concentration course-2	Preparatory course for adjudicator assessment	2 days	EUR 1,550
Special course	FIDIC contracts for practitioners	2 days	EUR 1,550

(Source : VBI)

These courses are repeatedly delivered from March to November every year. The languages used in the courses are German and English, as appropriate. There are more than 30 participants in the main course and concentration course-1, while 15 to 20 participants usually attend in concentration course-2.

4) Assessment Process

Since 2007, VBI initiates a three-day adjudicator assessment workshop every year. The participants are required to complete the main course and concentration courses-1 and 2. No other specific requirements are set out for the admission of trainees. The professional qualification and experience of participants are examined during the listing process after the assessment. The workshop schedule is outlined below and its participation fee is EUR 2,625.

Day-1 : Writing examination. Drafting of decision based on case study scenario as a homework

Day-2 : Discussion based on the decision prepared during the previous night

Day-3 : Same as Day-2

The assessment seminar serves not only for qualification purpose but also for training of candidate adjudicators.

The assessment is carried out by an assessment panel comprising of three assessors. Each assessor makes his own scoring and final decision. However, trainees are only rated as passing or failing based on mutual consent among the assessors.

Until now, about 30 participants have passed the assessment with a passing rate of approximately 80%. At present, six of these have been included in the national list. Some participants do not apply for inclusion in the list even if they already passed the assessment successfully. The reason is either the participants are still working for their companies or they think they need more working experience. Thus, the number of those listed is less than those who have successfully passed the assessment.

5) Listing Process

The requirements for registration to the national list are:

- (1) Pass the assessment workshop
- (2) Submit curriculum vitae (in both English and German)
- (3) Have at least five years of appropriate academic and /or professional qualifications as an engineer
- (4) Have at least five years successful practice as a principal engineer (or equivalent profession) or to be legal advisor in the field of contract administration and/or disputes.
- (5) Submit certificate of employment, if employed by a company

- (6) The loss of one of the requested conditions might be justified at the end of listing process.

Being a consultant as a profession is a prerequisite for becoming a member of the VBI (a lawyer or contractor is not eligible to be a VBI member). However, such membership is not a precondition to qualify for the list. Moreover, the nationality of the applicant is not limited to Germans.

Registration is renewed every two years and the listed adjudicator is required to act as dispute adjudicator, arbitrator or mediator for at least one international project. However, such experience can be replaced by an additional FIDIC training.

The listing charge is EUR 350 (EUR 250 for VBI members) for those who are newly registered and EUR 150 (EUR 100 for VBI members) for renewal of registration.

VBI does not recommend or suggest any particular person from those listed. The selection of adjudicator is left to the decision of the interested parties.

2.3.3 Poland

1) Profile of the Association

SIDiR, the Polish association of consulting engineers, was established in 1994. It has 25 member firms and a total of 878 members, 300 of which are individual members.

2) Status of National List

In 1999, the first adjudicator was registered in SIDiR National List. At present, 32 are included in the list. In terms of professional careers, the list consists of 27 engineers, four lawyers and one economist. All of them are either self-employed consultant or lawyer. SIDiR recognizes that those employed by a company are not suitable to act as adjudicators in view of independency and neutrality. Furthermore, SIDiR will not accept new registrants in the next two years because there is already a sufficient number of listed adjudicators.

In Poland, the number of infrastructure development projects financed by the World Bank and European Bank for Reconstruction and Development has been increasing after 2004 when the country joined the EU. Because FIDIC contracts are also currently used in public works projects as the standard form of contract, there is a large demand for adjudicators in the country.

With the increasing number of projects, disputes in construction contracts are also increasing. According to the record of SIDiR, their national adjudicators have been involved in 85 cases so far. On the other hand, it is deemed that the clients of the projects do not fully support the adjudication process, although they understand the benefit brought by the dispute board. The most popular type of dispute board in Poland is the three-person ad-hoc board.

3) Training for Adjudicator

SIDiR provides three modes of training on contract administration, i.e., 1) seminar, 2) SIDiR conference (twice a year), and 3) lecture class. The seminar is held two or three times a year regarding education on FIDIC contract documents and procurement procedure. The lecture class, which is held occasionally with small number of participants, provides good opportunity to discuss contractual issues based on a case study, wherein resource persons experienced in dispute resolution are invited. The lecture class takes on an important role for the training of local adjudicator candidates. In addition, SIDiR distributes 2,000 copies of bimonthly newsletter, which also provides educational opportunities in the field of contract administration and disputes settlement.

4) Assessment Process

SIDiR does not set up an assessment panel for the assessment of adjudicator. The registration to the national list is discussed and decided during board meetings of SIDiR upon application. The supplemental confirmation regarding qualification and/or interview with the applicant are initiated as the occasion demands.

5) Listing Process

The requirements for registration to the national list are as follows:

- (1) A minimum of ten years experience in professional works for at least two big construction projects, each with a value of about EUR 5,000,000 or more.
- (2) A minimum of two years experience in an office as a consulting engineer or as an engineer for supervision works.
- (3) A minimum of three years membership in SIDiR
- (4) Participated in more than three training workshops for arbitrators and/or practical participation in the court of arbitrators.
- (5) Recommendations from two adjudicators belonging to SIDiR

Registration to the national list is free of charge.

SIDiR will make an appointment with an adjudicator, if requested to do so. SIDiR has set up a standard fee for adjudicators, i.e., USD 1,000 for chairperson and USD 800 for other members of the dispute board.

2.3.4 Romania

1) Profile of the Association

The Romanian association of consulting engineers, ARIC, was established in 1999. It has 31

member firms and a total of 4,000 members. Individual membership is not permitted, except for those who are professors of universities.

2) Status of National List

At present, 11 adjudicators who qualified in 2008 are registered in the national list. Regarding their professional careers, eight are engineers and the remaining three are lawyers. Among the engineers, seven are working for consulting firms while one is employed with a contractor.

In Romania, infrastructure development projects financed by lending agencies such as the European Bank for Reconstruction and Development have been increasing after 2007 when the country joined the EU. Because these projects use FIDIC contracts, demand for adjudicators has been increasing in the country. Furthermore, public works projects financed through the Romanian government's own budget adopted FIDIC contracts in 2008, although use of FIDIC contracts has not been obligatory after March 2010. Thus, selection of the contract form is left to the executing agency of each project. ARIC established its national list to cope with the increasing demand for adjudicators in the domestic market.

3) Training for Adjudicator

ARIC conducted training for candidate adjudicators for two years from 2006. The training was carried out every Friday from 4 p.m. to 7 p.m. in workshop style, inviting candidate adjudicators. Meanwhile, arbitrators who are members of Romanian Arbitration Association participated in the workshop as tutors.

The workshops were delivered in the following two stages, with six to nine participants at each time:

First stage (14 months): Understanding of FIDIC contracts and adjudication procedure

Second stage (8 months): Case studies

4) Assessment and Listing Process

The capabilities of candidates were examined through the two-year training described above. As a result, 11 candidates qualified for inclusion in the national list of adjudicators. Therefore, separate assessment workshop was no longer held for qualification. The final selection was made by the chairperson of ARIC and the country representative of Dispute Resolution Board Foundation (DRBF).

ARIC is not considering periodic renewal of registration at this moment. If request for withdrawal is received, such adjudicator will be excluded from the national list.

ARIC also does not make appointment or recommendation of listed adjudicators.

2.3.5 Philippines

1) Profile of the Association

The Consulting Engineers Council of the Philippines (CECOP), the predecessor of CECOPHIL, was organized by nine consulting firms in 1976. CECOPHIL has 23 regular member firms and three affiliate member firms at present.

2) Status of National List

CECOPHIL has just started examining the creation of a national list, and hence, such list has not been established yet.

In the Philippines, the dispute board is not used as a dispute resolution mechanism for public works projects. Although said dispute board is applied in some ODA and privately-financed projects, it seems that such cases are still very few.

3) Training for Adjudicator

In order to provide training opportunity on FIDIC contracts, CECOPHIL delivered Module 1 (Practical Use of the FIDIC Conditions of Contract) and Module 2 (The Management of Claims and Dispute Resolution) workshops at a two-year interval since 2005. Each workshop consists of a two-day course, where CECOPHIL invited contract specialists from Europe as trainer. An admission fee of about PHP 20,000 per workshop was set, with each workshop attended by about 80 participants.

Module 3 (Dispute Adjudication Boards) workshop has not been organized yet. However, CECOPHIL intends to initiate said module within 2011.

Chapter 3 Field Survey - II (Operation of DB under MDB Projects)

3.1 Objectives of the Field Survey

Multilateral development banks (MDBs) adopted FIDIC MDB Harmonised Edition in their standard bidding documents (SDB) for procurement of works in 2005, four years earlier than JICA. This survey was conducted to learn whether adjudicators are effectively performing, and to determine existence of any issues related to dispute board in the projects financed by MDBs. Consequently, this survey aims to utilize these outcomes for effective operation of adjudicators in JICA ODA loan projects, especially in the Asian region.

3.2 Survey Contents

The survey contents comprised of seven categories as listed below. The study team sent questionnaire (Attachment 3.1) to procurement sections of Asian Development Bank (ADB), World Bank (WB) and Inter-American Development Bank (IDB) in advance, and confirmed their responses during a meeting. The date, place and participants of the meeting are recorded in Attachment 3.2.

- 1) Bank's policy regarding use of DB
- 2) Actual status of DB in construction projects
- 3) Advantage of DB
- 4) Issues in connection with DB
- 5) Disbursement method of DB cost
- 6) Training program for cultivation of adjudicator
- 7) Typical source of employed adjudicators

3.3 Outcome of the Survey

3.3.1 General

MDB's responses to the questionnaire are recorded in Attachment 3.3.

Their responses have much in common and are summarized below:

- The use of Dispute Board (DB) is obligatory when the bank's SBD for works and plant are applied to the construction works. However, banks do not monitor actual establishment of DB in each project and do not urge project executing agencies to establish DB.
- It is deemed that project executing agencies do not fully understand the real benefit of DB since such concept is quite new to them. Accordingly, they are not positive in the introduction of DB in their projects in general.
- Disputes in contracts are issues between contracting parties in principle; therefore, banks do not adopt a proactive stance to be involved in disputes.

- There exists no specific rule stating that DB cost is appropriate under the loan provided by the banks. However, banks are not in a position to deny use of the loan for such expenditure. In some projects, DB cost is actually financed through the bank's loan.

All the banks expressed great interest and appreciation for JICA's past efforts on the promotion of DB and training programs for cultivation of adjudicators.

3.3.2 Asian Development Bank (ADB)

The barriers for promoting DB in Asian countries seem to be its being a western-centric concept and the significant cost burden for the recipient countries. ADB is in a position to promote DB at any rate since no better alternative is found for resolving disputes.

ADB has two kinds of SBD for civil works, namely, one for works which adopt the FIDIC MDB Harmonised Edition and the other is for smaller works. SBD for works is generally used for contracts whose value is over USD 10 million, depending on the complexity of the works. ADB has 30 to 50 projects exceeding USD 30 million and 10 to 15 projects exceeding USD 100 million; and therefore, the opportunity to use DB is increasing. However, projects where DB has already been established seem to remain few at present. The majority of DBs is of the ad hoc type. Even for the standing type DB, which means that DB is established at the outset of the construction contract, it seems that the establishment of such DB is postponed in many projects. It is noted that the cost for establishing a DB is the major concern of the project executing agencies in general.

Nothing is mentioned in ADB's lending policies that prohibits loan funds to be used to finance the DB costs incurred by the borrower. It can thus be realized that such costs are implicitly approved since ADB's general conditions of contract require a DB agreement that necessitates retainer payments to be made to DB member(s).

ADB does not have a procurement rule which inhibits the recipient countries from using the ADB loan for DB expenses. On the other hand, however, there is also no statement which clearly allows recipient countries to use a loan for DB expenses. Nevertheless, ADB would not have an issue should a line item for this purpose be included in the bill of quantities or schedule.

ADB does not intervene in a dispute between the employer and contractor. The claim and dispute arising between said parties are their issue basically. Also, ADB does not have enough internal resources to intervene.

Regarding the source of adjudicators, it is desired to maintain some resource pool with a constant number of adjudicators, even if the establishment of a national list is difficult.

ADB is impressed by JICA's various activities on the promotion of DB and training of adjudicator candidates achieved so far. It is worth discussing the continuation of these activities jointly by JICA and ADB.

3.3.3 World Bank (WB)

Since the WB is not a contracting party under a construction contract, it is not in a position to conduct close monitoring and meddle in construction claims and/or disputes. WB does not grasp the real status on the establishment of DB and its activity in each project.

Number of contracts financed by WB reaches about 22,000 annually including consultancy agreements. However, the summary data on the contract value requested in the questionnaire seems unavailable.

It is recognized that the benefits of DB are the prevention of delay in work progress and early settlement of disputes that arose. Many of the recipient countries do not understand DB well and are not fully aware of its benefits.

Regarding the acceptability of DB cost under WB loan, such cost is not basically recognized as a component to be financed by WB as this was not clearly mentioned in its procurement guideline. However, in some cases, DB cost is actually covered by the loan. This is left to the discretion of the task manager.

3.3.4 Inter-American Development Bank (IDB)

IDB is not a contracting party under the construction contract and hence, it is not in a position to proactively be involved in claims and/or disputes.

DB is a new dispute resolution mechanism for IDB and its recipient countries. However, actual performance of DB is very limited in on-going projects.

IDB does not allow the removal of DB provision from the contract if SBD for works is used. However, some countries do not permit the use of alternative dispute resolution (ADR) by law, and in such case, it may be required for the contract document to follow such regulations.

There are some 600 on-going projects financed through IDB loans. However, the summary data of contract values requested in the questionnaire seems unavailable.

The procurement policy of IDB does not stipulate that DB cost is appropriate under the loan; in actual practice, however, such cost is allowed to be covered by the loan.

Chapter 4 Field Survey – III (Dispute Resolution Board Foundation)

4.1 Objectives of the Field Survey

The Dispute Resolution Board Foundation (DRBF) was created in 1996 by the founders of the Dispute Review Board (DRB) as a nonprofit organization to support and promote the use of the Dispute Boards (DB). Its office is located in Seattle, United States of America (USA), and it has over 700 members in 59 countries.

The DRBF is a dominant organization for promoting DB similar to the International Federation of Consulting Engineers (FIDIC). The survey was carried out to confirm activities of the DRBF and the prevalence of DB, especially in the USA, through interviews.

The date, place and participants of the meeting are recorded in Attachment 3.2.

4.2 Outcome of the Survey

The DRBF divided its activity area into two regions, namely: (1) Region 1, which covers the USA, and (2) Region 2 which covers the rest of the world. The DRBF has a plan to establish Region 3 which will cover Oceania and Asia in 2012.

In the USA, the DRB, which gives recommendations but not decisions on the referral of disputes, has become dominant in the DB process. The DRB is used in many construction contracts these days. The latest database (updated at the end of 2010) developed by the DRBF has 2,191 projects which used the DRB, 2,033 cases of which are projects in the USA.

It is recognized that the prevention of disputes is the most remarkable benefit of having a DB. Therefore, the type of DRB, which is prevailing in the USA, is the standing board in principle. Dispute prevention is mostly attained through facilitation of consensus-building efforts among contracting parties, in which the DRB's advisory opinion during site visits plays a critical role.

It was actually experienced in the USA that delays on the completion of work and/or cost overruns were minimized through dispute prevention and early settlement of disputes brought about by the DRB. The study made by the Florida Department of Transportation confirmed the advantages of the DB system, as shown in Table 4.1 below.

Table 4.1 Time and Cost Overrun Study by the Florida Department of Transportation

Contract	Nos. of Contract	Time Overrun	Cost Overrun
With DRB	15	1.84%	12.12%
Without DRB	60	19.10%	17.89%

(Source : DRBF)

Moreover, according to the database kept by the DRBF, 98% of disputes were settled through the DRB process without arbitration or litigation. This is one of the evidences showing the effectiveness of

the dispute prevention function of the DB system.

In the USA, all fees are paid to DRB members on actual work time basis while no retainer is paid. The average fee costs between USD 1,500 to USD 3,000 per day.

Regarding the payment procedure, the contractor pays 100% of the fee to DRB members first and then the contractor claims 50% of the fee from the owner. The owner usually pays such cost to the contractor using the provisional sum retained in the contract.

The DRBF delivers workshops for promotion of DB and training of candidates for DRB members. The DRBF also provides seminars tailored to specific needs of government agencies that will use the DRB. As an international event, the DRBF holds a two-day training workshop after the DRBF annual conference.

The DRBF suggested that a trial pilot project which would use DB will be one of the most effective measures for the project owner to realize the real benefits of DB.

Chapter 5 Adjudicator Training Workshop

5.1 Purpose of the Adjudicator Training Workshop

The DB Adjudicator Training Workshop (TW) has been conducted for the following three purposes:

- 1) To verify the effectiveness of the JICA DB Training Kit, which was developed during the JICA Study 2009;
- 2) To provide a training opportunity for the candidates who will participate in the JICA DB Adjudicator Assessment Workshop (AW);

(note) It was recommended in the JICA Study Report 2009 that, among other requirements, candidates of AW should i) have completed FIDIC Modules 1 and 2 and ii) have completed TW. Candidates who have not completed Modules 1 and 2 were given the opportunity to participate in these courses, which were conducted in Tokyo between November 29, 2010 and December 3, 2010.

- 3) To identify the problems which may be revealed during the training of adjudicators in Japan

5.2 Selection of Trainers

TW was carried out by three trainers including Professor Omoto, a member of the Study Team, and the following two trainers invited through FIDIC, who were among those listed on the FIDIC President's List of Approved Dispute Adjudicators.

- 1) Mr. Gordon Jaynes (residing in UK)

Mr. Jaynes, an American lawyer, has over 40 years experience in the international construction industry. He renders advice to owners, consultants, contractors, subcontractors and process engineering companies and serves as party's attorney, arbitrator and DB adjudicator. He is one of the reputable construction lawyers in the world in the field of construction contract and dispute resolution. Especially, he has often been appointed as a neutral arbitrator, or DB adjudicator who is required to be independent and impartial to the parties involved.

He has also been part of the Assessment Panel of Adjudicators (APA) for the FIDIC President's List of Approved Dispute Adjudicators from the beginning of this system. Moreover, he has conducted FIDIC assessment of adjudicators for six times so far and has contributed to its improvement.

In 2009, he was part of the team which conducted the JICA study entitled, "Study on the Introduction and Dissemination of DAB/Adjudicators in the Asian Region", and contributed to the preparation of the JICA DB Training Kit.

- 2) Mr. Richard Appuhn (residing in Italy)

Mr. Appuhn has the experience of over 40 years in civil engineering. He specializes in civil

engineering and engineering geology and is a registered Professional Engineer (PE) and engineering geologist in the US. He has been working for consultants and contractors in the US, South Africa, Italy, etc., in international construction projects. He became independent in 2000 and started his own consultancy firm. He has often been appointed as DB adjudicator. He has been a director in charge of education and training in the Dispute Resolution Board Foundation (DRBF) and is a FIDIC-accredited trainer. His expertise includes conducting training for DB adjudicators.

5.3 Invitation of Trainees

1) Method of Recruitment

As applicants are required to have sufficient experience in construction projects and abundant experience in construction contract, particularly in using FIDIC Conditions of Contract, the Study Team requested the Overseas Construction Association of Japan, Inc (OCAJI) and the Association of Japanese Consulting Engineers (AJCE) for nomination of candidates.

The nomination of candidates was requested in early November. In mid-November, OCAJI and AJCE recommended nine and ten applicants, respectively (19 in total).

2) Requirements for Applicants

The Study Team carried out recruitment of candidates with the support of OCAJI and AJCE according to the FIDIC Guidelines on National List. Under the precondition that applicants will participate in both the TW and AW, the Study Team imposed the following qualifications as the application criteria:

(1) Academic Background:

Possess academic qualifications or background in professional disciplines such as civil, electrical or mechanical engineering as well as architecture, economics and law.

(2) Professional Qualifications

Possess relevant recognized professional qualifications such as professional engineer, first-class architect, executive/senior professional civil engineer (Japan Society of Civil Engineers), first-class civil construction management engineer, FCI Arb¹, lawyer, etc. In-house experts on the management of contractual and legal aspects will be qualified if they have sufficient experience in the construction field.

(3) Professional Career

Possess over ten years of experience as a consulting engineer or a contractor handling a responsible position. It is noted that lawyer is exempted from this requirement.

(4) Special experience

¹ FCI Arb: Fellow, Chartered Institute of Arbitrators, UK

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- i) Possess experience in overseas construction projects, which may consist of construction experience, providing consulting services or rendering contractual advices.
 - ii) Possess experience in using FIDIC Conditions of Contract.
 - iii) Possess experience in dispute resolution. It can be as an arbitrator, adjudicator, the Engineer as specified in FIDIC Conditions of Contract, consulting engineer, or party to a dispute.
- (5) Fluent in English and able to write concise and correct sentences
 - (6) Completion of FIDIC training program, Modules 1 and 2.
 - Module 1: Practical Use of the FIDIC Conditions of Contract
 - Module 2: The Management of Claims and Dispute Resolution Procedures

3) Application Documents

Applicants for the TW and AW are requested to submit to the AJCE the application documents below in electronic format on the date specified.

Original application form and recommendation letters that require signature are requested to be submitted separately by mail.

All the application documents should be written in English except for certificates or qualification written in Japanese.

- (1) Application for TW and AW (Appendix 5.1)
- (2) CV (free format)
- (3) Photo in digital format
- (4) Two recommendation letters
- (5) Certificate on academic career
- (6) Certificate on professional qualifications
- (7) Certificate of FIDIC Modules 1 and 2 training program
- (8) Other relevant certificate or qualification

4) Selection of Applicants

The Study Team requested candidates to submit all the application documents as specified in Section 5.3.3) above. All required documents were received by early December 2010. The deadline for submission of two recommendation letters and the application form was extended, as they require additional time for mail delivery.

All application documents were submitted to the trainers and assessors in charge of respective workshops for prior documentary examination. It was confirmed that all the applicants passed the documentary examination.

There were some issues to be followed-up on the application documents as summarized below:

(1) CV

In drafting the CV, it is necessary to describe, in a concise and impressive manner, one's experience in contract management in construction projects, dispute resolution, project management, and the role that applicants played. However, there were cases where the contents are rather simple and not impressive.

(2) Recommendation Letters

For purposes of transparency, recommendation letters shall be received from different parties or organizations. As this point was not clearly stated in the application requirement, there were cases in which two recommendation letters are prepared by the same organization. It may be a cause that those who have enough experience in dispute resolution for providing recommendation would be somewhat limited.

5.4 Training WorkshopProgram

TW was conducted for four days from December 15 to 18, 2010, in accordance with the program in Appendix 5.2.

TW was structured by combining lectures based on the materials included in the kit, case studies using scenarios prepared by the trainers and simulated situations during the mock DB hearings.

1) Lectures

Three trainers took turns in giving lectures using PowerPoint slides which were included in the training kit. Trainers ascertained the understanding of the candidates by asking questions. The lectures covered the following subjects:

- Characteristics of DB (efforts to avoid disputes)
- Types of DB (standing, ad hoc)
- Selection of DB members (qualification, costs)
- Operation of DB (Site visits, providing informal opinion, referral, hearing, decision)
- Remuneration to DB members
- Proceedings after DB Decision (efforts to reach amicable settlement, arbitration)
- Expiry of DB membership

As shown in the analysis of answers to questionnaires in the following section, most of the

candidates evaluated that the kit and lectures based on the kit are suitable training materials.

2) Case Study as Homework

Trainees were given an assignment to answer how to deal with issues that may arise during the different stages of the DB process, in case they are tasked as DB chairperson. They write decision(s) for the case included in the scenario.

- Homework Day 1
 - How to establish a DB when one of the parties is not cooperative
 - How to calculate the costs of DB
- Homework Day 2
 - Important matters during site visits, requirements to be satisfied when DB provides an informal opinion, etc.
 - How to write a DB site visit report
 - How to communicate and distribute information during site visits
 - Time bar for referral, formal referrals, hearing

3) Mock Hearing

Mock DB hearings were conducted by using scenarios prepared by the trainers. The case study was on the issue on how to conduct DB proceedings dealing with an Extension of Time (EOT) claim in a construction of a hydroelectric power plant. Trainers demonstrated how to do a mock hearing before playing their respective roles. Trainees were divided into six teams, each consisting three members (only one team had four members). Three teams respectively played the role of the Employer, Contractor and DB. One activity took 30 minutes and each team played three different roles. During the mock hearing, trainers advised on how to behave and proceed. Trainees have no experience on hearings learned through these exercises.

Completion certificates shown in Appendix 5.3 were given to all the trainees at the end of the final day.

5.5 Result and Analysis of Questionnaire Survey

The following questions were asked in the questionnaires:

- Motivation for applying for TW
- Evaluation of the training and the training kit
- Availability as a DB member, if appointed
- Proposal for improvement of the training kit

-
- Proposal for improvement of the TW

The result of the questionnaire survey is shown in Appendices 5.4.1 and 5.4.2, and is summarized as follows:

1) Motivation for Applying for TW

- Motivation

There were 21 answers obtained from 19 trainees. Six replied that they attended to generally learn about DB and dispute resolution while 15 answered that they attended to qualify as DB adjudicators. More than 80% of the trainees gave a very positive and clear answer of their desire to become DB adjudicators, which proved that the purpose of the TW was accomplished. It was interesting to note that one of them expressed his observation that DB members would be needed in Japan in the future.

- Workshop Fee

The attendance fees for this kind of two-day workshop in Europe ranges between JPY 150,000 and JPY 200,000 while that for a four- to five-day workshop is about JPY 300,000, which still attract participants. It is said that these fees are normally paid by individuals, and not by their employers. Trainers were asked on how much they would be willing to pay personally for this TW (because no fee was required to pay at this time). With a fee of JPY 300,000 given as an example, five replied positively, 13 negatively and 1 had no answer. The range of acceptable fees according to number of trainees is as follows:

- ✧ JPY 30,000: 2 trainees
- ✧ JPY 100,000: 5 trainees
- ✧ JPY 150,000: 2 trainees
- ✧ JPY 200,000: 2 trainees
- ✧ JPY 300,000: 5 trainees

The above survey results show that there are professionals in Japan who are ready to pay such a high fee just to participate in this kind of workshops, which seems that DB adjudicator is a new promising profession. This trend is very helpful in the development and maintenance of a DB national list.

- Intention to Apply to the FIDIC President's List of Approved Dispute Adjudicators

Fifteen out of 19 trainees expressed their intention to apply to the list. Nine out of 15 desired attaining this prestigious qualification to contribute to the international construction industry. Two of them expressed intention but still think that they need more education and training. It is expected that several adjudicators will be listed not only in

the Japanese national list but also in the FIDIC President's List.

2) Evaluation of the Training and Training Kit

The questions and corresponding replies related to the evaluation of training and training kit are as follows:

- Is training kit useful for self-study?

All trainees evaluated that the kit is useful for self-study.

- Was the training effective through the use of the training kit?

All but one who did not answer evaluate that the training was effective.

- Is the TW useful not only for potential adjudicators but for users of DB (employers, contractors, engineers, etc.)?

A majority of 16 out of 19 answered positively.

- Was the workshop difficult?

Seven replied it was difficult while 12 thought otherwise. There are several reasons for the difficulty rating, such as difficulty in hearing English, too many materials to read, and unfamiliarity with FIDIC MDB Harmonised Edition. These reasons seem to be the very problems which they have to overcome. Some stated that because of too much homework, they did not sleep enough and found it difficult to concentrate. However, this method will not be changed in the future because this was intentionally designed to cope with the similar situation that often occurs in actual DB operation.

- Did you gain confidence in your own ability for serving as a DB member after attending this workshop?

Fourteen answered in the affirmative while five thought they need further education, training and practice. This proved that the TW was evaluated as effective.

3) Availability as a DB Member if Appointed

Nine of the trainees answered they were available and would accept the appointment at the moment. Meanwhile, ten trainees replied that they would not be available because they are employed, although there were some who mentioned that they would be available in one to two years.

4) Proposal for Improvement of the Training Kit

The training kit was generally evaluated as a good material.

- Two trainees considered the kit as good enough as it is.

- Detailed proposal: to provide relevant sub-clause numbers and to make an index in front of the kit. These proposals are helpful for the improvement of the kit.
- There was a proposal that the TW should include project management in relation to the DB process. The current program of four to five days may not deal with such a wide range of subjects but the proposal is worth considering.
- Many trainees wanted to have more case studies based on the scenarios in the kit. However, it is considered much better that scenarios be based from actual experiences of the trainers.

5) Proposal for the Improvement of the TW

There were quite a number of proposals to improve the TW in relation to homework. There were other proposals such as an extension of the workshop period by one day and improvement of DB mock hearing.

- Reducing the Volume of Homework

This request had been made during the TW. However, this format is the same for AW intended for the FIDIC President's List or for workshops in other countries. Thus, this method is important in preparation for the AW and will not be changed.

- Extension of the TW Period

The training kit was designed for five-day workshop. This time, the period was shortened to four days although five days are recommended.

- DB Mock Hearing

As mentioned above, the total duration should be extended and more time should be allocated to DB mock hearing. It is noted that trainers should also participate in the mock hearing.

Chapter 6 Adjudicator Assessment Workshop

6.1 Purpose of the Adjudicator Assessment Workshop

DB Adjudicator Assessment Workshop (AW) has been conducted for the following two purposes:

- To re-verify the effectiveness of the JICA DB Training Kit by conducting the AW immediately after the TW
- To provide the result of assessment informally to the Association of Japanese Consulting Engineers (AJCE), which is planning to establish a national list of DB adjudicators.

6.2 Formation of Assessment Panel for Adjudicators (APA)

The AW was carried out by three assessors including Professor Omoto, who is among the Study Team, and the following two assessors invited through FIDIC, who were among those listed in the FIDIC President's List of Approved Dispute Adjudicators. Mr. Jurowich was elected as the chairperson.

1) Mr. Volker Jurowich (residing in Germany)

After graduating as civil engineering faculty of a technical university in Germany in 1969, Mr. Jurowich has been working with a major German international contractor, Züblin, until he retired as a board director. He has gained design experience in the company and is a specialist in dam construction. He is well experienced in dispute resolution such as arbitration and has been often appointed as DB member. He is a FIDIC-accredited trainer and the president-elect of the DRBF.

2) Dr. Sebastian Hök (residing in Germany)

Dr. Hök is a partner of a German law firm and also a lecturer of applied science at the Berlin University. He is an expert in arbitration law and construction law and well experienced in handling international construction disputes. He is also a FIDIC-accredited trainer.

6.3 Assessment of Application Documents

Eligibility of 19 candidates was scrutinized based on the application documents described in Section 5.3.3). This assessment was carried out by a total of five experts consisting of trainers and assessors. As a result, all candidates were judged as eligible.

Some of the characteristics of the candidates are as follows:

1) Age

Age ranges widely between 40 and 71, with most of the candidates being over 55 years old (average is 59.8). It is well expected that they will accept appointments after registering in the national list.

Table 6.1 Age of Participants for AW

Age	Number
40 – 49	3
50 – 59	4
60 – 69	11
Over 70	1
Average: 59.8	19

2) Occupation

Eleven candidates are categorized as consulting engineers (employed consultants, independent consulting engineers) but many of them have worked with contractors. All of them are well experienced in overseas projects.

Table 6.2 Occupation of Participants for AW

Job	Number
Employed Consultants	9
Self-employed Consultants	2
Employed by Contractors	6
Law Firm	1
Education	1
Total	19

3) Profession

Fourteen out of 19 are civil engineers by profession.

Table 6.3 Profession of Participants for AW

Expertise	Number
Civil Engineer	14
In-house Lawyer	3
Economist	1
Lawyer	1
Total	19

6.4 Assessment Workshop Program

The AW was conducted for three days from December 20 to 22, 2010, in accordance with the program in Appendix 6.1.

Using the five testing techniques below, the knowledge and capability in international

construction contracts (especially of FIDIC MDB Harmonised Edition), skills of managing the DB process, capability of making decision, and the ability in communicating and writing in English were examined.

1) Multiple Choice Test

- Eighty nine questions were prepared on conditions of contracts, claims procedures, procedures for disputes and DB, and application of these basic knowledge

2) Case Study

- To draft an agenda of the DB's first site visit for a breakwater and a container berth construction project.

3) DB Decision Writing

- Based on the scenario of a hydroelectric power plant construction, decision writing was practiced concerning contractor's claims of extension of time (EOT) and additional costs and Employer's claim over liquidated damages due to Contractor's delay.
- Drafting a decision as to the validity of DB for a highway project.
- Drafting decisions for a dispute as to claims procedure and a dispute as to Employer's right to set-off for a construction of a road project.

4) Oral Examination

- Based on the intermediate assessment of the candidates after multiple choice test and DB decision writing, candidates were selectively subject to oral examination.
- Subjects of the examination include notice of claim, specifications, ambiguities of contract provisions, and Employer's right to set-off.

5) Interview

- Each candidate was interviewed by APA at the end of the AW. Intermediate assessment was reconfirmed and the communication ability was assessed.

6.5 Result of Assessment

Based on the assessment of all stages of the AW as a whole, ten out of 19 candidates were judged to have necessary capabilities required for a DB adjudicator.

APA submitted to JICA the Overview Report of the Assessment Panel (Appendix 6.2) and the result of the assessment.

All candidates were presented with an Assessment Workshop Completion Certificate, enclosed

as Appendix 6.3, at the end of AW.

6.6 Analysis of Result of Assessment

The result of AW was evaluated as below and the matters which are pointed out here should be regarded as subjects for future training of DB adjudicators in Japan.

1) Multiple Choice Test

It was found that some candidates were not familiar with FIDIC MDB Harmonised Edition. The results ranged widely between good and bad. Candidates who have not passed this time are recommended to thoroughly study the MDB Harmonised Edition.

2) DB Decision Writing

It was judged that all candidates were capable of writing good English. Most of the candidates were not good at identifying issues involved in the scenarios and in developing the case logically in accordance with the conditions of contract. This is likely because Japanese engineers have not had education and training for such skills, which are to be considered as definitely necessary for a DB member. Lawyers, registered or in-house, are much better in decision writing. Meanwhile, engineers are advised to undergo training, with the lawyers' help, with regard to identifying issues and developing a case.

As shown in the Chapter 6.3, most of the candidates are working for either consultants or contractors. It was found that the candidates showed in their DB decisions partiality or being biased on one of the contracting parties of the scenarios. A DB adjudicator must be impartial between the contracting parties despite his past profession and judge the issues just in accordance with the contract. candidates are required to educate and train themselves in this regard.

3) Oral Examination and Interview

It was generally observed that candidates were worse at speaking than writing English. Ability of English conversation is essential especially at the hearing during the site visits. However, during the interview at the end of AW, most of them were more fluent in English than during other occasions, perhaps because they became more confident. This slightly improved the result of assessment.

6.7 Result and Analysis of Questionnaire Survey

The following questions were asked in the questionnaires:

- Motivation for applying in AW
- Evaluation of the AW
- Availability as a DB member if appointed

-
- Proposal for improvement of AW

The results of the questionnaire survey are shown in Appendixes 6.4.1 and 6.4.2, and summarized as follows:

1) Motivation for Applying in AW

- Motivation

Similar to the answers to questions for TW, most of the candidates replied that they attended to qualify as DB adjudicators.

- Workshop Fee

A workshop fee of JPY 200,000 was given as an example. Nine replied in the affirmative while the other nine answered as follows:

◇ JPY 20,000	: 1 candidate
◇ JPY 40,000	: 1 candidate
◇ JPY 50,000	: 1 candidate
◇ JPY 80,000	: 1 candidate
◇ JPY 100,000	: 5 candidates
◇ JPY 200,000	: 9 candidates

In summary, 14 candidates answered positively if the fee would range between JPY 100,000 and JPY 200,000. Many candidates are ready to pay large sum of fees for TW and AW altogether. This implies that they are willing to face the challenge of a new job by making full use of their professional experiences.

- Intention to apply to the FIDIC President's List of Approved Dispute Adjudicators

Almost same result was obtained for the same question asked for the TW. Two candidates, however, declined to reply.

2) Evaluation of the AW

The questions and respective replies related to AW are as follows:

- Was the training workshop (TW) suitable in preparation for the assessment workshop (AW)?

Eighteen candidates replied in the affirmative, while one did not reply. It was proposed that more training is needed for writing decisions. This seems to show that they lack the ability to identify issues of a scenario and in developing their cases. This is surely the most important subject to be covered by TW.

- Was AW difficult?

More than half of the candidates confirmed it was difficult. Two typical answers are as follows: 1) there were too much homework and 2) they recognize their lack of knowledge on FIDIC MDB Harmonised Edition. As to the proposal to homework, the trainers will not relieve the assesses from this obligation because the assignment of the homework is traditional in this kind of assessment and it was adopted also in the assessment of FIDIC President List's adjudicators and arbitrators in UK.

- Proposal for Improving AW

There were requests to have APA's comments included in their homework and written decisions. However, since the workshop is for assessment purposes, such request was not granted. There were also requests to have mock DB hearings as there was none conducted. This request will therefore be studied. There was also another request that longer period should be kept between TW and AW. This will also be taken into account.

- "Will you take the challenge again if you fail in AW?"

Sixteen out of 19 Candidates confirmed that they would face the challenge again if they fail in the assessment. Another AW should be conducted in two to three years.

3) Availability as a DB Member if Appointed

Ten candidates (it is noted that this is one candidate more than the number who replied in TW questionnaire) replied that they were ready. It is expected that in the near future, a DB adjudicator will be appointed after establishing the AJCE National List.

6.8 Plan for Establishing the National List of DB Adjudicators

Following the results of the AW, AJCE plans to establish a registration system for adjudicators in 2011. Under the system, AJCE will develop and maintain the national list of adjudicators in Japan.

Chapter 7 Verification of Effectiveness of JICA DB Training Kit

7.1 Effectiveness of the Training Kit

The JICA DB Training Kit, which was developed during the JICA Study 2009, was designed to 1) help potential DB adjudicator candidates, who have enough practical experience in international construction projects in order to reorganize their knowledge about DB and to prepare them for serving as DB adjudicator, and 2) provide a comprehensive tool to help candidates in achieving the purpose described above by improving their capability in writing and communication.

One of the purposes of the two workshops (TW and AW) is to verify the effectiveness of the training kit. The effectiveness was verified as follows:

- Training kits were distributed to the candidates in advance so that they will be able to study the materials before participating in the workshops.
- Trainers, taking turns, made presentations using the materials included in the kit. As per instructions in the kit, trainers prepared scenarios to be used for case studies. Through the combination of lectures and case studies, interactive sessions between the trainers and candidates became possible. This helped candidates significantly improve their oral communication skills in preparation for possible oral examination and interviews in the AW.
- Training on decision writing helped the candidates improve their skills towards the AW.
- Almost all the necessary documents required in the AW were included in the kit, which could be further improved if the proposal in the next section is implemented.
- It would not have been possible to have ten out of 19 candidates pass the assessment if there was no training kit available and the training was not conducted using such kit. As the analysis of the answers to the questionnaires shows, most of the candidates evaluated the effectiveness of the kit and confirmed that it can be used for the dissemination of the DB concept as well.

7.2 Proposed Improvement of Training Kit

The following documents were distributed to the candidates. It is recommended to include these documents in the kit in the future.

- Clause 20 of FIDIC Contract Guide

This FIDIC Guide is a commentary on the series of FIDIC Conditions of Contract, namely, Red, Yellow and Silver books, comparing same clause numbers in each book.

- Clause 20 of FIDIC Gold Book, “Design, Build and Operate”

Gold Book was published after the guide, and therefore, to complete the comparison, this should be included.

- ICC Arbitration Fee Scale

Arbitration is the last resort to resolve disputes under the FIDIC contract. International Chamber of Commerce (ICC) is the most famous arbitration institution for international construction disputes. To study the process, cost consideration is necessary and thus, the fee scale helps in this exercise.

Candidates also proposed the following, which are recommended for implementation in the future:

- Kit should have an “Index” as guide to the document.
- Related sub-clauses of FIDIC conditions should be referred to in the text of the kit.

Chapter 8 Recommendations

8.1 Recommendations on the Framework for Introduction and Dissemination of DB in JICA ODA Loan Projects

1) Adjudicator Assessment Workshop in Asian Countries

As result of the assessment workshop, ten participants out of 19 were judged qualified to be registered as adjudicators in the national list. Since the result of the assessment was scheduled to be reported to the Association of Japanese Consulting Engineers (AJCE), the qualified adjudicators were expected to be registered on the AJCE National List and play an adjudicator's role in future construction projects.

The AJCE National List will be the first attempt in the Asian region, and will assume part of the responsibility in promoting DB that FIDIC strongly recommends to its member associations. In order to respond to the growing demands of adjudicators in JICA official development assistance (ODA) loan projects, it is much desired that the creation of a national list will be realized in other Asian countries so as to significantly increase the availability of adjudicators in the region.

In order to realize this, however, it is necessary to have an organization that plans and pursues programs for implementing the training and assessment workshops for candidate adjudicators. Furthermore, those who have experience in adjudication are significant resources for trainers and/or assessors.

At present, it is deemed difficult to arrange resource persons and executing bodies, as well as to manage the entire process of creating a national list in the Asian region. Under such circumstances, JICA could play an important role by supporting the adjudicator development program with respect to its management and financial assistance. In addition, tools such as FIDIC Modules 1 and 2, and the DB Adjudicator Training Kit developed by JICA could be effectively used together with experience gained through the series of JICA studies that started in 2008.

The training programs could be planned as follows:

(1) Subject Countries

Potential countries for the training and assessment workshops could be selected by the following criteria:

- i) JICA ODA loan projects are implemented at present and also assumed to be continued to be implemented.
- ii) A member association of FIDIC that has potential to create a national list exists.
- iii) Human resources with a strong will to serve as adjudicators and sufficient experience and knowledge so as to participate in the planned training and assessment workshops exist.

Potential countries that satisfy the above requirements were assumed to be Indonesia, Vietnam,

Philippines, India and Sri Lanka.

(2) Potential Venue

It would be economical to conduct the training and assessment workshops in one place where participants from the subject countries can gather. This will facilitate the improvement of participants by learning from other nations. One potential venue for conducting the training and assessment workshops would be in Manila, Philippines. The reasons for this are as follows:

- i) Access from the subject countries is good.
- ii) Since an alternative dispute resolution (ADR) is active, there exists a high possibility of generating excellent adjudicators.
- iii) It could be possible to collaborate with international schools specializing in management, such as the Asian Institute of Management (AIM).
- iv) The program under consideration could be jointly implemented with the Asian Development Bank (ADB) in Manila in order to enhance its promotion and influence.

(3) Recruitment of Participants

The recruitment of participants in respective countries will be conducted widely in cooperation with FIDIC member associations, contractor's associations, the Dispute Resolution Board Foundation (DRBF), etc. The requirements for participation are similar to those imposed under this Study. Regarding the assessment workshop, the maximum number of participants would be about 20. Accordingly, the number of participants from each country should be limited to 4 or 5.

(4) Training Workshops

The training workshops will include the following two kinds of programs:

- i) Module 1 (Practical Use of the FIDIC Conditions of Contracts) and Module 2 (The Management of Claims and Dispute Resolution Procedures) for five days
- ii) DB Adjudicator Training Workshop for five days

Both training programs will be implemented at an interval of approximately three months. The contents of the programs will be similar to those in the already implemented JICA Study.

It is advisable to recruit five trainers (two trainers for Modules 1 and 2, and three trainers for the DB Adjudicator Training Workshop) from experienced experts such as FIDIC-accredited trainers and/or FIDIC President's List of Adjudicators.

(5) Assessment Workshop

The assessment workshop will be carried out for three days by organizing an assessment panel

of three adjudicators who are part of the FIDIC President's List of Adjudicators. The contents of the program will be similar to those of this JICA Study. The assessment workshop will be conducted after the training workshop.

(6) Utilization of Assessment Results

The results of the assessment workshop will be reported to respective FIDIC member associations. The succeeding procedures such as registration into the national list are left to each FIDIC member association. It is anticipated that the AJCE would share its experience with each member association in creating a national list of adjudicators.

When the executing agencies of JICA ODA loan projects consult with JICA on the appointment of adjudicators for their projects, the national lists could be effectively utilized as a potential source of adjudicators.

2) International Promotion on Introduction and Dissemination of DB

Through the hearings with multilateral development banks (MDBs) conducted in this Study, it was found that the establishment of the standing DB seems to be postponed despite the fact that it is required in the contract of an ample number of projects although the real status has not been figured out in detail.

When the conditions of contract in standard bidding documents, which is obligatory (or strongly encouraged) by financial institutions, are not strictly followed by the contract parties, the originally considered risk allocation between the contract parties may be biased or the smooth implementation of the contract process may be interfered. These drawbacks sometimes result in delay in the work progress or cost overruns of projects. If the standing DB is not organized in accordance with the contract, there will be higher possibility that DB's dispute prevention function will not be well realized and disputes will occur frequently in a project.

Since 2008, JICA has been introducing and disseminating DB, as well as providing training for adjudicator candidates. This initiative by JICA is a pioneering achievement among international financial institutions (IFIs), which is expected for further expansion and development.

In particular, the implementation of two schemes, as discussed below, is recommended.

(1) Publicity on JICA Activities and Achievements

In order to draw understanding and cooperation from employers of ODA recipient countries and MDBs for the promotion of DB, JICA could widely publicize its achievements such as the development of a training kit, implementation of training and assessment workshops, and various seminars on contract and dispute resolutions. The opportunities for publicity and promotion would be in international conferences, as listed below, wherein employers of projects in developing countries and MDBs will participate.

- i) FIDIC Annual Conference (every September)
- ii) FIDIC Asia-Pacific User's Conference (every June)
- iii) FIDIC MDB Harmonized Major Works (Construction) Contract Conference
- iv) DRBF International Conference (every May)

Furthermore, it would be effective to exchange dialogues in conferences held among IFIs on procurement.

(2) Collaboration with IFIs for Capacity Building and Dissemination of DB

In order to introduce and promote DB effectively, it is essential to make the employers of construction contracts understand the benefit of DB properly by providing them education and training. JICA has conducted DB promotion seminars in the Philippines, India, Vietnam, Cambodia, Bangladesh and Sri Lanka for executing agencies of JICA ODA projects. However, it was observed that many of such executing agencies still have reservations towards bearing DB costs. Therefore, this kind of seminar is required to be conducted continuously and repeatedly.

It is recommended that JICA will conduct future training workshops and seminars in collaboration with MDBs (such as ADB) since most of the executing agencies of JICA ODA projects are recipients of other donors as well. By doing so, the cost of training programs can be shared by JICA and MDBs.

In the JICA Study Report prepared under the "Study on the Introduction and Dissemination of DB Adjudicators in Asian Region (2010)", Indonesia, Vietnam (Ho Chi Minh) and Pakistan were proposed as potential venues for the DB promotion seminar. It is recommended to prioritize these countries for future training programs.

8.2 Recommendations on Effective Use of Adjudicators in JICA ODA Loan Projects

1) Promotion of DB through the Pilot Projects or Ongoing Priority Projects

The study report prepared under the previous JICA Study in 2009 suggested that JICA leads the implementation of pilot projects supported by JICA for the following objectives:

- (1) To prove that introducing DB into a construction contract makes project implementation smoother, which consequently leads to the employer's benefits.
- (2) To ease project implementing agencies' hesitation to adopt DB into their projects through the support of JICA in covering DB costs.

The implementation of pilot projects is considered to be one of the most promising approaches for the promotion of DB and effective use of adjudicators in JICA ODA projects.

However, the following issues were identified in the implementation of a pilot project:

- It will take two to three years from the arrangement of the pilot project until the confirmation of

benefits of DB (i.e., selection of the pilot project for about three months, discussion with the executing agency of the project for another three months, preparation of bid documents incorporating the DB process for six months, bid and bid evaluation for six months, confirmation of benefits of DB after establishment of the standing DB after 12 months).

- When the number of pilot projects is few, there should be equal opportunity in having a pilot project among recipient countries of JICA ODA loans.
- The use of grant aid is seen to cover DB costs in order to reduce financial burden to the loan recipient countries. A new institutional arrangement for the use of grant aid will be required to be studied since this kind of financial assistance would be the first case of JICA.

In order to circumvent these issues, it is conceivable that the provision of strong support from JICA for the formation and operation of DB in ongoing projects would be a workable alternative measure. Under this scheme, the formation of DB will be accelerated by identifying hindrances in the establishment of DB and then determining their solutions, as well as working together with the project executing agency for the selected ongoing project where the standing DB has not yet been established despite of such requirement under the contract.

Table 8.1 shows examples of large JICA ODA loan projects with construction contracts those will soon be concluded within one or two years. These projects will be the candidate projects.

Table 8.1 Candidate Projects for DB Formation Acceleration Scheme

Name of Project	Country	Works
Samawah Bridges and Roads Construction Project	Iraq	Utility Works
Thai Binh Thermal Power Plant and Transmission Line Construction Project	Vietnam	Thermal Power Plant Construction (300 MW x 2)
Jakarta Mass Rapid Transportation System (1)	Indonesia	Underground Railway Construction(16 km long)

(Source : Study Team)

2) Establishment of JICA's Internal Process to Ensure the Formation of DB

It is important to clearly demonstrate in the procurement rules that the costs related to DB operation, which breakdown is shown below, is eligible under JICA ODA loan.

- (1) Fee for adjudicators:
 - retainer
 - site visit
 - advisory opinion, hearing and decision
- (2) Direct cost:
 - traveling expense

- accommodation at the site
- other necessary incidentals

Such rules which specify the eligibility of DB costs under the loan provided by banks were not found in the survey for MDBs, including ADB, WB and IBD, made under this Study. Therefore, it is important to clarify such eligibility in procurement rules and documents so that the executing agencies of a project can recognize that the DB cost is indispensable in the implementation of projects.

It is also recommended to check whether the DB cost is adequately estimated in the project cost during the project appraisal made by JICA. Although the DB cost is finally shared equally by the Employer and the Contractor, the total cost should be allocated in the project cost estimate.

Furthermore, in the assessment of bidding documents, it is suggested for JICA to check whether the bidding documents clearly stipulate the payment procedure by which the Employer pays its portion of the DB cost to the Contractor. Under the FIDIC MDB Harmonised Edition, the full DB cost will be paid to adjudicators by the Contractor based on monthly invoice from adjudicators, then the Contractor will claim half of the DB cost from the Employer. The Employer will pay such cost to the Contractor by using the provisional sum allocated for such purpose in the bill of quantities (BoQ).

This payment procedure, which is put in practice in the USA, is considered the most practical and rational mechanism for the payment of the DB cost. In addition, the following advantages are expected if the DB cost is allocated in the provisional sum:

- (1) The same cost is included in the bid prices offered by multiple bidders. This results in the fair evaluation of bid prices.
- (2) Since the provisional sum is excluded from bid evaluation, the bidder's potential risk of having a low estimate of the DB cost will be eliminated.

After the construction contract is concluded, JICA can outline the establishment and operation of DB through examination and monitoring of monthly reports prepared by the consultant and monthly statements of payment submitted by the Contractor.

It is expected that the effective use of DB will be much enhanced in JICA ODA loan projects through the implementation of the series of actions stated above.

3) JICA's Support for Operation of Mentoring Program for Adjudicators

As new adjudicators are produced from the Asian region in the future, some of them may need more practical working experience as an adjudicator. The mentoring program, in which mentees work with experienced adjudicators and are provided with on-the-job training at the project site, is a very effective measure to improve their abilities. The JICA Project is deemed appropriate for practicing the mentoring program. This will contribute much for the capacity building of new adjudicators, who are qualified under the assessment workshop proposed in Chapter 8.1, for example, if JICA provides support for the mentoring program. The necessary support may include consensus building with the

executing agencies of the JICA project for the implementation and financial support of the mentoring program.

FIDIC is promoting a mentoring program called “National Adjudicator Pupilage”. This program is outlined as follows:

- (1) Object person : National List of Adjudicators (and its candidates)
- (2) Mentor : FIDIC President’s List of Adjudicators
- (3) Mentoring period : about one year
- (4) Program:
 - i) Training through email (12 exercises and total training time of 90 hours)
 - ii) Training in four workshops (workshop time is two to four hours each)
 - iii) Participation in real site visit and hearing as an observer (one day each)
- (5) Cost : Travelling expenses and workshop participation fees are borne by the mentee (the fee of the mentor is at no cost to the mentee).

APPENDICES

Questionnaire on National List of Dispute Board Adjudicator

1. Background

- 1) JICA (Japan International Corporation Agency) adopted FIDIC Red Book MDB edition in its Sample Bidding Documents for civil works in June 2009, and therefore Dispute Board (DB) was introduced in the process of dispute resolution under the Contract
- 2) Since numbers of qualified adjudicators might become insufficient to cope with increasing demand of adjudicators for Japanese ODA Loan project, JICA has been conducting a promotion study of adjudicators since year 2008.
- 3) The outcomes of the study so far are;
 - (1) DB promotion seminar in JICA ODA loan recipient countries in Asia (India, Philippines, Vietnam, Sri Lanka, Indonesia, Bangladesh and Cambodia)
 - (2) Development of DB adjudicator training kit
 - (3) Preliminary study on development of National List for Adjudicator by FIDIC Member Association in Asia.
- 4) This year, JICA intends to carry out the study with the following TOR;
 - a) Survey on development of National List (NL) by FIDIC MA in Europe
 - b) Survey on effectiveness of DB process in MDB funded projects (ADB and WB)
 - c) DB adjudicator training seminar in Tokyo
 - d) DB adjudicator assessment workshop in Tokyo

2. Purpose of Questionnaire

The questionnaire shown in the next page corresponds to item a) of TOR above and it aims to learn how National Lists have been prepared in the countries those already established National List. The lesson and learned experienced in such countries will be very useful and helpful for preparation of new National List in the Asian countries including Japan.

QUESTIONNAIRE

1. About Your Association

- 1) Year of establishment
- 2) Organization chart of association
- 3) Nos. of member firms
- 4) Nos. of consulting engineers under member firms

2. Present Status of National List (NL)

- 1) Nos. of listed adjudicators
- 2) Short CV of adjudicators
- 3) What kind of organization does adjudicator belong to ? (e.g. contractor, consultant, law firm, self-employed, etc.)
- 4) Demand of adjudicators from the projects
- 5) Type of project to which adjudicators are appointed (domestic or international projects)

3. Training Program for Adjudicators

- 1) Does your association provide training course (or workshop) for candidate of adjudicator?

If yes,

- 2) Program of training course (or workshop)
- 3) How often do you provide training course (or workshop)?
- 4) Total numbers of participants (trainees) so far
- 5) Trainers (FIDIC accredited trainers?)
- 6) Training materials
- 7) Participation fee
- 8) Please provide suggestions and recommendation on training of candidates of adjudicators based on your experience, if any.

4. Assessment of Adjudicators

- 1) Application procedure
- 2) Criteria for admission
- 3) Assessment procedure
- 4) Criteria for registration to national list
- 5) Formation of assessment panel
- 6) How often do you provide assessment workshop?
- 7) Fee for application
- 8) Please provide suggestions and recommendation on establishment of National List based on your experience, if any.

5. Listing of Adjudicators

- 1) Listing procedure
- 2) Maintenance and renewal of National List
- 3) Criteria for re-listing
- 4) Fee for listing
- 5) Does your association appoint the listed adjudicator, when requested?

If yes,

- 1) How often have you appointed adjudicators so far?

Meeting with FIDIC Member Associations

	VBI (Germany)	SIDiR (Poland)
Date	18 November, 2010 (14:00 to 15:30) 19 November, 2010 (10:00 to 12:00)	16 November, 2010 (13:30 – 16:00) 17 November, 2010 (11:00 – 12:30)
Place	Office of VB (Berlin)	Office of CIDiR (Warsaw)
Attendees from MA	<ul style="list-style-type: none"> • Mr. Klaus Rollenhagen (VBI, Managing Director) • Dr. Sebastian Hok (Lawyer, FIDIC adjudicator) • Ms. Tatjana Steidl (VBI secretariat) 	<ul style="list-style-type: none"> • Mr. Kristof Woznicki (SIDiR, President) • Mr. Grazyna Doktorska (SIDiR, Secretary General) • Mr. Caciej Rozanski (SIDiR adjudicator)
Attendees from JICA	<ul style="list-style-type: none"> • Mr. Shokichi Sakata (Deputy Director General for Planning and Coordination, Financing Facilitation and Procurement Supervision Department, JICA) • Ms. Fuyuko Ohki (Loan Procurement Policy and Procurement Supervision Division, JICA) • Mr. Yukinobu Hayashi (JICA Study Team) 	<ul style="list-style-type: none"> • Mr. Shokichi Sakata (Deputy Director General, Loan Procurement Policy and Procurement Supervision Division, Financing Facilitation and Procurement Supervision Department, JICA) • Ms. Fuyuko Ohki (Loan Procurement Policy and Procurement Supervision Division, JICA) • Mr. Yukinobu Hayashi (JICA Study Team)

	ARIC (Romania)	CECOPHIL (Philippines)
Date	22 November, 2010 (10:30 – 12:30)	27 January, 2011 (10:00 – 11:30)
Place	Office of ARIC (Bucharest)	Office of CECOPHIL (TCGI Engineers, Manila)
Attendees from MA	<ul style="list-style-type: none"> • Mr. Nicolae MICU (ARIC President, ARIC adjudicator) • Ms. Alina Oprea (DRBF country representative, ARIC adjudicator) • Ms. Luliana Diaconovici (ARIC secretariat) 	<ul style="list-style-type: none"> • Mr. Virgilio A. Madrazo (CECOPHIL, President) • Mr. Michael Roberto P. Reyes (CECOPHIL, former President) • Ms. Lailani L. Pimentel (CECOPHIL, secretariat)
Attendees from JICA	<ul style="list-style-type: none"> • Mr. Yukinobu Hayashi (JICA Study Team) 	<ul style="list-style-type: none"> • Ms. Fuyuko Ohki Ms. Fuyuko Ohki (Loan Procurement Policy and Procurement Supervision Division, JICA) • Mr. Yukinobu Hayashi (JICA Study Team)

Appendix 2.3

Summary of Responses to Questionnaire from FIDIC Member Associations

Survey Items			FIDIC (President's List)	Poland (SIDiR)	Germany (VBI)	Romania (ARIC)
Association	Year of establishment		1913	1994	1903	1999
	Nos. of member	Firm	80 (Member Association)	25	about 3,000	31(No individual member)
		Person	about 615,000	878 (individual member : about 300)	about 4,000	about 4,000
	Nos of Directors		11	9	8	5
National list	Year established		1999	1999	2007	2008
	Nos. of adjudicator		47	32	6	11
	Employment status of adjudicator		Self-employed	Self-employed	Self-employed (5) Contractor (1)	Consultant (7) Contractor (1) Lawyer (3)
	Expertise of adjudicator	Engineer	-	27	5	8
		Lawyer	-	4	1	3
		Economist	-	1	0	0
Working status of adjudicator	Project		international and domestic project	domestic project, mainly	international project	domestic project
	Standard daily fee suggested	Chairperson	3,000US\$/day	1,000US\$/day	-	-
		Other member of board	3,000US\$/day	800US\$/day	-	-
		Retainer fee	1 to 3 days per month	1 day per month	-	-

Survey Items			FIDIC (President's List)	Poland (SIDiR)	Germany (VBI)	Romania (ARIC)
Training program on FIDIC contracts	Type		1) Module 0 2) Module 1 3) Module 2 4) Module 3 5) Module 4	6) FIDIC Contract seminar : once or twice a year 7) SIDiR conference: once or twice a year (300 to 400 person) 8) Class of lecture (35 to 40person)	1) Basic course (1 day) 2) Main course : FIDIC Module 1 + legal terms (2 days) 3) Concentrated course -1: Claims and disputes (2 days) 4) Concentrated course -2: Preparation for adjudicator assessment (2 days)	Weekly workshops held for 2 years from 2006
	Trainer		FIDIC accredited trainers	FIDIC trainers in the early stage, Polish trainers at present	German FIDIC accredited trainers	Romanian arbitrators, etc.
Assessment of adjudicator	Assessment Method		3-days assessment workshop by 3-person assessment panel	Decision by board meeting (interview if required)	3-days assessment workshop by 3-person assessment panel	Decision by ARIC president and DRBF country representative
	Requirement for admission		1) Member of a FIDIC Member Association 2) Appropriate academic and/or professional qualifications as an engineer 3) At least ten years successful practice as a principal engineer in the field of contract administration and /or disputes 4) Knowledge and	1) 10 years professional experience in 2 or more projects (5 million Euro) 2) 2 years experience as a consulting engineer or an engineer to supervise works. 3) 3 years membership of SIDiR. 4) 3 trainings for arbitrator and/or practical participants	1) To have passed assessment workshop 2) To submit Curriculum Vitae (in both English and Germany) 3) To have five years of appropriate academic and /or professional qualifications as an engineer 4) To have five years successful practice as a principle engineer	The capability of the candidates was assessed through 2 years workshop.

Survey Items			FIDIC (President's List)	Poland (SIDiR)	Germany (VBI)	Romania (ARIC)
			experience in FIDIC documentation 5) Proven experience as a construction dispute resolver, either as an arbitrator or adjudicator 6) Formal dispute adjudication assessment comprising a three-day Adjudicators Assessment Workshop provided by FIDIC; 7) Good inter-personal and communication skills 8) Commitment to, and availability for, appointment as a FIDIC adjudicator 9) Ability to be impartial and objective	5) in court of arbitration 6) Recommendation by 2 adjudicators	or to be legal advisor in the field of contract administration and/or disputes. 5) To submit certificate of employee in case of company employee	
Listing	Fee	For entry	250 Euro	free	350 Euro (250 Euro for VBI members)	free
		For renewal	100 Euro	free	150 Euro (100 Euro for VBI members)	free
	Time for renewal		3 years		2 years	

Questionnaire on Dispute Board in MDB Projects

1. Background

- 1) JICA (Japan International Corporation Agency) adopted FIDIC Red Book MDB edition in its Sample Bidding Documents for civil works in June 2009, and therefore Dispute Board (DB) was introduced in the process of dispute resolution under the Contract
- 2) Since use of DB is new and, thus, constitute a big challenge to donors as well as to developing partner countries, JICA has been conducting a promotion study of adjudicators since year 2008.
- 3) The outcomes of the study so far are;
 - (1) DB promotion seminar in major partner countries in Asia (India, Philippines, Vietnam, Sri Lanka, Indonesia, Bangladesh and Cambodia)
 - (2) Development of DB adjudicator training kit
 - (3) Preliminary study on development of National List for Adjudicator by FIDIC Member Association in Asia.
 - (4) Survey on development of National List (NL) by FIDIC MA in Europe
 - (5) DB adjudicator training & assessment seminars in Tokyo

2. Purpose of Questionnaire

The questionnaire shown in the following pages is to know how Multi-lateral Development Banks (MDB) have DB applied in the contracts they finance. More concretely, we are interested in how Dispute Board is effectively used, opinions of executing agency for use of Dispute Board, issues for dissemination of Dispute Board, and actual practice of operation of Dispute Board, etc. in the projects financed by MDB.

QUESTIONNAIRE

1. Application of Dispute Board (DB) in Construction Contract

- 1) We believe use of DB is mandatory when bidding documents are drafted in accordance with the Bank's standard bidding documents for Works or Plant.
 - Is this interpretation correct?
 - How frequent the Bank's standard bidding documents for Works or Plant are used?
 - Could you also provide a rough idea on the numbers of contracts by amount the Bank approves every year. (We are interested in how many Bank-financed contracts are worth using DB. For information, JICA approves around 400 to 500 contracts every year, of which around 30 to 50 and 10 to 15 exceed 3 billion JY and 10 billion JY respectively.)
- 2) How many on-going projects and how many percent of the on-going projects use DB at present?
- 3) Once a contract is issued, who/which structure in the Bank ensures the follow-up for actual establishment of a DB? Or does the Bank completely leaves it to the parties to the contract?
- 4) Do you have any recommended criterion on selection of type of DB for recipient countries?
 - i) standing DB or ad-hoc DB
 - ii) three-person DB or one-person DB
- 5) Do you think FIDIC President's List is a major source of adjudicator appointed by contract parties?

2. Training of Adjudicators

- 1) It seems that numbers of adjudicator listed in FIDIC President's List have become insufficient to cope with increasing demand of DB from the projects. Do you have any training programs for candidates of adjudicators?
- 2) If yes, do you obtain any assistance from such professional organization such as FIDIC and Dispute Resolution Board Foundation (DRBF) ?

3. Benefit of Dispute Board

- 1) How do you recognize the benefit of DB experienced in the projects financed

by your Bank?

- 2) Do you think the recipient countries understand benefit of DB and are willing to adopt DB in dispute resolution and prevention process?
- 3) If not, what is the major concern the recipient countries have?

4. Cost of Dispute Board

- 1) Is the cost of dispute board is eligible cost under the loan provided by your Bank?
- 2) If yes, how these costs are paid to Dispute Board and reimbursed to the recipient country?
- 3) Do you have any suggested method of cost estimate for employment of dispute board in project appraisal stage?

Meeting with MDB and DRBF

	Asian Development Bank (ADB)	World Bank (WB)
Date	28 January, 2011 (9:30 to 11:30)	1 February, 2011 (9:30 to 10:45)
Place	ADB headquarters (Manila)	WB headquarters (Washington D.C.)
Attendees from MDB	<ul style="list-style-type: none"> • Mr. Ignatius Santoso (Director, Central Operation Services Division 2) • Mr. Jeff Taylor (Senior Procurement Specialist, Central Operation Services Division 2) • Mr. Jesper Pedersen (Procurement Specialist, Central Operation Services Division 2) • Mr. Taisuke Miyao (Procurement Specialist, Central Operation Services Division 2) 	<ul style="list-style-type: none"> • Mr. Ian Nightingale (Lead Procurement Specialist, Procurement Policy and Service Unit)
Attendees from JICA	<ul style="list-style-type: none"> • Mr. Takashi Ito (Director, Loan Procurement Policy and Procurement Supervision Division, Financing Facilitation and Procurement Supervision Department, JICA) • Ms. Fuyuko Ohki (Loan Procurement Policy and Procurement Supervision Division, JICA) • Mr. Yukinobu Hayashi (JICA Study Team) 	<ul style="list-style-type: none"> • Mr. Chiharu Kudo (JICA USA Office) • Mr. Yukinobu Hayashi (JICA Study Team)

	Inter-American Development Bank (IDB)	Dispute Resolution Board Foundation (DRBF)
Date	2 February, 2011 (15:00 to 16:00)	2 February, 2011 (9:45 to 11:15)
Place	IDB headquarters (Washington D.C.)	JICA USA Office (Washington D.C.)
Attendees from MDB/DRBF	<ul style="list-style-type: none"> • Ms. Maria Camila Padilla (Procurement Specialist, The Project Procurement, Financial Management and Portfolio Division) 	<ul style="list-style-type: none"> • Mr. Harold V. Mckittrick, (DRB, former President)
Attendees from JICA	<ul style="list-style-type: none"> • Mr. Chiharu Kudo (JICA USA Office) • Mr. Yukinobu Hayashi (JICA Study Team) 	<ul style="list-style-type: none"> • Mr. Chiharu Kudo (JICA USA Office) • Mr. Yukinobu Hayashi (JICA Study Team)

Summary of Responses to Questionnaire from MDB

Question	Response		
	ADB	WB	IDB
1. Application of Dispute Board (DB) in Construction Contract			
1) We believe use of DB is mandatory when bidding documents are drafted in accordance with the Bank's standard bidding documents for Works or Plant.			
(1) Is this interpretation correct?	Yes, use of DB is mandatory under Works or Plant contracts.	Yes, use of DB is mandatory under Works or Plant contracts. However, the Bank does not trace whether the DB is actually established or not in each contract.	Yes, use of DB is mandatory under Works contracts (IDB does not have Plant contract yet). However, Alternative Dispute Resolution is not accepted by the law in some countries. In such case, provisions in the conditions of contract are obliged to follow the legal system of the country.
(2) How frequent the Bank's standard bidding documents for Works or Plant are used?	Such statistic is not available.	Such statistic is not available.	Such statistic is not available.
(3) Could you also provide a rough idea on the numbers of contracts by amount the Bank approves every year. (We are interested in how many Bank-financed contracts are worth using DB. For information, JICA approves around 400 to 500 contracts every year, of which around 30 to 50 and 10 to 15 exceed 3 billion JY and 10 billion JY respectively.)	Number of contract exceeding 10 million USD is about 100 per year (110 contracts in 2009, 98 contracts in 2008, 89 contracts in 2007, and 90 contracts in 2006) In 2009, number of contract less than 10 million USD is 6,300. Among them, 5,630 contracts are less than one million USD.	The total number of new contract financed by WB is about 22,000 per year which includes consultancy agreements also. We will check whether the data requested is available or not and inform you later, if found.	The Bank has about 600 projects financed by IDB at present, however, we do not have such statistics. There are several contracts exceeding 500 mil USD value.
2) How many on-going projects and how many percent of the on-going projects use DB at	Such statistic is not available.	We do not monitor status of DB in each project, thus such data is not	We do not have such data.

Question	Response		
	ADB	WB	IDB
present?		available so far.	
3) Once a contract is issued, who/which structure in the Bank ensures the follow-up for actual establishment of a DB? Or does the Bank completely leaves it to the parties to the contract?	The Bank leaves it to the contract parties.	The Bank is not in a position to follow up establishment of DB.	The Bank is not in a position to follow up establishment of DB.
4) Do you have any recommended criterion on selection of type of DB for recipient countries? i) standing DB or ad-hoc DB ii) three-person DB or one-person DB	The Bank does not have specific criterion.	It largely depends on scale and complexity of the project.	Under the Works contract, standing board is standard form. Regarding number of board member, the Bank does not have a specific recommended criterion.
5) Do you think FIDIC President's List is a major source of adjudicator appointed by contract parties?	Such statistic is not available.	The FIDIC President's list seems to be a good source, however, we do not monitor actual source of adjudicator for every contract.	We do not have a specific idea.
2. Training of Adjudicators			
1) It seems that numbers of adjudicator listed in FIDIC President's List have become insufficient to cope with increasing demand of DB from the projects. Do you have any training programs for candidates of adjudicators?	The Bank does not have such training program.	The Bank does not have such training program.	The Bank does not have such training program.
2) If yes, do you obtain any assistance from such professional organization such as FIDIC and Dispute Resolution Board Foundation (DRBF) ?			
3. Benefit of Dispute Board			
1) How do you recognize the benefit of DB experienced in the projects financed by your Bank?	Number of project employing DB is still small so that it is difficult to clearly identify the benefit of DB based	(1) to minimize delay of the progress of the work (2) to settle disputes early	The Bank does not have much experience on Dispute Board, therefore it is difficult to point out

Question	Response		
	ADB	WB	IDB
	on actual experience.		real benefit of Dispute Board.
2) Do you think the recipient countries understand benefit of DB and are willing to adopt DB in dispute resolution and prevention process?	High cost expenditure for appointment of Dispute Board seems to be a major concern for many of the Executing Agencies. It is not easy for them to justify such expenditure against potential benefit.	It seems only some executing agencies recognize benefit of DB, but not all.	Dispute Board is a quite new system for the recipient countries, therefore it seems they have not recognized the benefit of Dispute Board yet.
3) If not, what is the major concern the recipient countries have?	As stated above.	A lack of awareness of real benefit to be brought by BD.	
4. Cost of Dispute Board			
1) Is the cost of dispute board is eligible cost under the loan provided by your Bank?	There is nothing in ADB's lending policies to prohibit loan funds being used to finance a borrower's portion of costs incurred. Indeed it could be argued that such costs are implicitly "approved" as ADB's general conditions of contract require a DB agreement that requires retainer payments to be made to the member(s).	The DB cost is not recognized as a cost component to be financed by WB basically. The procurement guideline does not say so clearly. However, the DB cost is actually covered by the provisional sum (or contingency) of the loan in some cases. It is up to the discretion of the task manager.	Our procurement policy does not stipulate that DB cost is eligible cost under the loan. However, it can be covered by the loan.
2) If yes, how these costs are paid to Dispute Board and reimbursed to the recipient country?	We as an institution would not have an issue should a line item for this purpose be included in the BoQ or schedule.		
3) Do you have any suggested method of cost estimate for employment of dispute board in project appraisal stage?	The Bank does not have standard cost estimate method or guideline.	No, because the DB cost is not a cost component under Bank loan in principle.	No, we do not have such guideline.

APPLICATION FORM

(DB Training Workshop/DB Assessment Workshop)

Date (dd/mm/yy)		Signature	
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Family Name	
First Name	
Country of Residence	
Address	
Date of Birth	
Telephone Number	
Fax Number	
E-mail Address	
Educational Qualifications	
Professional Qualifications	
Current employment status (if employed)	
Present position (if employed)	
Positions held (position, organization, dates)	
Particular technical expertise	
Dispute resolution experience	
Standard form of contract familiarity	
FIDIC Modules 1&2 seminar (completed/to be completed)	
Other panel listings (organization, country, list)	
Languages (language, level)	
Publications (publications, dates)	

Program for DB Adjudicator Training Workshop



Dispute Board Adjudicator Training Workshop



1. Date :
15 December (Wed) to 18 December (Sat), 2010
2. Time :
Morning Session : 9:00 to 12:00
Afternoon Session : 13:00 to 17:00
3. Venue :
Kousai Kaikan
5-1, Kojimachi, Chiyodaku, Tokyo
Tel : 03-5276-0333
4. Trainers :
Mr. Gordon L. Jaynes
Mr. Richard Appuhn
Prof. Dr. Toshihiko Omoto
5. Workshop Materials :
 - 1) JICA DB Training Kit
 - 2) FIDIC Conditions of Contract for Construction (MDB Harmonized Edition, 2006)
 - 3) JICA Sample Bidding Documents - Procurement of Works (2009)
6. Opening Session (15 December, 9:00 -) :
 - 1) Opening Remarks Mr. Shokichi Sakata
Deputy Director General,
Financing Facilitation and Procurement Supervision
Department,
Japan International Cooperation Agency
 - 2) Orientation Mr. Yukinobu Hayashi
Team Leader, JICA Study Team

Programme for A Four-Day Training Workshop

		Program	Purpose	Form or Method
Day 1	AM	Introduction of Trainers/Trainees Introduction to Dispute Board <ul style="list-style-type: none"> • What is FIDIC? • What is a Dispute Board? • Arbitration Rules 	Review of history / Structure / Current status of FIDIC Review of history/Concept of DB Arbitration as the final resort of dispute resolution and its costs	Lecture with PPT, Q&A and interactive discussion
	PM	Setting up a DB <ul style="list-style-type: none"> • Procedure • DB Member's Qualifications • Adjudicator's Lists DB Costs	Contractual procedure of setting up a DB, Professional requirements of DB members, application of existing adjudicators lists Right understanding of Cost components of DB	Lecture with PPT, Q&A and interactive discussion
	Evening Home-Work	Prepare a draft CV	A chance for a participant to draft a good CV for promoting him/herself a competent DB adjudicator	Trainers should review the drafts and return them to participants with comments during the Workshop
Day 2	AM	Operation of Dispute Board (1) <ul style="list-style-type: none"> • Site visits • DB meeting • Site tour • Informal discussion of potential disputes Operation of Dispute Board (2) <ul style="list-style-type: none"> • Site visit report • Supplying information to DB Members during intervals of Site visits (monthly reports, updated work schedule, claim notice, other important letters, etc.) 	Understand and acquire the knowledge and practice of DB function, point out and consider the things to remember at each stage of DB operation Understand and acquire the knowledge and practice of DB function, point out and consider the things to remember at each stage of DB operation	Lecture with PPT, Q&A and interactive discussion Lecture with PPT, Q&A and interactive discussion
	PM	Operation of Dispute Board (3) <ul style="list-style-type: none"> • Referral & Time Limit • Written Submissions • Hearing(s) • Transcripts 	Proper understanding and acquiring knowledge and practice of procedure of referral / hearings / documentation/ transcript	Lecture with PPT, Q&A and interactive discussion

		Program	Purpose	Form or Method
	Evening Home-Work	Preparation for Mock Hearing	Understanding a hypothetical scenario and each party's case (participants are provided each party's position paper).	Group work by the participants divided into groups with three members (a DB)
Day 3	AM	Operation of Dispute Board (4) <ul style="list-style-type: none"> Mock Hearings for workshop participants 	Understanding and acquiring knowledge and practice: Rules of hearing, role of each participant, proper reaction at a difficult situation	3 participants make 1 group; 3 groups play roles of: Group 1: DB, Group 2: Employer, Group 3: Contractor Continued on by the other 3 groups.
	PM	Operation of Dispute Board (5) <ul style="list-style-type: none"> DB Decision Purpose DB Decision Structure DB Dissents 	Learning writing a decision in a proper structure satisfying requirements, what to be done if unanimous decision is not possible?	Lecture with PPT, Q&A and interactive discussion
		After the Decision <ul style="list-style-type: none"> "Amicable Settlement" period Enforceability of DB decision 	After a decision is given, what should be done if either or both parties are not satisfied? Duty to make efforts for amicable settlement? Understanding and acquiring knowledge about enforceability of a DB decision and remedies when the decision is not complied with	Lecture with PPT, Q&A and interactive discussion
	Evening Home-Work	Preparation for Drafting of mock decision	Practice of writing a DB decision	Individual participant writes a decision as if he/she is Chair or one-person DB
Day 4	AM	Review and discussions of draft "Decisions"	Interactive review of draft decision of each participant	Discussion by all participants
	PM	Review and discussions of draft "Decisions" Close	Assessment of draft decision of each participant Conferment of Completion Certificate by : Mr. Takashi Ito, Director, Loan Procurement Policy and Supervision Division, Financing Facilitation and Procurement Supervision Department, JICA	Lecture, Q&A and interactive discussion

Profile of Trainers



Mr. Gordon L. Jaynes is a lawyer in private practice, based in England and specialized in contractual aspects of international construction projects. He is Chairman Emeritus of the International Bar Association Committee on International Construction Projects and Founding Chairman of the Inter-Pacific Bar Association of the same name. He served on the Editorial Boards of The International Construction Law Review and Construction Law International and is an experienced trainer in various countries on all forms of engineering and construction contracts. His experience in international Dispute Boards began in 1994 when he served as: a consultant to The World Bank in establishing its contract provisions for use in such Boards. He was a member of the Task Force which produced the ICC Dispute Board Rules, and a founding member of FIDIC's Assessment Panel for Adjudicators, vetting applicants for entry to the FIDIC President's List of Approved Adjudicators, for service in DABs on contracts using FIDIC Conditions. Gordon has received the DRB Foundation's Al Mathews Award for outstanding service in promoting international use of Dispute Boards. The Award is the Foundation's highest honour. Gordon currently chairs two Dispute Boards in China and Romania.



Mr. Richard Appuhn is a certified FIDIC trainer and adjudicator and serves on its Task Group for the drafting of General Conditions of Subcontract. He has BS and MS degrees in Civil Engineering and Engineering Geology from the University of California, Berkeley, is a registered Civil Engineer and Engineering Geologist in California. He is an arbitrator and adjudicator and has served and is currently serving on Dispute Boards in Romania (Motorway, Infrastructure Rehabilitation and Residential Development Projects), Vietnam (Building Construction), Ethiopia (Road Rehabilitation), Tanzania (Road Rehabilitation), Madagascar (Mineral Port Construction) and Mozambique (Airport Rehabilitation Project). His professional and dispute resolution experience includes the use of the entire Suite of FIDIC Contracts including the FIDIC MDB Harmonized Edition.



Prof. Dr. Toshihiko Omoto is a Visiting Professor at the Graduate School of Management (MBA) of Kyoto University. First Class Civil Engineer in Japan, holding Master's and Doctor's Degrees in Civil Engineering awarded by Kyoto University, Japan, and Master's Degree in Construction Law and Arbitration awarded by King's College, University of London. He is listed on the FIDIC President's List of Approved Adjudicators and is on the FIDIC Assessment Panel of Adjudicators. He has over 30 years experience in the international construction industry. He worked for a major Japanese contractor for 25 years, for 15 years of which, he was involved in resolution of engineering and construction disputes, both by amicable settlement negotiations and by arbitration. In year 2000, he began his independent consultancy, specializing in dispute resolution, representing and/or advising owners, contractors, insurers etc.

Completion Certificate for Adjudicator Training Workshop



FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



This is to certify that

Mr. OOOOO

has successfully completed

Dispute Board Adjudicator Training Workshop

held

from December 15 to December 18, 2010 in Tokyo,

organized by the Japan International Cooperation Agency (JICA) in association with FIDIC and the Association of Japanese Consulting Engineers (AJCE).

Gordon L. Jaynes
Accredited Trainer, FIDIC

Richard Appuhn
Accredited Trainer, FIDIC

Toshihiko Omoto
Accredited Trainer, FIDIC

Noriaki Hirose
President, AJCE

Shigenari Koga
Director General,
Financing Facilitation and
Procurement Supervision Department,
Japan International Cooperation Agency

Result of Questionnaire Survey on Adjudicator Training Workshop (1)

Question					Answer																				Y	N	B					
					a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s									
Name (if you do not mind)																																
Motivation	Why did you apply to TW?																															
	Would you have applied if TW & AW had cost you, say, 3 hundreds thousand Yen?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, how much is affordable cost for you?	N	Y	N	N	N	Y	N	N	N		Y	N	N	Y	N	Y	N	N	N							5	13	1
	Do you want to apply to FIDIC President's List of Approved Dispute Adjudicators?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Please specify the reason.	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y		Y	Y	Y	Y	N						15	3	1	
Availability	Do you want to work as an adjudicator if you are appointed as a DB member at this moment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, when will you be available?	N	Y	N	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N						9	10	0	
Training and Training Kit	Is the Kit good for self study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, please specify the reason.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	19	0	0	
	Is the combination of the training and the kit good?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, please specify the reason.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y					18	0	1		
	Do you think Training Workshop is good for users of DB too, for the understanding of the practical use of DB?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, please specify the reason.	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	16	3	0		
	Was TW difficult to follow?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, please specify the reason.	Y	Y	N	N	Y	N	Y	N	N	N	Y	N	Y	N	N	N	N	Y	N						7	12	0	
	Are you confident that you can serve as a DB member after this training?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, please specify the reason.	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	Y	N						14	5	0	
	What do you suggest to improve Training Kit?																															
	What do you suggest to improve TW?																															

Legend:
Y : Yes
N : No
B : Blank

Result of Questionnaire Survey on Adjudicator Training Workshop (2)

Question				Comments
Name (if you do not mind)				
Motivation	Why did you apply to TW?	<p>* I want to know DB System</p> <p>* Interest and desirousness to adjudicator</p> <p>* To know the difference between adjudicator and the facilitator of partnering.</p> <p>* I am now working for one of construction company. My long experience has been under FIDIC 1987, 4th edition. For further taking care of Yen loan project, I needed to apply.</p> <p>* Because I wish to be DB adjudicator.</p> <p>* I want to be an adjudicator.</p> <p>* To become DB.</p> <p>* I have engaged long for project management including bid documents preparation, which, I intend, is to be upgraded my learning DB with its primary purpose proactive effect of dispute resolution.</p> <p>* Because I should contribute my experience to Japanese construction industry.</p> <p>* It seems quite interesting and also tough to act as an adjudicator, because an adjudicator is required to be a good arrange/mediator, which is very different from arbitrator. So I applied this TW.</p> <p>* To become an adjudicator.</p> <p>* I wish to serve the public and the construction industry as a member of DB if possible.</p> <p>* To intend to prevent unnecessary disputes in the construction works when engaged in construction supervision as the Engineer and to intend to be an adjudicator of DAB authorized by FIDIC.</p> <p>* I would like to work as a member of DB. In addition, I would like to explain my client (foreign government) about the necessity of DB.</p> <p>* It is because I want to be listed adjudicator.</p> <p>* I want to be an accredited adjudicator.</p> <p>* To develop my skills in dispute resolution.</p> <p>* Because DB would be used in public works in Japan in the future.</p> <p>* To get a comprehensive knowledge of Contract, especially DB and to get qualification of DAB.</p> <p>* I was recommended to TW by my fellow.</p> <p>* In order to receive adjudicator assessment workshop.</p>		
	Would you have applied if TW & AW had cost you, say, 3 hundreds thousand Yen?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>if No, how much is affordable cost for you?</p> <p>* 30,000 Yen (2)</p> <p>* 100,000 Yen (3)</p> <p>* 150,000 Yen (2)</p> <p>* 200,000 Yen (2)</p> <p>* 25,000 Yen/day</p> <p>* 1,000 USD</p>

Result of Questionnaire Survey on Adjudicator Training Workshop (2)

Question				Comments
	Do you want to apply to FIDIC President's List of Approved Dispute Adjudicators?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>Please specify the reason.</p> <p>* Yes, because win-win project management is my ultimate dream. * Yes, because I would like to still work in the construction industry outside Japan. * Yes, because I wish to build up the experiences as DB member. * Yes, I want to be on President's List. * Yes, because I would like to get broader channel of participatory the DB. * Yes, because Japanese who has experience should contribute more. * No, because I have no experience as an adjudicator. * Yes, but after a while and study a little bit more. * Yes, I would like to deepen more knowledge being acquainted with professional people. * Yes, because that can be a target for my life. * Yes, because it is one of the most famous list of ADAs. * Yes, as it is so honorable to be an authorized DA. * No, because National List will suffice.</p>
Availability	Do you want to work as an adjudicator if you are appointed as a DB member at this moment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>If No, when will you be available?</p> <p>* I am now work for a university and do not have much time to act as a DB member until 201. I would like to work after 2013. * I may work still more 3 to 4 years up to 65 at the some company. * I must continue for my project until completion. * Employed * Yes, but depending on my other commitment. * from April 2011 * Because I am engaged in the present job that may last another couple of years. * I am working for a company. It makes me difficult to find time to be appointed. * I am working with the company at present. * I would like to have at least 6 month period to say good-bye to my current employer. * Not now, maybe a few years later.</p>
Training and Training	Is the Kit good for self study?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>If No, please specify the reason.</p> <p>* Yes, but I expected more material including real life procedural case of DB procedure or more sample decision etc. * Yes, but I would like to have more detailed material contained.</p>
	Is the combination of the training and the kit good?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>If No, please specify the reason.</p> <p>* Yes, but categorized further description, if contained would be more helpful. * If the differences among various editions of FIDIC are important, those differences are all to be incorporated into one kit. Too many handouts during the training may cause confusion.</p>
	Do you think Training Workshop is good for users of DB too, for the understanding of the practical use of DB?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>If No, please specify the reason.</p> <p>* Yes, but it seems too much for the users if the content is same. * It looks rather difficult for general users of DB. * I want to have more deeper contents.</p>

Result of Questionnaire Survey on Adjudicator Training Workshop (2)

Question				Comments
	Was TW difficult to follow?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>If Yes, please specify the reason.</p> <ul style="list-style-type: none"> * I need to do much more study about MDB, because I do not have an Experience to use MDB at real projects. * I needed to remember the condition clause by clause. Finally OK, I think. * At some point, if I lose my concentration, I tend to miss the point. Maybe because I did not sleep well. * There are plenty of volume to follow. * Some English way of speeches are too native for me. * Depending on the seat where I sit, it was sometimes difficult to hear. * In certain extent, it is at least not very easy to follow home work burden, volume of documents to be read, etc.
	Are you confident that you can serve as a DB member after this training?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>If No, please specify the reason.</p> <ul style="list-style-type: none"> * To be a real member of DB, I feel I need more on-site practice for a year or so. * I need a practical experience as a member of DB. * I need more experiences involved in dispute resolution. * Practical trainings are necessary to get confidence. * On-the-job training may be necessary.
	What do you suggest to improve Training Kit?			<ul style="list-style-type: none"> * To arrange more actual case study also to be distributed. Such kind of actual case study will become very helpful for the candidates of the adjudicator. * Excellent materials. Well organized. * Kit should include more on the real case procedural matter and way to handle the difficult situation. * I hope DB system is to be improved/enhanced in terms of its scope (DB itself + broader function on project management, coupled with institutional problem) as well as its span of covering the project asset (implementation stage + upstream/downstream stages) on which the training is prepared. * Please add the relevant sub-clauses of each slide so that we can easily refer to the TW and the Contract. * I would suggest that figures showing general arrangement of the each topics be inserted to assist candidate to understand easily. * I do not think this kit needs a lot to be improved. Necessary documents (such as samples, articles) are already included in one book which is very convenient. * Very understandable and readable, but more concise or shortened version is expected. * To include the indexes of CC of MDB. * If there contains more DB examples, it would help trainees having clear picture. * It is suggested that three kind of sample decision papers should be included in Attachment-3. * Index in front will be extremely useful.

Result of Questionnaire Survey on Adjudicator Training Workshop (2)

Question			Comments
	What do you suggest to improve TW?		<ul style="list-style-type: none"> * Home work volume should be arranged as one of suitable volume. To keep health condition is also very important. Especially to get suitable sleeping time is required. * I did not expect that the volume of homework be so large, especially one for the 1st Day. So, advanced notice for this would be helpful. * Sometimes I could not hear clearly what the speaker was saying. Mini microphone could be helpful. * After we spent so much time on each day home work, there I feel little award for the work. I wish we can all receive the corrected answer or at least give us the sample answer to those questions. * Model answer to the homework will be beneficial. * I would suggest that the duration of workshop is to extend one day to 5 days in order to have a case study. Also responses for written homework are expected. * Most exciting and helpful part is Mock Hearing on 3rd day. If everyone takes part of the role of chairman, it will work a lot more. * Allow for one or two hours everyday for self learning of the documents or text in the afternoon or before lunch. * If mock DB playing by qualified person is included more, not just once, it would help the participants to understand. * TW could be improved further with mock exercises. * 30 to 40 minutes of smaller workshop sessions per day may be helpful for deeper discussions. * It is quite tough to spend time to do homework after the training because most of trainee need to back to their office to work. It could be better to allocate time to do homework during training. * Use a microphone. * I think that duration of TW is too short. There is hardly time needed to re-study the kit or previous preparation for TW.

Program for DB Adjudicator Assessment Workshop



Dispute Board Adjudicator Assessment Workshop



1. Date :
20 December (Mon) to 22 December (Wed), 2010
2. Time :
Morning Session : 9:00 to 13:00
Afternoon Session : 14:00 to 17:00
3. Venue :
Kousai Kaikan
5-1, Kojimachi, Chiyodaku, Tokyo
Tel : 03-5276-0333
4. Assessment Panel :
Dipl.-Ing. Volker Jurowich
Dr. Götz-Sebastian Hök
Prof. Dr. Toshihiko Omoto
5. Workshop Materials :
 - 1) JICA DB Training Kit
 - 2) FIDIC Conditions of Contract for Construction (MDB Harmonized Edition, 2006)
 - 3) JICA Sample Bidding Documents - Procurement of Works (2009)
6. Opening Session (20 December, 9:00 -) :
 - 1) Orientation Mr. Yukinobu Hayashi
Team Leader, JICA Study Team

Programme for A Three-Day Assessment Workshop

Date	Time	Topics	In charge	Case Study	
20.12.2010	Start 09.00	Welcome & Introduction of the Assessment Panel and Assesseees	Jur		
	10.30	DAB organisation	Hök	Case Study 1: Site Visit	
	13.00	Lunch			
	14.00	Multiple Choice Test	Jur/Hök		
		Case Studies	Jur	Overnighter: Case Study 2	Muddy Water
21.12.2010	09.00	Collection of Case Study			
	09.15	Multiple Choice Test Review & Questions			
	11.30	Procedural Rules: Questions + Answers	Jur		
	13.00	Lunch			
	14.00	Case Study	Hök	Case Study 3 Adjudicators fees	
		Case Study		Overnighter: Case Study 4	Bügl-Buger
22.12.2010	09.00	Collection of Case Study			
	09.15	Oral examinations + short scenario & questions	Hök/Jur		
	13.00	Lunch			
	14.00-16.00	Individual interviews			
	16.00-16.30	Conferment of Completion Certificate Closing Remarks Mr. Shigenari Koga Director General, Financing Facilitation and Procurement Supervision Department, Japan International Corporation Agency			

Profile of Assessors



Dipl.-Ing. Volker Jurowich is a civil engineer, Technical University, Aachen, Germany. He has been working with a major German international contractor for 35 years, the last 15 of which as an Executive Director. His responsibilities were part of the local business and all of the international business outside of the European Union. Projects under his direct responsibility include major infrastructure works, hydroelectric projects, harbour construction, drill and blast as well as TBM tunnelling and building works.

He has experience in dispute resolution by negotiation, by mediation, by dispute boards and by arbitration. Volker is now working as a contract consultant and in dispute resolution. He was member of the Executive Board of Directors of the DRBF from October 2006 to May 2010, President of DRBF Region 2 from October 2008 to May 2010 and is now President Elect of the Executive Board. He holds the diploma in International Commercial Arbitration from Queen Mary and Westfield College, University of London. He served on the ICC task force for Dispute Boards. Presently Volker serves on a DAB in South Africa, as Chairman of a Panel of Experts in Sudan and as single member DAB in Romania.

He is lecturer at the University of Stuttgart on international construction. Volker is listed on the FIDIC President's List of Approved Adjudicators. He is Chairman of the Assessment Panel for the German National List of FIDIC Adjudicators.



Dr. Götz-Sebastian Hök graduated in Law from Göttingen University and is a German solicitor registered at the Berlin Bar. The University of Göttingen has awarded a phd in law to Sebastian Hök in 1993. Sebastian Hök has extensive international project and commercial experience gained while working in Europe, the Middle East, Africa and Asia. For the past 20 years he has been partner and senior partner of Dr. Hök, Stieglmeier & Kollegen. Sebastian Hök is acting as arbitrator, adjudicator and legal counsel. He is a lecturer at Berlin University of applied science for construction contract management law and also a licensed FIDIC trainer having trained engineers, architects and lawyers on FIDIC in the Middle East, India, Europe and Africa. Since 2009 he is an assessed FIDIC listed Adjudicator. He was member of DAB and arbitral panels in Bosnia, Germany, Latvia and Poland. Dr. Hök has written various books and articles in French, English and German on FIDIC forms of contract. In particular he is the author of the German Handbuch des Internationalen und ausländischen Baurechts (Manual of International and foreign construction law) and the co-author of the book FIDIC for Practitioners.

He is also a member of the German Dispute Adjudication Assessment Panel and former past Chairman of Eurojuris Commission International Litigation. Moreover he was also a friendly reviewer of the FIDIC Gold Book and the FIDIC Subcontract form. Dr. Hök has broad forensic experience as a legal counsel and as a member of the Engineer's team. He was involved in infrastructure and housing projects in Algeria (LNG plant, Mosque), Angola (water project), Australia (Mining project), Azerbaijan (Shopping Mall), Afghanistan (Roads and other infrastructure), Belgium, Bosnia (Roads), Cameroon (Power Plants), Cape Verde (Port), Chile (Food plant), England (Housing, Power Plant), France (High Rack Storage Area, Airport), Germany (Housing, Off-shore windmill Parks, Windmill Parks), Ghana (Dam), Laos (Mining), Latvia (Airport), Qatar (Town development, Railway, FIFA Pavillion), Poland (Roads, Plant), Romania (Waste Water Treatment Plant, Railways), South Africa (Windmill Park), Syria (Dam), Turkey (Plant), United Arab Emirates (Refurbishment of monuments, architectural projects) and Vietnam (Plant, Port).



Prof. Dr. Toshihiko Omoto is a Visiting Professor at the Graduate School of Management (MBA) of Kyoto University. First Class Civil Engineer in Japan, holding Master's and Doctor's Degrees in Civil Engineering awarded by Kyoto University, Japan, and Master's Degree in Construction Law and Arbitration awarded by King's College, University of London. He is listed on the FIDIC President's List of Approved Adjudicators and is on the FIDIC Assessment Panel of Adjudicators. He has over 30 years experience in the international construction industry. He worked for a major Japanese contractor for 25 years, for 15 years of which, he was involved in resolution of engineering and construction disputes, both by amicable settlement negotiations and by arbitration. In year 2000, he began his independent consultancy, specializing in dispute resolution, representing and/or advising owners, contractors insurers etc.

FIDIC – JICA

Dispute Board Adjudicator Assessment Workshop

Tokyo, 20 -22 December 2010

Overview Report of the Assessment Panel

Assessment Panel:

- Prof. Dr. Toshihiko Omoto, Tokyo, Japan
- Dr. Götz-Sebastian Hök, Berlin, Germany
- Dipl.-Ing. Volker Jurowich, Stuttgart, Germany

The Assessment Panel was approved by FIDIC and JICA.

The Panel Members agreed on Mr. Jurowich to act as Chairman.

All three Panel Members are listed on the FIDIC President's List of Approved Dispute Adjudicators.

Prof. Omoto is Member of the Assessment Panel for the FIDIC President's List.

Dr. Hök and Mr. Jurowich are Members of the Assessment Panel for the German National List of FIDIC Adjudicators, established by VBI (Verein Beratender Ingenieure, Berlin, Germany), the German Member Association of FIDIC.

Assessment Workshop Format:

The format of the Assessment Workshop was established on the basis of experience gained from executing multiple Assessments for the FIDIC President's List and for the German National List.

The basic elements of the Assessment Workshop were:

- One (1) multiple choice test
- Four (4) nos. case studies, two of which as homework to be prepared by the candidates overnight.

- Oral examinations covering: DAB organisation, DAB Procedural Rules, understanding of contract clauses, extension of Time for Completion, Price Adjustment, Variations, etc.
- Individual Interviews.

The Assessment Workshop is a strenuous exercise for the candidates, as is Dispute Adjudication.

Objective of the Assessment Workshop:

The objective of the Assessment Workshop is to assess the candidates’:

- Familiarity on condition of contract of FIDIC MDB version
- Ability of applying condition of contract on claims and to extract potential contract problems
- Ability in writing clear, reasoned and persuasive decisions
- Ability in decision-making (proficiency for adjudication)
- Ability of working under time constraint
- Ability of verbal communication skill with concerned parties
- Interpret contract clauses
- Put given situations into a contractual context
- Understand the role of, the rules for and the requirements upon a Dispute Adjudicator
- Identify issues in a dispute
- Understand the dispute avoidance priority

And also:

- Re-verifying the effectiveness of JICA DB Training Kit that was developed for the Training Workshop. The Training Kit was drafted as a part of JICA’s study in 2010 - “Introduction and Dissemination of DAB Adjudicators in Asian Region”. APA considers that the result of the assessment is a demonstration of the overall suitability of the Kit.

Admission of Candidates:

The selection of candidates was done in accordance with the recommendations made by both OCAJI (Overseas Contractors Association of Japan Incorporated) and AJCE (Association of Japanese Consulting Engineers) in line with the Guideline (Guideline for Implementation of Qualification Procedure of DB Adjudicators(draft)) established in March 2010 by the Study Team for the Study

on the Introduction and Dissemination of DAB/Adjudicators in the Asian Region.

A total of nineteen (19) candidates were admitted to the Assessment Workshop, out of which fourteen (14) are engineers, four (4) are lawyers and one (1) is economist.

General Comments:

Dispute Adjudication, as incorporated in the FIDIC Forms of Contracts, is the first tier of a two tier dispute resolution procedure. As such, decisions made by the Adjudicators, will only put an end to the disputes by acceptance of the decisions by all Parties.

It is therefore important that the Adjudicators do not only have the ability to make the right decisions in line with the Contract concluded by the Parties, but also that they are able to make the Parties understand the reasons basis for decisions and at all times are able to demonstrate a conduct of highest standards of ethics and competence.

If that is safeguarded, Dispute Adjudication will continue to be the most efficient and successful dispute resolution process.

With that in mind the Assessment Panel proceeded. The chosen format was well able to establish the candidates' qualifications as Dispute Adjudicators individually.

There was sufficient occasion to check candidates individually on certain issues, when a previous test was not entirely convincing.

Result of the Assessment Workshop:

The Assessment Panel has come to a unanimous decision to qualify as "PASSED" 10 out of 19 candidates. The names of the candidate s who passed the assessment will be reported separately.

The Assessment Panel hereby expresses its congratulations to the successful candidates and wishes them success in their future activities.

The Assessment Panel further wishes to encourage the unsuccessful candidates to improve their qualifications through further training and training workshops.

Assessment Workshop Venue:

The Assessment was conducted at Kosai Kaikan, 5-1, Kojimachi, Chiyoda-ku, Tokyo. The Assessment Panel was pleased with the facilities and the services provided which were entirely suitable.

Recognition:

The Assessment Panel would like to express its gratitude to FIDIC, JICA and AJCE for having been entrusted with the execution of the Assessment, and also to the candidates, all of whom are experienced and reputed professionals, for allowing us to assess them.

Assessment Panel for Adjudicators

Three handwritten signatures in blue ink are displayed horizontally. The first signature on the left is a stylized, cursive script. The middle signature is more legible, appearing to read 'H. Juro'. The third signature on the right is also cursive and stylized.

Prof. Dr. Toshihiko Omoto Dipl.-Ing. Volker Jurowich Dr. Götz-Sebastian Hök

Completion Certificate for Adjudicator Assessment Workshop



FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



This is to certify that

Mr. OOOOO

has completed

Dispute Board Adjudicator Assessment Workshop

held

from December 20 to December 22, 2010 in Tokyo,

organized by the Japan International Cooperation Agency (JICA) in association with FIDIC and the Association of Japanese Consulting Engineers (AJCE).

Götz-Sebastian Hök
Accredited Trainer, FIDIC

Volker Jurowich
Accredited Trainer, FIDIC

Toshihiko Omoto
Accredited Trainer, FIDIC

Noriaki Hirose
President, AJCE

Shigenari Koga
Director General,
Financing Facilitation and
Procurement Supervision Department,
Japan International Cooperation Agency

Result of Questionnaire Survey on Adjudicator Assessment Workshop (1)

[illegible]

Legend:
Y : Yes
N : No
B : Blank

Result of Questionnaire Survey on Adjudicator Assessment Workshop (2)

Question				Comments
Name (if you do not mind)				
Motivation	Why did you apply to TW and AW?	<p>* Do want to be an adjudicator.</p> <p>* My various dispute solution experienced outside Japan for 30 years should be contributed to the people who want to be working overseas construction industry.</p> <p>* Being interested in a new job.</p> <p>* To become DB.</p> <p>* To develop my knowledge and skills.</p> <p>* Because I want to be an adjudicator officially accredited by FIDIC.</p> <p>* For a qualification for listed adjudicator.</p> <p>* I desire to be adjudicator.</p> <p>* I wanted become a member of DB, however, I now realized it is a quite challenge.</p> <p>* Because I wanted to be adjudicator.</p> <p>* Because I with to be adjudicator if qualified. I have had a great interest in the international construction contract management, I wish to continue.</p> <p>* The company I am working for asked me to apply to AW.</p> <p>* To get qualification of adjudicator.</p> <p>* To skill up my contract management ability and I am wishing to work at the construction industry as long as possible even though as a DBA member.</p> <p>* I have hoped to become awarded and act as DB member to serve the world.</p> <p>* Requirement of dispute settlement, especially with a proactive mean, will be developed in the developing countries in Asia and nearby region.</p> <p>* If I could become an adjudicator, this could be very big benefit for my career.</p> <p>* I wanted to know how DB worked, Procedure System, etc.</p> <p>* To minimize the unnecessary disputes in the construction works and to become an authorized adjudicator.</p>		
	Would you have applied if TW & AW had cost you, say, 2 hundreds thousand Yen?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<p>if No, how much is affordable cost for you?</p> <p>* 20,000 Yen</p> <p>* 40,000 Yen</p> <p>* 50,000 Yen</p> <p>* 80,000 Yen</p> <p>* 100,000 Yen (5)</p>

Result of Questionnaire Survey on Adjudicator Assessment Workshop (2)

Question					Comments
	Do you want to apply to FIDIC President's List of Approved Dispute Adjudicators?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Please specify the reason.	<ul style="list-style-type: none"> * Yes, because it will be honorable. * Yes, because that can be another challenge for rest of my life. * Yes, because it would provide me with motivation. * No, because I will not be eligible at present knowledge. * No, I have not reached such standard. After further practice and study, I wish to apply in future. * Yes, because I want to go this path as far as I can go. * Yes, because I wish to accumulate my experiences. * No, not for the time being. In the mean time national list will suffice. * Yes, FIDIC President's List is one of major ones for adjudicator. * Yes I would like to work as a DAB member in the future. * Yes, but when I am ready. * Yes, for making broader skill, not on in ordinary mean but also in cultural mean. * No, because I have now no experience as an adjudicator.
Availability	Are you available if you are appointed as a DB member at this moment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, when will you be available?	<ul style="list-style-type: none"> * I need some period, 3 to 6 months, to say good-bye to my current employer. * Under employment. After finishing my assignment, I do. * I am engaged in the current job in Taiwan. * Possible from April 2011. * Yes, but depending on the other members and type of project. * I still have a project to complete. * No, not for the time being as I am now working for the company. * I am currently employed by a company. * I am going to work at some company still more 2 to 3 years. * I would, but I have to talk with my availability with the company. * Yes, but I need to check my schedule to make time for it, because I have several tasks in the university.
Assessment Worksh	Was TW suitable preparatory course for AW?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, please specify the reason.	<ul style="list-style-type: none"> * Partly yes, partly discrepancies. But in any way, I learned a lot both from TW and AW as well as colleague participants. * Yes, but it would be better to provide more on how to prepare decision papers.
	Was AW fair to follow up TW?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If No, please specify the reason.	<ul style="list-style-type: none"> * Some discrepancies. * Considering the toughness of AW, it is better TW to give training more in detail.

Result of Questionnaire Survey on Adjudicator Assessment Workshop (2)

Question					Comments
	Was AW difficult to follow?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If Yes, please specify the reason.	<ul style="list-style-type: none"> * Homework was really tough. * Too many homework involved. * Simply because I had not be accustomed to the way of conducting assessment. * I had a little difficulty to follow a clause by clause. It's improved gradually. * Due to lack of preparation of myself. * Difficult in terms of the volume of work we have to do. * A little bit much volume of homework forced to cut sleeping time. * It refers a lot of matter including laws (It means I must study more). * More through reading and understanding of the conditions of contract is needed.
	What do you suggest to improve AW?				<ul style="list-style-type: none"> * As the duration of AW was so compressed, utilizing e-mail in the course would be suggested in order to take more time to study. * Because homework are not returned with comments or remarks, the result can not be reflected to the next assignment. * Time for AW is a bit short to learn what should a person act as a DB. * Applicants are needed detailed information well before AW takes place. * I have thought we will have a mock-up hearing and play a role as chairman and do the assessment. * To adjust the volume of homework not to disrupt next day's workshop. * Some specific comments on each candidate's homework could improve the ability of candidates a lot. * I think that it needs to set up some interval between TW and AW. * More simplicity is expected on the questionnaire and homework to prepare the decision.
	Will you apply again if you fail the assessment?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Please specify the reason.	<ul style="list-style-type: none"> * Yes, because one of the interested area for me to contribute the society. * No, because it is too tough to have a return match. * Yes, after 3 to 5 years later, because I need more knowledge and experiences in construction contractual matters. * Yes, but not so many later. * Yes, after further study, I want to try again. * Yes, but I hope I don't have to. If I have to, I will. * No, because it makes me so tired since I am not so young. * Yes, because I am interesting in this job. * Yes, but it depends on the fee.

Photographs of Workshops

1. Adjudicator Training Workshop



Orientation of Workshop by Dr. Omoto



Lecture by Mr. Gordon Jayne



Lecture by Mr. Richard Appuhn



Mock Hearing by Trainers



Mock Hearing by Trainees



Exercise of Making Decision by Trainees



Wrap-up of Workshop by Trainers



Conferment of Completion Certificate by Mr. Ito of JICA



Closing Address by Mr. Ito of JICA



Group Photograph



2. Adjudicator Assessment Workshop



Orientation of Workshop by Mr. Hayashi of Study Team



Assessment Panel (from the left, Dr. Omoto, Mr. Volker Jurowich and Dr. Götz-Sebastian Hök)



Oral Examination by Dr. Götz-Sebastian Hök



Oral Examination by Mr. Volker Jurowich



Question and Answer Session



Interview with Trainee



Conferment of Completion Certificate
by Mr. Koga of JICA



Closing Address by Mr. Koga of JICA