

# **Creation of National List of Japanese Adjudicators**

**Mr. Yoshihiko Yamashita**

**Secretary General of Association of Japanese  
Consulting Engineer**



Dispute Board Seminar

## Creation of National List of Japanese Adjudicators

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Japan International Cooperation Agency (JICA)

Yoshihiko Yamashita  
Association of Japanese Consulting Engineers

JICA Dispute Board Seminar 2012



## Presentation Topics

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- Background of Introducing Adjudicators
- AJCE List
- Adjudicator Assessment and Registration Process

JICA Dispute Board Seminar 2012

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## Background of Introducing Adjudicators

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## FIDIC Initiative

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- President List of Adjudicators
  - ✓ Since employment of DB and Adjudicators in Red Book, FIDIC has implemented Adjudicator Assessment at about 3 years interval.
  - ✓ At present, 46 Adjudicators are listed on President List of Adjudicators including Dr. Toshihiko Omoto, Japan.

<http://www1.fidic.org/resources/contracts/adjudicators/default.asp>

JICA Dispute Board Seminar 2012

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## FIDIC Initiative – National List

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- ✓ FIDIC Recommends promotion and realization of National List(\*) that is initiated by each Member Association of FIDIC to cope with expected future demand.
- (\*) *List of Adjudicators registered by each FIDIC MA is called National List.*
- ✓ At present, FIDIC publicise 8 National List  
UK, Germany, Poland, Rumania, Hungary,  
South Africa, Philippines, Japan
- ✓ AJCE has started registration and operation of National List in Japan since 1 May 2011.



## AJCE List

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## AJCE List (1)

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### History and Background

- ✓ In Dec. 2010, JICA conducted FIDIC Contract Seminar, and Adjudicator Training Workshop to examine effectiveness of JICA Adjudicator Training Kit
- ✓ 19 qualified candidates participated
- ✓ AJCE has drafted "Procedural Rules and Guidelines" for Adjudicator Assessment and Registration"
- ✓ AJCE received a list of 10 successful candidates from Assessment Panel
- ✓ 10 candidates satisfied conditions of "Procedural Rules and Guidelines"
- ✓ At present, 7 candidates have registered on AJCE List.



## AJCE List (2)

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### Criteria for Registration

- ✓ To pass Adjudicator Assessment conducted by AJCE
  - Validation of certificate : 3 years
  - Fail to register within 3 years:  
Participate in FIDIC Training courses for  
Module 1, 2, 3, 3A
- ✓ To be able to correspond to appointment if the condition of appointment is agreeable



## AJCE List (3)

### Re-registration

- ✓ Re-registration: at every 3 years
- ✓ Record of following career development is mandated for re-registration
  - Adjudicator activities/ practice
  - participate in training program on Adjudicator
  - experience in FIDIC contract practice
  - publication, presentation, articles in related subject
  - others



**AJCE List of Adjudicators**

On May 2011, AJCE has started operation of the AJCE List of Adjudicators and requested successful candidates to register in the AJCE List of Adjudicators. Successful candidates were examined by the "AJCE Adjudicator Guidelines" that reflect the "FIDIC Guidelines for National Lists", following the rigorous assessment workshop conducted by the assessment panel who are composed of FIDIC president's list of approved adjudicators.

**Disclaimer**

AJCE does not administer selection and appointment of adjudicators under any circumstances whatsoever as prescribed below:

- Appointees shall take responsibility in selection of Adjudicators from the AJCE Adjudicators List.
- AJCE is not in a position to appoint any adjudicators on AJCE Adjudicators List.
- AJCE is not responsible for listees' information as AJCE has not made any revision, alteration or modification of the information submitted by the listees.
- AJCE is not responsible for any liability or damage that is attributable to listees' conducts, regardless of their acts and omissions.

Adjudicators are entered on the list from the date of registration to the renewal date.

**AJCE Listees**

CV of the subject adjudicator can be downloaded by clicking the underlined name

- Oba Kunihisa
- Kato Takeshi
- Kaido Masaru
- Manai Ryuji
- Kiburaki Takaharu
- Olamoto Takashi
- Saisho Yoichi



## Adjudicator Assessment And Registration Process



## Adjudicator Assessment and Registration Process (1)

### Before Adjudicator assessment

- 1) Documentary Examination
- 2) FIDIC Contract Seminar: 5 days
  - Module 1: Practical Use of the FIDIC Contracts
  - Module 2: Management of Claims and the Resolution of Disputes
- 3) Adjudicator Training Workshop: 4-5 days
  - Module 3 and 3A: Dispute Adjudication Board or
  - Dispute Board Training Kit (JICA)



## Adjudicator Assessment and Registration Process (2)

### Adjudicator Assessment

- 4) Adjudicator Assessment: 3days
- 5) Decision to pass or fail

### Registration

- 6) Review passed candidates & issue pass-certificate
  - 7) Application for Registration
  - 8) Application review and approval by AJCE
  - 9) Payment for registration
  - 10) Issue registration certificate and Announcement on AJCE List
- (Duration of registration: Longest 3 years)

### Flow of Adjudicator Assessment and Registration

Process	Person in charge	Duration
Appointment of Assessment Panel	(AJCE)	
Announcement	(AJCE)	6 mos. before
Submission of Application	(Candidates)	Before deadline
Documentary Examination, Decision to pass or fail	(Assessment Panel - AP)	1 month
FIDIC Contract Seminar FIDIC Module 1 and 2	(FIDIC Accredited)	5 days
Adjudicator Training Workshop	(F. President List of Adjudicator)	5 days
Adjudicator Assessment	(AP)	3 days
Decision to pass or fail, and Reporting Results	(AP)	1 month
Issue pass-certificate	(AJCE)	1-2 months
Application for registration, Review and approval	(Candidate)	within 3 years
Payment of registration fee Issue Registration Certificate, Announcement on AJCE List	(AJCE)	

### Flow of Re-registration

Process	Person in charge	Duration
Notice of re-registration	(AJCE)	6 mos. before
Application Form Record of CPD	(Candidate)	3 mos. before
Submission		
Documentary Examination, Decision to pass or fail	(AJCE)	1 month
Letter of Pledge and Consent, Payment of registration Fee	(Candidate)	1 month
Issue Registration Certificate, Announcement on AJCE List	(AJCE)	1-4 Weeks
FIDIC Contract Seminar FIDIC Module 1 and 2	(FIDIC Accredited Trainer)	5 days
Adjudicator Training Workshop	(F. President List of Adjudicator)	4-5 days
Letter of Pledge and Consent, Payment of Registration Fee	(Candidates)	1-2 months
Issue Registration Certificate, Announcement on AJCE List	(AJCE)	



## Application Requirements for Adjudicator Assessment (1)

Application requirements: comply with FIDIC Adjudicator Guidelines

- 1) Possess appropriate qualification
  - Professional Engineer, - First-class architect,
  - First-Class engineer on construction management,
  - Attorney or - Other appropriate professional qualifications.

(in-house law expert having sufficient experience in FIDIC contract is qualified as well)
- 2) Possess 10 or more years of working experience in consulting engineering industry or construction industry. However, this shall not apply to an attorney.



## Application Requirements for Adjudicator Assessment (2)

- 3) Possess all of the experience as specified below:
- ① International construction works  
- work experience, consulting services, construction supervision or advice : any one of them is sufficient
  - ② FIDIC Contract Documents
  - ③ Dispute resolution



## Application Requirements for Adjudicator Assessment (3)

- 4) Fluent in English and able to compose concise sentences
- 5) To have complete FIDIC contractual training programs: FIDIC Modules 1 and 2
- 6) To have completed FIDIC Adjudicator Training workshop: FIDIC Module 3 and 3A
- 7) To have an intention to register on AJCE List (AJCE List prepared by AJCE and opened to public when registration is accepted)
- 8) To be listed on AJCE List and have an intention to accept upon appointment

### Program: FIDIC Contract Management Seminar

Module 1: Practical Use of the FIDIC Contracts	
Day 1	FIDIC Contract Documents: Introduction and Principle Responsibilities of the Main Parties
Day 2	The Management of Projects Working Exercise No.1- Taking Over Financial Clauses and Procedures Risk, Force Majeur and Termination
Day 3	FIDIC Contract Documents and JICA ODA Loan Project FIDIC Contract Documents and Dispute Resolution
Module 2: Management of Claims and Resolution of Disputes	
	Introduction Managing Variations
Day 4	The Management of Claims Notice and Claims Procedures Contractor's Claims Sub-clause 20.1 Claims for Delay The management of Claims Claims for Delay (continued) Claims for Additional Payment Employer's Financial Claims
Day 5	The Resolution of Disputes Dispute adjudication Boards (DABs) The JICA Alternative Particular Conditions Workshop Exercise No.2- Notices Workshop Exercise No.3- Variations The Resolution of Disputes Arbitration Claims (materials only)

### FIDIC Contract Seminar, Tokyo



### 4-Days Adjudicator Training Workshop

#### Program

Day 1	AM	Introduction of Trainers/Trainees
	PM	Introduction to Dispute Setting up a DB DB Costs Prepare a draft CV (Evening Homework)
Day 2	AM	Operation of Dispute Board (1) Operation of Dispute Board (2)
	PM	Operation of Dispute Board (3) Preparation for Mock Hearing (Evening Homework)
Day 3	AM	Operation of Dispute Board (4)
	PM	Operation of Dispute Board (5) After the Decision Preparation for Drafting of mock decision (Evening Homework)
Day 4	AM	Review and discussions of draft
	PM	Review and discussions of draft

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### Adjudicator Training Workshop, Tokyo



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### Adjudicator Assessment, Tokyo

Day 1	AM	Introduction of the Assessment Panel and Assessers DAB organisation
	PM	Multiple Choice Test Case Studies
Day 2	AM	Collection of Case Study Multiple Choice Test Review Procedural Rules: Q & A
	PM	Case Study Case Study
Day 3	AM	Collection of Case Study Oral examinations
	PM	Individual interviews

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### Adjudicator Assessment, Tokyo



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Thank you for your attention

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# **Common Disputes during Construction in Vietnam**

**Mr. Pham Van Khanh**

**General Director, Ministry of Construction**



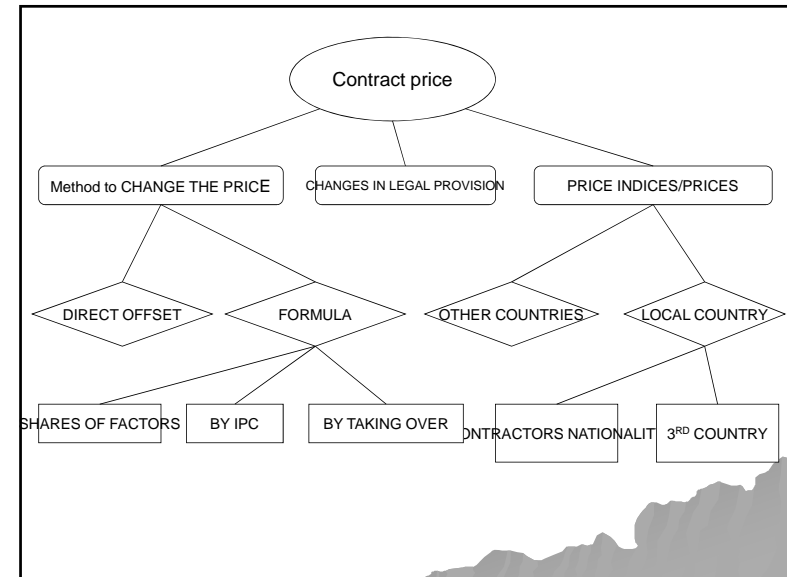
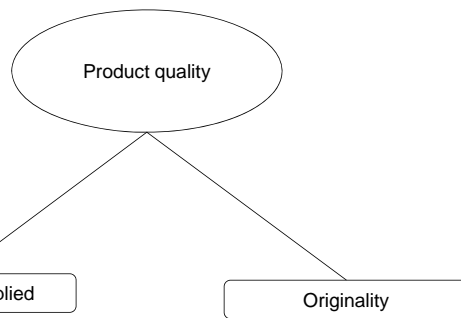
# Disputes that often happen in implementation of construction contract in vietnam

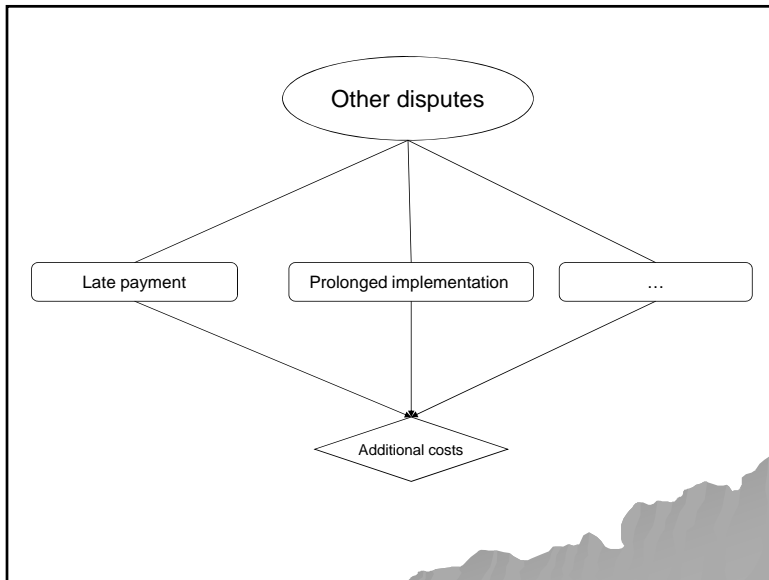
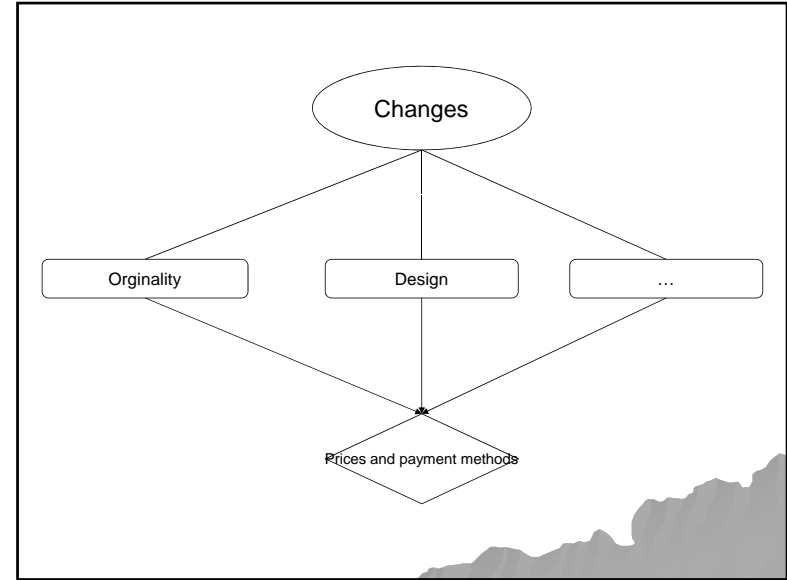
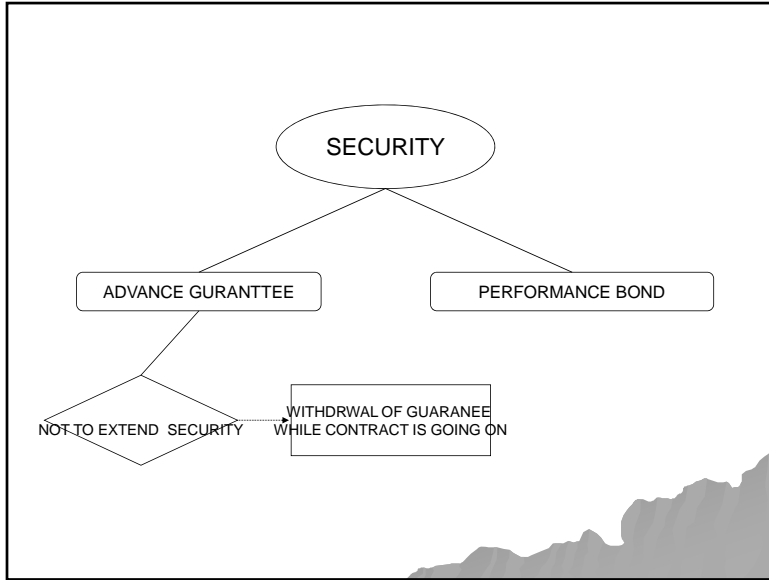
Dr. Pham van khanh

General director of construction economics –  
Ministry of construction

## Group of disputes that often happen

1. Disputes on quality
2. Disputes on contract price
3. Disputes in connection with security, (guarantees) in the contract
4. Disputes arising from changes in the process of contract implementation
5. Other disputes





Thank you for listening!

**Dispute Settlement at the  
Vietnam International  
Arbitration Center (VIAC)**

**Mr. Vu Anh Duong**

**Attorney-at- Law, General Secretary of VIAC**

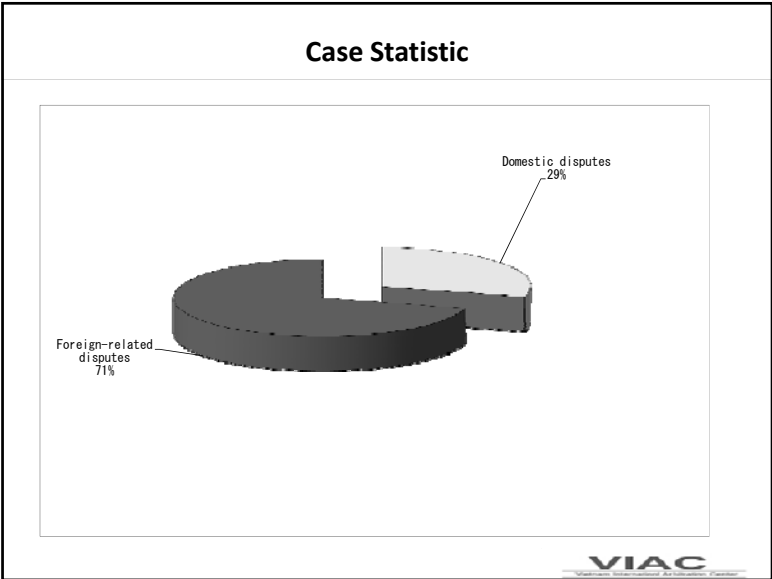
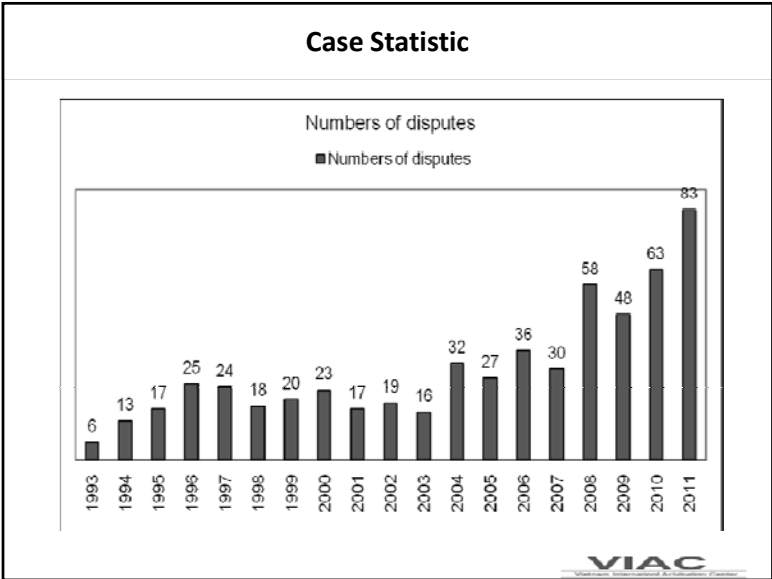
**VIAC**  
 VIETNAM INTERNATIONAL ARBITRATION CENTRE  
 AT THE VIETNAM CHAMBER OF COMMERCE AND INDUSTRY  
 Trung tâm Trọng tài Quốc tế Việt Nam

## DISPUTE SETTLEMENT AT THE VIAC

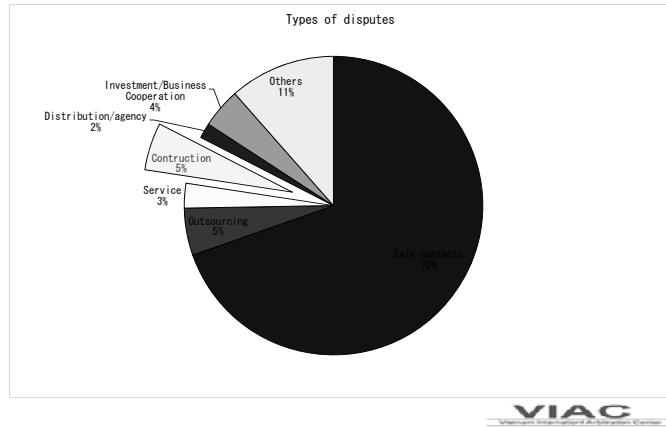
### VIAC's overview

- Established in 1993 (*the merge of the Foreign Trade Arbitration Council founded in 1963 and the Maritime Arbitration Council founded in 1964*).
- An independent and non-profit organization with its own charter, seal and bank account.
- Head office in Hanoi and three branches in Ho Chi Minh City, Da Nang and Can Tho.
- VIAC fuction: to resolve commercial (+) disputes by mediation and arbitration

**VIAC**

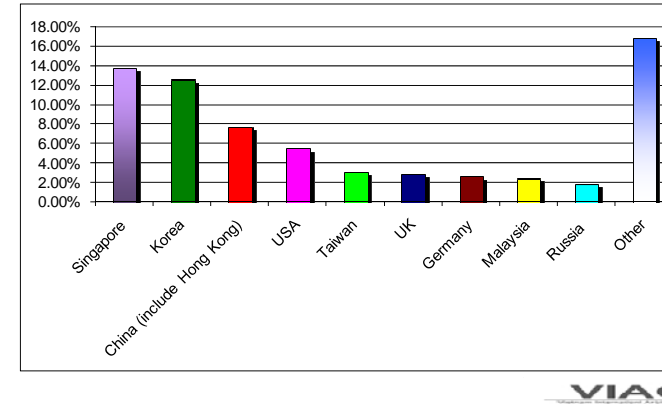


## Case Statistic



## Dispute parties: Over 50 countries

### Top Countries & Territories



## VIAC's Arbitrators

120 arbitrators (114 Vietnamese, 6 foreigners)



## DISPUTE SETTLEMENT BY ARBITRATION IN VIETNAM

### Current legal sources on arbitration:

#### Domestic arbitration:

- ❖ Ordinance on Commercial Arbitration 2003
- ❖ Commercial Arbitration Law 2010
- ❖ Enforcement of Judgment Law 2008

#### Foreign arbitration:

- ❖ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958: Vietnam joined in 1995
- ❖ Civil Proceedings Law (the part on recognition and enforcement of foreign arbitral awards in Vietnam)
- ❖ Enforcement of Judgment Law 2008

VIAC

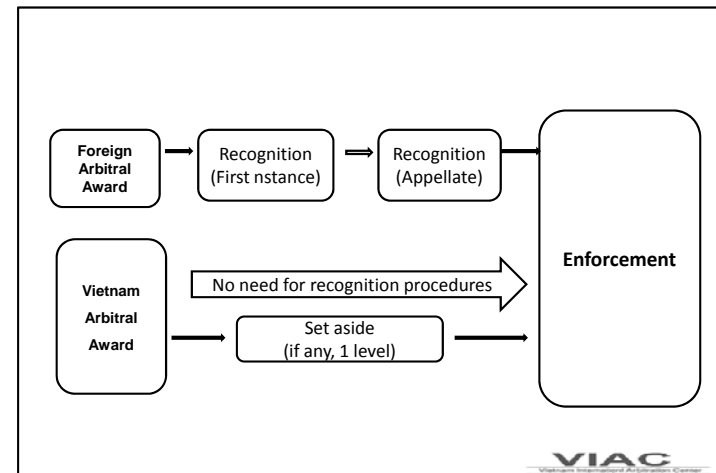
## DISPUTE SETTLEMENT BY ARBITRATION IN VIETNAM

Commercial Arbitration Law 2010

- ❖ Legal framework completed, basically consistent with legal and practical principles in international arbitration practices
- ❖ Party autonomy (arbitrator, place of arbitration, language of arbitration, applicable law)
- ❖ Complete the supporting role of the Court with arbitration
- ❖ Abolish criteria on arbitrator nationality
- ❖ Empower the arbitral tribunals to apply for interim relief, gather evidences, and summon witnesses
- ❖ Simplify procedures for Court to set aside arbitral awards (1 level)

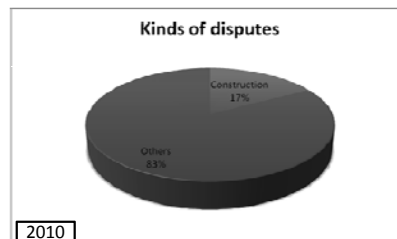
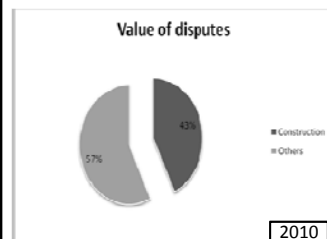
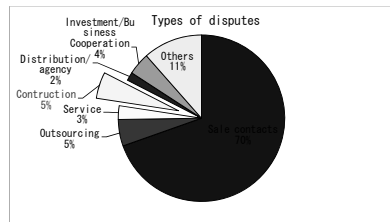


## Recognition and enforcement of arbitral awards in Vietnam



## Construction disputes at the VIAC

- Increasing trends
- High value amount
- Complicate



## Construction disputes at the VIAC

### ARTICLE 9 : ARBITRATION

Any disputes and disagreements, which can arise under the present Contract or in connection with it, are subject to the settlement by the way of negotiation. If the agreement is not achieved by the Parties, the disputes and disagreements are subject to consideration in the Arbitration court of Hanoi- Vietnam in accordance with the regulations of the given court. The arbitrators establish their decision on the regulations of the present Contract and the vietnam Substantive Right is accepted as the right regulating the present Contract. The decision of the above-stated court will be final and obligatory for both Parties.

### Article 15: Dispute

15.1 Any dispute arising between the Contractor and the Owner shall be settled by amicable negotiation. In case the parties fail to reach amicable, the dispute shall be referred to arbitration to be appointed by the Vietnam International Arbitration Centre.

### Article 16: Settlement procedures

16.2 ...

Within 30 days from the date of receiving the arbitral award, any party can bring the arbitral award to the upper court for final judgment.

Article 4: During the execution of the contract, all arisen disputes in connection with this Contract which cannot reach amicable settlement shall be referred to Vietnam International Arbitration Centre (VIAC) at the Viet Nam Chamber of Commerce and Industry under the Rules of the International Chamber of Commerce and arbitration shall be final and binding both parties.





## Recommendation

- Arbitration award is final and binding, can not appeal
- Shouldn't use a mixed clause, refer the dispute to both court and arbitration.
- Use the Model Arbitration Clause (VIAC, SIAC, ICC, JCAA etc. )
- Contact us in case the parties wish to insert the VIAC's Model Clause + +
- Follow the requirements and procedures of the dispute settlement clause before action (bring dispute to court or arbitration)



**VIAC**  
Vietnam International Arbitration Centre

VIETNAM INTERNATIONAL ARBITRATION CENTRE  
AT THE VIETNAM CHAMBER OF COMMERCE AND INDUSTRY

## Thank you for your attention !

*Vu Anh Duong*

*General Secretary*

*Add.: 9 Dao Duy Anh, Ha Noi*

*Tel : 04. 3577 0545*

*Fax : 04. 3574 3001*

*Email: [duongva@viac.org.vn](mailto:duongva@viac.org.vn)*

*Website: [www.viac.org.vn](http://www.viac.org.vn)*

**Appendix - 2.3.8**

**Construction Dispute  
in  
Sri Lanka**

**Mr. Tilak P. Kolonne**

**Country Representative of DRBF in Sri Lanka**

Japan International Cooperation Agency (JICA)

**DAB (Dispute Adjudication Board) Seminar  
Colombo, Sri Lanka  
Construction Dispute in Sri Lanka**

**Speaker:**

Tilak Kolonne  
Consultant, practicing Arbitrator, Adjudicator  
Country Representative of DRBF in Sri Lanka

Email: [tpk@vform.net](mailto:tpk@vform.net)  
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00 94 114 895 500

17/01/2012

**CONSTRUCTION DISPUTE IN SRI LANKA**

- Introduction of DAB/Adjudication to Sri Lankan construction industry
- Popularity of the process
- What have we gained so far
- Problems & areas for improvement
- Recommendation

**CONSTRUCTION DISPUTE IN SRI LANKA**

Prior to introduction of DAB/ Adjudication

Standard conditions in use were:

- ICTAD/SCA/1 provides Engineer's Decision(optional) and Arbitration
- FIDIC Red Book 1987 provides Engineer's Decision and Arbitration
- Arbitration Ordinance of 1948
- Arbitration Act No 11 of 1995

**CONSTRUCTION DISPUTE IN SRI LANKA**

Introduction of DAB/ Adjudication

Standard conditions in use are:

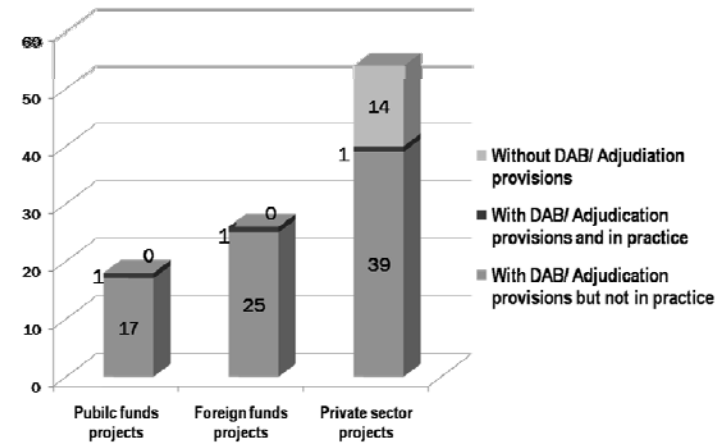
- ICTAD/SBD/1, 2, 3 and 4 provides Engineer's Determination, DAB/ Adjudication, Arbitration
- FIDIC 1999 suite of CoC provides Engineer's /Employer's Determination, DAB/ Adjudication, Arbitration
- No law to govern DAB or Adjudication process

## HOW POPULAR DAB/ ADJUDICATION IN SRI LANKA

A brief survey was carried out to have an understanding of popularity

- Six major contractors were interviewed
- Categorized into foreign funds, public funds and private sector projects
- Following information was obtained;
  - Number of projects with DAB/ Adjudication provisions in contract
  - Number of projects actually implement
  - Number of projects without DAB/ Adjudication provisions in contract

## HOW POPULAR DAB/ ADJUDICATION IN SRI LANKA



## WHAT HAVE WE GAINED SO FAR BY DAB/ ADJUDICATION

1. DAB/ Adjudication as a method of dispute resolution by ADR (i.e. other than litigation) in Sri Lanka
2. Construction professionals as dispute resolvers
3. Emergence of IDMP (Institute of Dispute Management Professionals)
4. The outcome is mostly considered as bargaining factor at the final negotiated settlement (e.g. Southern Expressway)

## PROBLEMS IDENTIFIED AND AREAS FOR IMPROVEMENT



1. Lack of knowledge as to crystallization of dispute
2. Inadequate use of dispute avoidance feature of DAB process

**PROBLEMS IDENTIFIED AND  
AREAS FOR IMPROVEMENT**



3. Knowledge and understanding about requirement of Adjudication/ DAB

- Question of Engineer's impartiality in old FIDIC Red Book
- Interim solution to dispute
- "Pay now argue later"
- "Quick & dirty fix"

**PROBLEMS IDENTIFIED AND  
AREAS FOR IMPROVEMENT**



Knowledge & understanding about requirement of Adjudication/ DAB



Sri Lankan construction industry needs awareness programmes...



**PROBLEMS IDENTIFIED AND  
AREAS FOR IMPROVEMENT**



4. Appointment of Adjudicator/ DAB

- **Personal contacts**  
Why?  
No formal independent list published – difficult to find appropriate adjudicators, qualifications and their capacity is not published
- **Appointing bodies - ICTAD, SLIA, IESL, IQSSL**
  - ICTAD as appointing body
  - Professional bodies as appointing body
  - Conflict amongst professionals



**PROBLEMS IDENTIFIED AND  
AREAS FOR IMPROVEMENT**



5. Competency of DAB members/ Adjudicators for the job

- Academic training as to legal studies
- Academic training as to dispute resolution
- Practical training as to dispute resolution

**PROBLEMS IDENTIFIED AND  
AREAS FOR IMPROVEMENT**



5. Giving immediate effect to Adjudicator's/  
DAB decision

- Decision is binding but not necessarily final
- Parties, particularly the employers' fear
- Accuracy of DAB decision
- Competency of DAB

**PROBLEMS IDENTIFIED AND  
AREAS FOR IMPROVEMENT**



6. Enforcement of immediate effect of  
Adjudicator's/ DAB decision

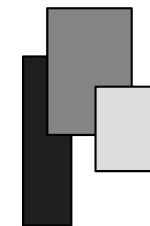


**No law to this effect**



**SUMMARY & RECOMMENDATIONS**

- Sri Lanka is among few countries in the region to adopt DAB/ Adjudication extensively
- Party confidence is improving but need lot of work to retain
- Mostly forced rather than voluntary
- Need of awareness and training programmes
- Need of researches
- Need of necessary legal backing



**Thank You..**

# **Resolution of Construction Dispute in the Philippines**

**Mr. Salvador P. Castro Jr.**

**Country Representative of DRBF in Philippines**

**SEMINAR ON DISPUTE BOARD**  
Ballroom II, Hyatt Hotel and Casino Manila  
09 February 2012

## **RESOLUTION OF CONSTRUCTION DISPUTES (In the Philippines )**

Speaker : **SALVADOR P. CASTRO, JR.**, FAPM, ICIOB, MCIArb  
FIDIC Contracts International Accredited Trainer  
Country Representative, Dispute Resolution Board Foundation  
Accredited Arbitrator and Mediator, Construction Industry Arbitration Commission  
Past President, Council of Engineering Consultants of the Philippines

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### **1. MAJOR ADR MILESTONES**

- 1953 Republic Act No. 876, or the Arbitration Law was enacted by Congress**
- 1985 Creation of the Construction Industry Arbitration Commission (CIAC)**
  - > Executive Order 1008, "Original and Exclusive" jurisdiction over construction disputes.
- 1989 Started its operation as an arbitration center of construction cases.**
  - > CIAC Arbitration Rules and Procedures

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### **1. MAJOR ADR MILESTONES (cont'd)**

**2004 Passage of the landmark law "Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004 (ADR Act of 2004).**

- > Affirmed CIAC's "original and exclusive" jurisdiction of construction and construction-related disputes.
- > Expanded parties to include project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or insurer or an insurance policy in a construction project.
- > Allows the appointment of foreign arbitrators.

**Court to dismiss cases involving construction disputes and refer the parties to CIAC for arbitration.**

- > not later than pre-trial conference
- > unless both parties, assigned by respective counsel, submit to RTC written agreement exclusivity for the Court rather than CIAC.

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### **1. MAJOR ADR MILESTONES (cont'd)**

- 2005 CIAC Rules of Procedures Governing Construction Arbitration was amended to align with the ADR Law, which allows, among others, the entry of foreign arbitrators in arbitration cases filed with the CIAC.**
  - > CIAC added Mediation as part of mode of dispute resolution with its own CIAC Mediation Rules.
- 2009 First CIAC Arbitration Case with a Foreign Arbitrator as member of the Arbitral Tribunal.**

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## 2. STATISTICS ON NUMBER OF CASES FILED IN CIAC AND SUMS IN DISPUTE (1989 – Dec 2011)

### Number of Cases

- > Total Number = 694
- > Highest Number = 50 in 1999
- > Lowest Number = 8 in 1989/1992/1993
- > Average/Year = 31 cases

### Sums in Dispute

- > Total SID = P37.3 Billion (USD867.5 M)
- > Highest SID = P 5.6 Billion (USD 131.5 M) <sup>2001/2002</sup>
- > Lowest SID = P26.8 Million (USD629.5 K) <sup>1989</sup>
- > Average/Year = P54.4 Million (USD 1.28 M)

**Time to Resolve Cases from TOR : 6 months**

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Source : CIAC 5

## 3. CONSTRUCTION CONTRACTS IN THE PHILIPPINES AND THEIR MODES OF DISPUTE RESOLUTION

### a] Domestic Contracts

	Court	DAB/DB	Mediation	Arbitration
CIAP 102 : Contracts for Private Construction	No	No	No	YES
Philippine Bidding Documents (Domestic Contractors)	No	No	No	YES
Contracts prepared by				
..... Quantity Surveyors	No	No	Sometimes	YES
..... Lawyers	No	No	Sometimes	YES
..... Parties	Sometimes	No	Sometimes	Sometimes
FIDIC Contracts (Domestic Contractors)	No	Sometimes/ later deleted	No	YES
Multilateral Development Banks (MDB) Harmonised Edition 2010 (Domestic Contractors)	No	Sometimes/ Deleted	No	YES

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## 3. CONSTRUCTION CONTRACTS IN THE PHILIPPINES AND THEIR MODES OF DISPUTE RESOLUTION (cont'd)

### b] International Contracts

	Court	DAB/DB	Mediation	Arbitration
Philippine Bidding Documents (International Contractors)	No	Sometimes/ deleted	No	YES
Philippine Bidding Documents (as harmonized with Development Partners)	No	Yes/ deleted	No	YES
FIDIC Contracts	No	Sometimes/ later deleted	No	YES
MDB Contracts	No	Sometimes/ Deleted	No	YES
JICA Sample Bidding Documents (MDB Edition 2006)	No	Sometimes/ deleted	No	YES
Other International Contracts	No	Sometimes/ deleted	No	YES

@ 2012

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## 4. PERCEIVED BARRIERS AND ISSUES ON THE USE OF DAB/DBs

(in various types of projects in the Asia-Pacific Region, specifically in Emerging Countries like the Philippines)

### a) BARRIER NO. 1 : HIGH COST OF "INTERNATIONAL" DAB/DBs

**47** in FIDIC President's List of Approved Adjudicators

(country residence and not nationality)

**41** from Europe, Middle East, Canada, North America, Africa

**3** from Asia-Pacific

**3** Country of residence not known

*(Presented during the FIDIC Asia-Pacific Contract Users' Conference, Singapore, June 2011)*

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**4. PERCEIVED BARRIERS AND ISSUES ON THE USE OF DAB/DBs (cont'd)**

**b) BARRIER NO. 2 : COST OF TRAINING OF LOCALS FOR THE NATIONAL LIST OF DAB/DBs**

- Since 2005, FIDIC has encouraged FIDIC Member Associations to conduct DAB training and to establish their National Lists of Approved Adjudicators; however to-date :
  - > Most of the FIDIC Member-Associations within the region either have not started or are still in various development stages.

**4. PERCEIVED BARRIERS AND ISSUES ON THE USE OF DAB/DBs (cont'd)**

**b) BARRIER NO. 2 : COST OF TRAINING OF LOCALS FOR THE NATIONAL LIST OF DAB/DBs (cont'd)**

- One of the barriers is the cost of DAB trainings and accreditation criteria in order to be included in the National List.
  - > Resistance from the locals to spend for training since there is no assurance of the enforceability of the Clause on DAB in the FIDIC, MDB, JICA contracts.

**4. PERCEIVED BARRIERS AND ISSUES ON THE USE OF DAB/DBs (cont'd)**

**c) BARRIER NO. 3 : ENFORCEABILITY OF THE DAB/DB DECISIONS**

- A question on the legal enforcement of the DAB decisions.
- Perception is that DAB is another layer of delays and costs :
  - > decisions not binding,
  - > decisions cannot be enforced by the court,
  - > decisions still to be referred to arbitration if party fails to comply
- Barrier is relevant in countries without adjudication laws or when arbitration timeline is fast.
- This barrier is relevant in the Philippines since there is no Law on Adjudication.

**4. PERCEIVED BARRIERS AND ISSUES ON THE USE OF DAB/DBs (cont'd)**

**d) BARRIER NO. 4 : UNDERSTANDING OF THE DAB/DB AND ITS BENEFITS**

- Construction Industry Stakeholders are not familiar with DAB and role of DAB in “jobsite dispute resolution”.
- Perception is that :
  - > “DAB/DB is viewed as a duplication to arbitration”
  - > “DAB is another layer in dispute resolution.”

**4. PERCEIVED BARRIERS AND ISSUES ON THE USE OF DAB/DBs** (cont'd)

- e) **BARRIER NO. 5 : BUDGET FOR COST OF DAB/DBs**
- o Cannot estimate and/or no budget allocated for the DAB.
  - o Budget for DAB, if any, is not included in the Loan Package of the Employer.
    - > On Full Term DB, parties jointly decide to defer the appointment and appoint only a DB when dispute arises.

**5. SUMMARY**

- o We hope that this Dispute Board Seminar sponsored by JICA, in cooperation with DRBF and CECOPHIL, will address and resolve the perceived barriers in the use of DAB in our construction contracts.
- o We further hope that JICA will continue its advocacy of cooperating with AIM and JICA on the “Practical Project Management Program in the Global Market”, with the management of FIDIC/MDB/JICA Contracts and use of the Dispute Board as the main subjects.

*(JICA gives grants to the Philippine Government and subsidizes fees of the contracting and engineering organizations.)*

**5. SUMMARY** (cont'd)

- o Thank you for choosing the Philippines as the venue for the launch of the “JICA Sample Bidding Document 2008” 3 years ago, and this time as one of the five countries for the training and accreditation of DAB/DBs.

**MANIFESTO**

Endorsing DRBF's Advocacy to Develop and Use of the Disputes Adjudication Board in the Resolution of Construction and Commercial Disputes

WHEREAS, disputes invariably arise for different reasons in any kind of business undertaking between contracting parties;

WHEREAS, it is recognized that it is in the best interest of the contracting parties to resolve such disputes at an early stage, as they occur;

WHEREAS, the Dispute Resolution Board Foundation (DRBF), a non-stock and non-profit organization that is committed to the foregoing objective, has spearheaded the advocacy in introducing and promoting the development and use of the Dispute Adjudication Board to speedily resolve conflicts and disputes in the construction and business industries as they occur;

WHEREAS, in order to succeed in realizing this endeavor, DRBF needs the support of concerned organizations.

NOW THEREFORE, WE, the undersigned representatives of the recognized business and construction organizations in the country, do hereby declare our unwavering support for DRBF's efforts to promote and institutionalize the use of the Dispute Adjudication Board in the resolution of disputes and conflicts among contracting parties within the business and construction industries.

WE RESOLVE further to commit our support in whatever information campaign or fora that will be organized by DRBF in order to meet the foregoing objectives.

Done in the City of Pasig, Philippines this 28th day of August 2008.

COUNCIL OF ENGINEERING CONSULTANTS OF THE PHILIPPINES

  
Michael Robert P. Reyes  
President

PHILIPPINE CONSTRUCTORS ASSOCIATION

  
Anthony L. Fernandez  
President

PHILIPPINE DISPUTE RESOLUTION CENTER, INC.

  
Eduardo R. Ceniza  
President

PHILIPPINE INSTITUTE OF CONSTRUCTION ARBITRATORS MEDIATORS

  
Beda G. Fajardo  
President

WITNESSES

JAPAN BANK FOR INTERNATIONAL COOPERATION

  
Hiroshi Togo  
Chief Representative  
- Manila Office

JAPAN INTERNATIONAL COOPERATION AGENCY

  
Norio Matsuda  
Representative

DISPUTE RESOLUTION BOARD FOUNDATION

  
Gordon L. Haynes  
Member Emeritus  
Board of Directors

  
Salvador P. Castro, Jr.  
Country Representative  
Philippines

PHILIPPINE OVERSEAS CONSTRUCTION BOARD

  
David M. Conzunji  
Chairman

# Mabuhay !!!

# **Implementation Challenge to the Dispute Board Mechanism**

**Mr. Hamid L. Sharif**

**Principal Director  
Central Operation Service Office  
Asian Development Bank**

# Implementation Challenges to the Dispute Board Mechanism

Hamid Sharif  
Principal Director  
Central Operations Service Office



## DB in ADB Documents

- ✓ Civil Works: FIDIC MDB Harmonized Edition (June 2010)
- ✓ Procurement of Plant – Design, Supply, and Install: Model Form of International Contract for Process Plant Construction published by ENAA (the Engineering Advancement Association of Japan)
- ✓ ADB Guidelines on the Use of Consultants



## Standard Bidding Documents Section 8 –Particular Conditions of Contract

20.2	Date by which the DAB shall be appointed	28 days after the Commencement
20.2	The DAB shall be comprised of	insert either "One sole Member" or "Three Members"
20.2	List of potential DB sole members	[Only when the DB is to be comprised of one sole member, list names of potential sole members; if no potential sole members are to be included, insert: "none"]
20.3	Appointment (if not agreed) to be made by	[Insert name of the appointing entity or official]

## ADB Guidelines on the Use of Consultants

- ✓ Para. 2.47 – Indefinite Delivery Contract (Price Agreement):

When borrowers need to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance.

This is commonly used to retain "advisers" for implementation of complex projects (for example, dam panel), **expert adjudicators for dispute resolution panels**, ... and so forth, normally for a period of a year and more.



## Pros

- ✓ Quick solution (3-4 months )
  - ✓ They know contract docs., specs., plans, procedures and parties in advance
  - ✓ As against Arbitration (2-3 years) and Litigation (more than 3 years)
- ✓ Reliable solution
  - ✓ Depending on the appointment: reputable persons with moral authority
- ✓ Practical solution
  - ✓ Project is moving

ADB

## Pros

- ✓ Opinions and early warnings prevent future disputes
- ✓ Employers use DB's decision for accountability support against higher authority (such as Line Ministry, Congress, Cabinet, Prime Minister), Auditor General, Mass Media, etc.
- ✓ Impact on Engineers: to be more professional in performing tasks and rendering decisions

ADB

## Pros

- ✓ DB members are involved and thus more knowledgeable of site situations than arbitrators
- ✓ More transparency for contract variations
- ✓ Smoother project implementation

ADB

## But practice may differ

### Ghazi Barotha Hydropower Project

- ✓ Objective was to meet demand for electric power in Pakistan by generating hydropower in an environmentally sustainable and socially acceptable manner (with minimal environment and resettlement impacts)
- ✓ Cofinanced among ADB, WB, JBIC, KfW and IDB)
- ✓ Included 2 contracts for construction of a Barrage and Power Channel, both awarded to a JV of int'l contractors
- ✓ Original construction period: Dec. 1995 – Mar 2000
- ✓ Actual Construction period: Dec. 1995 – Dec. 2003

ADB

## But practice may differ

### Ghazi Barotha Hydropower Project

- ✓ JV contractor alleged various faults against the Engineer and the Employer, such as denials of adequate time extensions and reimbursement of costs, including claims against the impartiality of the Engineer
- ✓ Contract provided for referral to a DRB if either party is dissatisfied with the Engineer's decisions. Also provided for arbitration if either party is dissatisfied with DRB's recommendation
- ✓ The DRB was not successful, and case eventually reached arbitration (ICSID)
- ✓ Case was settled at the arbitration stage (in 2005).

ADB

## But practice may differ

### Ghazi Barotha Hydropower Project

- ✓ LESSONS LEARNED – Major stumbling blocks to success of the DRB in this case:
  - ✓ Delays in the appointment of representatives to the DRB
  - ✓ Failure to soundly establish a DRB and constant challenges to its membership
  - ✓ Failure of the DRB to render a decision that was respected by both parties

ADB

## Challenges

- ✓ General lack of knowledge or experience among executing/implementing agencies
- ✓ Judicial/bureaucratic barriers to enforcement
- ✓ Absence of local procedures and pools of national experts

ADB

## Challenges

- ✓ Failure of parties to appoint DB members at the onset. Some questions to consider:
  - ✓ Why don't the parties commit to the DB, even when it is already in the contract?
  - ✓ Are there any constraints from the government's side (*e.g.*, cultures of bureaucracy, budget and appropriation constraints)?
- ✓ Cost should be considered, particularly for standing DB (creating ad hoc DBs will diminish original purpose of being an early solution provider)

ADB



## Estimating DB Cost

Project Cost	3 Person Standing DB	1 Person Standing DB
\$10 mil.	18 %	6 %
\$30 mil.	6%	2%
\$50 mil.	3.6%	1.2%
\$100 mil.	1.8%	0.6%
\$500 mil.	0.36%	0.12%

## Estimating DB Cost

- ✓ Costs generally cover:
  - ✓ Retainer fee for each member (generally three times the daily fee)
  - ✓ Daily/hourly fee for each member
  - ✓ Per diem
  - ✓ Travel costs
  - ✓ Taxes
  - ✓ Administrative expenses
- ✓ Consider:
  - ✓ Requires 3 to 4 site visits a year, with around 10 working days per visit
  - ✓ Contracts can have a term of 2 to 5 years (plus 1 yr. Defects Liability Period)
  - ✓ Many variables so estimating actual costs can be like measuring a piece of string

**ADB**

## Recommendations

- ✓ Regional capacity development programs to build awareness for both executing/implementing agencies and contractors' associations
- ✓ Support the creation of national pools of experts
- ✓ Check the creation of DBs as part of fiduciary reviews

**ADB**

## Recommendations

- ✓ Selective use of DB based on amount and Complexity (in ADB, all Civil Works contracts \$10M and up use FIDIC harmonized SBDs)
- ✓ Lower Costs by:
  - ✓ Establishing credible National Lists
  - ✓ Considering multiple project assignments and IDCs
  - ✓ Waiving Retainer Fees
  - ✓ Considering Piggy-back TAs for loans with complex civil works contracts, to ensure that DBs are funded and constituted

**ADB**

**Appendix - 2.3.11**

# **Construction Disputes and Alternative Disputes Resolution in Indonesia**

**Dr. Sarwono Hardjomuljadi**

**Country Representative of DRBF in Indonesia**

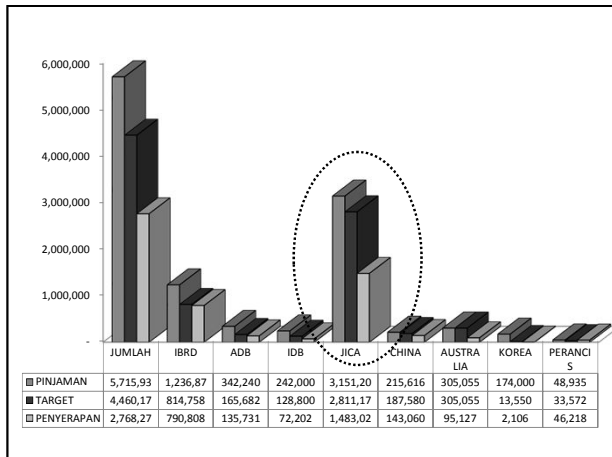
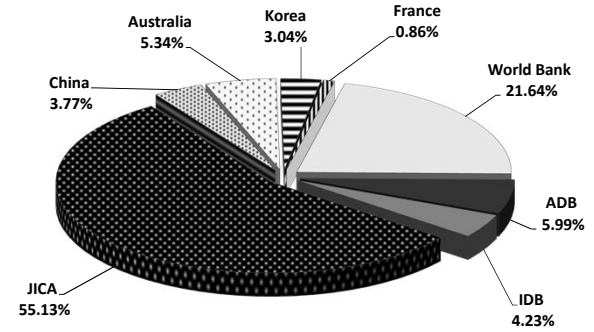
# Construction Disputes and Alternative Disputes Resolution in Indonesia

Dr. Sarwono Hardjomuljadi  
 ASEAN Chartered Professional Engineer  
 FIDIC International Accredited Trainer  
 DRBF Country Representative for Indonesia



JICA-FIDIC-DRBF  
 Jakarta, February 14, 2012

## BILATERAL AND MULTILATERAL LOAN for Public Works Sector (as per December 31, 2011)



## Main Causal Factors of Construction Disputes in Indonesia



Based on the study conducted by Sarwono (2010)<sup>[2]</sup> by distributing the questionnaires among the employers (45), consultants (40) and contractors (42), it was found that:

The contractual claims as well as the non-contractual claims led to disputes in Indonesia are due to the **different interpretation on clauses** in the conditions of contract, among them the most often are clauses about **possession of site** and **changes in design/variations**.

The Employer has the largest role in the succeed of a construction project, starting from the pre-contract strategy, the selection of conditions of contract and the commitment in executing the selected conditions of contract.



FIDIC MDB Harmonised Major Works (Construction) Contract Conference  
Renaissance Hotel, Brussels, Belgium  
27 – 28 January 2011

The problem of different interpretation of the contract is not only faced by the non-English speaking countries but also by the English speaking people, not merely due to the inadequate capability in interpreting the contract and/or legal terms, but also due to **the certain intention** of the party/parties.

The philosophy of **Clause 2.1 [Right of Access to the Site]** should be understood by the parties involved in the execution of the contract and the wording in the contract clauses should be interpreted correctly.

The Changes in Design is also accommodated by FIDIC GCC for Construction **Clause 13 [Variations and Adjustment]**. Engineer has an important role in Changes in Design.



FIDIC MDB Harmonised Major Works (Costruction) Contract Conference  
Renaissance Hotel, Brussels, Belgium  
27 – 28 January 2011

### Clause 3.1 Engineer's Duties and Authority

**FIDIC Construction 1999**      **Clause 3.1 Engineer's Duties and Authority**  
The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. **The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor.**

**FIDIC MDB 2010**      **Clause 3.1 Engineer's Duties and Authority**  
The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. **The Employer shall promptly inform the Contractor of any change to the authority attributed to the Engineer.**



Under the FIDIC MDB Harmonised Edition (2010), The Employer is allowed to change the authority of the Engineer and then inform the contractor, but under the FIDIC for Construction (1999), the Employer has an obligation not to impose "further constraints on the Engineer's authority except as agreed with the Contractor." This change is assumed as giving more power to the Employer.



FIDIC World Annual Conference 2011  
Davos, Switzerland October 2 – 5, 2011

### 2.1 Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data.

The right and possession may not be exclusive to the Contractor.

If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer **may withhold any such right of possession until the Performance Security has been received.**



If no such time is stated in the Contract Data, the Employer shall give the Contractor right of access to, and possession of, the Site ***within such times as required to enable the Contractor to proceed without disruption in accordance with the programme submitted under Sub-Clause 8.3 [Programme].***

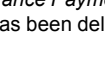


## 8.1 Commencement of Works

Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following ***precedent conditions*** have all been fulfilled and the Engineer's notification recording the agreement of both Parties on such fulfilment and ***instructing to commence the Work is received by the Contractor:***



- (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;
- (b) delivery to the Contractor of reasonable evidence of the Employer's Financial arrangements (under Sub-Clause 2.4 [ *Employer's Financial Arrangements*]);
- (c) except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [ *Compliance with Laws* ] as required for ***the commencement of the Works;***
- (d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [ *Advance Payment* ] provided that the corresponding bank guarantee has been delivered by the Contractor.



## Project Stages

The notice to proceed is given, and the contractor begins the work.



The first few months are usually the best time period for the contractor and the employer. "Honeymoon Period."  
People are excited about a new project, the stress level is not yet high and pressure has not yet set in among people.



As the project progresses further, problems start to surface and the atmosphere starts to change.  
The Honeymoon continues only until the contractor submit his first claim and the employer rejects it.



Owners think the contractors always want to cheat them, whereas contractors think the owners always try to squeeze the contractor for having more work for less or even no money.



## Construction Disputes Resolution in Indonesia



- The best dispute resolution mechanism is **amicable settlement**.
- Oftenly the amicable settlement could not be reached
- The negotiation even utilizing the third party **mediation**.

### • **Dispute Board**

### • **Arbitration**

### • **Litigation**



Obstacles in using DB in Indonesia are:

- 1.“Legal base”
- 2.“Payment / cost”
- 3.“Power of DB decision”
- 4.“Bad experiences”
- 5.“DB, Arbitration, Litigation”
- 6.“Standing or Ad-hoc DB”



### 1. Legal base (understanding of the legal base).



**Related Regulation in Indonesia  
Undang-undang No. 30 / 1999  
Re: Arbitrase dan Alternatif Penyelesaian Sengketa**

**Bab I Ketentuan Umum Pasal 1 Butir 10**

Alternatif Penyelesaian sengketa adalah lembaga penyelesaian sengketa atau beda pendapat melalui prosedur yang disepakati para pihak, yaitu penyelesaian di luar pengadilan dengan cara konsultasi, negosiasi, konsiliasi, atau *penilaian ahli*.

**Bab II Alternatif Penyelesaian Sengketa PAsal 6 Butir 1**

Sengketa atau beda pendapat perdata dapat diselesaikan oleh para pihak melalui *alternatif penyelesaian sengketa* yang didasarkan pada itikad baik dengan mengesampingkan penyelesaian secara litigasi di Pengadilan Negeri.

**Bab II Alternatif Penyelesaian Sengketa PAsal 6 Butir 7**

Kesepakatan penyelesaian sengketa atau beda pendapat secara tertulis adalah *final dan mengikat* para pihak untuk dilaksanakan dengan itikad baik serta wajib didaftarkan di Pengadilan negeri dalam waktu paling lama 30 hari sejak tanggal penandatanganan.

**Catatan:**

Undang-undang ini mengatur penyelesaian sengketa yang secara tegas mencantumkan dalam perjanjian kontraknya bahwa semua sengketa atau beda pendapat yang timbul atau mungkin timbul dari hubungan hukum tersebut akan diselesaikan dengan cara arbitrase atau melalui alternatif penyelesaian sengketa.

**2. Payment / cost (amount and source of finance).**



**Questions about the existence, the financing and the cost of DB:**

**1. How is the financing?**

The cost of DB is not included in the GOI budget and the loan itself?

Action needed: In order to support the use of DB, all cost incurred should be included in the loan so the possible budget cost could be stated in the contract, then provide a provisional sum or make an agreement with the lender stating that they will support the owner to finance the use of DB.

**2. Why is the use of DB unpopular?**

The Employer and the Contractor are reluctant to spend money before the occurrence of dispute.

Action needed: It is advisable that when dispute has not occurred (the standing time), DB will only receive a kind of retainer fee (starting from the contract signing until the dispute occurs) for services such as reading and analyzing information of potential dispute from parties, discussing through email or conducting meeting if necessary, to allow the DB becoming and remaining conversant with all project developments.

Minimum 3 days fee per month should be OK.

When dispute occurs, the hourly fee will then be applied.

The use of DB is actually more advantageous than the costly and lengthy dispute.

**3. DB decision, whether it is final and binding or not?**



#### Clause 20.4 Obtaining Dispute Board's Decision

Para 4..

The decision **shall be binding** on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as describe below.

Para 5

.....If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give **Notice of Dissatisfaction** to the other Party indicating its dissatisfaction and intention to commence arbitration.

Para 7

If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either 28 days after it received the DB's decision **shall become final and binding** upon both



#### BAB VII PEMBATALAN PUTUSAN ARBITRASE Undang undang 30 Tahun 1999 Pasal 70

Terhadap putusan arbitrase para pihak dapat mengajukan permohonan pembatalan apabila putusan tersebut diduga mengandung unsur-unsur sebagai berikut :

- a. surat atau dokumen yang diajukan dalam pemeriksaan, setelah putusan dijatuhkan, diakui palsu atau dinyatakan palsu;
- b. setelah putusan diambil ditemukan dokumen yang bersifat menentukan, yang disembunyikan oleh pihak lawan ; atau
- c. putusan diambil dari hasil tipu muslihat yang dilakukan oleh salah satu pihak pemeriksaan sengketa.



#### 4. Bad experiences in the former project.



The case, *CRW Joint Operation v Perusahaan Gas Negara*, involved a contract between a publicly-owned Indonesian company (the employer) and an Indonesian joint operation (the contractor) for the construction of a pipeline. The contract was based on the FIDIC Conditions of Contract for Construction, 1999 (the Red Book) and was governed by Indonesian law.

The parties referred the dispute to a **single-person dispute adjudication board**, which valued the variations and ordered the employer to pay them. The employer refused to do so and issued a **notice of dissatisfaction** with the dispute adjudication board decision. The contractor then filed a request for arbitration with the ICC seeking to oblige the employer to **"promptly give effect" to the "binding" dispute adjudication board decision**, in accordance with sub-clause 20.4 of the Red Book.

The majority of the arbitral tribunal (chairman Alan Thambiyah and co-arbitrator Neil Kaplan CBE QC SBS) found that the dispute adjudication board decision was binding on, and to be given immediate effect by, the parties and that the contractor was entitled to immediate payment of the sum. The other co-arbitrator, H Priyatna Abdurrasyid, issued a dissenting opinion on separate grounds.

*From an article in the December 8, 2011 issue of GAR by Christopher R. Seppälä*



Subsequently, the employer obtained an order from the *Singapore High Court setting aside the award.*

The contractor appealed to the *Singapore Court of Appeal, which dismissed the appeal.* Although the courts based their respective judgments on somewhat different grounds, the assumption that a "binding" decision of a dispute adjudication board (that is, one that has been the subject of a notice of dissatisfaction) should not be enforced by arbitration, due to a perceived "gap" in sub-clause 20.7, featured heavily in their reasoning.

*From an article in the December 8, 2011 issue of GAR by Christopher R. Seppälä*



## 5. DB, Arbitration, Litigation, the understanding.



### Advantages of Dispute Boards over arbitration and litigation are:

(1) timely

(2) less costly

Dispute Boards function: dispute avoidance and prevention function.

Dispute Boards provide the parties with the benefit of highly effective dispute resolution.

Dispute Boards resolve the disputes comparatively in much less time.

Dispute Boards resolution process costs are much lower than other process.



## 6. Standing and Ad-hoc DB, the understanding.



## STANDING DAB

### Advantages

All DB all the information on the project development since the beginning.

Once dispute occurred, the decision logically could be made by the DB in a relatively shorter time.

Pricewise may be more expensive

## AD-HOC DAB

### Advantages:

Cheaper



**The appointment of three members DB is easier and less time consuming, because instead of one member whom should be agreed and approved by both parties, three member DB are consist of three member, one member proposed by each party respectively and the third, the chair appointed by the member. Commonly the member appointed by parties will try to find the respectable person whom recognised by them as person who have enough knowledge in the substance of construction process and having capability to coordinate the DB.**



## Suggested action:

1. Dissemination of DB to the higher level/decision maker.
2. Training on understanding and procedure of appointment of DB
3. Information that finally, using DB is less costly compared with no DB
4. Information that using DB is not conflicted with the Indonesian Law and Regulation
5. In order to support the use of DB, all cost incurred should be included in the loan, since so far, it is not included in the loan for construction.



## Related Regulation FIDIC Conditions of Contract for Construction MDB Harmonised Ed. 2010 Clause 20 Claims, Disputes and Arbitration

### Clause 20 Point 2 Appointment of the Dispute Board

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the parties have not jointly appointed the DB, 21 days before the date stated in the Contract Data and the DB is comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.



**Related Regulation**  
**FIDIC Conditions of Contract for Plant and Design Build 1999**  
**Clause 20 Claims, Disputes and Arbitration**

**Clause 20 Point 2 Appointment of the Dispute Board**

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

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



**Related Regulation**  
**FIDIC Conditions of Contract for EPC/Turnkey 1999**  
**Clause 20 Claims, Disputes and Arbitration**

**Clause 20 Point 2 Appointment of the Dispute Board**

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

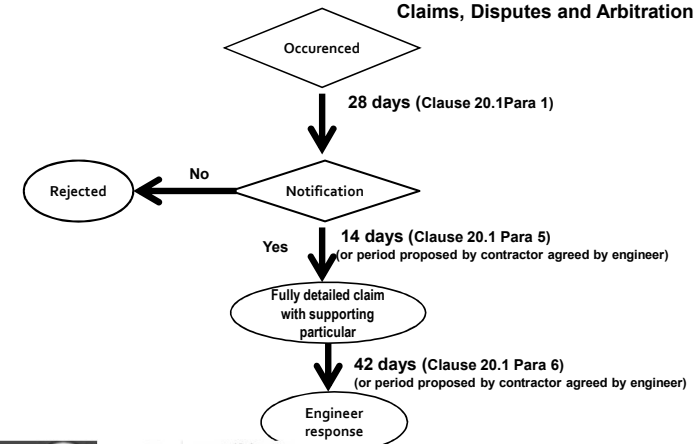
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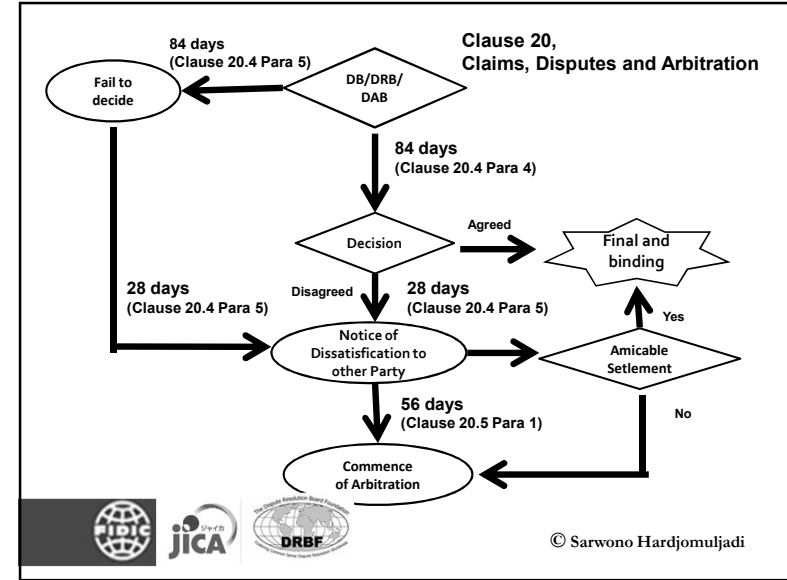
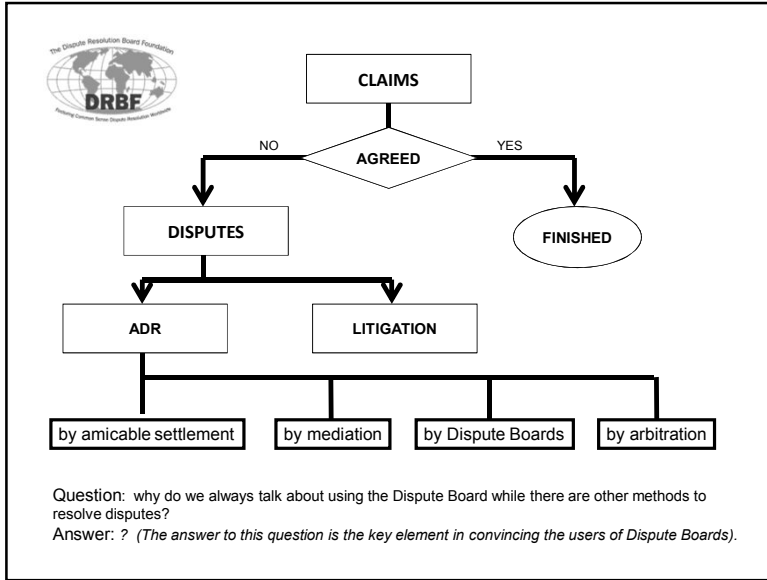
capability of parties in handling the contractual problems



**Clause 20, Claims, Disputes and Arbitration**



© Sarwono Hardjomuljadi



## Question and Answer in DB Seminar

Question		Answer
1. Vietnam (January 11 <sup>th</sup> , 2012)		
1)	Is the cost of DB covered by JICA ODA loan?	We consider DB as a tool for construction management, thus, its cost is eligible under JICA ODA loan.
2)	High impartiality is required of the members of DB. How can we consider about their nationalities?	It often occurred that the Employer and Contractor respectively nominate a person with the same nationality as theirs, which is also the case in arbitration. However, even in this case, a third person, who acts as the chairperson, is highly recommended to be of a third nationality.
3)	Who is the suitable appointing agency for a DB member?	FIDIC is a typical example, although the JICA sample bidding documents do not indicate any default data.
4)	I think an adequate legal framework is needed for adoption of DB.	The agreement by which parties are bound by the DB decision is based on the principle of the freedom to contract, and we understand that this agreement is not in conflict with any legal framework.
2. Sri Lanka (January 17 <sup>th</sup> , 2012)		
1)	Significance of the introduction of DB can be understood. However, even if the contract stipulates the DB process, non-observance of the contract can happen. The postponement of DB appointment has actually occurred.	Non-observance of the contract means breach of contract. Delay of the nomination of DB also could be a breach of contract. This is an issue of integrity and morals, rather than a legal matter.
2)	There is a problem with DB that it is not a ruling as a final decision. There is also a case which developed into the MDB Clause 20.7 “Failure to Comply with DB’s Decision”.	The DB’s decision is not final, but it is binding on parties unless and until it is revised in the succeeding amicable settlement or arbitration. If a party does not follow the DB’s decision nor go to arbitration, such breach of contract can be submitted to the arbitration. The FIDIC Gold Book (Design, Build and Operate) stipulates that the Contractor has to submit a bank guarantee to the Employer by which the Employer can receive refund if the DB’s decision is overturned by amicable settlement or arbitration. This arrangement assures the effectiveness of the DB’s decision.

Question		Answer
3)	Is it not required to set up an adequate legal framework for the operation of DB? How is the case in Japan?	We think that the ruling of the DB does not conflict with the legal framework, because it is an agreement under the framework of the contract. If there is a law related with ADR, it will support the DB system. However, it is not always necessary. DB-specific legislation does not exist in Japan as well.
4)	What is the role of the Engineer during the hearing?	The Engineer often plays a role of presenter to describe the actual situation of the project site.
<b>3. Philippines (February 9<sup>th</sup>, 2012)</b>		
1)	Are the DB members required to be well-acquainted with the local laws?	Most of disputes referred to the DB concerns a technical issue or the interpretation of the contract. A dispute associated with local laws and regulations is very rare. However, local laws may have some influence to such matters as defect liability.
2)	If there is such possibility that dispute would be referred to arbitration after the party's dissatisfaction of the DB's decision, can the DB cost be regarded as a waste of money?	<p>In the FIDIC contract, either party is allowed to submit the dispute to arbitration by serving notice of his dissatisfaction to the DB's decision within 28 days. According to statistics in the USA however, only 2% of disputes go to arbitration after the DB's decision as explained in the DB seminar. The decision of DB is also referred to in the arbitration court and this is one of the reasons why most of disputes is resolved without arbitration.</p> <p>Another possible reason is that many people seem to think that the same judgment as the DB is made in the arbitration award.</p> <p>With the popularization of DB, the number of arbitration cases submitted to ICC, an arbitration institution, has been greatly reduced. ICC also promotes DB and has established its own procedural rules for DB.</p>
3)	Is there any correlation between DB's introduction and the competitive environment in the bid?	In case of a contract without DB, we have heard that some contractors from USA or EU tend to hesitate to bid. A survey of the State of California, USA, tells us that the bid price for a contract with DB shows lower tendency than for the contract without DB. Especially in large-scale contracts, an improvement in the cash

Question		Answer
		flow seems to be expected by the bidders.
4)	In the Philippines, is there any plan to establish national list of adjudicator? If yes, will it follow the FIDIC guideline?	<p>CECOPHIL is planning to start the process to establish national list this year. We have delivered FIDIC Modules 1 and 2 seminars and we would like to provide Modules 3 and 3A seminars this year. We think the assessment process should follow the FIDIC guideline. (CECOPHIL)</p> <p>AJCE's procedure for assessment of adjudicator follows the FIDIC guideline. AJCE is willing to share our experience with other MAs who wish to create the national list. (Study Team)</p>
5)	Will government officials be able to participate in the assessment of adjudicators?	We consider that the door should be opened. However, it may be difficult for the government official to serve as an adjudicator before his retirement.
6)	Is DB also applicable to the DBO (Design Build and Operate) type contract? Are the skills required of an adjudicator different?	FIDIC has introduced the DB to all major contracts including the Red Book (Design-Bid-Build), Yellow Book (Design-Build), Silver Book (EPC/Turnkey) and Gold Book (Design-Build-Operate). The basic skills required of an adjudicator are basically the same. By the way, it is said that an ad hoc DB, which has been adopted in the current version of the Yellow Book and Silver Book, will be replaced with standing DB in the next revision.
<b>4. Indonesia (February 14<sup>th</sup>, 2012)</b>		
1)	What is the reaction to the introduction of DB in the other countries?	We have conducted DB seminars also in Vietnam, Sri Lanka and the Philippines, and questionnaire surveys regarding use of DB were carried out. The results are different from country to country; however, more than 50% of the participants are in favor of the introduction of DB according to the surveys. The typical reason for a negative answer is the cost overburden associated with the appointment of DB.
2)	How is the application of the DB system in Japan?	The DB process is not practiced in public works contracts in Japan; however, the Ministry of Land Traffic Infrastructure has been recently attempting to introduce DB in their projects on a trial basis. In

	Question	Answer
		public works projects, the Engineer seen in the FIDIC contract has neither been appointed, but the Ministry is also considering introducing it in their project.
3)	How is the confidentiality obligation of DB?	In the CV of the adjudicator, details of disputes, including the DB's decision in past projects, are not described. In the case of an AJCE adjudicator, AJCE asks them to pledge compliance with the Code of Ethics of AJCE before their registration. This Code of Ethics contains confidentiality provisions on the professional service.
4)	Regarding the introduction of DB, is it not necessary to coordinate with a number of national laws and rules in Indonesia?	Decision of the DB is given under an agreement of the contract parties in the framework of the contract, and we consider that it does not cause conflict with national legislation. In addition, the reason is always attached when the decision is given. Therefore, if a third party is going to challenge the decision, he shall state its rationale.
5)	<p>Currently, I am in charge of a project financed by JICA and the project is under process of pre-qualification. DB is adopted in the contract, however, the cost of DB is not allocated in the loan. Therefore, auditors might point out such inconsistency in the future. How should I respond to these situations?</p> <p>In addition, how we can deal with this matter for future projects financed by JICA to avoid same problem?</p>	<p>In that case, it is recommended to have a discussion with auditors, and to obtain their consent to adopt DB in the contract. In on-going projects, such process is deemed to be most realistic. JICA will provide the necessary support.</p> <p>As for DB cost, please examine the possibility of using the contingency cost. For upcoming new projects, JICA will discuss this matter with the executing agency during project appraisal to ensure to allocate necessary DB cost in the loan.</p>
6)	Is DB applicable to the EPC contract?	DB can be applied to various types of contract including Design Build and EPC contracts. A railway tunnel project in Turkey, which is financed by JICA, uses the FIDIC Silver Book with an actual standing DB.
7)	I understand AJCE's criteria for assessment of adjudicator complies with the FIDIC guidelines. Don't you think	AJCE's rules follow the guidelines recommended by FIDIC. We consider our criteria to be appropriate for the selection of a qualified adjudicator. As a result,



Question	Answer
<p>the criteria is too hard when applied to other countries in Asia.</p>	<p>only seven adjudicators are registered in Japan so far.</p> <p>Adjudicators should have ample experience and be a person respected by the contracting parties. The average age of the FIDIC President’s List Approved Adjudicators exceeds 65, while some are over 80 years old.</p> <p>One of the requirements in our assessment criteria is to possess “experience in overseas projects”. In case of Indonesia, there are a number of international projects in the country, therefore we suppose it will not be a tough requirement.</p>

## Dispute Board (DB) Questionnaire

### Q1. Which entity do you belong to?

- Government
- Contractor
- Consultant
- Law firm
- Other ( )

### Q2. How was today's seminar? (Please check *all* that apply)

- (1) Interesting?:  extremely  very much  fair  not very much  not at all
- (2) Useful?  extremely  very much  fair  not very much  not at all
- (3) Clear and easy to understand?.  extremely  very much  fair  not very much  not at all
- (4) Other comments:  
( )

### Q3. Are you willing to adopt DB for the project you are / will be concerned?

- Yes, I want to adopt DB.
- No, I don't want to adopt DB.
- No, but I will adopt DB if certain issues, which I am concerned about, are cleared.

### Q4. (For the persons who have selected "YES" in Q3)

#### 4-1 Why do you think you want to adopt DB? (Please check *all* that apply)

- (1)  I know well about benefit of DB.
- (2)  I think it works well in my country.
- (3)  DB is cost-effective.
- (4)  I think disputes / conflicts likely to happen in the project.
- (5)  Settlement of disputes / conflicts by ourselves is difficult without DB.
- (6)  DB most likely makes fair decision.
- (7)  Though there are few adjudicators now, it can be promoted through proper training and monitoring program/ system in my country.
- (8)  Others ( )

#### 4-2 Which is the BIGGEST reason among those above?

Fill in the number: ( )

### Q5. (For the persons who have selected "NO" in Q3)

#### 5-1 Why do you think you don't want to adopt DB? (Please check *all* that apply)

- (1)  I don't know well about DB.
- (2)  I doubt the effect. / I don't think it works well in my country.
- (3)  DB costs high.
- (4)  I think disputes / conflicts are not likely to happen in the project.
- (5)  We can settle disputes / conflicts by ourselves without DB.



## Summary of Questionnaire Survey Result

Question		Vietnam	Sri Lanka	Philippines	Indonesia
<b>Q1</b>	<b>Which entity do you belong to?</b>				
	Government	64%	63%	57%	56%
	Contractor	5%	7%	0%	5%
	Consultant	20%	26%	28%	21%
	Law firm	5%	1%	9%	0%
	Other	7%	1%	6%	18%
<b>Q2</b>	<b>How was today's seminar?</b>				
<b>(1)</b>	Interesting?				
	extremely	5%	6%	11%	23%
	very much	59%	60%	71%	41%
	fair	36%	32%	18%	31%
	not very much	0%	2%	0%	5%
	not at all	0%	0%	0%	0%
<b>(2)</b>	Useful?				
	extremely	13%	16%	15%	19%
	very much	68%	64%	61%	59%
	fair	20%	20%	24%	22%
	not very much	0%	0%	0%	0%
	not at all	0%	0%	0%	0%
<b>(3)</b>	Clear and easy to understand?				
	extremely	14%	15%	11%	11%
	very much	43%	55%	62%	37%
	fair	41%	29%	27%	40%
	not very much	3%	2%	0%	11%
	not at all	0%	0%	0%	0%
<b>Q3</b>	<b>Are you willing to adopt DB for the project you are / will be concerned?</b>				
	Yes, I want to adopt DB.	50%	65%	60%	47%
	No, I don't want to adopt DB.	10%	3%	9%	0%
	No, but I will adopt DB if certain issues are cleared.	40%	32%	31%	53%
<b>Q4</b>	<b>(For the persons who have selected "YES" in Q3)</b>				
<b>Q4-1</b>	<b>Why do you think you want to adopt DB?</b>				
	I know well about benefit of DB.	13%	12%	13%	11%
	I think it works well in my country.	14%	8%	9%	5%
	DB is cost-effective.	8%	15%	11%	19%
	I think disputes / conflicts likely to happen in the project.	26%	19%	19%	25%
	Settlement of disputes / conflicts by ourselves is difficult without DB.	14%	12%	8%	6%
	DB most likely makes fair decision.	16%	12%	15%	19%
	Though there are few adjudicators now, it can be promoted through proper training and monitoring program/ system in	9%	19%	21%	13%

Question		Vietnam	Sri Lanka	Philippines	Indonesia
	my country.				
	Others	1%	4%	5%	2%
<b>Q4-2</b>	<b>Which is the BIGGEST reason among those above?</b>				
	I know well about benefit of DB.	9%	21%	12%	6%
	I think it works well in my country.	0%	7%	0%	6%
	DB is cost-effective.	18%	19%	12%	17%
	I think disputes / conflicts likely to happen in the project.	59%	21%	32%	50%
	Settlement of disputes / conflicts by ourselves is difficult without DB.	0%	16%	4%	0%
	DB most likely makes fair decision.	14%	7%	20%	17%
	Though there are few adjudicators now, it can be promoted through proper training and monitoring program/ system in my country.	0%	7%	20%	0%
	Others	0%	2%	0%	6%
<b>Q5</b>	<b>(For the persons who have selected “NO” in Q3)</b>				
<b>Q5-1</b>	<b>Why do you think you don’t want to adopt DB?</b>				
	I don't know well about DB.	10%	2%	2%	17%
	I doubt the effect. / I don't think it works well in my country.	22%	20%	19%	17%
	DB costs high.	31%	31%	33%	25%
	I think disputes / conflicts are not likely to happen in the project.	3%	9%	3%	6%
	We can settle disputes / conflicts by ourselves without DB.	10%	24%	16%	8%
	I'm afraid DB might make unfair decision.	8%	2%	7%	4%
	It's difficult to find adequate adjudicators. / There are few certified adjudicators.	8%	7%	16%	15%
	Others	7%	5%	5%	8%
<b>Q4-2</b>	<b>Which is the BIGGEST reason among those above?</b>				
	I don't know well about DB.	10%	0%	7%	18%
	I doubt the effect. / I don't think it works well in my country.	24%	13%	7%	18%
	DB costs high.	33%	58%	67%	35%
	I think disputes / conflicts are not likely to happen in the project.	0%	8%	0%	0%
	We can settle disputes / conflicts by ourselves without DB.	0%	8%	7%	6%
	I'm afraid DB might make unfair decision.	5%	0%	0%	0%
	It's difficult to find adequate adjudicators. / There are few certified adjudicators.	10%	0%	13%	6%
	Others	19%	13%	0%	18%

## Comments Given by Seminar Participants

Question : Please describe your questions or unclear issues regarding Dispute Board.

## 1. Vietnam

No.	Comments
1	<p>In construction contract, in the Bill of Quantity, we have the name of items &amp; quantity of it, but there is no unit price and sum cost of this item (This item was presented in DWG of Bidding Documents and Contract). Just before construction of this item, Contractor asked the Variation Order for this item, but the Client said it was in the DWG and BoQ of Contract, so Contractor has to do it anyway, but Contractor insisted on asking the Variation Order or they will not build this item (This item must be constructed for the Completion of the Project).</p> <p>Please send me the answers for the following question.</p> <ol style="list-style-type: none"> <li>1. Who is right? How much of right for them? Why?</li> <li>2. How to solve this matter with the best way?</li> <li>3. Who will be responsible for this mistake? Why?</li> </ol>
2	<ol style="list-style-type: none"> <li>1. At present, Vietnamese Government has not issued any instructions about establishment and the way of operation of DB. Therefore, with the role of Government Management Authority, we can not conduct DB for the contract. We need the cooperation among Ministries and Branches concerned to establish the provisions.</li> <li>2. Which are criteria for members of DB? JICA should give recommendations in the Sample Bidding Documents.</li> <li>3. The cost for DB must be included in the total investment, which shall be agreed between JICA and Borrower at the appraisal period.</li> </ol>
3	<ol style="list-style-type: none"> <li>1. How much does it cost if we hire a DB organization for our project? (%)</li> <li>2. Does DB organization supervise contract to reduce dispute? In ??? implement contract period?</li> </ol>
4	<ol style="list-style-type: none"> <li>1. Who sign the contract with DB.</li> <li>2. How to solve the disputes between investors, Contractors, Engineers and the DB? In case a DB as a member of all Association with another DB is assigned to solve a dispute that involves the second DB, whether the resolution of this DB is objective? We should think of the solution for such cases.</li> </ol>
5	Nationality of DB member in JICA project.
6	<ol style="list-style-type: none"> <li>1. DB cost high?</li> <li>2. It's difficult to find adequate adjudicators?</li> <li>3. We can settle disputes by ourselves without DB?</li> <li>4. When it can be training and monitoring in my country?</li> </ol>
7	<ol style="list-style-type: none"> <li>1. I want JICA should be prepare more documents with dispute board for implemented contract</li> <li>2. Setting more model contract to implement project</li> </ol>
8	1. Basing on the FIDIC Contract Form 1999 or MDB 2006, Pink Book 2010, the DB apply

No.	Comments
	<p>one by one project and the members are selected from FIDIC list those are mostly come from overseas countries. So the cost for DB so high.</p> <p>2. I propose JICA to cooperate with associations in Vietnam such as : VIAC, ICC, VECAS (our organization) to find the way to establish the arbitrators list in Vietnam in future.</p>
9	<p>1. What is qualified requirement of DB</p> <p>2. Criteria to select DB member</p> <p>3. What is major difference with others? (PMC, arbitration, court)</p>
10	<p>1. Can Employer include the cost of DB in the loan amount to be approved by JICA?</p> <p>2. In FIDIC 1987, if the Engineer's Decision in 67.1 is already rendered, can the Parties disregard and agree to establish a DB to settle the dispute.</p> <p>3. How can the Party replace a DB Member.</p>

## 2. Sri Lanka

No.	Comments
1	<p>Selecting more appropriate member or members for DB in very specific way</p> <p>Acceptance of local members to JICA or suitable guideline for acceptance</p>
2	<p>1) In Sri Lanka, is there a standard charge (remuneration to DB) established?</p> <p>2) Why can it be made compulsory to the contract?</p> <p>3) See the possibility of introducing categories of DB depending on the nature of contract (the nature of the contract should be clearly spelled out)</p>
3	<p>ACESL hope to steer your operation in Sri Lanka. ACESL comprising of well established consultants all over the country. If you concern about this please contact undersigned</p>
4	<p>I would like to know how we can incorporate DB for resolutions of dispute in contract documents of JICA funded projects. Further I want to know whether this is compulsory in JICA funded projects in Sri Lanka.</p>
5	<p>Prefer to follow FIDIC training on DB assignment</p>
6	<p>1. I am of the view that amicable settlement should come as the first option of the dispute resolution method in the document.</p> <p>2. Further, I am with the idea of ad-hoc DB rather than a standing one.</p>
7	<p>1. Can JICA appoint a standing DB for projects funded with ODA Loans so that it will be cost effective for developing countries such as Sri Lanka</p> <p>2. Many speakers at today's seminar discouraged appointment of lawyers to DB. But lawyers are considered for application to FIDIC adjudicator programs</p>
8	<p>1. How to assess the qualifications and experiences of a DB member before appointing?</p> <p>2. What is the position of adjudicators list of Sri Lanka?</p> <p>3. What are the pre-qualifications and experiences need to be satisfied in order to join as an adjudicator in the National List (Sri Lanka)? Where can I find them?</p>
9	<p>Cost of adjudication is very uncertain. At the beginning neither party can estimate the cost. Therefore, the client cannot budget or the contractor is in-dark; how to guide the</p>

No.	Comments
	client/consultant or the contractor?
10	Adaptability of contract clause stating that DB decision should be final and enforceable. Can it be done?
11	In conditions of contracts (COC) of the FIDIC-MDB document, only the provision is available for a “FULL TIME DB” (Standing Dispute Board). The provision to appoint a “ADHOC DB” also shall be made available in appropriate .....
12	In Sri Lanka there are very few number of DAB member. Most of them are not competent enough due to lack of experience. Some of them are give partial decision because they have connection with contractor than employer organization. I propose ..... and short term training to build up new suitable members through JICA or any other finance assistance.
13	Thank you very much for organizing a very informative seminar on Dispatch Board.
14	At the ICTAD seminar, it is stated that Dispute Resolution Board cannot give any instruction opinions or comments regarding construction or other related activities. But today seminar it is stated that opinion can be given if both parties are agreed. It is required clarification regarding this.
15	1. Not clear whether DB and DAB are same or not?
16	<ol style="list-style-type: none"> <li>1. FIDIC contains Dispute Adjudication Board. It is not clear whether dispute board is prior to above adjudication board.</li> <li>2. As the cost seems to be high, scope of the project may have to be reduced.</li> <li>3. It is better to increase no. of local adjudicators.</li> </ol>
17	What is the recommended with financial limit (contract price) to have BD for particular contract.
18	<ol style="list-style-type: none"> <li>1. The services to be provided by the DAB for retainer should be clearly defined. This is a contentious issue in Sri Lanka.</li> <li>2. Some members take up too many DB assignments leaving them no time to attend to problems promptly-there should be a limit a range.</li> <li>3. People who act the dual rolls of contractor’s representatives for arbitration matters and also act as DB member in other contracts pause an ethical question.</li> </ol>
19	<ol style="list-style-type: none"> <li>1. Suggest the problem of implementation of DB decisions be covered in more detail</li> <li>2. Should a notice of dissatisfaction be accompanied by a mandatory notice of referral to arbitration</li> </ol>
20	Lack of implementation mechanism in the DB process is a disadvantage
21	<ol style="list-style-type: none"> <li>1. What is the role of the engineer at a hearing? Can he make presentation or responses on behalf of the Employer?</li> <li>2. In what way can the DB initiate dispute prevention?</li> </ol>
22	The FIDIC conditions of contracts for Civil works do not have provision for Ad-Hoc adjudication. Does it indicate that Ad-hoc adjudication is disallowed or not recommended for Civil work contracts?
23	1. Prof. Omoto stated, if a party give a Notice of Dissatisfaction but do not invoke arbitration, e.g. DAB decision to pay Employer do not pay. Aggrieved party invokes arbitration, for



No.	Comments
	<p>implementation of DAB award, say arbitrator give award to implement DAB decision. Isn't arbitrator in breach of National Justice? Not heard? I think in UK such award was overturned by Court on this basis? Do you think Sri Lanka being common law country also has persuasive effect on this case?</p> <p>2. Pls arrangement for National Adjudication Assessment in Sri Lanka too with a subsidized rate in SL or closer Asian country.</p>
24	<p>1. Limit of contract amount to be introduced for appointment for DB.</p> <p>2. Cost involvement of DB must be depend on the contract amount</p>
25	<p>You need to be ..... actively promoting “Impartiality” and “Integrity” of DB process, Away From government influence in Sri Lanka</p>

### 3. Philippines

No.	Comments
1	<p>The individual functions of DB, the engineers, the lawyers, the arbitrators regarding projects.</p>
2	<p>1. Still unclear for me about the general roles and functions of a DB/DAB in the implementation of a domestic and international projects to be adopted here in the Philippines.</p> <p>2. But if certain issues, regarding DB functions/roles are clear enough then it will probably works well in our country.</p>
3	<p>1. At present, government contracts (infra, good and services) are referred to government procurement policy Board (CPPB). What are the implications if there will be DRB, DAB or CDB?</p> <p>2. The concept seems very good to local contracts.</p>
4	<p>I perceived FIDIC to be more beneficial to the contractor considering that the client have an agreement with the consultant who will work for the smooth implementation of the project in favor of the client.</p>
5	<p>The remaining issue is how to make DB decision enforceable between contracting parties without going further to arbitration which will entail additional cost</p>
6	<p>1. What if certain issues/disputes were not resolved by DB or one of the party did not agree with decision of DB? (This might also lead to arbitration/litigation). Will the decision of DB can be imposed legally? (or enforced)</p> <p>2. From my personal point of view, I guess the Philippine government is not ready yet in embracing totally the DB due to absent of relevant laws, and lack of knowledge on the advantages and disadvantages of engaging a DB in a project.</p> <p>3. Pros against cons should be presented or make known (in engaging DB in a project), because I believe the presentation is a bit one sided.(if there are cons)</p> <p>4. Arbitration/litigation is not embedded in Filipino culture. Dispute or issues usually resolve on its early stage.</p>

No.	Comments
	5. However, I believe DB can still be promoted in the Philippines through proper training, information dissemination, etc.
7	<ol style="list-style-type: none"> <li>1. We have encountered civil works project which are funded by foreign loans. Our concern is that in cases where the project is an export credit (i.e. a condition of the loan agreement is that we need to purchase the goods and services from supplier in the country of the vender), the suppliers always insist on interpreting the contract according to their laws.</li> <li>2. On our part we will insist on interpreting it according to Philippine laws, based on the sites of the project. How can DB assist in this dispute when it is still in the contract preparation phase?</li> </ol>
8	<ol style="list-style-type: none"> <li>1. Are the parties bound to follow the decisions/recommendations of the DB since it is not legally recognized in the Philippine?</li> <li>2. How to set up a dispute Board? Is there a normal available in JICA that can be followed?</li> </ol>
9	<ol style="list-style-type: none"> <li>1. The Dispute Board manual should clearly state or differentiate the roles and responsibilities of the DB, the guide on how to select adjudicators, the estimated cost so that it could be factored / considered in the planning stage should be provided.</li> <li>2. The advantages and disadvantages of DB should also be included in the manual. The list of adjudicators and their qualifications maybe provided.</li> <li>3. Also the guide on how to employ a DB, where to address and if there are forms that should be filled in or pro-forma contract of TOR or expected output it possible, should be included.</li> </ol>
10	What if both parties don't agree with DB, what will happen?
11	How long is the usual engagement of DB with the Employer?
12	The DB mechanism is not a clear assurance that issues pertaining to contract implementation will not reach the arbitration process. It may happen that a party is not satisfied with the DB's decision. In this case, he/she may resort to avail by the arbitration clause in the contract. Then there will be double expense on the part of the contracting parties, i.e., DB fees and arbitral award.
13	If a person is appointed as a member of a DB and receives retainer fee, is he precluded from being appointed as member of another DB.
14	I wish the DOTC legal department will be invited/included in future FIDIC and DB trainings.
15	<ol style="list-style-type: none"> <li>1. Case of USA: What brought about increase in use of DB? What did USA see in DB that merited use in resolution?</li> <li>2. Is the DB mechanism being lobbied for government institution obligation? (Such as ADR in US Federal Courts)</li> </ol>
16	<ol style="list-style-type: none"> <li>1. Will the process of adjudicator assessment and registration applied in JAPAN be also applied in the development of national adjudicators in the Philippines?</li> <li>2. If so, when and where will be the announcement for submission of application be posted?</li> <li>3. May a government official be a member of dispute board?</li> </ol>
17	1. Given that the acceptability of a DB is still in its "infancy", how far are we from the

No.	Comments
	<p>establishment of a standard daily rate fee for DB members?</p> <p>2. Can the ICSID-recommended daily rate be considered as a “ballpark figure” for a 3-members standing DAB?</p>
18	<p>1. Being in project 1 construction management for more than 25 years or so, it has always been or project owners rely on the project management or construction management team to resolve disputes as it arises. It appears from the lecture today that DB maybe well within the function of construction management team (assuming that CM team is experienced and capable of handling dispute)</p> <p>2. There is no person not to support DB it were to talk about coping with or to be at far with international practice. But the prohibitive cost of having one is a major concern for private developers.</p>
19	Is the DB site visit at the interval of not less than 70 days ideal time to be abreast of activities in contract implementation?
20	<p>1. Difficult to quantify cost of maintaining DB. Even assuming that funding institutions agrees to include the cost of DB in the loan proceeds, if the provisional cost exceeded the actual cost of maintaining the DB, who will shoulder the excess cost?</p> <p>2. Will JICA be willing to fund or subsidize training of potential adjudicators?</p> <p>3. Who will spearhead the formation of adjudicators list?</p>
21	The only unclear this is the process of re-registration as dispute adjudicators.
22	<p>1. In the Philippines, public-private partnership (PPP) scheme is being promoted by the current administration. Against this background how can the dispute board concept become relevant and applicable?</p> <p>2. Considering the cost impact of incorporating a DB mechanism under a contract, what measures / strategy can be taken to entice private sector in investing in such contractual management enhancement scheme. Adding such cost into the project cost may only ultimately burden the public since “User’s Pay Principle” is the underlying policy of a PPP arrangement.</p> <p>3. How can the public be better informed that the benefits of DB far outweigh its cost?</p>
23	<p>1. I asked if the contract can fix the cost of DB by setting a cap on the fees of the DB members.</p> <p>2. The cost of DB should be included or an item in the project cost, not subject to tax.</p> <p>3. Who is the appointing authority in case the parties fail to agree on the chair? It will be speedier if the chance is determined by a simple.....</p> <p>4. Limit or eliminate challenges to the DB members.</p> <p>5. The nationality requirement for chairman of the DB should be suspended until the pool of qualified practitioners reach a viable number.</p>

No.	Comments
24	One of the perceived barriers on the use of DAB/DB is the high cost of training of locals for the national list of DAB/DB given that currently there is no assurance of the enforceability of the clause on DAB is the FIDIC, MDB or JICA contracts. Another perceived barrier is the unfamiliarity of construction industry stakeholders with the DAB/DBA. JICA's advocacy of familiarizing stakeholders with the DAB/DB is commendable and noteworthy. Is there any more plan on JICA's part to subsidize the training of local in Manila? It would be most welcome.
25	<ol style="list-style-type: none"> <li>1. Thank you for inviting us and giving us the opportunity to make a presentation. It was great to see the well organized big event.</li> <li>2. One suggestion is that Q&amp;A session must be held after each presentation. It will make the seminar more active and useful for all the participants. Time constraint can be overcome by shorter, more focused presentation.</li> <li>3. Anyway, thank you and good luck for all.</li> </ol>

#### 4. Indonesia

No.	Comments
1	Important for the training DB and make use DB for all level.
2	Who is the member of DB? I think it is better to consist of local expert who really understand the problem in ground.
3	<ol style="list-style-type: none"> <li>1. Basically I agree use a DB for the contract. That is very helpful for the project especially for the big works such as, airport, elective power plant, industrial plant, toll road etc.</li> <li>2. But otherwise , until today no budget allocation for DB (in loan agreement or government budget)</li> </ol>
4	<ol style="list-style-type: none"> <li>1. Procedure of amicable settlement?</li> <li>2. Requirements of adjudicator?</li> <li>3. Is JICA going to implement this system in projects here? If yes, when will it?</li> <li>4. DB is new. How do JICA make approaches to socialize the system?</li> </ol>
5	<ol style="list-style-type: none"> <li>1. Dispute Board should be incorporated during SAPPORF or Project Memorandum Phase.</li> <li>2. DB should also know the local construction law, to avoid wrong decision.</li> <li>3. It is necessary to discuss with local auditor such as BPK, BPKP, KPK to inform them this activity in order to avoid misunderstanding.</li> </ol>
6	<ol style="list-style-type: none"> <li>1. In the project supported by JICA Loan, I suggest that the DB's fee should be included in the Project Loan.</li> <li>2. DB in project donor Agency should be disseminated to the Indonesia Auditor Body (BPK and BPKP) otherwise the project implementing will be in trouble.</li> </ol>
7	How to relate DB to Indonesian law number 30 year 1999?
8	<ol style="list-style-type: none"> <li>1. What is the benefit to be the adjudicator?</li> <li>2. Why is the requirement is so high?</li> </ol>
9	JICA should have MoU with BPK, BPKP, LKPP about DB.

No.	Comments
10	How to decided the DB at the contract, because we don't know well the person of chase mention or use at the DB.
11	DB cost is too expensive.
12	DB's cost is very expensive.
13	Please consider; <ol style="list-style-type: none"> <li>1. Cost for DB is very expensive.</li> <li>2. Unsolved dispute still process to arbitration.</li> <li>3. It seems for government of Indonesia project especially highway still not popular.</li> <li>4. Please DB manual send to us, if possible.</li> </ol>
14	In the L/A or MoD not mentioned cost for DB. Where we can prepared the source of costs? If we have big project more than 1(one) package, how much we pay the DB, for example MRT2 there are 6 package constructions.
15	DB – Is it necessary desire on the bidding document, if yes is which part? ; (i) particular conditions or (ii) ITB (Instruction to Bidders)
16	What kind of response do you have after introducing DB to Asian countries such as India, Vietnam, etc? Are they using DB on their contracts?
17	<ol style="list-style-type: none"> <li>1. How to minimize impartial from adjudicators.</li> <li>2. Adjudicator as a project team.</li> <li>3. What do you think Retainer fee equal with 50% PM salary?</li> </ol>
18	<ol style="list-style-type: none"> <li>1. How we can relate to DB's decisions, if there's a chance for the parties to disagree/dissatisfaction to the decisions? Would it be more money if the parties still should go to the arbitration</li> <li>2. How we can make our own (Indonesia) National List?</li> </ol>
19	<ol style="list-style-type: none"> <li>1. Useful just for big project.</li> <li>2. Just for construction engineers. (Construction cost is the biggest cost in the projects.)</li> </ol>
20	<ol style="list-style-type: none"> <li>1. For medium and less scale project, DB is costly for the contract. Moreover employer (Indonesian People) are likely to ask for some/small adjustment after contract/during construction.</li> <li>2. In addition, the contractor (Indonesian contractor) usually realize that risk from beginning and consider such cost on their proposal. So, how to convince the effective use and to implement DB on such project are difficult.</li> </ol>
21	How should is the DB's decision of the dispute is not accepted by parties involved and they bring the dispute to the court
22	If there is dispute between engineer and employee of contractor, can the DB also settle the dispute?

Record of Discussion (MPI, Vietnam)

1. Date : 11 January, 2012, 14:00 - 15:30
2. Place : Ministry of Planning and Investment (MPI), Hanoi
3. Attendees : MPI  
Mr. Le Van Tang (Director General, Public Procurement Agency)  
Ms. Vu Quynh Le (Director, Center for Procurement Support)  
JICA  
Takashi Ito (FFPSD), Yasuaki Momita (FFPSD), Daisuke Watanabe (JICA Vietnam Office)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Volker Jurowich
4. Discussion :
  - 1) Consistency shall be maintained between Vietnamese legal system and DB system in order to ensure dissemination of DB. (MPI)  
  
As explained in the DB seminar, the dispute resolution process by DB is agreed under the contract by the contracting parties and we consider that there is no conflict between them. (Study Team)
  - 2) In addition, dissemination of DB would be not very easy unless the employer's benefit to be brought about by DB is clearly proven. (MPI)  
  
We believe the DB system is the best alternative for dispute resolution as well as dispute avoidance. It is not easy to prove the economic advantage of DB, since we cannot implement one project both with and without DB at same time. However, only few disputes finally go to arbitration after the DB process according to statistics in the USA as presented in the seminar and DB became a very popular dispute resolution mechanism in the USA. We think DB can be regarded as a kind of insurance for the employer. (Study Team)  
  
Also, the bid price can be lowered by adoption of DB in the contract, because contractor's risk will be mitigated to a reasonable level. We heard that some European contractors do not participate in bids if the DB is not provided in the contract. (Study Team)
  - 3) It would be a good solution to run a pilot project with support from JICA to prove real benefit of DB. We can confirm benefit and issues through implementation of the pilot project and we can report it to our Prime Minister. The pilot project should be medium-

## Appendix 2.8.1

or large-sized project executed under international competitive bidding (not STEP). Anyway, DB is a new system for Vietnam so that building awareness is very important. It will be achieved by such measures as DB promotion seminar held today. A step-by-step approach would be a realistic way for introduction of DB system into the project. (MPI)

At any rate, it is important to try DB system and experience it. The implementation of a pilot project is worth examining. We will be able to discuss this matter during appraisal of a large-scale JICA ODA project next time. (JICA)

(end)

Record of Discussion (VIAC, Vietnam)

1. Date : 12 January, 2012, 14:00 - 16:00
2. Place : Vietnam Engineering Consultant Association(VECAS), Hanoi
3. Attendees : Vietnam International Arbitration Centre (VIAC)  
Mr. Vu Anh Duong (Deputy General Secretary of VIAC)  
Mr. Le Chi Hien (Davis Langdon & Seah)  
Dr. Le Net (LCT Lawyers)  
Mr. Chau Huy Quang (LCT Lawyers)  
Ms. Nguyen Huong Giang (LCT Lawyers)  
Mr. Nguyen Tien Quang (Key Law Firm)  
JICA  
Takashi Ito (FFPSD), Yasuaki Momita (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Volker Jurowich
4. Discussion :
  - 1) VIAC was established in 1993, by merging the Foreign Trade Arbitration Council (established in 1963) and Maritime Arbitration Council (established in 1964). We administer resolution of commercial disputes by either mediation or arbitration. We were involved in 83 cases of disputes in 2011 and 71% of them were international disputes. (VIAC)
  - 2) According to year 2010 statistics, the ratio of construction dispute is 17% in terms of number of cases and 43% in terms of disputed amount, respectively. Construction disputes are increasing every year.
  - 3) About 120 arbitrators are registered in the VIAC arbitrator list. We have about 10 engineering and construction experts among them. These arbitrators may be good candidates for the national list of adjudicators in Vietnam. (VIAC)
  - 4) The Commercial Arbitration Law was enacted in 2010 in Vietnam and the Vietnamese tend to think that disputes should be settled by litigation, especially for disputes on public works. (VIAC)
  - 5) Majority of the employers of ODA project is Project Management Unit (PMU), however their discretionary power is limited. The problem is that PMU often needs higher authority's approval in the administration of a contract. The Prime Minister is the person having authority to determine important matters in large-scale projects (Group A projects).



(VIAC)

The higher authority of contracting parties should be regarded as party to the contract itself.  
(Study Team)

- 6) Do you think that the DB process under FIDIC conditions of contract has any conflict with Vietnamese legal system related to arbitration and litigation? (Study Team)

If DB is stipulated in other national laws, it is very clear that there is no conflict. It is not sure for us. How is Japanese case? (VIAC)

The DB process is not specified by law also in Japan, however, if parties make an agreement, by which parties agree to follow to the decision of third person appointed by them, such agreement is ensured under the law. And, the parties' entitlement to resolve dispute through the legal system will be secured, if the agreement allows the party to proceed with arbitration or litigation when they are not satisfied with a third party's decision. Is it same in Vietnam? (Study Team)

The principle of "Freedom to Contract" exists under the civil code in Vietnam, therefore such interpretation that DB has conflict with national law can be considered to be invalid.  
(VIAC)

- 7) Do you know any case that public court made judgment on DB's decision after DB's decision became "final and binding" under the contract. (VIAC)

We do not know of such a case, however there are two cases of "binding but not final" decision. One was when the court gave a decision that the parties shall comply with Engineer's decision until arbitral award is given. The DB's decision and Engineer's decision have same power.

Another one was when the court rejected arbitral award which instructed the parties to implement DB's decision. (Study Team)

(end)

Record of Discussion (MOF, Vietnam)

1. Date : 13 January, 2012, 14:00 - 15:30
2. Place : Ministry of Finance (MOF), Hanoi
3. Attendees : MPI  
Ms. Nguyen Xuan Thao (Director of Bilateral Division II, Department of Debt Management and External Finance)  
JICA  
Takashi Ito (FFPSD), Yasuaki Momita (FFPSD), Daisuke Watanabe (JICA Vietnam Office)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Volker Jurowich
4. Discussion :
  - 1) I think we do not have experience of standing DB in any project in Vietnam, although we have a few experiences on ad-hoc DB in ADB-financed projects here. We understand the advantages of the DB system, such as 1) DB has dispute prevention function, and 2) large expenditure needed for arbitration would be eliminated; however, some evidences to prove these benefits for the employer are necessary to convince and promote DB to project owners. Another problem is that we have to pay commitment fee for the loan, if DB cost is included in the loan amount. (MOF)
  - 2) An inconsistency shall be maintained between Vietnamese legal system and DB system in order to ensure dissemination of DB. (MOF)  

The dispute resolution process by DB is agreed under the contract by contract parties and we consider there is no conflict between them. (Study Team)

The loan agreement becomes like “law” after the signature. If the use of DB is stipulated in the loan agreement, adoption of DB will be increased with absolute certainty. I think the loan agreement is silent about DB at present. Anyway, I think we need more time for dissemination of DB in our country. (MOF)
  - 3) We think DB system will also contribute to the improvement of investment climate in Vietnam. (JICA)

(end)

Record of Discussion (MOFP, Sri Lanka)

1. Date : 16 January, 2012, 10:00 - 11:00  
18 January, 2012, 15:30 - 16:30
2. Place : Ministry of Finance and Planning (MOFP), Colombo
3. Attendees : MOFP  
Mr. Mapa Pathirana (Director General, Department of External Resources (DER))  
Mr. N. G. Dayarafkra (Director General, Department of Public Finance, General Treasury)  
Ms. Anula Harasgama (Additional Director General, Department of Public Finance, General Treasury)  
Mr. I. A. Wimaladasa (Director, Department of Public Finance, General Treasury)  
JICA  
Shokichi Sakata (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Volker Jurowich, Yukari Shiimoto (Nippon Koei)

4. Discussion :

- 1) Since MOFP has the authority to determine the national policy on contract documents, therefore, I wish that JICA and MOFP could have a meeting with the executing agency of JICA ODA loan projects prior to the DB seminar. (MOFP)
- 2) The cost of standing DB is expensive and we have to pay even if no dispute has arisen. Who will bear such cost? Is the DB necessary because arbitration process is provided in the contract for resolution of dispute?

The DB cost is equally shared by the Employer and the Contractor. The standing DB visits the site periodically and it has a dispute avoidance function (arbitration does not have it). DB can resolve dispute much quicker than arbitration if dispute arises between the contracting parties. This benefit realized by a standing DB should be considered. Most of arbitrators are lawyers and the arbitrators start to work only after a dispute arises. The DB usually includes engineers and they are always acquainted with the project situation through regular site visits. This results in dispute avoidance and quick resolution of disputes. (Study Team)

The DB can be regarded as a kind of insurance for the Employer. (Study Team)

Such practices as suspension of the site visit by DB or termination of DB agreement can be examined in order to save cost when the contracting parties recognize that dispute would not likely to arise. (Study Team)

3) How the DB members are selected? (MOFP)

In the case of a three-member DB, the Employer and the Contractor will each recommend one member for approval of the other party, and these two members will recommend the third member, who will act as the chairperson, for approval of the contracting parties. (Study Team)

(end)

Record of Discussion (SLNAC, Sri Lanka)

1. Date : 16 January, 2012, 14:30 - 15:30
2. Place : Office of Mr. Hiran M. C. de Alwis, Colombo.
3. Attendees : Sri Lanka National Arbitration Center (SLNAC )  
Mr. Hiran M. C. de Alwis (Chief Executive/Legal Advisor Governor)  
Mr. Johann Atapattu (Chief Operating Officer)  
JICA  
Shokichi Sakata (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Volker Jurowich, Yukari Shiimoto (Nippon Koei)
4. Discussion :
  - 1) SLNAC was established in 1985 as a non-government arbitration institution in Sri Lanka. We have been involved in about 100 cases so far, among which 20 to 30 cases are related to construction. More than 90% of the cases are domestic disputes. As international disputes are increasing, we will need to establish an international arbitration center in the future. (SLNAC)
  - 2) In Sri Lanka, construction works are rapidly increasing after the civil war has settled down, and consequently, arbitration for construction contracts is also increasing. SLNAC has members related to the construction industry, including the National Construction Contractor Association and Chamber of Construction Industry of Sri Lanka. (SLNAC)
  - 3) We consider that the DB process does not conflict with the domestic legal system, particularly if DB is specified in the contract as an agreed dispute resolution mechanism. As dispute prevention function of DB is emphasized, DB would be a good system especially for construction contracts. (SLNAC)
  - 4) In response to the question by study team regarding binding effect of arbitration award, SLNAC responded as below;  
  
“The public court sometimes judges the adequacy of arbitration proceedings, however we think it will not judge appropriateness of the arbitral award itself. A special court which ensures observation of arbitral award by a contracting party is established in the commercial court in Sri Lanka. (SLNAC)

(end)

Record of Discussion (GPPB, Philippines)

1. Date : 8 February, 2012, 9:30 - 10:30
2. Place : Government Procurement Policy Board (GPPB), Manila
3. Attendees : GPPB  
Mr. Dennis S. Santiago (Executive Director III, Department of Budget and Management)  
Mr. Manolito P. Madrasto (Executive Director, Philippine Contractors Association Inc.)  
JICA  
Takashi Ito (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Götz-Sebastian Hök, Yukari Shiimoto (Nippon Koei)

4. Discussion :

- 1) The study team made a presentation of DB process and JICA's activities for dissemination of DB using the seminar handout.
- 2) We appreciate the concept of DB, however, the biggest concern of the project owner is overburden of DB cost and this prevents dissemination of DB. (GPPB)

The retainer fee of a DB member is set at one day per month in some cases, from the cost-saving viewpoint. The project owner should well recognize the huge economic loss associated with delayed completion of the infrastructure project that is often caused by contractual dispute. If the DB system can prevent the project from such disruption, it will be a great benefit for the project owner. (Study Team)

- 3) We have many cases in the Philippines that DB's decision is not respected and the dispute goes to arbitration easily. (GPPB)

About 98% of disputes are settled by DB's decision at the project site according to the statistics in USA. The dispute avoidance function brought by standing DB should be appreciated more. The best scenario for the project is that no dispute arises with operation of DB at the project site. (Study Team)

- 4) It would very effective to compile a report regarding operation of DB in past projects which demonstrates real benefit of DB for further dissemination of the DB system in a convincing manner. (GPPB)

The necessity of a good case example has been already recognized by persons concerned in

DB and this matter will be discussed in the annual conference of DRBF this year. The sharing of DB experience will give new impetus to promote DB. (Study Team)

We have to recognize that a perfect mechanism for dispute resolution does not exist. We cannot avoid some reaction when we are going to introduce a new system. A positive attitude which accepts trial of the new system is imperative in such situation. (JICA)

- 5) We have a law regarding Alternative Dispute Resolution (ADR) as well as arbitration law in Philippines. We understand there exists no conflict between DB and the domestic legal system based on the principle of freedom of contract. (GPPB)

(end)

Record of Discussion (ADB, Philippines)

1. Date : 8 February, 2012, 11:00 - 13:00
2. Place : Asian Development Bank (ADB), Manila
3. Attendees : ADB  
Mr. Hamid Sharif (Principal Director Central Operations Service Office)  
Mr. Taisuke Miyao (Procurement Specialist, Central Operation Service Division 2)  
JICA  
Takashi Ito (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant) Yoshihiko Yamashita (AJCE), Götz-Sebastian Hök, Yukari Shiimoto (Nippon Koei)
4. Discussion :
  - 1) We often recognize the project owners are somewhat reluctant to adopt DB in the projects financed by ADB. The biggest concern of the owner is the cost burden associated with appointment of DB. (ADB)
  - 2) ADB highly appreciates JICA's proactive effort for the dissemination of DB made so far. ADB and JICA have common issues related to DB as financier. ADB would like to coordinate with JICA for future promotion program of DB. (ADB)
  - 3) We understand that majority of the adjudicators have an engineering background and the quality of the adjudicator is a critical requirement for success of the DB system. The cultivation of local adjudicators would be a significant challenge which will result in a reduction of DB cost. We also recognize that the quality of the Engineer is important to minimize dispute. Furthermore, it is also important to enhance the depth of understanding of DB by staff of the Bank. (ADB)
  - 4) Although we do not have a lot of experience of DB operation in our projects so far, I would like to introduce our experience of DB in Ghazi Barotha Hydropower Project in Pakistan. (ADB)
  - 5) After the meeting with the Principal Director of Central Operations Service Office of ADB, JICA team delivered the presentation on JICA's ongoing activity and future approach for the dissemination of DB.

(end)



Record of Discussion (DOF, Philippines)

1. Date : 8 February, 2012, 16:00 - 16:30
  2. Place : Department of Finance (DOF), Manila
  3. Attendees : DOF  
Mr. Mr. Rommel S. Herrera (Director III, International Finance Group)  
JICA  
Takashi Ito (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant) Yoshihiko Yamashita (AJCE), Götz-Sebastian Hök
  4. Discussion :
    - 1) We consider that there are two issues, i.e. cost issue and legal issue, for dissemination and adoption of DB process. I would like to confirm opinions from executing agency of JICA ODA projects. (DOF)  

The DB is set up under the contract provisions as one of project management tools, therefore, the DB system has a different base from the national legal system. We consider that the DB system does not conflict with national laws. (Study Team)
    - 2) Although we recognize the notable advantage of DB is dispute avoidance, most of the contracting parties seems not to sufficiently understand how the DB process is actually implemented. (DOF)
    - 3) We have learned that DB cost will be covered by JICA ODA loan. It is important to include the DB cost in the individual project budget without fail for realization of DB process. (DOF)  

JICA intends to ensure the setting-up of standing DB in large-scale project, at least. (JICA)
- (end)

Record of Discussion (NEDA, Philippines)

1. Date : 10 February, 2012, 14:00 - 16:00
2. Place : National Economic Development Authority (NEDA), Manila
3. Attendees : NEDA  
Mr. Lito Abellera  
JICA  
Takashi Ito (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Götz-Sebastian Hök, Yukari Shiimoto (Nippon Koei)
4. Discussion :
  - 1) NEDA welcomes JICA's proactive effort for dissemination of DB in JICA-financed projects.
  - 2) At first, JICA would like to ensure the setting-up of standing DB in projects with contract value exceeding one billion Japanese Yen (about 10 to 15 projects per year). For this, we would like to have discussion with related government offices for adoption of DB system during project appraisal and to secure allocation of DB cost in the project budget. (JICA)
  - 3) The function of dispute avoidance brought by DB should be more appreciated, although some project owners have declined to adopt DB in their projects. Please recognize DB is one of project management tools rather than legal instruments. The DB can be recognized as a kind of insurance for the project also. We understand there exists no conflict between DB and the domestic legal system based on the principle of freedom of contract. (Study Team)
  - 4) Can DB process be applied to PPP projects? (NEDA)  
  
It is possible, and we have a case that DB is used in a privately-funded project in Japan. (Study Team)
  - 5) As a next step for promotion of DB process, JICA intends to develop a Dispute Board Manual this year. (JICA)

(end)

Record of Discussion (LKPP, Indonesia)

1. Date : 13 February, 2012, 14:00 - 15:00
2. Place : National Public Procurement Agency (LKPP), Jakarta
3. Attendees : LKPP  
Ms. Sarah Sadiqa (Director, Business Development and International Cooperation)  
Mr. Fanni Sufiandi (Head of Section for Multilateral Cooperation)  
Mr. Ichwan Makmur Nasution (Deputy Director, International Cooperation)  
JICA  
Yasuaki Momita (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Götz-Sebastian Hök, Yukari Shiimoto (Nippon Koei)
4. Discussion :
  - 1) A good understanding of the benefits of a DB by the Ministry of Finance would be indispensable for DB dissemination in Indonesia, although we recognize well the advantage of the DB concept. A proactive support from the academic sphere is important too. We are glad to hear several universities will participate in the DB seminar tomorrow. (LKPP)
  - 2) In Indonesia, a law dealing with Alternative Dispute Resolution (ADR) was enacted in 1999 (Law No. 30). We understand that no inconsistency exists between the DB and domestic legal system based on the principle of freedom of contract. (LKPP)
  - 3) The ultimate target of DB operation is the avoidance of dispute, and this aspect is largely different from arbitration. In addition, it should be recognized that the contractor's risk would be mitigated by the existence of DB at the project site, thus contributing to lower bid prices. (Study Team)
  - 4) How does JICA consider development of national list? (LKPP)  
During the overseas survey this year, we have meetings with FIDIC Member Associations in four Asian countries to investigate their intention and organizational structure for development of their own national lists. JICA will be prepared to support setting-up of national lists depending on the result of the survey. (Study Team)
  - 5) Is the DB process applied only to construction contracts? (LKPP)  
The DB system is also used in operation and maintenance contracts. (Study Team)

(end)

Record of Discussion (BAPPENAS, Indonesia)

1. Date : 15 February, 2012, 14:30 - 15:00
2. Place : National Development Planning Agency (BAPPENAS), Jakarta
3. Attendees : BAPPENAS  
Ms. Kennedy Simanjuntak (Director, Directorate of Bilateral Funding)  
JICA  
Yasuaki Momita (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto  
Construction Project Consultant), Yoshihiko Yamashita (AJCE),  
Götz-Sebastian Hök
4. Discussion :
  - 1) JICA explained its policy for operation of DB in JICA ODA projects.
  - 2) I heard from my subordinate that the Minister of Public Works delivered an opening address in the DB seminar yesterday. It would be a big push to encourage use of DB, since the Ministry of Public Works administers a lot of infrastructure projects in Indonesia. (BAPPENAS)
  - 3) We would like to point out that competitiveness in bidding would be stimulated by the introduction of DB in the contract. And, its cost should be regarded as necessary management cost for the project. (Study Team)
  - 4) It should be noted that fairness and transparency are essential requirements for the body that administers the national list of adjudicators. (BAPPENAS)

(end)

Record of Discussion (UKP4, Indonesia)

1. Date : 15 February, 2012, 16:00 - 17:00
2. Place : President Delivery Unit for Development Monitoring and Oversight (UKP4), Jakarta
3. Attendees : UKP4  
Mr. T. Nirarta Samadhi (Deputy Director for Control)  
Mr. Farchad Mahfud, Ms. Rivana Mezaya  
JICA  
Yasuaki Momita (FFPSD)  
JICA Study Team  
Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Götz-Sebastian Hök, Yukari Shiimoto (Nippon Koei)

4. Discussion :

- 1) The DB can eliminate escalation of claims by leading parties to amicable settlement. This is a remarkable feature of the DB function. The DB will note the source of dispute in the early stage and it can lead the contracting parties to amicable settlement by giving unofficial advice. (Study Team)
- 2) It should be recognized that DB is one of project management tools rather than legal instruments of dispute resolution. (Study Team)

We understand such aspects, however, the biggest concern of the executing agency of the project is cost burden of DB appointment. (UKP4)

It can be considered that FIDIC added new value to its contracts by introduction of DB. The typical examples of the value added are dispute avoidance and quick resolution of dispute. Huge economic losses derived from the late completion of infrastructure projects should also be taken into consideration. A contractual dispute sometimes results in late progress of construction works. In order to enjoy such values, the user of DB should pay for it and we consider that the parties can obtain sufficient benefit from such investment, which is not pure additional cost. (Study Team)

- 3) We would like to know an actual example of DB operation and its benefits. The dissemination of DB would be accelerated if such information is available. (UKP4)

(end)

Record of Discussion (VECAS, Vietnam)

1. Date : 12 January, 2012, 9:00 to 12:00
2. Venue : Vietnam Engineering Consultant Association(VECAS), Hanoi
3. Attendee :
  - VECAS
    - Mr. Nguyen Dan Can (President)
    - Mr. Nguyen Van Chau (Vice Present, General Secretary)
    - Mr. Nguyen Lap Son (Director)
    - Mr. Cao Minh Khang (Director)
    - Mr. Le Duc Son (Secretary General)
    - Ms. Pham Thu Huang (Secretary)
  - JICA
    - Takashi Ito (Financing Facilitation and Procurement Supervision Dept.)
  - JICA Study Team
    - Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Volker Jurowich, Yukari Shiimoto ( Nippon Koei )
4. Discussions:
  - 1) National List in Vietnam
    - There are no National Lists open to public in Vietnam. VECAS will establish National List.
  - 2) Activity on FIDIC Contract Documents by VECAS
    - 2003 FIDIC Contract seminar – Funded by ADB
    - Hanoi (100 participants)
    - Ho Chi Minh (200 participants)
    - Translation of FIDIC Contract Documents in Vietnamese
  - 3) Red Book (1999)、 White Book (2006)、 Red Book MDB (2006)
  - 4) Establishment of National List by VECAS
    - VECAS is positive about the establishment of National List. In the followings are challenges for establishing National List:
      - (1) Dissemination and promotion of Dispute Board (DB)
        - DB is not well-understood in the nation. Therefore, dissemination and promotion of Dispute Board to raise its awareness is necessary. Collaboration with the following

entities is essential in Vietnam:

- Ministry of Planning and Investment
- Ministry of Justice
- Ministry of Construction

(2) Preparation of National List

VECAS will start preparation of National List based on AJCE's Adjudicator Procedural Rules and Guidelines (VECAS).

(3) Potential Candidates for Adjudicator

VECAS will nominate potential candidates who satisfy qualification criteria and experience in international construction projects (VECAS).

(4) Relevant Qualification

VECAS will specify relevant qualification in Vietnam by referring to AJCE's Adjudicator Procedural rules and Guidelines. At present, there is no PE qualification in Vietnam. VECAS has been collaborating with the Ministry of Construction to submit a bill on PE law which would be enacted by 2014. Therefore, domestic qualification equivalent to PE, and PE obtained in foreign country, experience in international projects that have introduced FIDIC Contract Documents, etc. will be considered as relevant qualification.

(5) Capacity Building

Though trainings on FIDIC Contract Documents were conducted in the past, trainings aiming at potential adjudicator candidates such as FIDIC Modules and adjudicator workshops are necessary.

(6) Support from outside

VECAS expects support from FIDIC, JICA, ADB, AJCE, etc. for implementation of training on FIDIC Modules and adjudicator workshop.

4) Implementation of Joint Seminar

VECAS is proactive about carrying out joint seminar with other FIDIC MAs. Though they wish to hold seminar in Vietnam, they are willing to participate in seminars in other country as well (VECAS).

**【Outline of VECAS】**

- 1) Vietnam Engineering Consultant Association (VECAS) is a Member Association of FIDIC representing Vietnam. VECAS was established in 1995 in Hanoi solely for consulting engineers. VECAS is composed of 220 member firms in which a total number of employees are about 50,000. Member firms are from engineering and architecture sectors (VECAS).

- 2) VECAS aims at the following activities at present:
  - (1) Enhance regional activities by establishing 5 regional offices in North, Mekong Delta and Central (north, central, south) areas besides Hanoi and Ho Chi Minh City.
  - (2) Promote capacity building by establishing training and educational center in which foreign trainers will be invited. After a certain period, training will be conducted by Vietnamese trainers.
  - (3) Increase medium and small size member firms as majority of member firms is government-affiliated large firms at present.



Minutes of Meeting (ACESL, Sri Lanka)

1. Date : 18th January, 2012, 9:00 - 12:00
2. Venue : Ridgeway Room, Royal Colombo Golf Club, Colombo
3. Attendees :

ACESL (The Association of Consulting Engineers, Sri Lanka)

Mr. Malith Mendis (President)  
Mr. Russel De Zilwa (Vice President)  
Mr. J. Karunaratne (Vice President)  
Mr. Ananda Senarath (Treasurer)  
Mr. P.C. Jinasena (Council Member)  
Mr. R. P. Lokuratno (Council Member)  
Mr. Tudor Munashinghe (Past President)  
Mr. Chaaminda Weerakoon (Secretary)

JICA

Shokichi Sakakta (Financing Facilitation and Procurement Supervision Dept.)

JICA Study Team

Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Volker Jurowich, Yukari Shiimoto (Nippon Koei)

4. Discussion :

1) National List in Sri Lanka

IESL (Institution of Engineers, Sri Lanka) and ICTAD (Institute for Construction Training and Development) possess adjudicator lists for the use of domestic projects.

(1) IESL ( members are all engineers), disclosed list

12 Arbitrators, 21 Adjudicators

(2) ICTAD, closed list

FIDIC Contract Documents are used in Sri Lanka which are employed in the ICTAD Contract Documents. DB is not in conflict with local laws in Sri Lanka. However, positive introduction of DB in projects and compliance with DB decision are challenging issues.

Credibility of DB List in Sri Lanka is questionable as adjudicator listees were not assessed by established criteria. (ACESL)

2) Holding of FIDIC Contract Seminar by ACESL

2008 : FIDIC Module 1 (200 participants)

2009 : FIDIC Module 2 (120 participants)

2010 : FIDIC Module 3 (120 participants)

Seminars were financially supported by the World Bank and carried out for government and private sector staffs (ACESL).

3) Establishment of National List by ACESL

ACESL is positive about the establishment of a National List. The following are the challenges for establishing the National List:

(1) Dissemination and promotion of Dispute Board (DB)

Although arbitration and DB are practiced in Sri Lanka, securing and maintaining competent adjudicators and arbitrators are challenging issues. In addition, merits and function of DB is not well-understood in the nation. Therefore, dissemination and promotion of Dispute Board is necessary.

(2) Preparation of National List

ACESL intends to establish National List as part of their midterm activity plan (2011-2014). They will start preparation of trustworthy National List based on AJCE's Adjudicator Procedural Rules and Guidelines. Candidates will be selected from ACESL members who are engineers. Lawyers may not be invited (ACESL).

(3) Potential Candidates for Adjudicator

ACESL will nominate potential candidates who satisfy qualification criteria and experience in international construction projects (ACESL).

(4) Relevant Qualification

ACESL will specify relevant qualification in Sri Lanka by referring to AJCE's Adjudicator Procedural rules and guidelines. There exists Chartered Engineer (CE) that can be a relevant qualification for candidates. Every engineer is qualified to take examination after four years of professional experience since graduation from university. The CE examination is composed of written and oral tests. In addition, Quantity Surveyor qualification exists that is closely related to claim and dispute in construction projects (ACESL).

(5) Capacity Building

Trainings aim at potential adjudicator candidates such as FIDIC Modules and adjudicator workshops are necessary.

(6) Support from outside

ACESL expects support from outside entities like FIDIC, JICA and AJCE for implementation of training and workshop on FIDIC Module 1, 2, 3 and 3A.

4) Implementation of Joint Seminar

ACESL is proactive about carrying out joint seminar with other FIDIC MAs. Although they wish to hold the seminar in Sri Lanka, they are willing to participate in seminars in another country as well (ACESL).

**【Outline of ACESL】**

- 1) ACESL is a Member Association of FIDIC representing Sri Lanka having its headquarters in Colombo. It was established in 1980 to promote business opportunity for consulting engineers and to enhance collaboration with overseas consulting firms (ACESL).
- 2) ACESL is operated by 11 Executive Board Members and Secretariat. It is composed of 13 member firms and 91 individual members in which the total number of employees is about 1,100. ACESL does not have a permanent office now, however, they plan to establish it according to the midterm activity plan.
- 3) Objectives of ACESL activity are as follows:
  - (1) Promote and disseminate FIDIC Contract Documents
  - (2) Help enhance capacity building of members through trainings and seminars on FIDIC Contract Documents
  - (3) Promote global collaboration with other Member Associations of FIDIC
  - (4) Enforce the midterm activity plan in which preparation of National List is included.

Record of Discussion (CECOPHIL, Philippines)

1. Date and Time : 10th February, 2012, 9:00 to 12:00

2. Venue : JICA Philippine Office

3. Participants

CECOPHIL (Council of Engineering Consultants of the Philippines)

Zenaida N. Abad (President)

Thelma C. Mauricio (Vice-President)

Virgilio A. Madrazo (Past President/Council Member)

Estelita Y. Gutierrez (Secretary/Council Member)

Henry A. Muallil (Treasury/Council Member)

Michael R. P. Reyes (Past President/Council Member)

Lani Pimentel (Secretariat)

JICA

Takashi Ito (Financing Facilitation and Procurement Supervision Dept.)

JICA Study Team

Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Dr. Götz-Sebastian Hök, Yukari Shiimoto (Nippon Koei)

4. Discussion :

1) National List in Philippines

There are no National Lists open to public in Philippines, therefore, CECOPHIL will establish National List.

2) Holding of FIDIC Contract seminars by CECOPHIL

2008 to 2010

FIDIC Module 1 (2 times)

FIDIC Module 2 (1 time)

2011

FIDIC Module 4 (1 time)

3) Establishment of National List by CECOPHIL

CECOPHIL integrates preparation of a National List in its 2012 activity plan. They are positive about the establishment of the National List. The following are the challenges for establishing the National List:

(1) Dissemination and promotion of Dispute Board (DB)

Although arbitration is widely practiced in the Philippines, the merits and function of

DB is not well-understood in the nation. Therefore, dissemination and promotion of Dispute Board is necessary.

(2) Preparation of National List

CECOPHIL has established Special Committee for preparation of the National List directly under the President. They will start preparation of National List based on AJCE's Adjudicator Procedural Rules and Guidelines (CECOPHIL).

(3) Potential Candidates for Adjudicator

CECOPHIL will nominate potential candidates who satisfy qualification criteria and experience in international construction projects (CECOPHIL).

(4) Relevant Qualification

CECOPHIL will specify relevant qualification in the Philippines by referring to AJCE's Adjudicator Procedural rules and guidelines. There exist potential engineers having competence and sufficient experience in international construction projects. The study team informed that overseas projects implemented in the Philippines can be deemed as international projects.

(5) Capacity Building

Trainings aim at potential adjudicator candidates such as FIDIC Modules and adjudicator workshops are necessary. Although one of CECOPHIL member is an accredited trainer of FIDIC and able to conduct Module 1 and 2 trainings, they expect support of FIDIC, JICA and AJCE.

(6) Support from outside

CECOPHIL expects support from outside entities like FIDIC, JICA and AJCE for implementation of training and workshop on FIDIC Module 1, 2, 3 and 3A.

4) Implementation of Joint Seminar

CECOPHIL is proactive about carrying out joint seminar with other FIDIC MAs. Although they wish to hold seminar in the Philippines, they are willing to participate in seminars in another country as well (CECOPHIL).

**【Outline of CECOPHIL】**

CECOPHIL is a Member Association of FIDIC representing consulting engineering industry in Philippines. It has started as CECOP with 9 member firms in 1976. Later, it evolved to CECOPHIL that represents solely for consulting engineers who play key roles in the domestic market as well as to enhance competence in international market.

1) Organizing body

CECOPHIL is operated by Executive Board (President, Ms. Zenaida N. Abad), Advisory Board, 7 Standing Committees and Secretariat. It is composed of 24 member firms and 2 affiliate member firms having a total of about 3, 500 employees. Disciplines of member consulting firms are civil, architecture and engineering sectors.

2) Objectives of CECOPHIL activity

- (1) Raise status of Consulting Engineers
- (2) Promote cooperation between clients and member firms
- (3) Promote collaboration among CE-related firms
- (4) Promote interest of CEs
- (5) Contribute economic growth of the nation.

Record of Discussion (INKINDO, Indonesia)

1. Date and time : 15 February, 2012, 10:00 to 12:00

2. Venue : INKINDO Secretariat

3. Attendee :

INKINDO (IKATAN NASIONAL KONSULTAN INDONESIA)

Mr. Zulkifli Halim (President)

Mr. John P. Pantouw (Vice-President)

Mr. Gusnando S. Anwar (Council Member)

Mr. Yulianto (Council Member)

Mr. Djoko Soepriyono (Council Member)

Mr. Jimmy S. Michael (Secretary General)

JICA

Yasuaki Momita (Financing Facilitation and Procurement Supervision Dept.)

JICA Study Team

Yukinobu Hayashi (Nippon Koei), Toshihiko Omoto (Toshihiko Omoto Construction Project Consultant), Yoshihiko Yamashita (AJCE), Dr. Götz-Sebastian Hök, Yukari Shiimoto ( Nippon Koei )

4. Discussion :

1) National List in Indonesia

There are no National Lists open to the public in Indonesia, therefore, INKINDO will establish a National List. The Ministry of Public Works manages and operates a mediation body.

2) Holding of FIDIC Contract Seminars by INKINDO

(1) 2008 FIDIC Module 1 (105 participants)

(2) 2010 FIDIC Module 1, Module 2 (110 participants)

(3) 2010 FIDIC Module 2 (120 participants)

(4) 2011 FIDIC Module 2, Silver Book (141 participants)

3) Establishment of National List by INKINDO

INKINDO is positive about the establishment of the National List. The following are challenges for establishing the National List:

(1) Capacity Building

In the past, trainings on FIDIC Modules 1 and 2 have been conducted in Indonesia. Adjudicator training workshops for Modules 3 and 3A are necessary.

(2) Preparation of National List

The FIDIC Committee of INKINDO will start preparation of National List based on AJCE's Adjudicator Procedural Rules and Guidelines (INKINDO).

(3) Potential Candidates for Adjudicator

INKINDO will nominate potential candidates who satisfy qualification criteria and experience in international construction projects (INKINDO).

(4) Relevant Qualification

INKINDO will specify relevant qualification in Indonesia by referring to AJCE's Adjudicator Procedural Rules and Guidelines. There exist many engineers having Professional Engineer qualification who possess high competence and sufficient experience in international construction projects. The study team informed that overseas projects implemented in Indonesia can be deemed as international projects.

(5) Support from outside

INKINDO expects support from FIDIC, JICA, ADB, AJCE, etc. for FIDIC Modules training seminars and adjudicator workshop.

**【Outline of INKINDO】**

INKINDO is a FIDIC Member Association representing Indonesia. It has started as IKINDO in 1970 to strengthen competence of consulting engineers in the international market as well as to promote domestic consulting services. In 1979, it merged with other engineering association and evolved as INKINDO.

1) Organizing Body

INKINDO is composed of large firms (640), medium-sized firms (1,872) and small firms (4,867), in which the total number of employees is about 35,000. It is administered by an Executive Board (President, Mr. Zulkifli Halim), 9 Standing Committees and Secretariat.

2) Objectives of INKINDO activity

- (1) Enhance qualification and capacity of members
- (2) Participate in planning and development process in public work projects
- (3) Raise status of consulting engineers
- (4) Promote collaboration among members
- (5) Create viable business environment
- (6) Enhance participation in domestic and international projects
- (7) Comply with ethics and code of conduct in consulting services.