

EFCA 2005 : Krakow

Dispute Boards

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Disputes are a fact of life



Dispute Boards Reduce Conflict

Dispute Resolution Board Foundation

Fostering common-sense dispute resolution worldwide

- Non Profit Organisation
- Formed in 1996
- Created to promote the use of DRB / DAB around the world
- Maintains a Data Base



ADR Systems

- Ad Hoc – bespoke procedures
- Facilitation
- Conciliation
- Dispute Boards

Dispute Board Features

- What is a Dispute Board ??
 - Tribunal (1 or 3 people)
 - Independent
 - Impartial
 - Familiar with project
 - Encourages resolution of issues at job site level
 - Resolves Disputes

ADVANTAGES OF THE DAB

- Resolves disputes in 84 days
- Lower costs than Arbitration or Litigation
- Impartiality
- Real time assessment
- Improves standards
- Provides clarity
- Diffuses problems (win – win)
- Encourages competitiveness in tenders

General Conditions of DAA

- Employer decides (at tender stage)
 - What type of DAB
 - How many members
 - Period to agree selection
 - Third party nominator
- List of candidates in tender ??
- Employer to be ready to nominate

General Overview

- routine -

- Becomes Familiar with project
- Remains up to date
- Visits the site
- Meets with parties
- Reports to parties
- Review performance
- Be proactive

DAB OBLIGATIONS

- Act Fairly
- Act Impartially
- Give parties a reasonable opportunity to put their case & respond
- Adopt procedures:
 - Avoid unnecessary delay
 - Avoid unnecessary expense

Rules & Procedures

■ USA

- Bespoke
- DRBF

■ UK

- Statutory
- Contract

■ Global

- FIDIC
- ICC
- Bespoke

Procedural Rules

- FIDIC

- www.fidic.org

- ICC

- www.iccwbo.org/drs

- World Bank

- www.worldbank.org

- ICE

- www.ice.org

Funding Agencies Using FIDIC

- World Bank
- Multilateral Banks
- Development Authorities
- Reconstruction Agencies
- Governments

FIDIC Systems

- Full Time DAB
 - Red Book
 - Decision
 - Advice / Opinion

- Ad Hoc DAB
 - Yellow Book
 - Decision

FIDIC DAB Provisions

- Contract Procedures
- General Conditions
 - Warranties
 - Obligations
 - Payment
- Procedural Rules
 - Procedures
 - Powers / Duties
- Tripartite Agreement

Formation of DAB - FIDIC

- Cl.20.2 Formation
 - 1 or 3 members
 - Each party nominates one member
 - Parties consult members and agree a chairman
 - List of potential members in tender
- No Agreement
 - FIDIC President will nominate
 - Due consultation with parties

Member Appointment

■ FIDIC

- By Each Party
- By FIDIC President
 - US\$250

- Independent
- Impartial

■ ICC

- Jointly appoint
- By ICC DB Centre
 - US\$2,500

- Independent

Adjudicator Lists

- FIDIC
- ICE
- DRBF Listing
- National ACE
- No Official List:
 - World Bank
 - ICC
 - Agency

Dispute Board Output

- Routine Activity
 - Site Visit Report
 - Opinion
 - Advice
- Referred Dispute
 - Decision
 - Recommendation

FIDIC Procedures

■ Contract Conditions

- Cl.20.2 Disputes shall be adjudicated by DAB
- Cl.20.2 Appointment of DAB
- Cl.20.3 Failure to agree DAB nomination
- Cl.20.4 Obtaining a Decision
- Cl.14 & Cl.16 & Cl.20.7 Enforcement

POST DECISION

- Shall be binding ... promptly give effect
- May be reversed by amicable settlement or arbitration
- Dissatisfaction – 28 days
- Otherwise after 28 days - binding
- Failure to comply – arbitration
- Compliance is a contractual obligation