EFCA 2005 : Krakow

Dispute Boards

Gwyn Owen
www.gwynowen.com

International Chairman
Dispute Resolution Board Foundation
www.drb.org
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 pout 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](http://www.fidic.org)

- **ICC**
  - [www.iccwo.org/drs](http://www.iccwo.org/drs)

- **World Bank**
  - [www.worldbank.org](http://www.worldbank.org)

- **ICE**
  - [www.ice.org](http://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
Contract Conditions

- Cl.20.2 Disputes \textit{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