

The Dispute Board Federation

Geneva - Singapore

Excellence in Dispute Resolution since 2001

August 2010

Issue: 58



Featured Events and Continuing Professional Development Units

Future combined
FIDIC - DBF
and
International Finance
Corporation
related programmes
and events include:

Santiago, Chile
The Adjudicator
Training Programme
August 24-25, 2010

Rome, Italy
Intensive DAB Training
Programme,
September 15-16, 2010
12 CPD Units

Singapore
Introduction to DAB's
September 22, 2010

Dubai
Total Immersion
Programme on FIDIC
Contracts
Sept 25 - Oct 1, 2010
33 CPD Units

Singapore
Intensive DAB Training
Programme
28-29 October 2010
12 CPD Units

Singapore
Annual Symposium,
November 3-5, 2010
15 CPD Units

For a full listing of
programmes and
events, brochures
and more information
and/or to register please
go to our website

New Developments

Many of you have already received our [email](#) announcing the Dispute Board Federation's approval as a provider of continuing education programmes for the Solicitors Regulation Authority (The Law Society of England and Wales). We were particularly pleased with the Assessment Report prepared by the Solicitors Regulation Authority which commented on the *Total Immersion* Programmes - indeed one comment in their assessment review sums it up:

"This is a specialist course for practitioners who have some knowledge already and I consider that these methods of teaching, which are supported by 3 to 4 trainers per day and also by case studies relating to projects with an international flavour, would in fact be the best. The teaching is also backed up by materials of the highest quality. As well as definitely meeting the aims and intended learning outcomes, these methods will provide delegates with a huge reserve of fresh knowledge to draw on once they have returned to the office. The aims and intended learning outcomes have been set out very well and they have been met in excellent fashion."

As a result we will now be able to provide continuing professional development credit for those attending our programmes such as the Intensive DAB Training Programme which gives the participant 12 units of credit and the FIDIC *Total Immersion* Programme which will provides 33 hours of credit. In addition to providing continuing professional development credits to both the members of the Law Society and the Bar of England & Wales, these programmes also provide the same number of hours of credit for other groups such as the the ICE, the RIBA, and RICS. We hope that this added benefit will help those taking our courses and programmes to increase their professional knowledge and standing in their respective professions.

One of the questions that is frequently asked is why doesn't the DBF advertise the price of its FIDIC *Total Immersion* Programme. The reason is that unlike our other programmes one cannot just sign-up and take this course. Due to its nature and intense scope this particular course is only offered to carefully selected individuals who can prove their aptitude, willingness, experience and need to our Selection Committee. The Selection Committee first reviews the CV's and other information from those who are interested in the course, then makes its selection and notifies the

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candidate. To borrow a phrase from another select organisation "only the good need apply and only the best are chosen." Once chosen the candidates are told the price and the terms and conditions for the course.

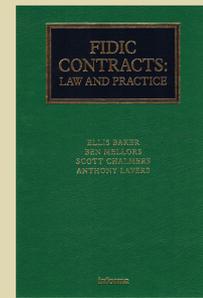
It should also be noted that the price for FIDIC *Total Immersion* Programme, covers everything - meals, accommodations at the finest hotel, transportation to and from the regional international airport, all materials, FIDIC Contract books and of course our Training Manual which contains all course slides and papers. Each participant then gets 6 days of full time one-on-one training in all aspects of the FIDIC Contracts and only has to travel once. The alternative is to take 5 different courses by other training companies, make 5 different trips, stay at 5 different hotels, pay for your meals, -- the result being that each individual, in the long run, saves both time and money while learning the interaction between all of the FIDIC Contracts at the same time with our one course.

We are also setting up a Member - Guest Dinner in Dubai at the conclusion of our upcoming *Total Immersion* Programme in September and look forward to seeing you at this event. You will be receiving a separate emails as to the details.

Finally the prevention of fraud in the development of large-scale infrastructure projects is one of the DBF's many concerns. This problem has become more acute in the past few years and as part of our Public Policy Institute we encourage the development of more effective ways of combating fraud in the private sector. In this regard Miss Kay Linnell who is one of our Professional Members is at the forefront of this on-going battle and we have asked her to delineate the problem, and to suggest possible solutions -- in particular through the use of Dispute Boards. Her article follows.

Herbert Wilson
Executive Director

New Books



FIDIC Contracts: Law and Practice

In next month's Newsletter we review the newest book on FIDIC Contracts by Ellis Baker, Ben Mellors, Scott Chalmers, Anthony Lavers.

Published by Informa Publishing, London



Fraud in The Private Sector

by
Miss Kay Linnell*

Large scale corporate fraud can have devastating effect on private and public sector businesses operating internationally. Corruption and fraud in whatever form require active strategies to reduce reputational damage, criminal and civil losses and to implement effective corporate governance. Losses can be so large that ENRON style insolvency might ensue.

Fraud is Rampant (generally/construction/developing countries)

Generally fraud is expected to increase during any recession since fraudsters are unwilling to curtail their lifestyle when the credit crunch bites. A TSUNAMI of frauds was expected in the fall of 2009 but they have not yet materialised perhaps masked by insolvencies. In construction it is the accepted "norm" that to win contracts any corporation has to pay commission/inducements or bribes to officials. This is particularly true for construction contracts in developing countries where regulations are treated more flexibly than in other industries. There is simply more scope where large sums are tied up in on-site materials, work-in progress with local budgets, joint ventures and unusual invoicing and accounting arrangements.

Those Governments around the world and in particular the US Government are particularly enforcing the Foreign Corrupt Practices Act as part of their global crackdown on fraud and corruption. It is important to understand the facets of the various anti-corruption practices to understand the threat that they pose and the knife edge balance between obtaining contracts by paying inducements or bribes which is common practice as opposed to falling foul of these anti-corruption laws. In the United States the Fraud Corrupt Practices Act (FCPA) has been available since 1977 but it has not been implemented with any vigour. The FCPA views the bribery of Foreign Officials to obtain or retain business and a failure to maintain accurate books and records as related to internal controls a very serious crime. If it were implemented and enforced the Act's provisions significantly impacts on business organisations through criminal and civil prosecutions and will inflict collateral damage that comes with the Government enforcement of anti-corruption laws. The factors which have led to an increased awareness of the ability of Governments to

enforce FCPA prosecutions following violations have arisen because of the world-wide recession. A case study in point not in a construction industry related to the prosecution of Control Components Inc (CCI) a Californian Corporation designing and manufacturing control valves for the nuclear oil and gas and power generation industries throughout the world. In that case between 1998 and 2007 CCI's offices, employees and agents made more than 200 recorded corrupt payments to private companies and individuals in 36 countries including China, Korea, Malaysia and the United Arab Emirates. The bribes totalled US\$6.85 million and the resulting projects earned CCI US\$46.5m in net profits. Prosecutors used a variety of tactics to unravel the pervasive conspiracy which is indicative of the US Government's new approach to fighting FCPA violations. The Corporation and the individuals were all prosecuted and 8 CCI Defendants formed the largest number of individuals in any FCPA case. The US Travel Act was used to charge commercial bribery and this Act prohibits using interstate or foreign commerce to promote unlawful activity in including bribery and corruption in violation of State Law.

In the United States this FCPA public deterrent and published prosecutions have had a visible impact on corporations. The early levies on Lockheed Martin in 1994 were repeated in 2005 when Titan Corporation paid US\$28.5 million and in April 2007 a US\$44million fine was levied against Baker Hughes. In December 2008 Siemens paid US\$1.7billion in fines, penalties and dispersion of profits to the United States and German authorities and in early 2009 Halibut settled a bribery probe with a US\$550 million fine.

The fact that the FCPA prosecutions and fines have been so successful indicates that there is an enormous level of fraud rampant in those industries which have traditionally relied on inducements to win contracts, particularly construction and particularly in developing countries where there is no anti-bribery legislation.

The Solution

The solution is the implementation of much tighter controls and regular management reporting, spot checks and very strong risk based internal audit procedures with an audit committee reporting to the main group Board.

There is also another solution that is required and that is the training of all staff and employees to understand a fully compliant programme to be deemed effective and form a defence. Any training of staff must cover anti-bribery laws as well as the requirement to keep proper books and records and the company's policies, procedures, standards and published requirements including employment contracts must refer to this training. The impact on any venture including the company's culture, reputation and ethical standards can have damaging effects far beyond the compliance with anti-corruption laws in their home country. All employees and anyone who acts on the company's behalf should be given anti-corruption training and any third parties including vendors and contractors who interact with government employees must be aware of the consequences and requirements of all relevant legislation.

Implementation of strong Corporate Governance is essential to reduce the risk of fraud. The involvement of unconnected independent Non-Executive Directors and third party arms-length reviews are part of this Fraud risk reduction strategy. An anti-fraud policy should be published and training implemented across every large corporation with the consequences for any perpetrator, well known as a policy of prosecution and dismissal.

It is important to make sure that everyone understands that fraud involves dishonesty and has criminal connotations of the breach of some laws and is in the same area as theft or robbery. Fraud is a general and global phenomenon and although there may be no visible evidence of fraud it is extremely likely that what is a fraud in one country is not in another. International businesses clearly have different cultures in which they operate and there are often clashes between the regulation of the head office and those at any local level.

A lot of the tools necessary to detect fraud rely on a sufficient and regulated accounting system with full internal controls. Internal controls make sure that the work of one person or the report from one country is verified by another and checked back to daily logs of business activity. Checks also need to be performed at a macro level and the results of a budget compared to a contract and payments to individuals should be tested. Frauds are discovered when there is a challenge and when there is an opportunity to challenge existing assumptions presumed by head office controllers and test the difference between ordinary accounting and preventative or deterrent forensic auditing which accepts nothing at face value and tests the facts behind every reported transaction. It is important that internal auditors ask for records backing up amounts deposited and amounts paid without prior notice and in particular for payment of non-standard construction expenses.

Why would Dispute Boards be effective?

It is clear that when bribes are paid there are often disputes as to how the amounts are dealt. Here the involvement, on a regular basis, however infrequent of third parties such as a Dispute Board which is not connected with the company or the contract in any other way can frequently, not only be a useful deterrent but also an opportunity for things that are not being done in

accordance with a company's own guidelines to be exposed. One example of this would be the regular involvement of a Dispute Board with visits 3 or 4 times a year to the various construction sites. The reason for this is that these people will see exactly who and what is available on the site and any bribes or inducements paid to officials may become obvious.

There is a danger that the Dispute Board does not have any function in reporting anything they find to the management of a company, nor indeed if there is anything on a construction site that would give rise to concerns about the safety of the site. However the fact that there is a third party presence of experienced constructors will have some impact and that in itself is a deterrent because the fear of any fraudster or individuals breaking anti-bribery and corruption laws is that of discovery and the consequences. It is clear that until there are a few more "public hangings" and prosecutions of individuals and that corruption is stamped out at the recipients end in local government as well as in construction and the larger industries that the possibility of making a sizeable profit will be outstripped by the current very small perceived risk of being caught.

It is difficult to control the very large projects or joint ventures that the international construction firms undertake purely by internal audit and financial reporting mechanisms. The addition of an independent Dispute Board not only fulfils the role of 'nipping disputes in the bud' and using adjudication decisions to keep construction contracts moving forward but also their regular visits 3 or 4 times a year ensure that fraud is kept down by active inspection.

**Kay is a Professional Member of the DBF and specialises in forensic accounting and areas of litigation support including civil, family and criminal matters. She is a Chartered Arbitrator, an accredited Mediator, an experienced Expert Witness and Determiner. She has experience in specialist commercial matters including share valuations, insurance claims, management consultancy, construction disputes, business interruption, insolvency and corporate recovery, fraud investigations, forensic reconstruction, tax professional negligence and tax investigations.*

With a wealth of experience as a Forensic accountant and in matters of compliance, she was responsible for Company Secretarial matters; Chief Executive of the Joint Insolvency Monitoring Unit Limited for the self-regulation of the insolvency profession; The Board of Inland Revenue's Chief Investigating Accountant and Head of Accountancy Profession and Accountancy Advisor in the Special Compliance Office at the Inland Revenue; Arbitrator and Expert Witness.