

# The Dispute Board Federation

Excellence in Dispute Resolution since 2001

August 2012

Issue: 82



## From the Secretary's Desk...

This month's issue brings with it a new format and new contributors. The DBF is pleased to announce that its ever popular Intensive DAB Training Programme which covers all aspects of Dispute Boards, how they are organised, how they operate, and how to be a DAB Member under the FIDIC Contracts, the ICC Rules and the DBF Rules & Procedures is scheduled for October 8-10 in London. This is then followed by the DBF's new training programme in Adjudication Decision and Arbitration Award Writing which is being held on October 11, 2012 in London also. For more information, please contact Richard McGlade, our events manager [richard.mcglade@dbfederation.org](mailto:richard.mcglade@dbfederation.org).

Additionally our FTIP 2012 covering all of the FIDIC forms of contract and taught in a Total Immersion format over 6 days is being given again in Dublin in February 2013 - we are proud of the fact that the Law Society of England & Wales, in reviewing this programme commented:

*"The standard of organisation and presentation is excellent and it is clear both that the provider has taken the greatest care over the preparation of the course materials and that an excellent administrative organisation backs the provider up."*

Whilst that is underway we are planning a Members' Dinner in Hanoi in October and a Symposium/conference there also later in the year.

The DBF is also pleased to announce that it is finalising some changes to the membership structure and is opening up the category of Fellow to include a wider array of individuals who can show the necessary experience and commitment to both the organisation and the field of dispute boards and dispute resolution.

**Dr Cyril Chern**  
Secretary

## In This Issue

[FIDIC Sub-Clause 20.6](#)

[Maritime Dispute Boards](#)

## Featured Article

**Dispute Resolution  
Process Under the 1999  
FIDIC Red Book  
Subclause 20.6: a Court  
of Appeal Review**

By: Ben Beaumont

This article deals with The Dispute Adjudication Board 1999 FIDIC Conditions of Contract Notice of Dissatisfaction Sub-Clause 20.6 as well as the provisions of Sub-Clause 20.7--The ICC Arbitration-Terms of Reference-Breach of Natural Justice-Partial or Interim Award.

A decision of the Court of Appeal of Singapore given on 13 July 2011, *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2100] SGCA 33, raises important issues not only for the FIDIC Red Book Conditions of Contract, but also for Dispute Adjudication Board procedure in general and proper arbitration tribunal practice.

[Read on...](#)

## Featured Article

**Dispute Boards in  
Maritime Construction**

By: Dr Cyril Chern  
and Christopher Koch

It is no surprise that

## Editorial

By: Andrew Burr, Jennifer Jones and David Johnson, Atkin Chambers, London

With the enforceability of dispute board decisions now at centre stage, following the decision of the Singapore Court of Appeal in *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] SGCA 33, this seems an appropriate time to relaunch the Newsletter of The Dispute Board Federation in a new format.

This inaugural issue contains articles by Ben Beaumont, Cyril Chern and Christopher Koch, focusing on the present and the future of dispute boards. Ben's contribution reviews and comments in detail on the CRW case, whilst Cyril and Christopher suggest ways in which dispute boards might be used in a field other than construction and engineering, such as maritime construction.

In his case note/ review, Ben Beaumont critically assesses the 2011 decision of the Court of Appeal in Singapore in *CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK*.

This was a case where a single member Dispute Adjudication Board had been established. The Board made a range of decisions about variation orders under the contract, one of which in particular proved controversial. This decision was duly referred to an arbitral tribunal, which ordered immediate payment of the sums found due by the Board, without reviewing the substance of the Board's decision. That Order proved controversial and was appealed first to the High Court and then to the Court of Appeal in Singapore.

The Court of Appeal had to consider a number of issues as set out by Mr Beaumont, including two issues in particular. First, was the arbitral tribunal entitled to order immediate payment in accordance with the Board's decision; and secondly, ought the arbitral tribunal to have reviewed the substance of the Board's decision before making its order. The Court held that the arbitral tribunal ought to have made an interim award enforcing the Board's decision before hearing the substantive dispute and making a final award.

The author explains that, although he considers it uncontroversial that the arbitral tribunal should have considered the substantive dispute between the parties, in his view there is nothing in the standard FIDIC terms that permits a tribunal to make an interim award temporarily enforcing the Board's decision, so long as the appropriate Notice of Dissatisfaction has been filed. The appropriate course would have been to make a final award based on consideration of the substantive dispute between the parties. The interim award was unjustified.

In their article "*Dispute Boards in Maritime Construction*", Cyril Chern and Christopher Koch examine the particular features of the shipbuilding process which give rise to conflicting incentives - and thus frequent disputes - between the parties.

The authors note that, in addition to the idiosyncrasies of individual national courts that frequently render them unsuitable fora for the resolution of international commercial disputes, the trend of using arbitration to resolve such disputes also fails to provide a cheaper alternative.

Moreover, a common feature shared by litigation, arbitration and other alternative dispute resolution initiatives is that they are inevitably pursued after a dispute has crystallised and the parties' relationship has broken down. The authors contrast this with the use of Dispute Boards, run under the auspices of the Dispute Board Federation, or the Dispute Resolution Board Foundation, as an increasingly popular alternative in the general construction industry. Typically, the involvement of a Dispute Board is provided for by the parties in their contract and allows for tailoring to the particular contract.

The authors identify a particular feature of such Dispute Boards which makes them suited to use on large maritime projects: since a Dispute Board is set up around the time that the parties enter into their contract, it is able both to familiarise itself with the project from the outset and to capitalise on the goodwill frequently present between the parties in the early stages.

contract disputes arise in the marine construction and conversion industry. While ships come in a diverse assortment of configurations, varying in sophistication, they all share the common denominator of being a "floating city." In addition to providing the transportation service for which the vessel was designed, the ship is a complex, self-sustaining unit, capable of producing all of the services necessary to accommodate in comfort its crew over long and isolated ocean passages. ... Ships and their owners may seek shipyard services for everything from a relatively simple annual "check-up" to a major conversion, renovation, or new construction. Often, many of the technologies incorporated within the vessel require maintenance, repair, or even reconfiguration. [i]

In ship building/conversion contracts, the potential for contract disputes arises from the necessarily different objectives of the owner and the shipyard.

....  
Disputes, therefore, are going to arise. Too often, the contract management representatives for the owner and the shipyard arrive at diametrically opposed viewpoints concerning the issue in dispute and then pass the matter along to higher authorities for ultimate resolution. A possible result of the traditional resolution process, however, is that the prevailing party will discover that it has spent far more to obtain the resolution than the original issue was ever worth.

[Read on...](#)

Featured Events  
and

By maintaining a regular programme of updates, site visits and dialogue with the parties, the Board can, in the event that a dispute between the parties should arise, provide a rapid response since it will not be necessary to undertake the difficult exercise of post facto fact-finding on a complex project.

The authors also suggest that the mere presence of an actively involved Board is likely to impact upon the parties' conduct, and, in particular, is likely to mitigate any aggressive stance adopted by a party lest that party risks appearing to be acting unreasonably in the view of the Dispute Board. Accordingly, and based on experience to date that has borne out greatly reduced costs as a percentage of the overall project, it is argued that the maritime construction industry represents an ideal avenue for the increased use of Dispute Boards beyond the more general construction projects on which they have been adopted to date.

Cyril also contributes his "*From the Secretary's Desk .....*" column and summarises the DBF's programme of events for the remainder of 2012 and into 2013.

Welcome to this inaugural issue and please forward any contributions for future publication through the DBF website.

**Andrew Burr**  
August 2012  
Atkin Chambers  
Gray's Inn

**Continuing  
Professional  
Development Units  
2012 -13**

**Members' Dinner**  
October 15  
Hanoi

**Decision Writing Seminar**  
October 11, 2012  
London

**The DBF Intensive  
DAB Training Programme**  
October 8-10, 2012  
London

**FTIP 2013**  
February  
Dublin

For further information on  
any of the above please  
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For a full listing please go  
to our website  
[www.dbfederation.org](http://www.dbfederation.org)