

# The Dispute Board Federation

Excellence in Dispute Resolution since 2001

February 2012

Issue: 76



## A Note of Clarification...

In last month's issue of the Newsletter we mentioned that the DBF will be starting a new dialogue with several of the world's development banks specifically aimed at increasing the use of dispute boards in all lending and to use the DBF as the appointing body for all appointments.

Of the 48,000+ people who read our Newsletter each month we received emails from two people who felt that this somehow meant that the DBF was challenging FIDIC or was attempting to "take over" the role of FIDIC in appointments under the FIDIC form of Contract. We are concerned that anyone would think that the DBF would interfere with the contractual relationship already long established between FIDIC and the various World Development Banks regarding the use of FIDIC Contracts for infrastructure development and the method they set out as to nomination procedures for the appointment of Dispute Boards.

FIDIC, the DBF, the ICC, the RIBA, ICE, CIArb, and numerous other groups have their own rules and procedures for the appointment of Dispute Boards in various forms for projects and all of these groups respect the rules of the others.

What was perhaps misunderstood by those two individuals who raised concern was that in the world arena for dispute boards there are areas where vacancy exists for new dispute board implementation. To the extent the World's Development Banks do not use FIDIC or other forms of contracts for appointments the DBF has started this new committee to place the DBF at the forefront - this includes areas such as shipbuilding, telecoms development, oil & gas, concessions, health care, satellite and space exploration, etc. and the list is truly endless - with this in mind the DBF will be exploring ways in which it can help in dispute resolution through dispute boards and that is the purpose of this new committee.

**Herbert Wilson**

## Featured Events and Continuing Professional Development Units 2012

There are several new programmes and events which are shown on our website and these include:

**Development Banks Contracts Conference**  
April 10-11  
Hanoi

**FTIP 2012**  
June 27 - July 3  
Luxembourg

**DBF Members Dinner**  
June 20, 2012  
Istanbul

**Decision Writing Seminar**  
July 11-12  
Paris

**The DBF Intensive DAB Training Programme**  
September  
London

For further information on any of the above please contact [info@dbfederation.org](mailto:info@dbfederation.org)

For a full listing please go to our website [www.dbfederation.org](http://www.dbfederation.org)

## "War Stories" Needed

The DBF is looking for real life "War Stories" from DAB members of unique situations they have faced whilst on dispute boards and how they dealt with the situation. The best one each month will be published in the Newsletter and the author will receive a £100 honorarium. Please send to [info@dbfederation.org](mailto:info@dbfederation.org)

## What Would You Do? The 84-day Rule



Dr Cyril Chern

In last month's issue of the Newsletter the question was posed as to *What Would You Do* under the following scenario:

*The Contractor refers a dispute to the sole member DAB on January 1. The Parties and the DAB agree that the date for the Decision is 84 days later. 5 days before the Decision is due the DAB informs the Parties that due to the complexity of the issues it needs an additional month to give its Decision. The Employer agrees with this but the Contractor informs the DAB that it must comply with the Contract and give its Decision within the 5 days remaining. The DAB then gives the Contractor a choice: Either agree to the additional time or the DAB will give a Decision denying the Claim based upon insufficient evidence. The Employer sends an email commending the DAB for its ability to see that the claim is groundless and informs the DAB that it can take as long as it would like to give its Decision.*

We received many responses to this question and of all the ones received the following was the most thought provoking and was basically the general consensus of the majority of the responses received:

*"The purpose of a DAB is to give a Decision in as short a period of time as possible so that the Parties can get on with the Work and finish without delay. Sub-Clause 20.4 puts the time limit in for this reason and only has three requirements: 1. It requires that the DAB shall give its decision within the 84 days; 2. The decision shall be reasoned; and 3. The decision shall state that it is given under this Sub-Clause. If the DAB does not have sufficient time to review all of the evidence in this time period and the party presenting the evidence will not allow the DAB additional time then the presentation of evidence is not complete and the DAB should give its decision based upon what it has reviewed to the necessary date and so state in the decision."*

I am of the view however that a DAB can avoid this situation from developing by carefully establishing time lines and specific deadlines for the presentation of evidence. For example even as early as the preparation of the DAA the DAB should seek to have agreement with the Parties on timing such as allowing the decision to be made 30 days after the receipt of the last evidence, which could cause the decision to be made earlier than 84 days (or later) and which is more flexible for all. Ideally any timing agreement like this should be done very early on in the proceedings so that the DAB is not left, in the last few days before a decision is due, with having to ask for additional time as it will usually not be agreed.

---

\* Dr Cyril Chern is Secretary of the DBF and a Barrister at Crown Office Chambers, London and the author of several books related to construction and Dispute Boards.