

The Dispute Board Federation

Excellence in Dispute Resolution since 2001

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The New Year

Welcome to 2012.

Our new year started on a pleasant note with the London Members Dinner held at the Athenaeum Club. This will be followed later this year with a Members Dinner in Hong Kong and then later with one in Istanbul. The camaraderie and networking at these dinners makes them a truly enjoyable event and we are looking forward to hosting several in 2012.

Membership is also off to a good start with a significant rise in new members each month. The plan this year is to open the Fellow category to a larger number of our members particularly those with sufficient practical experience to warrant the higher standing.

On the training side the Intensive DAB Training Programme still has a few spaces left in February and a separate email will be going out shortly for that event. We are now actively setting up our premier 6 day event - the FIDIC Contract *Total Immersion* Programme (FTIP) which is geared for the busy top level construction executive to be held in May. You may view the details of both at [Programmes](#) on our website. Additionally as the year moves forward we are putting the finishing touches on our new programmes in Claims Presentation, Procurement, and Major Project Mediation and if you would like to be put on the waiting list for further details or would like more information please contact Richard McGlade richard.mcglade@dbfederation.org.

The DBF will also be starting a new dialogue with several of the world's development banks in 2012 specifically aimed at increasing the use of dispute boards in all lending and to use the DBF as the appointing body for all appointments. We are establishing a committee for this important project and if you would like to be considered for a place on this committee please contact me h.wilson@dbfederation.org.

Herbert Wilson
Executive Director

Featured Events and Continuing Professional Development Units

2012

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

The DBF Intensive DAB Training Programme

February 20-22, 2012
Luxembourg

(Limited number of places now available)

DBF Members Dinner

March 15, 2012
Hong Kong

Development Banks Contracts Conference

April 10-11
Hanoi

FTIP 2012

May 4 - 10
Luxembourg

DBF Members Dinner

June 20, 2012
Istanbul

Decision Writing Seminar

July 11-12
Paris

For further information on any of the above please contact info@dbfederation.org

For a full listing please go to our website

www.dbfederation.org



What Would You Do? The 84-day Rule



Dr Cyril Chern

"*What Would You Do?*" is a new section edited by Dr Cyril Chern*. Each month an adjudication question based upon real events will be posed and readers asked to respond. The best answers will be published in subsequent issues and the matter discussed.

FIDIC and other forms of contract provide for a specific number of days within which an adjudicator is to render its Decision. Under the FIDIC form of contract this is 84 days. Sub-Clause 20.4 from the 1999 Red Book as follows, states (emphasis added):

"20.4 Obtaining Dispute Adjudication Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

***Within 84 days after receiving such reference**, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. ..."*

The Question: Assume that the Claimant (the Contractor in this situation) has referred a dispute to the DAB on January 1 and assume that it is a one-member DAB. 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 Responding Party (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. The Contractor contacts you and seeks your opinion - **What Would You Do?** Send your answers to question@dbfederation.org.

* **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.