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**Dispute Boards in the Middle East**

by

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**ABSTRACT**

From their beginning, the pioneering Conditions of Contract issued by FIDIC<sup>1</sup> in 1957 and later editions up to 1992 provided an important source for contract conditions for civil and mechanical engineering projects in the Middle East. The prominent Clause 67 of the FIDIC Red Book provided for arbitration as the ultimate method of dispute resolution. However, in 1987, FIDIC introduced amicable settlement as an intermediate step in that process and in 1995, it introduced the concept of “Dispute Adjudication Board” in its Orange Book, as another step prior to arbitration, but before amicable settlement. This new concept was subsequently adopted in 1996 for use in the 1987 Red Book, as an alternative to the use of the Engineer as the Adjudicator, but with the added role of “Dispute Avoidance”.

The success of these two concepts encouraged FIDIC to have them adopted in its 1999 Forms of Contract for major works. But, unfortunately, whilst Dispute Avoidance is now accepted as an essential feature of the role of Dispute Boards, it is not yet accepted in the Middle East, as illustrated by the constraints placed in the Abu Dhabi Conditions of Contract of 2007 and the rejection of the use of the standing DAB. The reasons and the problems of using Dispute Boards in that region are discussed.

**1. *The Trend for Use of Dispute Resolution in the Middle East for Construction Contracts***

1.1 The trend for use of dispute resolution in construction contracts in the Middle East has followed the FIDIC Conditions of Contract from their creation in 1957 for the Red Book and 1963 for the Yellow Book, throughout their various editions. In particular,

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<sup>1</sup> FIDIC is the acronym for the “*Fédération Internationale des Ingénieurs-Conseils*” (International Federation of Consulting Engineers). It was originally founded in Ghent, Belgium in 1913 by the national associations of consulting engineers of Belgium, France and Switzerland, but since then it has grown to represent associations from nearly sixty countries around the world. The Red Book is the acronym for the Conditions of Contract for Works of Civil Engineering Construction.

Clause 67 for the Red Book and Clause 50 for the Yellow Book prescribed arbitration as the appropriate ultimate method for dispute resolution.

- 1.2 However, escalating costs and the excessive time it takes to complete arbitration proceedings, particularly in complex construction cases, led FIDIC in 1987 to introduce amicable dispute resolution in its Fourth Edition of the Red Book, as an intermediate step between the emergence of a dispute and the initiation of arbitration. This step, Amicable Settlement, was rightly made a mandatory step, obliging the parties to attempt to settle their dispute by methods other than arbitration, which are generally simpler; cheaper; quicker and certainly friendlier.<sup>2</sup>
- 1.3 FIDIC, also rightly, did not specify the type of amicable dispute resolution forum that it recommended, because it believed that each construction dispute is unique and may call for special treatment, distinct from that used or adopted in a different set of circumstances. Thus, “Amicable” may refer to any one of the following acronyms, as appropriate: Alternative; Affordable; Available; Additional or Appropriate, and included at the time, amongst others, mediation, conciliation, adjudication, expert evaluation and mini trial.
- 1.4 The criticism mounted by both employers and contractors of the role of the Engineer prescribed by the 1987 Red Book led in 1995 to the introduction of the concept of “Dispute Adjudication Board” in the Orange Book. So, in 1995, FIDIC followed the example of the World Bank,<sup>3</sup> and included in its then new Orange Book, the Dispute Adjudication Board procedure, as a first step in the path of dispute resolution.<sup>4</sup> This was followed, in November 1996, by the introduction of a Supplement to the Fourth

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<sup>2</sup> For the reasons why Amicable Settlement was made a mandatory step, see Chapter ?? of “The FIDIC Forms of Contract - The Fourth Edition of the Red Book”, by Nael G. Bunni, *Blackwell Science Ltd.*, Oxford, 3<sup>rd</sup> Edition, 2005.

<sup>3</sup> The World Bank published in January 1995 its Standard Bidding Documents for Procurement of Works financed in whole or in part by the World Bank. These documents were based on the fourth edition of FIDIC’s Red Book, but with certain mandatory amendments, amongst which was the dispute resolution clause. The most important of these mandatory changes was perhaps the introduction, in Clause 67 of the Conditions, of a “Dispute Review Board”, which replaced the adjudication role of the Engineer for contracts estimated to cost more than US\$50 million.

<sup>4</sup> The Orange Book was drafted by FIDIC for projects where Conditions of Contract for Design-Build and Turnkey were appropriate. This Form of Contract is now obsolete, as it has been replaced by the New Yellow Book published by FIDIC in September 1999.

Edition of the Red Book where the traditional role of the Engineer acting as an independent and impartial person was abandoned in favour of him being an agent of the employer and so his role as adjudicator or a quasi-arbitrator had to be handed over to a Dispute Adjudication Board, “DAB”, who both the employer and the contractor accepted that its members should be independent and impartial.<sup>5</sup> Thus, what used to be referred to as the two-tier system of dispute resolution became a five-tier process (if one includes, as the first step, the presentation of a claim and arbitration, as the last step). This multi-tier process has justifiably earned for itself the scientific title of “*disputology*”, particularly in view of the fact that the Supplement to the Fourth Edition of the Red Book added an important aspect to the role of the DAB; that of the “*Avoidance of Disputes*”.<sup>6</sup>

1.5 When the time came for FIDIC to consider reviewing its forms of contract in the late 1990’s, the principles of dispute settlement as provided for in the 1996 Supplement to the Fourth Edition of the Red Book were maintained by FIDIC, in its new major Forms Contract, published in September 1999:

- The Red Book for Building and Engineering Works, Designed by the Employer;
- The Yellow Book for Plant and Design-Build for Electrical and Mechanical Plant, and for Building and Engineering Works, Designed by the Contractor; &
- The Silver Book for EPC turnkey Projects Designed by the Contractor.

1.6 All of these three Forms of Contract incorporated the use of Dispute Boards, but unfortunately with two different types of DAB: Standing DAB & Ad hoc DAB, with the

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<sup>5</sup> For a more detailed analysis of the decision to introduce the Supplement to the Fourth Edition of the Red Book, see Chapter 21 of “The FIDIC Forms of Contract - The Fourth Edition of the Red Book”, by Nael G. Bunni, *Blackwell Science Ltd.*, Oxford, 3<sup>rd</sup> Edition, 2005.

<sup>6</sup> The “Avoidance of Disputes” was however, ambiguously incorporated in the 1996 Supplement to Fourth Edition of the Red Book, under Sub-Clause 67.2, where it provides that “*The Model Terms referred to in Sub-Clause 67.1(a) prevent either party consulting the Board privately, but do not prevent a joint approach, which may settle the matter and avoid a reference under Sub-Clause 67.2*”. Sub-Clause 67.1(a) then states that the terms of appointment of the Board shall “*incorporate the model terms therefor published by the Fédération Internationale des Ingénieurs Conseils (FIDIC), as they may have been amended by the Parties*”. Looking then at page A-10, paragraph 5 of the Terms of Appointment for a board of three members, it states the following: “*Neither the Employer, the Contractor nor the Engineer shall seek advice from or consultation with the Board Member regarding the Project otherwise than in the normal course of the Board’s activities under the Contract and the Rules. The only exception to this prohibition shall be where the Parties jointly agree to do so and the other Board Members also agree. The Employer shall be responsible for ensuring the compliance by the Engineer with this Clause*”.

latter being appointed only after the dispute has arisen. As such, there was no role for dispute avoidance, as explained in Section 3 below. Furthermore, but fortunately, the DAB role of dispute avoidance in the Red Book was more clearly expressed than in the 1996 Supplement, in that there was a whole paragraph in Sub-Clause 20.2 dealing with that concept,<sup>7</sup> as against the convoluted method in the Supplement, as explained in footnote 6 above.

## **2. The Changes from the 1987 to the 1999 Form – re Dispute Resolution**

2.1 From a Dispute Resolution point of view, a number of important changes were made in the 1999 Forms, the most important of which is perhaps the change in the position and the role of the Engineer. The independent impartial Engineer became an agent of the Employer and his role as adjudicator was relinquished to the DAB. This occurred due the fact that at that time the role of the “Engineer” had been under attack from both the project owner and the contractor on the basis of criticism relating to partiality and bias. On the one hand, contractor accused the Engineer of being biased in favour of the employer because, it was alleged that:

- His fee is paid by the project owner, referred to as employer under the Red Book;
- He acts as adviser to the employer prior to construction and normally continues this role upon completion of the construction stage;
- He is asked to consult with the employer prior to making certain decisions;
- Therefore, the Engineer was suspected of colluding with the Employer. The case was stated to be even stronger against the Engineer where he is an employee of the employer as his future employment might well depend on his actions; and
- Furthermore, many of the problems that arise on site are related to an action or inaction on his part and as a result he would be acting as judge and jury in his own cause.

2.2 On the other hand, employers accused the Engineer of being biased towards the contractor during the administration and execution of the contract in areas such as the award of extensions of time and determining the amounts of claims, etc., and that in

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<sup>7</sup> Reference is made to the 7th paragraph of Sub-clause 20.2 of the Red Book.

general he is too lenient towards the contractor, relieving him of certain obligations under the contract.

- 2.3 The new wording was drafted in response to that mounting criticism<sup>8</sup> of the role of the Engineer as an adjudicator or quasi-arbitrator in the settlement of disputes under the traditional Clause 67 of the Red Book.<sup>9</sup> Thus, the role of quasi-arbitrator or dispute resolver was removed from the Engineer and was given to the Dispute Board, hoping to resolve the controversy once and for all.
- 2.4 **Dispute Resolution Procedures:** The procedures under Clause 67 changed dramatically and became contained in two Sub-Clauses of the 1999 Forms: Sub-Clause 2.5 dealing with employer's claims and Sub-Clause 20.1 dealing with contractor's claims, each of which has quite different requirements.
- 2.5 **Barring Principles for Submission of the Contractor's Claims:** Sub-Clause 20.1 contains a requirement that the contractor should give notice to the Engineer describing any event or circumstance that gives rise to a claim he wishes to advance. This notice should be given as soon as practicable, and not later than 28 days after the contractor becomes aware, or should have become aware, of the event or circumstance, otherwise the Time for Completion would not be extended, and there would be no entitlement to additional payment. Furthermore, the employer would be discharged from all liability in connection with such a claim.
- 2.6 **New Time Limits for Submissions of the Contractor's Claims:** The contractor is also obliged to send to the Engineer, within 42 days of the event or circumstance, a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. Other provisions are also included in Sub-Clause 20.1, which in part refer to the Engineer's obligations in such circumstances.

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<sup>8</sup> "EIC/FIDIC Questionnaire Survey: the Use of the FIDIC Red Book", A report by the University of Reading, UK, June 1996.

<sup>9</sup> For a more detailed analysis, see Chapter 9 of Reference no. 2 cited above.

2.7 Sub-Clause 20.1 continues to provide that if the contractor fails to comply with the provisions in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of Sub-Clause 20.1, which refers to the notice of 28 days.<sup>10</sup>

### 3. **Standing DAB -v- Ad hoc DAB**

3.1 It is unfortunate that FIDIC introduced in its 1999 Forms of Contract two types of DAB. As explained at paragraph 1.6 above, the first is the Standing DAB, which was introduced in the Red Book, where the DAB is appointed by the date stated in the Appendix to Tender, the default time therein being 28 days after the contractual commencement date. The second type is the Ad hoc DAB, which was introduced in the Yellow and Silver Books, where the appointment occurs within 28 days after a party gives notice to the other party of its intention to refer a dispute to the DAB. The excuse given for not using the Standing DAB in the Yellow and Silver Books was that work on Site in the type of project with such conditions of contract does not usually commence for a long period of time after the Commencement Date, and hence there will be no reason to pay for a DAB that will not be needed, thus reducing the cost. This is wrong for two reasons: firstly, disagreements that might turn into disputes do arise even if work is taking place outside the Site. Secondly, by using ad hoc rather than standing DAB, the objective of avoiding disputes is lost. The solution to the problem of cost is easily dealt with by negotiating appropriate remuneration with the DAB during the initial period of work off site rather than the drastic measure of eliminating the dispute avoidance role of the DAB.

3.2 This misconceived idea of Ad hoc DAB was rejected in 2008 when the Gold Book was introduced by FIDIC, despite the fact that the Gold Book was based on the Yellow Book.

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<sup>10</sup> The second paragraph states: *“If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.”*

3.3 It is notable that in the case of Standing DAB, the parties may jointly seek an opinion re avoidance of a dispute rather than a decision, as explicitly referred to in Sub-clause 20.2 of the Red Book, 7th paragraph. This role now occupies a whole paragraph in the Gold Book, paragraph 20.5.

#### **4. *The Standing Dispute Adjudication Board “DAB”- General Conditions and Rules in the Red Book***

4.1 In an Appendix to the Red Book, entitled “*General Conditions of Dispute Adjudication Agreement*”, a number of provisions are incorporated to define what the Dispute Adjudication Agreement is, as well as providing general provisions on the agreement itself, and the warranties the DAB members give to each of the parties. It further sets out the obligations of each party to the tri-partite agreement, including payment and termination provisions;

4.2 The Appendix in the 1999 Red Book includes an Annex entitled “*Procedural Rules*”, which contain nine rules, and

4.3 At the end of the Red Book, there is a standard format for the Tri-partite Dispute Adjudication Agreement, pages vi and vii, which is expected to be completed by each member of the DAB.

#### **5. *Powers and Authority of the Board (under the 1999 FIDIC Contracts)***

5.1 It is important for the purpose of the remaining part of this paper to refer to the General Obligations of the DAB members; the employer; and the contractor towards each other, as contained in the Appendix referred to above. Furthermore, it is also important to set down some of the characteristics of the DAB as gleaned from the Appendix; and to indicate the Powers and Authority of the DAB, as in the next two paragraphs.

5.2 The characteristics of the DAB, as gleaned from the Appendix are:

- Truly Impartial, Independent & Neutral;
- Encourages lower tender pricing.
- Prevention of Disputes;

- Resolution of disputes in 84 days;
- Much Lower costs than Arbitration or Litigation
- Improves standards of behaviour by the Parties & claims management, by the Parties as they would be appearing repeatedly before the same panel;
- Provides & maintains clarity of procedures; and
- Provides a forum for discussing problems.

5.3 The Powers and Authority of the DAB, as specified in the Procedural Rules of the DAB, are as follows:<sup>11</sup>

- establish the procedure in deciding a dispute;
- decide its own jurisdiction, and the scope of any dispute referred to it;
- take the initiative in ascertaining the facts and matters required for a decision;
- make use of its own specialist knowledge, if any;
- decide upon the payment of interest;
- decide to grant provisional relief such as interim or conservatory measures; and
- open up, review and revise any opinion, instruction, determination, certificate or valuation of the engineer related to the dispute.
- establish the procedure in deciding a dispute;
- decide its own jurisdiction, and the scope of any dispute referred to it;
- take the initiative in ascertaining the facts and matters required for a decision;
- make use of its own specialist knowledge, if any.

5.4 The duties of the Board Members and the commencement of such duties are set out in the Appendix and include, amongst others, the duty to commence their work on appointment. They are normally required:

- (a) not to assign, delegate or subcontract any of their work;
- (b) to be available, on 28 days' notice, for all hearings, site visits, and meetings of the Board;
- (c) to become and remain conversant with the contract, the progress of the project and all project developments and maintain relevant files;

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<sup>11</sup> See Rule 8 of the Procedural Rules.

- (d) to observe the provisions of the Procedural Rules of the DAB;
- (e) not to be employed, while a Board member, whether as a consultant or otherwise by either party to the contract, or the Engineer without the prior consent of the parties and the other members of the Board;
- (f) while a Board member, not to engage in discussion or make arrangements with any party to the contract, or with the Engineer, regarding employment whether as a consultant or otherwise, either before or after ceasing to be a Board member;
- (g) to visit the site and meet with representatives of the employer and the contractor and the Engineer at regular intervals, at times of critical construction events, at the request of either party, and in any case not less than 3 times in any period of 12 months. The timing of and agenda for the site visits shall be as agreed among the employer, the contractor and the Board, but failing agreement, shall be fixed by the Board;
- (h) to be available to give advice and opinions in conjunction with other members of the Board on any matter relevant to the project, not being a dispute, when requested so to do by both parties; and
- (i) not to give advice to either party or to the Engineer concerning the conduct of the Works except in accordance with the Procedural Rules.

## 6. **Prevention rather than Cure**

### ■ A focus on the Dispute Phenomenon:

- Disagreement to Avoidance of Dispute to Contractor's or Employer's Claims to
- Determination to Dispute to Adjudication by the DAB to A Decision by the DAB
- Dissatisfaction to Amicable Settlement to Arbitration.

The difference between Disagreement & Dispute:

- In a disagreement, there is no claim yet by one party against the other; &
- No rejection of a rejection yet of the opinion of the other; &
- No determination.

## **7. Reluctance of Employers in the Middle East to use the 1999 Forms**

7.1 Employers in the Middle East have been reluctant to move from the 1987 Red Book; or its subsequent prints of 1988 and 1992, to the 1999 Forms. This may be for different reasons, including:

- Each Employer/Authority had modified the 1987 Red Book to suit its special circumstances and needs and developed their conditions of contract, as their requirements changed;
- In doing so, they had spent considerable amount of time and money and built significant experience and expertise in using the modified form;
- The parties' perceived additional cost to the project;
- Recent unhappy experience in the use of the DAB procedures in the UAE, where DAB Rules have not been properly followed;
- The use of the DAB has resulted in a small number of court cases with decisions that reflected badly on the use of DAB procedure.

7.2 As an example, *the 2007 Abu Dhabi Form of Contract* contained the first set of conditions that had the 1999 FIDIC Forms. However, as can be seen from the point of view of Clause 20, these Conditions of Contract removed the use of the Standing DAB from the Red Book and replaced it with an ad hoc type. Thus, with one stroke the important and valuable function of Dispute Avoidance has been eliminated from these forms of contract. It is not known why this was done, but there could be a number of reasons, including:

- Lack of knowledge on behalf of the employer or its advisers, and in particular anyone employed as the Engineer or the Employer's Representative;
- Cost of employing a Standing DAB, incorrectly assuming that there would be savings by not paying for a DAB and not realising that this cost will show a saving in the end by preventing some, if not all disputes;
- Some bad experience in the region: As stated in paragraph 7.1 above, the Standing DAB mechanism has failed in some cases in the Middle East due to non-compliance by members of the DAB with the Procedural Rules, which failure has reflected on its future use. An example of this was highlighted in a paper presented

at a DRBF Conference.<sup>12</sup> It related to a multi-storey commercial/residential tower block, which commenced in 2007, under the Red Book. It was reported in the paper that disputes, having arisen on the project, were referred to the DAB. The first eight decisions took between 100 and 300 days each to complete, after many months of detailed submissions and extensive hearings/meetings. The employer was unhappy with the DAB decisions and decided to sue the DAB members personally and to attempt to have the DAB decisions made to that date set aside by proceeding to the Dubai courts. The employer asserted that the DAB had not properly performed its services by rendering its decisions outside the agreed 84 days, (thus each decision was of no effect); and that therefore the DAB members were liable to him: for a refund of fees already paid; for reimbursement of his wasted legal and consulting fees; and for the costs in the court action. Unfortunately, the problems did not end there, since despite the court case, the DAB members continued to accept and work through further disputes, proceeding on an *ex-parte* basis, and rendering decisions in six further disputes. As a result, with the contractor receiving no payment in respect of any of these decisions, he also sued the DAB in the Dubai courts for various defaults, but mainly in proceeding *ex-parte*.

- With the role of the Engineer under the 1999 Form being reduced to one of agent, some engineers or employer's representatives do not relish bringing into a Project a DAB, with all its powers and authority, as set out in section 5 above.
- From the contractor's point of view, the requirement to provide a bond, if payment is to be made, is not helpful and could cause a rejection of the whole DAB concept.

## **8. The cost Issue**

8.1 Despite the fact that Dispute Boards have been used successfully on several major domestic and international construction projects, their use seems to have been rejected in the Middle East with that step in the dispute resolution mechanism being removed entirely from the general conditions of contract or left in, but never applied. The cost issue is perhaps one of the most influential in determining the use of the Standing DAB.

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<sup>12</sup> “*The influence of Dispute Boards around the world: The Middle East experience*”, by Stephen Hibbert, Introduction to International Adjudication- Conference, 2011.

For the DAB member to carry out its duties properly, as set out in section 5.4 above, his/her remuneration is set out in the Appendix under paragraph 6, but essentially it comprises three items:<sup>13</sup>

- a) A retainer fee per calendar month, recommended as being 3 times the daily rate as fixed by ICSID, presently equal to US\$3,000.00;
- (b) A daily fee, as fixed by the International Centre for the Settlement of Investment Disputes “ICSID”, presently equal to US\$3,000.00; and
- (c) All reasonable expenses incurred in connection with the member’s duties.

8.2 However, in many instances in the Middle East, more frequently than not, this level of remuneration is incorrectly thought as being too high and not affordable. Coming to this conclusion does not take into consideration the important tasks that the DAB members are entrusted with, as set out above. To eliminate one simple arbitration would save the parties much more than what the cost of the DAB would be, and in complex construction or engineering projects there would be many of these! As one of the sensible statements made provides: ***“On both the Daily Fee and the Retainer Fee, it is to be remembered when deciding on fees that the Contract Parties are investing in the DB as a means of trying to avoid the much more costly and time-consuming process of international arbitration or litigation. To use an old English expression, it is important not to be “Penny wise but Pound foolish”.***<sup>14</sup>

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<sup>13</sup> The full table of remuneration is as follows:

- (a) A retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) being available on 28 days’ notice for all site visits and hearings;
  - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this clause.
- (b) A daily fee which shall be considered as payment in full for:
  - (i) each day or part of a day up to a maximum of two days’ travel time in each direction for the journey between the member’s home and the site, or another location of a meeting with the other members (if any);
  - (ii) each working day on site visits, hearings or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) All reasonable expenses incurred in connection with the member’s duties, including the cost of telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs: a receipt shall be required for each item in excess of 5% of the daily fee referred to in sub-paragraph (b) of this clause.

<sup>14</sup> This is quoted from Page A-5 of the Dispute Board Manual of the Japan International Corporation Agency, March 2012

8.3 Some practitioners believe that it would be better to remove the retainer fee and leave the DAB to bill in respect of the hours it spends in performing its duties, but this would be terribly wrong for many reasons:

- It creates a false impression of a lower budget than actually required;
- It creates confusion and lack of certainty as to what is required from the DAB to perform its full duties;
- It may create a lack of trust between the Parties and the DAB;
- It does not accurately reflect the reasons for retainer;
- Other less serious problems relating to the extent of the work to be associated with monitoring the work on site.

8.4 Unfortunately, the view that this level of remuneration is too high and not affordable is sourced from:

- Some statements in certain technical documents that have been left incomplete and unqualified and as such, are capable of being taken out of context & misused, causing confusion and resulting in disingenuous arguments for the rejection of the DAB concept by certain parties for their own reasons! For example: See the Dispute Board Manual, March 2012 of the Japan International Corporation Agency, where the following is stated: ***“It is observed that this amount (the ICSID \$3000) is readily accepted by most DB members. However, in many instances, suitable DB members are willing to serve for less than that amount, but it is potentially unwise to seek to set a Daily Fee for less than one-half of the ICSID fee especially if DB members are sought from outside the country of the project, because it is likely to be difficult to attract top quality experts for any lesser amount.”*** (page A-5 of the Manual). The offending text is highlighted, since it begs the question: *Does it mean that the rate is acceptable at half the ICSID rate?*

Another example from the same document reads as follows: “If more than one person is on the DB, it is good practice to pay each the same fee, although sometimes the Chairperson receives somewhat more than the other two members in

recognition of the Chairperson's duty of organising the internal operations of the DB; however, there is no 'standard practice' on this point." (page A-5 of the Manual). This statement is in my view simply wrong in both of its parts!! In my view, the payment to the DB member would depend on the cost of living in the country of origin and the Chairman earns more by the number of days or hours input and not by the applied rate.

**9. Some abstract Questions**

- 9.1 Why do people pay more to get out of trouble than to prevent trouble in the first place?
- 9.2 Should the Parties compare the average pay of construction professional & legal professionals, including those in the dispute resolution field?
- 9.3 Why is there so little effort being expended at the moment to eliminate the Lack of Knowledge on behalf of the Employer or his Engineer or Representative?

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4<sup>th</sup> May 2013