

**DRBF Conference Sydney**



**12th Annual DRBF International Conference**  
 May 3-5, 2012  
 Dockside Convention Centre  
 Sydney - Australia

- Speaker:  
 Rechtsanwalt Dr. Götz-Sebastian Hök  
 • kanzlei@dr-hoek.de

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FIDIC.ORG

---

---

---

---


---

---

---

---

**DRBF Conference Sydney**



**Dr. Götz-Sebastian Hök**  
 FIDIC/MDB Approach in respect  
 of Dispute Adjudication Boards.

§ Kanzlei Dr. Hök  
 Stiglmeier & Kollegen Berlin

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FIDIC.ORG 2

---

---

---

---

---

---

---

---

**DRBF Conference Sydney**



**Dr. Götz-Sebastian Hök**

- defends the interests of clients in cross-border relationships
- in particular in the international construction field
- is specialised in international litigation
- speaking French, English and German
- is a fully accredited & licensed FIDIC trainer
- is a FIDIC assessed & licensed FIDIC trainer
- is the FIDIC legal advisor and listed Adjudicator
- is a practising arbitrator
- is a lecturer at Berlin University of applied science

§ Kanzlei Dr. Hök  
 Stiglmeier & Kollegen Berlin

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FIDIC.ORG 3

---

---

---

---

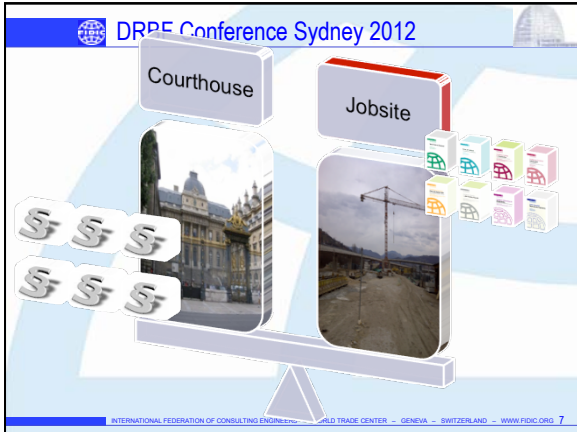
---

---

---

---






---



---



---



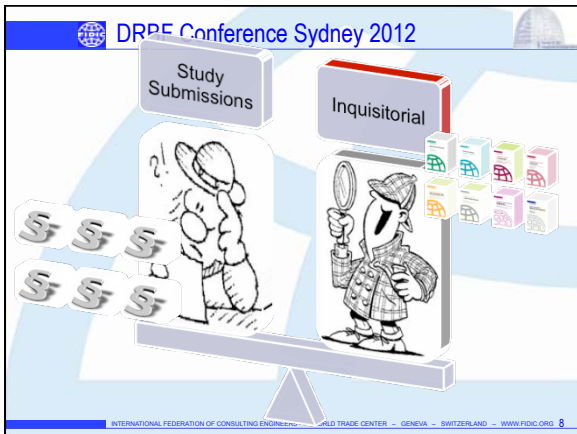
---



---



---




---



---



---



---



---



---




---



---



---



---



---



---




---

---

---

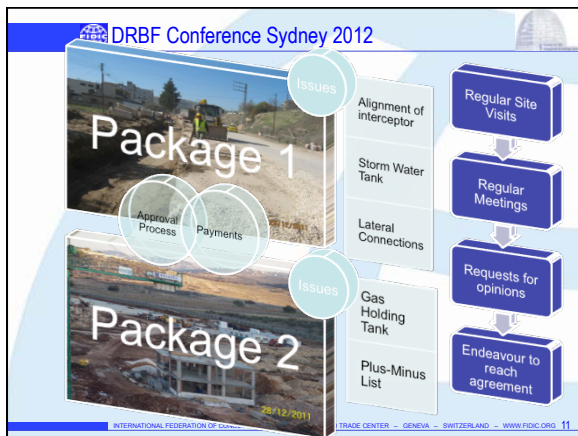
---

---

---

---

---




---

---

---

---

---

---

---

---




---

---

---

---

---

---

---

---

DRBF Conference Sydney 2012

**Issues**

- Access to arbitration & Courts is barred
- Binding Effect
- Enforceability

Lex mercatoria  
Civil Law  
Common Law

13

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FDIC.ORG

---

---

---

---

---

---

---

---

DRBF Conference Sydney 2012

**Contract** → **DAB decision** → **Summary Proceedings**

- Expert determination
- Binding Effect
- No Manifest Error
- No Inevitable result
- Arbitrato irrituale
- Bindend Advies
- Civil Codes & More

Lex mercatoria  
Civil Law  
Common Law

14

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FDIC.ORG

---

---

---

---

---

---

---

---

DRBF Conference Sydney 2012

**CONTRACT**

- Construction Contract
- DAA

15

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FDIC.ORG

---

---

---

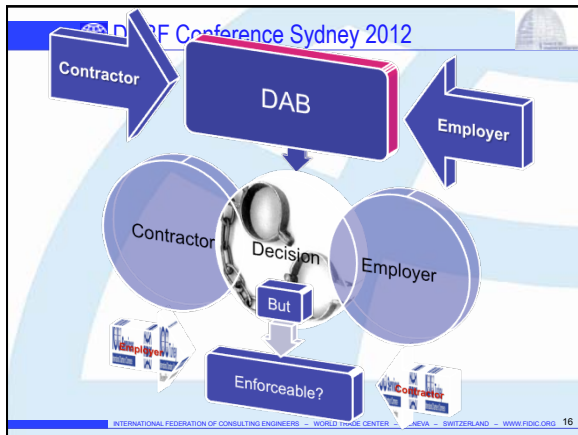
---

---

---

---

---




---

---

---

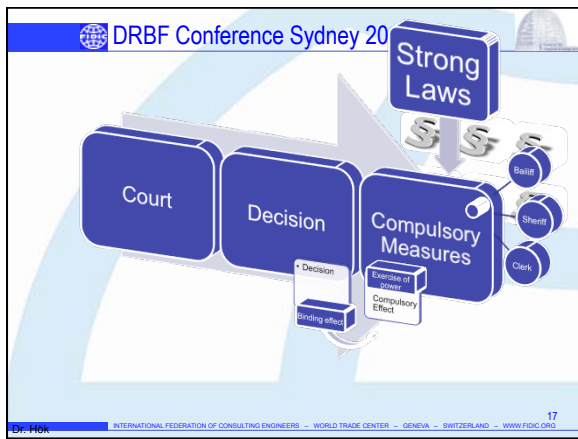
---

---

---

---

---




---

---

---

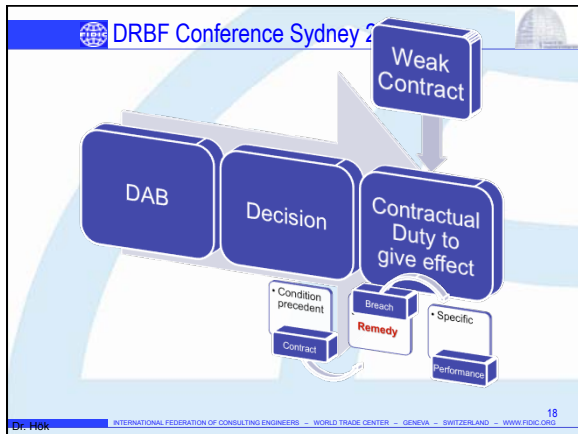
---

---

---

---

---




---

---

---

---

---

---

---

---

DRBF Conference Sydney 2012

**DAB decision**

- I conclude (with regard to English statutory adjudication: comment added) that enforcement proceedings such as these are contractual obligation, **namely the obligation to comply** with the decision.
- VHE Construction plc v. RBSTB Trust Co Ltd [2000] EWHC Technology 181 (13th January, 2000)

19

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FDIC.ORG

---

---

---

---

---

---

---

---

DRBF Conference Sydney 2012

**DAB decision**

- However an **adjudicator's decision does not create a cause of action as such**; it is merely an expression as to liability and quantum about the dispute that has arisen under the contract.
- ... **the cause of action remains the original claim** and is not the decision of the adjudicator.
- Glencot Development & Design Ltd v. Ben Barrett & Son (Contractors) Ltd [2001] EWHC Technology 15 (13th February, 2001)

20

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FDIC.ORG

---

---

---

---

---

---

---

---

DRBF Conference Sydney 2012

**Extent of the binding effect** (Beufield Construction Ltd v. Trudson (Hutton) Ltd 2008] EWHC 2333 (TCC)

- The parties are bound by the decision of an adjudicator on a dispute or difference until it is finally determined by court or arbitration proceedings or by an agreement made subsequently by the parties.
- The parties cannot seek a further decision by an adjudicator on a dispute or difference if that dispute or difference has already been the subject of a decision by an adjudicator.
- The extent to which a decision or a dispute is binding will depend on an analysis of the terms, scope and extent of the dispute or difference referred to adjudication and the terms, scope and extent of the decision made by the adjudicator. In order to do this the approach has to be to ask whether the dispute or difference is the same or substantially the same as the relevant dispute or difference and whether the adjudicator has decided a dispute or difference which is the same or fundamentally the same as the relevant dispute or difference.
- The approach must involve not only the same but also substantially the same range of factual and legal issues. This is because disputes or differences encompass a wide range of factual and legal issues. If there had to be complete identity of factual and legal issues then the ability to readjudicate what was in substance the same dispute or difference would deprive clause 39A.7.1 of its intended purpose.
- Whether one dispute is substantially the same as another dispute is a question of fact and degree."

21

INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS - WORLD TRADE CENTER - GENEVA - SWITZERLAND - WWW.FDIC.ORG

---

---

---

---

---

---

---

---






---

---

---

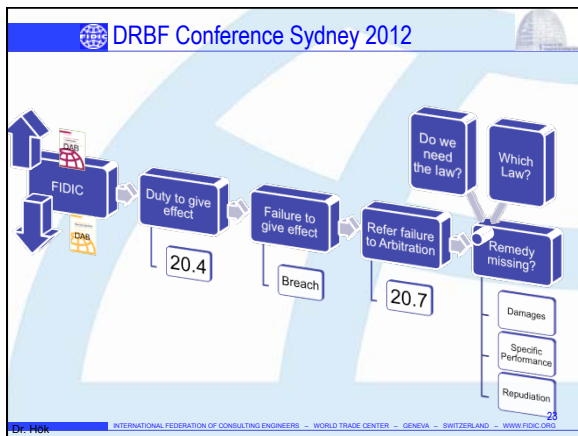
---

---

---

---

---




---

---

---

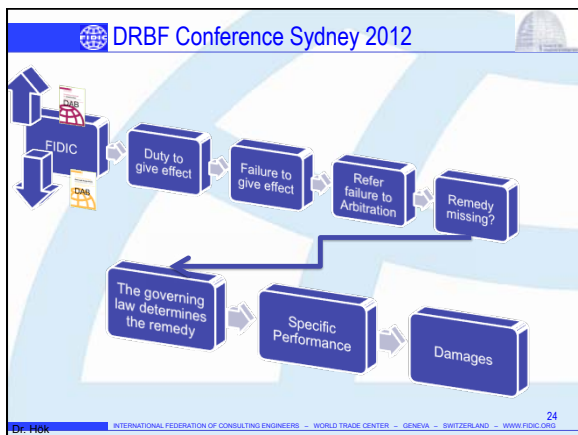
---

---

---

---

---




---

---

---

---

---

---

---

---





---

---

---

---

---

---

---

---