

Presentation to Dispute Boards

How to do it, what to avoid, lessons to be learned

Saturday 31 October 2009: 13:30 – 15:00
Bucharest, Romania

Gwyn Owen

MSc BSc CEng FICE FConsE FCI Arb

Past President DRBF

INTRODUCTION

- **Gwyn Owen**
 - The principle purpose of making a presentation to a DB
- **Edward Corbett**
 - What is the purpose of a hearing? Legal presentations and the participation of project participants
- **Florin Niculescu**
 - Identifying documents and substantiating the issues
- **Christopher Mires**
 - Presenting to a single member DB. Presentation, style and structure
- **Romano Allione**
 - Reaction of the DB members to the presentations of the parties
- **Open Discussion**

What is the purpose of a Dispute Board?

- To avoid disputes?
- To provide advice?
- To provide an Opinion?
- To provide a Decision?
- To provide a Recommendation?
- To provide guidance?

The Principle purpose of making a presentation to a DB

- Third Party Neutrals / non confrontational
- Expediency in contract administration
- Consideration of risk and liability
- Clarification of risk / opinion
- Open discussion of matters of concern
- Highlighting issues / facilitating discussion
- Dispute avoidance
- Assistance with negotiation
- Second level Dispute Resolution

Dispute Avoidance

- Are you as a DB contractually bound to avoid disputes?
- ICC Art 16: Informal assistance
- FIDIC '99 Procedural Rules Para 2
- FIDIC MDB Procedural Rules Para 2
- DRE Agreements under WB Rules or FIDIC 4
- Good Practice?

Risk Under Contract

- Notification & Liability -

- Allocation of Risk under the contract
- Change in Risk
- Unforeseeable Risk

Change & Administration under the contract

- Instructions
- Variations
- Valuations
- Unforeseeable issues
- Value Engineering

Management of Risk

- Administration
 - S.Cl.1.9 – 2 stage notice
 - S.Cl.4.12 – notice as soon as practicable
 - S.Cl.8.3 – notice promptly - specific probable future events
 - S.Cl.19.2 – 14 day notice
 - S.Cl.201. – 28 day notice
- Options
 - Claim avoidance
 - Programme & Cost implications
 - Mobilise the Engineer ... allocation of resources

Presentation to a DB

- **Who should attend**
 - Senior staff
 - Decision makers
 - Technical advisor
 - Legal advisor
- **Location of meetings**
 - On Site
 - At any other agreed location

Preparation by the Parties

- BE PREPARED !!
 - Report on Progress / Programme
 - Outline issues and matters of concern
 - Schedule progress with resolution of issues
 - Consider solutions
 - What is necessary to facilitate solutions
 - Programme of resolution
 - Recourses necessary
 - Outcome: Required / Possible / Acceptable / Risk
 - Consider consequences of outcome