

# 8th Annual DRBF International Conference

## Session A

### Constituting a Dispute Board under the Multilateral Development Banks (MDBs) Harmonised Construction Contract March 2006 Version

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Chaired by Cyril Chern

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#### Requirements and Issues:

##### 1. How A Dispute Board Comes Into Being

- a. Where in the Contract is this set forth
- b. Date of Commencement
- c. Who Appoints
- d. What if nothing happens by the date shown in the Contract?
  1. 21 Day rule
  2. Each Party (if 3 person Board) nominates one proposed member for approval by the other. If acceptable,  
**THEN**
  3. Those two recommend the 3<sup>rd</sup> member who will be the Chair,  
**OR**
  4. If there is a separate list of pre-approved members the selection is made from that list – but what if there are not enough names?
- e. What if the Parties:
  1. Fail to agree the appointment of the sole member by the required date; **OR**
  2. Either Party fails to nominate a member for approval by the other Party; **OR**
  3. Either Party fails to approve a member nominated by the other Party of a 3 person DB; **OR**
  4. The Parties cannot agree upon the appointment of the third DB member; **OR**
  5. The Parties cannot agree on the appointment of a replacement DB member within 42 Days – **THEN**

- a. Either the appointing entity **OR** the official named in the Contract Data can appoint **AND** each party has to pay one-half of the costs of either the entity or official.

**2. How many members are needed**

- a. Where in the Contract is this set forth
- b. How many
  1. One or Three but what about 5 or 2?
  2. What if no number given?
- c. The qualifications needed for appointment:
  1. "Suitably" qualified generally but also
    - a. Fluent in the language of communication as defined in the Contract; **AND**
    - b. Professionally experienced in the type of Construction involved in the Works; **AND**
    - c. Professionally experienced with the interpretation of contractual documents.

**3. How members are paid**

- a. Mutual agreement (including payment of any experts consulted by DB)
- b. Each Party pays one-half

**4. Members who either will not or cannot continue and their replacements**

- a. Members who decline to act in the first instance
- b. Members who resign later
- c. Members who are unable to continue due to other reasons

**5. Members who are terminated**

- a. By agreement of the Parties
- b. By termination of the DB