Dispute Boards in FIDIC Contracts

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History of DBs in FIDIC Contracts

1995 - introduced as part of Orange Book dispute settlement procedure

1996 - option for 1987 Red Book

1997 - option for 1987 Yellow Book

subsequently included in all new FIDIC forms of contracts including the MDB harmonised version
### FIDIC’s Rainbow Colours

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<th>Colour</th>
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| Red    | Civil Engineering Construction  
(works designed by the Employer) |
| Yellow | Plant and Design-Build  
(works designed by the contractor) |
| Silver | EPC/Turnkey Projects  
(one entity takes total responsibility for design & construction) |
| Green  | Short Form of Contract |
| Gold   | Design, Build & Operate |
| White  | Client - Consultant Agreement |
| Pink   | MDB harmonised version of Red book |
| Orange | Design - Build & Turnkey - superseded by Yellow and Silver |
Why were DBs introduced?

- challenge for “the Engineer” to give an independent decision

- especially if issues arose from their own previous acts/omissions
Now

DABs are part of the dispute settlement/resolution procedure in :-

- 1999 Red, Yellow, Silver and Green Books
- 2004 Pink Book (MDB harmonised version)
- 2006 Dredging and Reclamation Contract
- 2008 Gold Book
- 2009 Red Book Sub Contract
MDB Harmonised Edition 2006

- developed jointly by FIDIC and MDB HOPs
- ownership and copyright remains vested in FIDIC
- licensed to World Bank, ADB, AfDB, IADB, EBRD and many bilaterals including AusAID for unrestricted use by their borrowers
- includes DB provisions, DB general conditions and DB procedural rules
Who make up the DBs?

General qualifications stipulated in Clause 20.2

Key attribute is the respect and trust of the appointing parties

For domestic, small value contracts - local appointments usually appropriate

For international, large value contracts requirement for independence and impartiality
The Impact of DBs

- anecdotal evidence of reduced number of arbitrations
- because parties can quickly and easily call for the DB’s advice?
- able to deal with disagreements of any kind
- early resolution with minimal effort and cost
The Future of DBs

- the DB approach now firmly embedded in contract practice
- using a DB to avoid disputes is also now widely accepted
- FIDIC intends to go on including DBs in all its contract forms
Issues

- misuse of FIDIC contracts by some clients
- should the White Book incorporate DBs?
- does the background of the DB members matter?
- how to assure quality of local lists
- need for additional language skills on Presidents list