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JICA's efforts for promotion of the use of dispute boards ("DB") in the Asian region

JICA adopted the FIDIC MDB Harmonised Edition (2006) (hereinafter "MDB Conditions") in 2009 as the Conditions of Contract to be included in its Sample Bidding Documents for Japan's Overseas Development Agency ("ODA") loan projects. This of course involved the use of DBs to prevent and resolve disputes.

JICA had expectations that the use of DBs would have several favourable results: dispute prevention (or rapid resolution of those which could not be prevented); dissuasive effect on unreasonable behaviour of the Parties to the Contract; enhanced capacity of the Employer in terms of contract management; improvement of the Employer's reputation; and, more participation by good competitors in the bidding process.

In these circumstances, it was expected that the projects employing DBs would be increasing in the Asian region. However, the DB concept is still new to most recipient governmental authorities, local consultants, local contractors and other concerned groups such as arbitrators and lawyers. Also there are few qualified DB adjudicators in this region. Therefore, JICA decided to make efforts in the Asian region for wider understanding of the DB concept and for training of DB adjudicators.

The programme started in 2008. Kyoto University (represented by Professor Toshihiko Omoto), AJCE (Association of Japanese Consulting Engineers, represented by Director General Dr. Yoshihiko Yamashita), and the prominent consulting engineering firm Nippon Koei (represented by Mr. Yukinobu Hayashi) formed a joint venture to carry out the programme. These three representatives made a Study Team led by Professor Omoto.

In year 2008, a fact-finding survey was conducted by the Study Team with various organizations to confirm the present status of DB utilization, existing training for fostering DB adjudicators, and the possibility of cooperation with existing organizations which were training of DB adjudicators. The visited organizations included: King's College, University of London; the UK Institution of Civil Engineers and the UK Association of Consulting Engineers. The Study Team also participated in the 8th DRBF International Conference and DRBF Training Workshop, and had a meeting with DRBF Asian Group at Cape Town, South Africa.

JICA also conducted DB promotion seminars in Kyoto, Tokyo, New Delhi and Manila. Surveys were conducted in Kyoto and Tokyo in the form of a questionnaire to understand the participants 'awareness of, and interest in the use of DBs, and how they assessed themselves in satisfying the DB

qualification criteria This was done to identify potential adjudicators and to assist the Study Team in deciding whether to recommend that JICA establish a program of training for aspiring adjudicators.. The Study Team participated in the ASPAC General Assembly Meeting at the FIDIC Annual Conference in Quebec, Canada, and presented a draft action plan on promotion of the use of DBs in the Asian region. On this occasion Study Team exchanged views with FIDIC Executives, Dr. John Void (President), Mr. Gregs Thomopulos (President elect) and Mr. Enrico Vink (Managing Director) and obtained positive response for FIDIC's cooperation for JICA promotion of the DB concept.

In year 2009/2010, JICA achieved two major goals: preparation of a "Training Kit for Adjudicators" and "Guidelines for Implementation of Qualification Procedure for DB Adjudicators". In addition, JICA conducted DB promotion seminars and surveys with Japanese ODA loan recipient agencies in Phnom Penh, Hanoi, Jakarta, Dhaka, and Colombo.

On the Training Kit, Mr. Gordon Jaynes assisted JICA very much. The Kit consists of a sample programme for a 5-day Training Workshop, a training text with a large set of PowerPoint slides to accompany the text, plus attachments including a sample Three Party Agreement for engaging a DB member, and a sample Site Visit Report. Also included is a set of notes for the trainer regarding the training text, as well as a sample hypothetical scenario for use in a case study as part of the training.

Also prepared was a "Guideline for Implementation of Qualification Procedure of DB Adjudicators" developed for the FIDIC Member Association or other accrediting organization to assess potential DB adjudicators and list those who have passed the assessment on a National List. (AJCE, FIDIC Member Association of Japan, created its qualification procedure and Japanese National List in May 2011 based on this Guideline.)

In year 2010/2011, JICA conducted a Training Workshop and a subsequent Assessment Workshop in Tokyo for Japanese candidates who wished to be listed in the Japanese National List of DB Adjudicators. FIDIC and DRBF fully supported the two Workshops and sent highly qualified trainers and assessors. Trainers consisted of Mr. Gordon Jaynes, Mr. Dick Appuhn and Professor Toshihiko Omoto. Assessors consisted of Mr. Volker Jurowich, Dr. Sebastian Hök and Professor Toshihiko Omoto. As a result, 10 out of 19 candidates have passed the assessment and 7 of them have applied for listing on the National List.

JICA conducted a survey of the status of National Lists of DB Adjudicators in Poland, Germany, and Romania before conducting the Tokyo Training and Assessment Workshops.

JICA also conducted survey to study the current status of the use of DB with the Multilateral Development Banks and the DRBF. The Study Team visited the Asian Development Bank (ADB, Manila), World Bank (Washington DC) and the Inter-American Bank (IDB, Washington DC). The

general outcome of the survey was that the Banks were not involved in the use of DB and therefore they did not grasp the status of the use of DB. The Study Team also had a meeting with DRBF at JICA USA Office in Washington DC. in which Mr. Harold V. McKittrick (Former President) explained in depth about the activities of DRBF and reported that DRBs were widely used in the US construction industry and most of the disputes (if not prevented) were resolved without use of arbitration or litigation.

In year 2011/2012, the JICA Dispute Board Manual has been developed by the Study Team with the assistance of Mr. Volker Jurowich, Dr. Sebastian Hök, and Mr. Gordon Jaynes. This manual was prepared to assist all the stakeholders in the successful operation of DB, by giving concise and practical guidance on how to implement and operate successfully a DB. This Manual is intended for use not only by JICA and Borrowers from the Japanese ODA but also by any other users of DBs, including other financing agencies, Employers, Engineers, and Contractors.

JICA also conducted DB seminars and surveys on the possibility of establishing National Lists of DB adjudicators in Vietnam, Sri Lanka, Indonesia, and the Philippines. In the seminar in the Philippines, Mr. Hamid L. Sharif, Principal Director of Central Operations Services Office of the Asian Development Bank (ADB) gave a presentation focusing on the present obstacles against the dissemination of DB and expressed the view that ADB would make efforts to disseminate the DB concept and would like to cooperate with JICA in this regard.

In year 2012/2013, it is expected that JICA will have a Training Workshop and an Assessment Workshop at one location in Asia, for example in Manila, by gathering candidates who are to be selected from Asian countries, and the FIDIC Member Associations are expected to establish a National List in each country. It is also expected that JICA will select some projects of good size as “Pilot Projects” in which a DB would be properly established and operated through use of the guidelines and training materials which have been developed by JICA..

It should be mentioned that the DRBF Country Representatives assisted JICA for the successful seminars and surveys in each country. JICA and the Study Team wish to express appreciation to all who assisted their activities and would like to ask for their continuous cooperation in the future ..