

8th Annual DRBF International Conference

Session A

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

Chaired by Cyril Chern

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 3rd 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