



## Adjudicator Promotion in Asian Region

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## Background

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- Japan Bank for International Cooperation (Now JICA) License Agreement with FIDIC in Aug. 2008
- JICA will introduce FIDIC Red Book MDB Harmonized Ed. in new Sample Bidding Document
- Employment of adjudicators is mandated
- Need of capacity building of adjudicators in Asian Region
- JBIC initiated study on the promotion of adjudicators In Asian region
- Prof. Omoto, Kyoto Univ. and AJCE implemented the study in cooperation with JBIC



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## Dispute Board

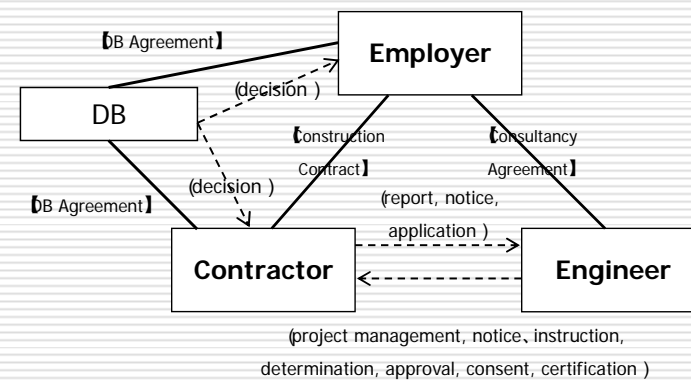
- ❑ Alternative Dispute Resolution  
Mediation, Dispute Board, Arbitration, Litigation.
- ❑ Dispute Board
- ✓ Dispute Review Board, DRB  
DRB issues recommendations.
- ✓ Dispute Adjudication Board, DAB  
DAB issues decisions.  
called as DB (Dispute Board) in MDB edition
- ✓ Combined Dispute Board, CDB  
CDB issues recommendations.  
However, CDB may issues decisions, if Employer or Contractor so requests.



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## Three Party System and DB in FIDIC



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## Dispute Settlement Procedures in FIDIC Contracts

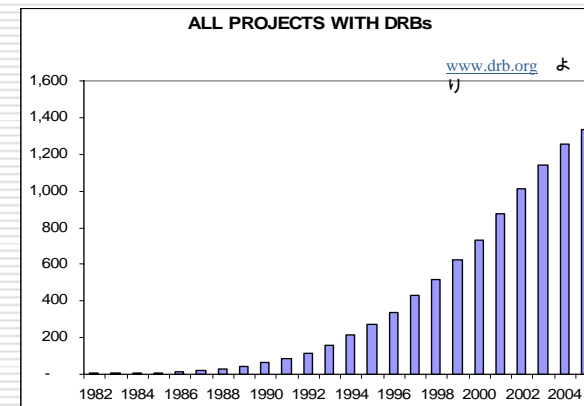
- ❑ Red Book 1987
  - The Engineer makes determination of claim and decision of dispute
  - Same in Yellow Book 1987
- ❑ Red Book 1999 and MDB edition
  - The Engineer makes determination of claim, and DB makes decision of dispute
  - Same in Yellow Book 1999
- ❑ Silver Book 1999
  - The Employer makes determination of claim, and DB makes decision of dispute



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## The Present State of DB's Propagation DRBF's Report



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## The Operation of DB Qualifications of DB members

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### FIDIC Rules

- Language ability
- Experience in drafting and interpreting contract documents
- Availability for site visits
- Free from conflict of interest with both contracting parties and Engineer
- Free from conflict of interest with the contract itself



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## The Operation of DB-Acquaintance With the Project The First Site Visit

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### **Discovering potential disputes areas**

- Seeds of problems planted at bidding, contract negotiation and signing stage
- Problems appear right after signing of the contract  
Discovering potential dispute areas
- Improvement of the relationships among the parties
- Establish Problem solving team for the project
- Length-of-stay : No shorter than three days
- Frequency : Every 3~4 months
  - Day 1 : Site inspection
  - Day 2 : Hearing
  - Day 3 : Site Visit Report



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## The Effects of DB Dispute Resolution

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- ❑ Disputes that cannot be solved among the parties and engineers are referred to DB ( Reference )
- ❑ DB being well informed of progress/contractual issues
- ❑ Claims and disputes will not be left unsolved
- ❑ Informal advisory opinion
- ❑ Most important function of DB is to prevent dispute before escalation



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## Project without DB

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- Hindering problems from being solved
- Each one pursues his own profit
- The contracting parties/Engineer don't get along well with each other
- Claims are left unsolved
- Tiny disputes may also escalate (global claims, additional problems of interest and exchange rates)
- More enormous cost occurs if disputes escalate into litigation and arbitration



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## The cost of DB FIDIC's Explanation

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- **Retainer**
  - DB members are to be conversant with the situation of the site, and maintain the related documents.
  - Covers office expenditure and other costs
- **Daily Fee**
  - Daily fee for site visit: Fee by Int'l Center for Settlement of Investment Dispute – USD3000/day
  - Days of stay + maximum two days for each way for travel
  - Days needed for documents reviewing for the reference
- **Reasonable expenses** such as airfare, hotel fee etc.



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## Promotion of DB Adjudicators Listing Status

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- **FIDIC Accredited Adjudicators**
  - FIDIC President's List of Approved Dispute Adjudicators
  - 38 Listees
    - Civil Engineers, Architects, Quantity Surveyors, Mechanical Engineers, Lawyers etc.
  - Qualification Criteria
- **AAA (American Arbitration Association) DB Panel**
- **Under preparation**
  - DRBF Approved Adjudicators
  - ICE, ACE
  - Other National List



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## Promotion of DB Adjudicators Education/Training/Accreditation

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### FIDIC

- FIDIC Contract Education/Training (commercially operated)
  - Module 1: Practical use of the FIDIC Conditions of Contracts
  - Module 2: The management of claims and dispute resolution procedures
  - Module 3: Management of Dispute Adjudication Board procedures
  - Module 4: Contract management and administration
- DRBF: Workshops very often



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## JBIC Initiatives

What's been done so far?

**Joint Venture (Kyoto Univ. & AJCE)  
has performed the following tasks so far**

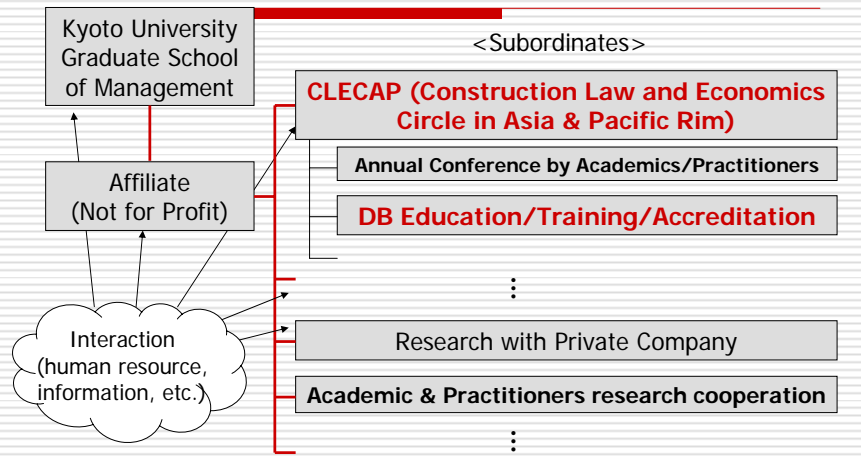
- 4 seminars:
  - at Kyoto University, Kyoto, 11 July 2008
  - at JBIC, Tokyo, 18 July 2008
  - at Habitat Center, Delhi, 22 August, 2008
  - at Linden Suites, Manila, 28 August, 2008
- Investigation/Hearing
  - at ICE, ACE, DRBA, CEAI, CECOPHIL, DRBF, King's College, etc.
  - participated in DRBF Workshop



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(proposed)  
 Framework of the New Institution



Action Plan (Proposed)

**1. Inauguration of the New Institution for Educating/Training/Accrediting Adjudicators in Asian region**

- Hold the seminars to improve the awareness of Dispute Board concept among the project stakeholders
- Hold the seminars to educate potential adjudicators.
- Provide information about DB / adjudicators to those who are interested.
- Hold the assessment workshop to accredit adjudicators for establishing National Lists
- All these activities to be performed in cooperation with FIDIC and Member Associations

## Action Plan (Proposed)

### 2. To help Establishment of FIDIC National Lists of Adjudicators by Member Associations

- FIDIC Member Associations may need accreditation by an independent organization when they prepare their National Lists.
  - FIDIC APA can provide this accreditation
  - The proposed new institution can also do, successful candidates will be recommended to Member Associations for inclusion in their National Lists



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## Action Plan (Proposed)

### 3. Ask for assistance of MDBs, JBIC etc.

- Urgent demand of DB adjudicators in Asia: FIDIC Conditions of Contract (1999 and MDB Harmonised Edition) will be used more. (JBIC (JICA) adopts MDB Harmonised Edition in its Sample Bidding Documents.)
- Costs for education/training materials, assessment workshop materials, tutors



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## Promotion of Adjudicators in Asian Region

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Thank you for your patience!



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