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Contract Management under FIDIC 2017 Red Book

Roles of Dispute Avoidance/Adjudication Board (DAAB)

Day 1-S13 – 22 July 2025



Roles of DAAB

Day 1-S13 – 22 July 2025

Dinesh Shiwakoti

Doctor of Engineering (Civil)

Master of Laws (Construction, Arbitration, Adjudication)

FIDIC President's List Adjudicator

FIDIC Accredited International Trainer

Fellow, Chartered Institute of Arbitrators



DISPUTES Resolution Options in FIDIC Red Book 2017

Forum	Agreement/Law	Effect
Avoid Dispute (DAAB)	Consensual	
Adjudication (DAAB)	Consensual, statutory	<ul style="list-style-type: none"> • Binding, • Not final (if NOD given within 28 days), • Local jurisdiction
Amicable settlement	Consensual	
Arbitration	Consensual, statutory	<ul style="list-style-type: none"> • Binding, • Final, • International jurisdiction
Mediation	Consensual, statutory	<ul style="list-style-type: none"> • Not binding
Court of law	Law	<ul style="list-style-type: none"> • Binding, • Several layers before final, • Local jurisdiction

(forums provisioned under FIDIC 2017)



FIDIC Redbook 2017: Roles of DAAB in Disputes

Dispute –
Definition

Dispute Adjudication–
History

DAAB–
Dispute Avoidance

DAAB—
Appointment

DAAB –
Disputes Adjudication

DAAB–
Case Study



Dispute: Definition

The relevant clause is **Sub-Clause 1.1.29 [2017 Red Book]**

There will be a Dispute when

- there is a Claim, or a matter to be agreed/determined;
- which is rejected (or partly rejected) by the determination of the Engineer; and
- a Notice of Dissatisfaction (NOD) in respect of that determination has been given by one Party (or the Parties have each given a NOD).

**SC 21.4 (2022 reprint)
exception added, for
Disputes:**

- (a) failure to certify Statement, failure to make payment,
- (b) failure to receive financial charge,
- (c) Notice of intention to terminate or Notice of Terminate the Contract – deemed Dispute

SC 1.1.29: "Dispute" means any situation where:

(a) one Party has made a Claim, or there has been a matter to be agreed or determined under sub-paragraph (a) of Sub-Clause 3.7 [Agreement or Determination];

(b) the Engineer's determination under Sub-Clause 3.7.2 [Engineer's Determination] was a rejection (in whole or in part) of:

(i) the Claim (or there was a deemed rejection under sub-paragraph (i) of Sub-Clause 3.7.3 [Time limits]); or

(ii) a Party's assertion(s) in respect of the matter as the case may be; and

(c) either Party has given a NOD under Sub-Clause 3.7.5 [Dissatisfaction with Engineer's determination].

Dispute Boards in the industry

- **Pioneer:** In construction, mechanism which initiated **in the 70's in USA**. Extensively used to date, under the form of Dispute Review Boards making non-binding recommendations.
- **Statutory Adjudication:** Other countries followed that path –UK (adjudication is **statutory** since 1996 under the Housing Grants, Construction and Regeneration Act, 1996), Australia, Singapore, Malaysia.
- **Non-FIDIC Contracts:** A growing trend in using DB, or also Conflict/Dispute Avoidance Panels, on large projects...and not only under FIDIC Contracts.
- **Bilateal/Multilaterals:** Amongst the Financing Institutions, there is a growing recognition of the DB/DAB/DAAB as a positive project support body, preventing dispute and fostering quick dispute resolution, helping to avoid that protracted disputes negatively impact the project delivery.
- **JICA** has been promoting the Dispute Boards on their financed projects for long, and finance the Employer's share of the DB costs. World Bank does the same with their 2019 SPD.

Dispute Avoidance/Adjudication Board (DAAB)

2017

SC 1.1.22 - *"DAAB" or "Dispute Avoidance/Adjudication Board" means the sole member or three members (as the case may be) so named in the Contract, or appointed under Sub-Clause 21.1 [Constitution of the DAAB] or Sub-Clause 21.2 [Failure to Appoint DAAB Member(s)].*

SC 21.1 – The DAAB is to be appointed from the outset of the Contract implementation in all three Books (Red/Yellow/Silver Book – in 1999 this was only the case in the Red Book). **Default position = within 28 days after the receipt of Letter of Acceptance.**

FIDIC Guidance Note on SC 21.1:

« It is generally accepted that construction projects depend for their success on the avoidance of Disputes between the Employer and the Contractor and, if Disputes do arise, the timely resolution of such Disputes..FIDIC strongly recommends that the DAAB be appointed, as a **'standing DAAB'** – that is, a DAAB that is appointed at the start of the Contract who visits the Site on a regular basis and remains in place for the duration of the Contract to assist the Parties: **a) in the avoidance of Disputes**, and **b) in the 'real-time' resolution of Disputes** if and when they arise to achieve a successful project.





Dispute Boards – World Bank



- WB has adopted the **FIDIC 2017 Suite of Contracts** (Red, Yellow and Silver Book) and made it part of **WB's Standard Procurement Documents** as of **July 2019**.
- WB sees the DAAB as a key in increasing the chances of delivering a successful project:
 - **Constitution of the DAAB is now a condition precedent to the setting of the Commencement Date under PC SC 8.1.**
 - Employer's share of the fees and expenses of the DAAB is paid by the project loan through a Provisional Sum.
 - WB SPD have given the DAAB a **special role in projects of high risk of Gender Based Violence (GBV)**, where the DAAB role is to verify that the Contractor complies with their anti-SH (Sexual Harassment) and SEA (Sexual Exploitation and Abuse) obligations.

Dispute Boards and ADB



COPA Part B

ADB SBD for Works (FIDIC Red Book) 2022

COPA Part A

Clause/Sub-Clause	Special Provisions
Sub-Clause 21.1 Constitution of the DAAB	<p>First paragraph: the second sentence is replaced with: "The Parties shall jointly appoint the member(s) of the DAAB within 28 days after the Commencement Date, unless stated otherwise in the Contract Data."</p> <p>In the second paragraph, at the end of the first sentence after deleting: ".", the following is added: ", each of whom shall meet the criteria set forth in Sub-Clause 3.3 of Appendix- General Conditions of Dispute Avoidance/ Adjudication Agreement."</p> <p>After the second paragraph insert the following paragraph: "If the Contract is with a foreign Contractor, the DAAB members shall not have the same nationality as the Employer or the Contractor."</p>
Sub-Clause 21.4.3 The DAAB's decision	<p>Item (i) of penultimate paragraph is deleted and replaced as follows.</p> <p>(i) subject to sub-paragraph (ii) below, this amount shall be due and payable in the next IPC, for which the Engineer is obliged to certify, and the Employer is obliged to make payment; and</p>

21.1	Time for appointment of DAAB member (s)	28 days after the Commencement Date
21.1	The DAAB shall comprise	<p>Either: One sole Member or: Three Members</p> <p>[Note: For a Contract estimated to cost above USD 50 million, the DAAB may comprise three members. For a Contract estimated to cost between USD 20 million and USD 50 million, the DAAB may comprise three members or a sole member. For a Contract estimated to cost less than USD 20 million, a sole member is recommended.]</p>

Ref. Sub-Clause (Col 1)	Conditions (Col 2)	Data (Col 3)
21.1	List of proposed members of DAAB	<p>Proposed by Employer</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p>Proposed by Contractor</p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p>
21.2	Appointment (if not agreed) to be made by	[Insert name of an organization or official as the appointing entity or official. The entity or official to be appointed must not, in any way, be related to the Employer, Project Executing Agency, or Project Implementing Agency.]

DAAB Members

DAAB Members are to be **independent** of the Parties, **impartial**, **experienced** in the type of Works being executed, in construction contract interpretation and to be fluent in the **language** of communication of the Contract (*Warranties in Clause 3 of the GC of DAAB Agreement*)

DAAB Members can be selected from various sources such as Lists of Accredited Adjudicators

- FIDIC President's List of Ajudicators

- <http://fidic.org/president-list>

- National Lists such as the French List, the Japanese list, etc

- <https://fidic.org/node/812>

- Lists from other institutions such as ICC

DAAB Members fees – to be shared 50/50 in between the Parties

Dispute avoidance in 2017

SC 21.3 – Avoidance of Disputes

If the Parties so agree, they may jointly request (in writing, with a copy to the Engineer) the DAAB to provide assistance and/or informally discuss and attempt to resolve any issue or disagreement that may have arisen between them during the performance of the Contract.



At the initiative of the Parties...

SC 21.3 – Avoidance of Disputes

If the DAAB becomes aware of an issue or disagreement, it may invite the Parties to make such a joint request.

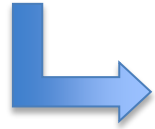


...as well as that of the DAAB.

Dispute avoidance in 2017

SC 21.3

Such joint request may be made at any time, except during the period that the Engineer is carrying out his/her duties under Sub-Clause 3.7 [Agreement or Determination] on the matter at issue or in disagreement unless the Parties agree otherwise



SC 20.1

Preserving the strengthened role of the Engineer

A Claim may arise:

....

*(c) if either Party considers that he/she is entitled to another entitlement or relief against the other Party. **Such other entitlement or relief may be of any kind whatsoever (including in connection with any certificate, instruction, Notice, opinion or valuation of the Engineer)....***

*In the case of a Claim under sub-paragraph (c) above, where the other Party or the Engineer has disagreed with the requested entitlement or relief (or is deemed to have disagreed if he/she does not respond within a reasonable time), **a Dispute shall not be deemed to have arisen except if any of sub-paragraphs (a) to (c) of Sub-Clause 21.4 [Obtaining DAAB's Decision] applies. The claiming Party may, by giving a Notice refer the Claim to the Engineer and Sub-Clause 3.7 [Agreement or Determination] shall apply...***

Dispute avoidance in 2017

General Conditions of DAAB Agreement



SC 1.6 – Informal Assistance

“Informal Assistance” means the informal assistance given by the DAAB to the Parties when requested jointly by the Parties under Sub-Clause 21.3 [Avoidance of Disputes] of the Conditions of Contract.



SC 5.1(e) – General obligations of the DAAB Member

The DAAB Member shall be available to give Informal Assistance when requested jointly by the Parties.



SC 1.4– DAAB’s Activities

“DAAB’s Activities” means the activities carried out by the DAAB in accordance with the Contract and the GCs, including all Informal Assistance, meetings (including meetings and/or discussions between the DAAB members in the case of a three-member DAAB), Site visits, hearings and decisions

Dispute avoidance in 2017

DAAB Procedural Rules



Rule 1 - Objectives

« The objectives of these Rules are:
(a) “to facilitate **the avoidance of Disputes** that might otherwise arise between the Parties; »



Rule 3 – Meetings and Site Visits

« The purpose of meetings with the Parties and Site visits by the DAAB is to enable the DAAB to:

...

(b) become aware of, and remain informed about, any actual or potential issue or disagreement between the Parties; and
(c) give Informal Assistance if and when jointly requested by the Parties ».



Rule 2 – Avoidance of Disputes

“Where Sub-Clause 21.3 [Avoidance of Disputes] of the Conditions of Contract applies, the DAAB (in the case of a three-member DAAB, all three DAAB Members acting together) may give Informal Assistance during discussions at any meeting with the Parties (whether face-to-face or by telephone or by video conference) or at any Site visit or by an informal written note to the Parties. »

DAAB Procedural Rules

Rule 7 - Hearings



The DAAB shall not give any Informal Assistance during a hearing, but if the Parties request Informal Assistance during any hearing:

- (a) the hearing shall be adjourned for such time as the DAAB is giving Informal Assistance;*
- (b) if the hearing is so adjourned for longer than 2 days, the period under Sub-Clause 21.4.3 [The DAAB's decision] of the Conditions of Contract shall be temporarily suspended until the date that the hearing is resumed; and*
- (c) the hearing shall be resumed promptly after the DAAB has given such Informal Assistance*

↳ E.g: for a possible bifurcation to an amicable settlement

Dispute adjudication

SC 21.4 – Dispute to be referred to the DAAB within 42 days from the giving or receiving a **Notice of Dissatisfaction (NOD)** on an Engineer's determination under SC 3.7 => otherwise NOD deemed to have lapsed => Engineer's determination becomes **final and binding**

SC 21.4 – DAAB's decisions

DAAB decision to be given within **84 days of the Dispute reference** to the DAAB, unless otherwise agreed with the Parties.

Decision is **binding**, even if a NOD is issued. If no NOD within 28 days of decision => decision becomes **final and binding**

If NOD

SC 21.5 and 21.6 - Arbitration

After an attempt of amicable settlement (SC 21.5), the final tier of dispute resolution is international arbitration (ICC Rules) (SC 21.6)




DAAB Decision in FIDIC Red 2017: Highlights

DAAB Decision:

- Within 84 days (no change),
- If no notice of dissatisfaction, final and binding (no change),
- Awarded amount **immediately due and payable** without any certification or notice,
- Whether **binding** or **final and binding decision**, “victim” Party entitled to take the **failure** itself **directly to arbitration**, if the “losing” party does **not give effect to the decision**,
- Entitled to **terminate** (Employer) or **suspend/terminate** (Contractor) **contract**, if a party fails to comply with Decision, which must however be “material”

Case study: Appointment of DAAB Members

- 
- Under a FIDIC Red Book 2017 based Contract, the Contractor requests to the Employer to appoint and mobilize a standing DAAB, as provisioned in the Contract.
 - The Employer objects to the mobilization of the DAAB. She argues that DAAB Members are too expensive, and bring little added value, because since in the Employer's country, only arbitral awards or court decisions are recognized, and there is no such things as dispute boards. She refuses to consider any proposed member put forward by the Contractor.
 - What is the Contractor remedy?

Case study: Appointment of DAAB members by FIDIC



- Same case as in former slide.
- The Employer maintains her objection, and ignores the appointment made by the President of FIDIC, arguing that the Employer is a State Agency hence no third party other than a state judge is having any jurisdiction to decide and impose matters on the Employer.
- What would you advise the Contractor to do?

Case study: DAAB, expenses, biasness



- Same case as in former slide.
- The Employer has finally accepted, though reluctantly, to proceed with the DAAB – an additional decision criterion being that the Employer's share of the DAAB fees and expenses have to be covered by the ADB loan.
- The DAAB's decision goes in the favour of the Contractor. The Employer, infuriated, states that she is not surprised since the DAAB Members are foreigners, and so is the Contractor, hence there is a clear collusion in between them against the interests of the Country. She issues a NOD which states that the DAAB is biased, his decision is therefore invalid, and that she will not pay that decision.
- What is your view on that position?

