



Lecture : 05  
*Introduction*

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# 1. Introduction

## Lecture Outlines

- Constitution of DAAB
- Expiry of DAAB
- Failure to Appoint DAAB Member(s)
- Avoidance of Disputes
- Obtaining DAAB's Decision
- Amicable Settlement
- Arbitration (Cont):

## 4. Dispute

### 4.2. Constitution of the DAAB:

- Disputes shall be decided by a **Dispute Avoidance/Adjudication Board** (DAAB) in accordance with Sub-Clause 21.4 [Obtaining DAAB's Decision].
- The Parties shall jointly appoint the member(s) of the DAAB within the time stated in the Contract Data (if not stated, **28 days**) after the date the Contractor receives the Letter of Acceptance.
- The DAAB shall comprise, as stated in the Contract Data, either one suitably qualified member (the “**sole member**”) or three suitably qualified members (the “members”).
- If the number is not so stated, and the Parties do not agree otherwise, the DAAB shall comprise three members.

## 4. Dispute

### 4.2. Constitution of the DAAB (Cont.):

- If the DAAB is to comprise three members, each Party shall select one member.
- The Parties shall consult both these members and shall agree the third member, who shall be appointed to act as chairperson (Umpire).
- The DAAB shall be deemed to be constituted on the date that the Parties and the sole member or the three members (as the case may be) of the DAAB have all signed a DAAB Agreement.
- The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAAB consults, shall be mutually agreed by the Parties when agreeing the terms of the DAAB Agreement.
- Each Party shall be responsible for paying one-half of this remuneration.
- The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone

## 4. Dispute

### 4.2. Expire of DAAB:

Unless otherwise agreed by both Parties, the term of the DAAB (including the appointment of each member) shall expire either:

- a. On the date the discharge shall have become, or deemed to have become, effective under Sub-Clause 14.12 [Discharge]; or
- b. 28 days after the DAAB has given its decision on all Disputes, referred to it under Sub-Clause 21.4 [Obtaining DAAB's Decision] before such discharge has become effective,

Whichever is later.

## 4. Dispute

### 4.2. Expire of DAAB:

However, if the Contract is terminated under any Sub-Clause of these Conditions or otherwise, the term of the DAAB (including the appointment of each member) shall **expire 28** days after:

- a. The DAAB has given its decision on all Disputes, which were referred to it (under Sub-Clause 21.4 [Obtaining DAAB's Decision]) within **224 days** after the date of termination;  
or
- b. The date that the Parties reach a final agreement on **all matters** (including payment) in connection with the termination

## 4. Dispute

### 4.2. Failure to Appoint DAAB Member(s):

If any of the following conditions apply, namely:

- a. if the DAAB is to comprise a sole member, the Parties fail to agree the appointment of this member by the date stated in the first paragraph of Sub-Clause 21.1 [Constitution of the DAAB]; or
- b. if the DAAB is to comprise three persons, and if by the date stated in the first paragraph of Sub-Clause 21.1 [Constitution of the DAAB]:
  - i. Either Party fails to select a member (for agreement by the other Party);
  - ii. Either Party fails to agree a member selected by the other Party; and/or
  - iii. The Parties fail to agree the appointment of the third member (to act as chairperson) of the DAAB

## 4. Dispute

### 4.2. Failure to Appoint DAAB Member(s) (Cont):

- c. the Parties fail to agree the appointment of a replacement within **42 days** after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, illness, disability, resignation, or termination of appointment; or
- d. if, after the Parties have agreed the appointment of the member(s) or replacement, such appointment cannot be effected because one Party refuses or fails to sign a DAAB Agreement with any such member or replacement (as the case may be) within **14 days** of the other Party's request to do so

## 4. Dispute

### 4.2. Failure to Appoint DAAB Member(s) (Cont):

- Then the appointing entity or official named in the Contract Data shall, at the request of either or both Parties and after due consultation with both Parties, appoint the member(s) of the DAAB (who, in the case of sub-paragraph (d) above, shall be the agreed member(s) or replacement).
- This appointment shall be final and conclusive.
- Thereafter, the Parties and the member(s) so appointed shall be deemed to have signed and be bound by a DAAB Agreement under which:
  - the monthly services fee and daily fee shall be as stated in the terms of the appointment
  - the law governing the DAAB Agreement shall be the governing law of the Contract defined in Sub-Clause 1.4 [Law and Language]

## 4. Dispute

### 4.2. 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.
- If the DAAB becomes aware of an issue or disagreement, it may invite the Parties to make such a joint request.
- 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.

## 4. Dispute

### 4.2. Obtaining DAAB's Decision:

- If a Dispute arises between the Parties then either Party may refer the Dispute to the DAAB for its
- Both Parties shall promptly make available to the DAAB all information, access to the Site, and appropriate facilities, as the DAAB may require for the purposes of making a decision on the Dispute.
- Unless the Contract has already been abandoned or terminated, the Parties shall continue to perform their obligations in accordance with the Contract.

## 4. Dispute

### 4.2. Obtaining DAAB's Decision (Cont):

- The DAAB shall complete and give its decision within:
  - a. **84 days** after receiving the reference; or
  - b. such period as may be proposed by the DAAB and agreed by both Parties.
- However, if at the end of this period, the due date(s) for payment of any DAAB member's invoice(s) has passed but such invoice(s) remains unpaid, the DAAB shall not be obliged to give its decision until such outstanding invoice(s) have been paid in full, in which case the DAAB shall give its decision as soon as practicable after payment has been received.
- The decision shall be binding on both Parties.

## 4. Dispute

### 4.2. Obtaining DAAB's Decision (Cont):

If either Party is dissatisfied with the DAAB's decision:

- a. Such Party may give a NOD to the other Party, with a copy to the DAAB and to the Engineer;
  - b. his NOD shall state that it is a “Notice of Dissatisfaction with the DAAB's Decision” and shall set out the matter in Dispute and the reason(s) for dissatisfaction; and
  - c. this NOD shall be given within **28 days** after receiving the DAAB's decision.
- If the DAAB fails to give its decision within the period stated in Sub-Clause 21.4.3 [The DAAB's decision], then either Party may, within **28 days** after this period has expired, give a NOD to the other Party in accordance with sub-paragraphs (a) and (b) above.

## 4. Dispute

### 4.2. Obtaining DAAB's Decision (Cont):

- If the DAAB has given its decision as to a matter in Dispute to both Parties, and no NOD under this Sub-Clause 21.4.4 has been given by either Party within **28 days** after receiving the DAAB's decision, then the decision shall become final and binding on both Parties.
- If the dissatisfied Party is dissatisfied with only part(s) of the DAAB's decision:
  - i. this part(s) shall be clearly identified in the NOD;
  - ii. this part(s), and any other parts of the decision that are affected by such part(s) or rely on such part(s) for completeness, shall be deemed to be severable from the remainder of the decision; and
  - iii. the remainder of the decision shall become final and binding on both Parties as if the NOD had not been given.

## 4. Dispute

### 4.2. Amicable Settlement:

- Where a NOD has been given under Sub-Clause 21.4 [Obtaining DAAB's Decision], both Parties shall attempt to settle the Dispute amicably before the commencement of arbitration.
- However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this NOD was given, even if no attempt at amicable settlement has been made.

## 4. Dispute

### 4.2. Arbitration:

- Unless settled amicably, and subject to Sub-Clause 3.7.5 [Dissatisfaction with Engineer's determination], Sub-Clause 21.4.4 [Dissatisfaction with DAAB's decision], Sub-Clause 21.7 [Failure to Comply with DAAB's Decision] and Sub-Clause 21.8 [No DAAB In Place], any Dispute in respect of which the DAAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:
  - a. the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;
  - b. the Dispute shall be settled by one or three arbitrators appointed in accordance with these Rules; and
  - c. the arbitration shall be conducted in the ruling language defined in Sub-Clause 1.4 [Law and Language].

## 4. Dispute

### 4.2. Arbitration (Cont):

- The arbitrator(s) shall have full power to open up, review and revise any certificate, determination (**other than a final and binding determination**), instruction, opinion or valuation of the Engineer, and any decision of the DAAB (**other than a final and binding decision**) relevant to the Dispute.
- Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the Dispute.

THANKS