

Contract Management and Methods of Negotiation & Dispute Resolution

By:
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Part 1

▶ Contract Management

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Contract Management and Methods of Dispute Resolution
Kuwait 19 to 21 November 2018

Tahseen Saleh

Introduction

Contract Management

▶ Definition

- ▶ is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the terms and conditions, as well as documenting and agreeing on any changes or amendments that may arise during its implementation or execution. It can be summarized as the process of systematically and efficiently managing contract creation, execution, and analysis for the purpose of maximizing financial and operational performance and minimizing risk.

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Introduction

- ▶ It is also a discipline of planning, organizing, motivating, and controlling resources to achieve specific goals.
- ▶ In the construction and engineering contracts we manage industrial, construction and other types of projects

Introduction

- ▶ A project is a temporary endeavor with a defined beginning and end (usually time-constrained, and often constrained by funding or deliverables)
- ▶ The term contract management is commonly used interchangeably with project management and this is understandable as many of the methods and techniques are common to both terms.

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Introduction

- ▶ Terminology in Contract Management
 - ▶ Product (the project)
 - ▶ Client (Customer)
 - ▶ Supplier
 - ▶ Program
 - ▶ User

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Introduction The Project

- ▶ The project shall have:
 - ▶ A defined scope
 - ▶ With certain quality requirements
 - ▶ To be executed within certain period (duration)
 - ▶ And within an estimated budget

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▶ **These are called the primary constraints**

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Introduction

The project

- ▶ Projects are of temporary nature (Time Constraint)
- ▶ This makes project management different from usual businesses or operations which are permanent, semi-permanent, functional activities, or services.

Introduction

The project

- ▶ Efficient project management uses methods which provide guidance on how to set up, organize, manage, control and deliver the project
 - 1- on time,
 - 2- within budget, and
 - 3- to the right quality

Introduction

The project

- ▶ The main challenges of project management are:
 - ▶ 1) to achieve all of the project goals while honoring the constraints;
 - ▶ 2) to optimize the allocation of necessary inputs and integrate them to meet predefined objectives

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- ▶ Good project management helps to ensure that **risks** are defined and managed appropriately, and benefits are achieved within the project constraints.

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Introduction

The Customer

- ▶ (Also called the Client) Is the person or group who commissions the work and will be benefiting from it once completed.
- ▶ The client is the most important figure in the management process because without him there will be no work and no contract.
- ▶ The rights and obligations of the Customer:

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Introduction

The Customer

- ▶ Client's rights:
 - ▶ To approve the designs
 - ▶ To approve the programs
 - ▶ To approve the budgets
 - ▶ Be aware of:
 - ▶ Project general approach
 - ▶ Project quality plan
 - ▶ Project start-up

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Introduction

The Customer

- ▶ Obligations of the Client
 - ▶ To make payments to the different parties in accordance with the contract(s)
 - ▶ Not to interfere with the progress of works
 - ▶ Attendees to give other obligations

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Introduction Supplier

- ▶ Is the person or group that is providing specialist resources and skills to the project or is providing goods and services to create the project outcome required by the customer and user.
- ▶ Examples on Suppliers
 - ▶ The bank providing finance
 - ▶ The contract management firm
 - ▶ The contractor building the project
 - ▶ Vendors supplying certain goods
 - ▶ Other consultants

Introduction Program

- ▶ The program is a collection of projects which together achieve the required tasks and beneficial change to the organization
- ▶ In small organizations this can be a single project or few projects
- ▶ It can be a collection of multi disciplinary projects which vary from very small to large projects

Introduction

User

- ▶ Is the person or group who will use or operate the final product. The customer and user may be the same in some cases.
 - ▶ Examples of users:
 - ▶ Operation departments in refinery
 - ▶ Students in school
 - ▶ Cars using a road
 - ▶ Public gardens and parks
 - ▶ etc

Processes

▶ Contract Management Processes

Processes

- ▶ Contract Management Constraints are:
 - ▶ Time
 - ▶ Cost
 - ▶ Quality
- ▶ The main challenges of contract management are:
 - ▶ 1) to achieve all of the project goals while honoring the constraints;
 - ▶ 2) to optimize the allocation of necessary inputs and integrate them to meet predefined objectives

Processes

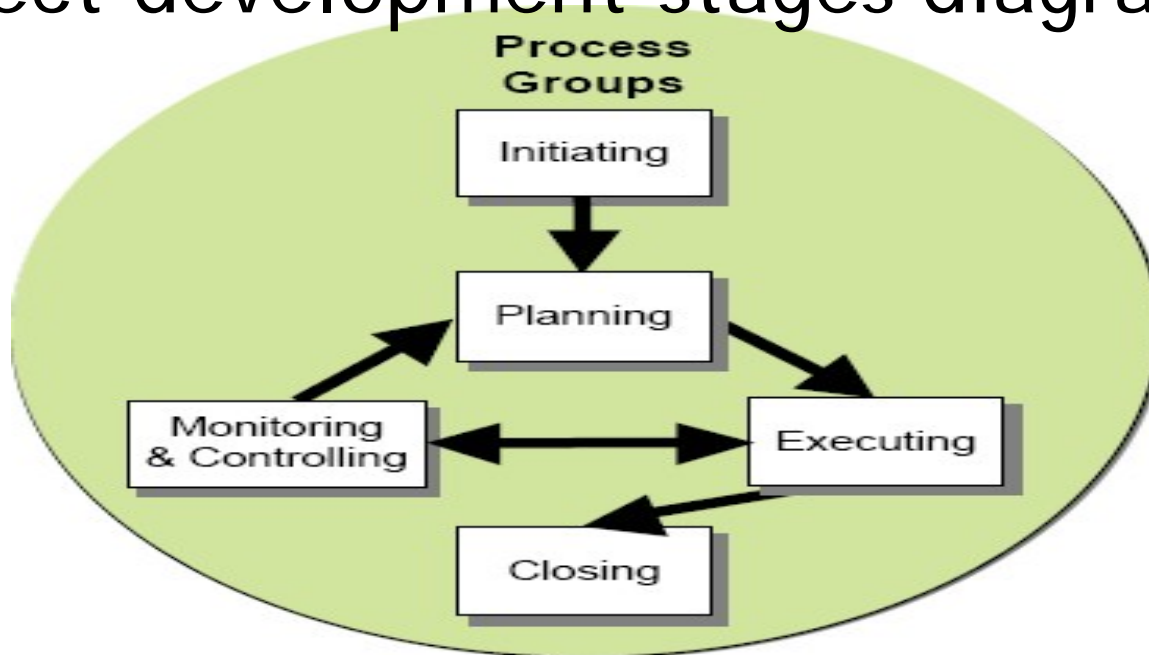
- ▶ How can we achieve the challenges?
- ▶ What are the tools and techniques to meet the challenges?
- ▶ What precautions shall be taken?
- ▶ What risks could be associated with a project?
- ▶ How to monitor and contain risks?

Processes

- ▶ To achieve the challenges certain techniques and approaches were developed
- ▶ The major elements in project management are:
 - ▶ Initiating the Project
 - ▶ Planning and design
 - ▶ Execution and construction
 - ▶ Monitoring and control

Processes

- Project development stages diagram



Processes

Initiating the project

- In the initiating stage we determine the nature and scope of the project.



- Provide project charter

Processes

Initiating the project

- ▶ In project management, a **project charter**, **project definition**, **project brief** or **project statement** is a statement of the scope, objectives and participants in a project.

It provides a preliminary delineation of roles and responsibilities, outlines the project objectives, identifies the main stakeholders, and defines the authority of the project manager.

It serves as a reference of authority for the future of the project

Processes

Initiating the project

- ▶ The purpose of the project charter is to document:
 - ▶ Reasons for undertaking the project
 - ▶ Objectives and constraints of the project
 - ▶ Directions concerning the solution
 - ▶ Identities the main stakeholders

Processes

Initiating the project

- ▶ In-scope and out-of-scope items
- ▶ High level risk management plan
- ▶ Communication plan
- ▶ Target project benefits
- ▶ High level budget and spending authority

Processes

Initiating the project

- ▶ The three main uses of the project charter:
 - ▶ To authorize the project - using a comparable format, projects can be ranked and authorized by Return on Investment.
 - ▶ Serves as the primary sales document for the project.
 - ▶ Serves as a focal point throughout the project.

Processes

Initiating the project

- ▶ The initiation stage shall be performed properly.
- ▶ The success of the project in meeting the business' needs depends on defining the nature and scope of the project

Processes

Planning and Design

- ▶ After the initiation stage, the project is planned to an appropriate level of detail.
- ▶ In the plan we address:
 - ▶ Time
 - ▶ Cost
 - ▶ Resources
- ▶ Failure to adequately plan greatly reduces the project's chances of success.

Processes

Planning and Design

- ▶ Depending on the type of contract, designs are developed during the planning stage which include:
 - ▶ Conceptual design
 - ▶ Design development stage
 - ▶ Detailed design

Processes Executing

- ▶ Project execution is the phase which starts after the approval of the project scope and necessary planning is made.
- ▶ Executing the project consists of the processes used to complete the work(s) defined in the project plan to accomplish the project's requirements

Processes Executing

- ▶ This phase requires coordinating people and other resources.
- ▶ It also requires properly performing the different activities as planned.
- ▶ The deliverables are the outputs of the processes performed as defined in the project management plan.

Processes

Monitoring and controlling

- ▶ Monitoring and controlling is the phase which is carried out in parallel with the executing phase.
- ▶ This phase consists of the processes performed to observe the project execution so that potential problems can be identified in a timely manner and corrective actions can be taken to control the execution of the project.

Processes

Monitoring and controlling

- ▶ The main benefit is that project performance is monitored and measured regularly to identify variances from the project plan if any.
- ▶ This phase includes:
 - ▶ Measuring the ongoing activities (Where we are)
 - ▶ Monitoring project variables (scope, time, cost, etc.) (Where we should be)
 - ▶ **Identify corrective actions (How to be back on track)**

Processes

Monitoring and controlling

– Monitoring and controlling cycle



Processes Closing

- ▶ Project closure is the formal acceptance of the project and ending it.
- ▶ Objectives of this process:
 - ▶ To Ensure that the project has a clearly defined end
 - ▶ Release the resources provided to the project
 - ▶ Gain Formal acceptance from the customer
 - ▶ Direct lesson learned to the people who benefit from them
- ▶ Establish a future method for verifying that the project has produced the desired benefits

Processes Closing

- ▶ Steps to achieve the objectives
 - ▶ Ensure that all the completed products have been approved
 - ▶ Ensure that resulting changes in business are supported and sustainable
 - ▶ Ensure the handover of the products to the appropriate support group
 - ▶ Approve lessons learned report
 - ▶ Approve the end project report
 - ▶ Prepare project closure notification

Processes Closing

- In brief the phase includes:
 - **Project Close:** Finalize all activities across all of the process groups to formally close the project
 - **Contract Closure:** Complete, close and settle each contract applicable to the project
 - **Complete all the administrative activities which include archiving of the files and documents**

Approaches

▶ Contract Management Approaches

Approaches

- ▶ Certain approaches were developed to carry out the processes in the different phases of the project life time while honoring the constrains
 - ▶ What are the Constraints in the project?
- ▶ The development of these methods or approaches started early last century and recently has evolved rapidly with the use of computers and specialized continuing research in this area.

Approaches

- ▶ Main Approaches:
 - ▶ The traditional methods
 - ▶ PRINCE 2
 - ▶ PRiSM
 - ▶ Critical chain project management
 - ▶ Event chain methodology
 - ▶ Process-based management
 - ▶ Agile project management

Approaches

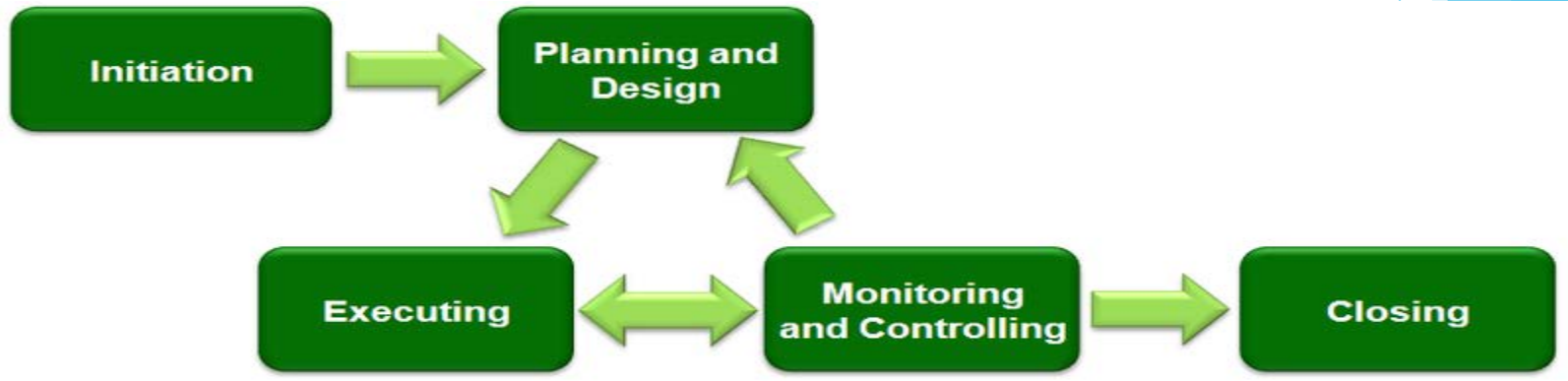
The Traditional Methods

- ▶ The main components are:
 - ▶ Initiation
 - ▶ Planning and design
 - ▶ Execution
 - ▶ Monitoring and controlling
 - ▶ completion

Approaches

The Traditional Methods

- Components of the traditional approach



Approaches

PRINCE2

- ▶ PRINCE (PROjects IN Controlled Environments)
- ▶ Was first established in 1989
- ▶ PRINCE 2 is a further development by the Office of the Government Commerce (OGC) in UK and was launched in 1996.

Approaches

PRINCE2

- ▶ PRINCE 2 is a structured approach to carry out project management
- ▶ Each process within PRINCE 2 is described using the following structure and format:
 - ▶ 1- Fundamental Principles
 - ▶ 2- Context
 - ▶ 3- Process Description
 - ▶ 4- Scalability
 - ▶ 5- Responsibilities
 - ▶ 6- Information Needs
 - ▶ 7- Key Criteria

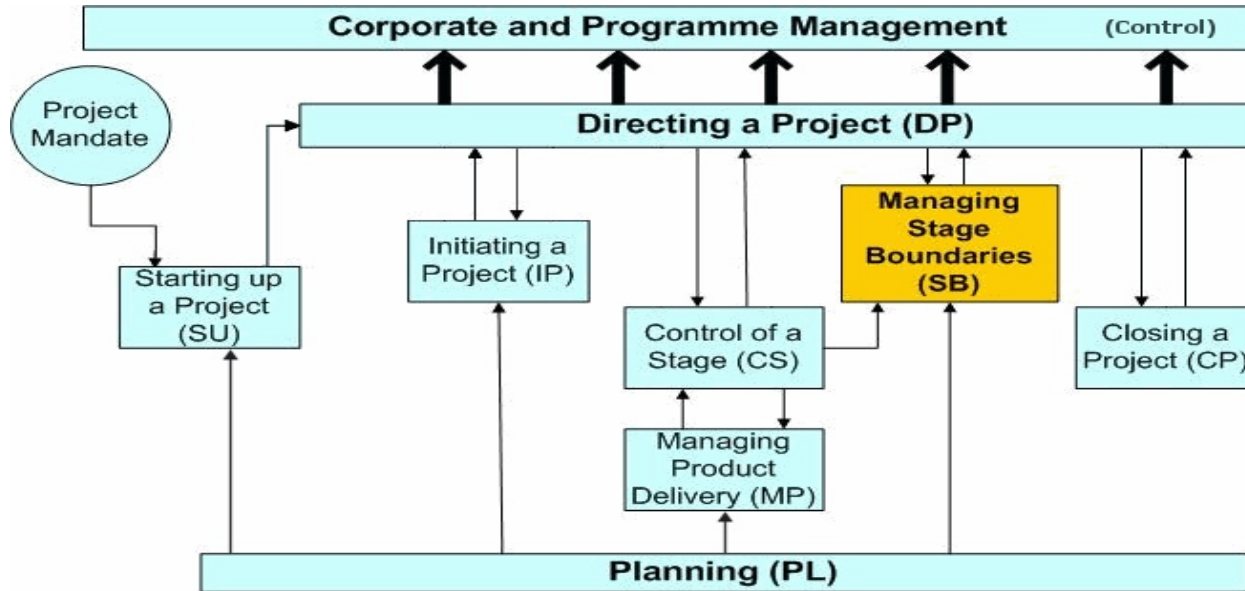
Approaches PRINCE2



Approaches PRINCE2

- ▶ The main principles adopted by PRINCE 2 to achieve successful project are:
 - ▶ A project is finite process with definite start and end
 - ▶ Projects always need to be managed in order to be successful
 - ▶ All the parties shall be clear about:
 - ▶ Why the project is needed
 - ▶ What it is intended to achieve
 - ▶ How the outcome is to be achieved
 - ▶ What their responsibilities are in that achievement

Approaches PRINCE2



Approaches PRiSM

- PRiSM (**P**ROjects **i**ntegrating **S**ustainable **M**ethods)
- This approach was developed in 2009
- PRiSM is a process based, structured project management methodology that introduces areas of sustainability and integrates them into four core project phases in order to maximize opportunities to improve sustainability and the use of finite processes.

Approaches

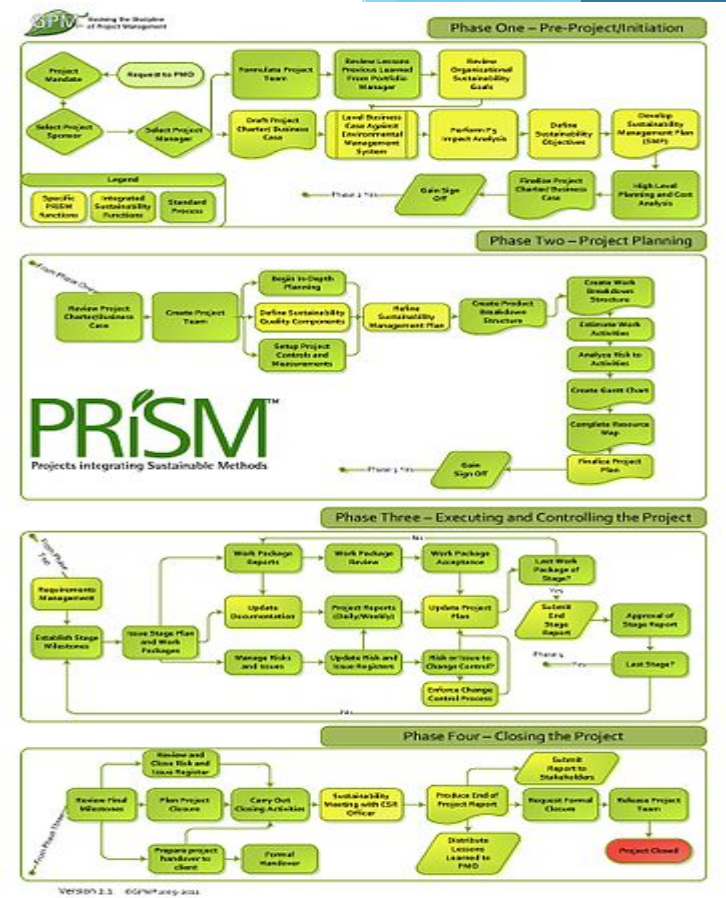
PRiSM

- ▶ It has consideration and emphasis beyond the project life-cycle and on five aspects of Sustainability: People, Planet, Profit, Process and Product.
- ▶ PRiSM also takes into account long term organizational impacts to the environment and the impact from cradle to cradle which the project objectives have.

Approaches PRiSM

- The four core Project Phases:

- 1- Pre-Project Initiation
- 2- Project Planning
- 3- Executing and controlling the Project
- 4- Closing the Project



Part 2

▶ Methods of Negotiation and Dispute Resolution

Dispute Resolution

- ▶ What is a Claim?
- ▶ What is a Dispute? And when it become into existence?
- ▶ What is ADR?
- ▶ What is DAB or DAAB?

What are Claims?

- Definition of Claims

- In The Oxford Companion of Law a claim is defined as “a *general term for the assertion of a right to money, property, or to a remedy.*”

- *It would be considered a claim under the above definition:*

- *When the Contractor applies for his monthly interim for the original scope of work, or*

- *Whenever the Employer writes to the Contractor requiring him to remedy defective work.*

What are Claims?

- Definition of Claims

- In construction contracts, a claim is generally taken to be an assertion for *additional* monies due to a party or *for extension of Time for Completion*.

- There is no express definition of a claim in the typical standard form of construction contract and it is rare to find a definition of a claim in reference texts or authorities on Construction contracts.

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What are Claims?

- Definition of Claims

- In 2017 recent release the definition of a claim was introduced:

- 1.1.{6, 5, 3} “Claim” means a request or assertion by one Party to the other Party for entitlement or relief under any Clause of these Conditions or otherwise in connection with, or arising out of, the Contract or the execution of

What are Claims?

- Definition of Claims

– البند الفرعي رقم ١,١ {٣,٥,٦} "المطالبة" تعني طلبًا أو تأكيدًا من أحد الطرفين للطرف الآخر للاستحقاق أو الإعفاء بموجب أي شرط من هذه الشروط أو غير ذلك فيما يتعلق بـ أو ما ينشأ عن العقد أو تنفيذ الأشغال.

– The FIDIC 1999 Suite of Contracts as well as the **Gold Book** of 2008 do not have a specific definition of a Claim.

Definition of Dispute under FIDIC 2017

▶ Clause 1 General Provisions (New Definitions)

- Some of the new definitions in the recent release:
 - 1.1.{29, 29, 26} “Dispute” means any situation where:
 - (a) one Party makes a claim against the other Party (which may be a Claim, as defined in these Conditions, or a matter to be determined by the Engineer under these Conditions, or otherwise);
 - (b) the other Party (or the Engineer under Sub-Clause 3.7.2 [*Engineer’s Determination*]) rejects the claim; and
 - (c) the first Party does not acquiesce (by giving a NOD under Sub-Clause 3.7.5 [*Dissatisfaction with the Engineer’s determination*] or otherwise).

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Dispute Resolution

- ▶ Many methods to resolve disputes are present most of which are:
 - ▶ Negotiation;
 - ▶ Mediation;
 - ▶ Conciliation;
 - ▶ Dispute Adjudication Broad (DAB) or (DAAB)
 - ▶ Adjudication
 - ▶ Mini trial
 - ▶ Pre-Arbitral Referee Procedure (ICC)
 - ▶ **The ICC Expertise Procedure**
 - ▶ Arbitration, and

Dispute Resolution

- ▶ The last two methods lead to a solution that is imposed on the parties in dispute, through a court judgment or an arbitral award. The other methods are amicable and so the parties have a say in, and can control, the outcome of the dispute.
- ▶ The best time to decide on the mandatory use of an amicable method of dispute resolution and the rules to be used for such method, is at the time of writing the contract agreement.

Dispute Resolution

▶ Advantages of Alternative Dispute Resolution Methods

- a) Whilst the procedure may or may not affect the amount of settlement, it will more than likely affect the cost of achieving it.
- b) The parties are in greater control of their own destiny, thus avoiding any of the uncertain consequences of litigation or arbitration.
- c) The procedure tends to preserve business relationships and avoids the possibility of one party being viewed as the loser.
- d) The process is much faster than litigation or arbitration as it could be completed in a few days or a few weeks if the dispute is a complex one requiring the preparation of further documents or investigations.

Dispute Resolution

▶ Advantages of Alternative Dispute Resolution Methods

- e) Arbitration or litigation may be pursued should the amicable method fail to produce the desired result. It is important, however, to remember that a written agreement should be signed by the parties to prevent information disclosed during the process from being used in subsequent litigation or arbitration. The parties must, however, be careful not to stipulate confidentiality in such broad terms that it becomes too restrictive to proceed to arbitration or litigation should settlement not be achieved or should it be found necessary to enforce the terms of any settlement agreement.

The DAB (DAAB)

The Role of the Engineer

▶ In Construction Contracts

- ▶ One major role of the Engineer in the FIDIC 1987 4th edition Red book is to act as adjudicator or quasi-arbitrator in any dispute arising between the Parties who shall be impartial,
- ▶ Sub-Clause 67.1 of the FIDIC 4th edition Red book states “If a dispute of any kind arises between the Employer and the Contractor in connection with, or arising out of the Contract ..., including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in first place be *referred* in writing to the Engineer with a copy to the

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The DAB (DAAB)

The Role of the Engineer

- ▶ In all these Contracts, the Engineer is either an employee of the Employer or employed by him.
- ▶ This applies also, to the later editions of the FIDIC, NEC Contracts.
- ▶ This status raised the concern and the question about the impartiality of the Engineer particularly in settling disputes which in many occasions he (the Engineer) is either part of it or the cause of it.

The DAB (DAAB) Concept

- ▶ The concept of having a board (one member or more (three)) who is **not paid by one of the parties only** and whose loyalty is not to the party which pays him was adapted and implemented in the supplement to the FIDIC 4th edition of the Red book in 1996.
- ▶ **This Board is called Dispute Adjudication board (DAB)**
- ▶ In the FIDIC 1999 suite of Contracts and the other releases **such as the Gold book**, this concept is also adapted and is addressed under Sub-Clauses

The DAB - DAAB

- ▶ How the DAB is formed?
- ▶ Who pays for the DAB?
- ▶ What are the types of DABs?
- ▶ Can the Parties seek advice of the DAB?
- ▶ Are the DAB's decisions binding?
- ▶ Are DAB's Decisions binding and final?

Dispute Resolution

2- Negotiation

- ▶ Direct negotiation between the parties in dispute without the intervention of a third party is perhaps the most readily available and most effective method of dispute resolution
- ▶ In simple forms, it consists of successively taking a, and then giving up a sequence of positions.
- ▶ Negotiation may be defined as a process where two or more parties in conflict attempt to reach an agreement to settle their differences and where that agreement is such that all the parties involved are prepared to live with it and accept it.
- ▶ Under the FIDIC forms of contract, negotiation is conducted under the 'due consultation' requirements in the specific form of contract.

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Dispute Resolution

3- Mediation

- ▶ Mediation vs. Conciliation
- ▶ The difference between mediation and conciliation lies in the role played by the neutral party.
 - ▶ In one (mediation) he simply performs the task of persuading the parties in dispute to change their respective positions, he works in a form of a shuttle diplomacy without actively initiating any ideas.
 - ▶ In the other one (conciliation), the neutral party takes more active role probing the strengths and weaknesses of the parties' case, making suggestions, giving ideas, advice, findings, pressure, argument for and against each of the parties' positions, and creating new ideas which might induce them to settle their dispute.

Dispute Resolution

3- Mediation

- ▶ is a form of alternative dispute resolution (ADR), a way of resolving disputes between two or more parties with concrete effects
- ▶ The mediator is a third party who assists the parties to negotiate a settlement.
- ▶ The mediator acts as a neutral third party and facilitates rather than directs the process.

Dispute Resolution

3- Mediation

- ▶ The process is private and confidential, possibly enforced by law. Participation is typically voluntary.
- ▶ The mediation process generally takes much less time than moving a case through standard legal channels.
- ▶ A mediator may charge a fee. The mediator collects his fees regardless of the success of the mediation process.

Dispute Resolution

3- Mediation

- ▶ Mediators are trained in working with difficult situations. The mediator helps the parties think "outside of the box" for possible solutions to the dispute
- ▶ Parties to a mediation are typically ready to work mutually toward a resolution.
- ▶ The mediator has no power or authority to decide the outcome of the dispute

Dispute Resolution

3- Mediation

- ▶ A definition of the role of the mediator is given by the American Arbitrators Association under six heading:
 - (a) The re-conciliator, who brings things parties together in order to engage in face-to-face discussions, opens channels of communication; and defuses hostility.
 - (b) The facilitator, who keeps discussions going by providing a neutral ground, arranging meetings, offering to chair them, helping to shape the agenda, simplifying procedures.
 - (c) The resource expander, who helps to gain access to necessary factual and legal information having

Dispute Resolution

3- Mediation

- d) The interpreter/ translator, who makes sure that each party understands what the other party is saying; and increase the perception and empathy between parties.
- e) The trainer, who instructs the parties how to negotiate more effectively with each other;
- f) The reality tester, who gets each party to look at how the other side sees the problem, makes each side think through and justify its facts, demands, positions and views; etc.

Dispute Resolution

4- Conciliation

- ▶ Both mediation and conciliation are less expensive and faster than the arbitration and litigation yet, the mediator or conciliator is not empowered to make a binding decision as in arbitration.
- ▶ Conciliation is a more formal process than mediation and it could generally involve the engagement of legal representatives, thus making it more expensive than mediation.
- ▶ If no amicable solution is reached, the conciliator has the duty to attempt to persuade the differing parties to accept his own solution to the dispute.

Dispute Resolution

4- Conciliation

- ▶ The conciliator meets with the parties separately in an attempt to resolve their differences.
- ▶ They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement
- ▶ The main goal of Conciliation is to conciliate, most of the time by seeking concessions

Dispute Resolution

5- Mini Trial

- ▶ Under the 'mini trial' procedure, top level management officials of each party voluntarily meet to present their best case and negotiate an expedited resolution to a pending board of Court of Appeals case.
- ▶ The mini-trial procedure has the following features:

(a) An independent and impartial advisor is appointed to take control of the proceedings. To act as advisor to the parties in dispute, to ask questions of witnesses, to provide comments if the parties so request, to ensure time limits as to act as chairman to two assistants who may be selected from among the senior corporate officers of both parties and who are expected to make

Dispute Resolution

5- Mini Trial

- b) The mini-trial panel is expected to hear the parties and then to propose or to facilitate a settlement. If no settlement is reached or proposed within a reasonable time, then the panel should submit a recommendation either unanimously or by the chairman.
- c) The procedure is brief with only few weeks allowed for the parties to prepare their case followed by a 'trial' of few days' duration.
- d) Lawyers are permitted to represent the parties at the trial.
- e) A memorandum is exchanged between the parties and copied to the advisor two weeks prior to the trial, in which each party outlines its position on the dispute in question as well as all documentary evidence to be presented at the trial

Dispute Resolution

5- Mini Trial

- f) The presentations are informal with rules of evidence not strictly adhered to. Cross-examination of witnesses is allowed but severely limited in duration
- g) The proceedings are confidential and no transcript or recording is allowed. None of the material generated by the trial may be used as evidence in pending or future proceedings. The advisor is disqualified as a witness, consultant or expert for either party in later proceedings should there be any.

Dispute Resolution

6- Arbitration

- ▶ Arbitration is a whereby the parties in dispute agree to submit the matter in dispute to the decision of a person or persons in whom they have confidence and trust and undertake to abide by that decision.
- ▶ The prerequisite to a valid arbitration are:
 - a) *the existence of a dispute*: a dispute must arise before parties can enter into an arbitration. It is not an arbitration if two parties seek a decision in respect of a problem for which neither have an answer.
 - b) *Agreement to refer the dispute to arbitration when the dispute arises*: The parties in dispute must either agree or already have agreed to refer the dispute to a third party individual or tribunal for determination. Such arbitration agreement typically incorporates by reference a set of procedural rules which the parties and the third party individual / tribunal are required to follow in respect of their conduct during the arbitration and the manner by which the determination is reached

Dispute Resolution

6- Arbitration

- c) *Agreement to be bound by the Award:* the parties in dispute must also agree to be bound by the award of the arbitrator / arbitration committee who has been chosen or appointed.

- d) *Initiative of the arbitration:* A notice to by one party to the other that he is commencing arbitration proceedings, and intends to refer the dispute that is in existence to an arbitrator / arbitration committee, is required to be given to initiate the arbitration proceedings.

Dispute Resolution

6- Arbitration

► Advantages of Arbitration:

- a) The parties in dispute are in control of the identity of the person to whom they entrust the resolution of the dispute.
- b) The parties in dispute are able to choose as an arbitrator someone who is an expert in the field of the dispute, be it technical or legal.
- c) The process can be expeditious and cost effective, if the parties wish to do so.
- d) The procedure is private, thus avoiding the disclosure of commercially sensitive information and any undesirable publicity or loss of reputation.
- e) Arbitration procedure is flexible and adaptable to the particular dispute or disputes

Dispute Resolution

6- Arbitration

► Advantages of Arbitration (Cont'd):

- f) The conduct throughout is less formal than court procedure without abandoning courtesy.
- g) It is possible to arrange for inspection of the project and matters relating to the dispute.
- h) It can be conducive to a negotiated settlement even at a late stage of the proceedings.
- i) In some jurisdictions, the arbitrator / arbitration committee have greater power than the court to open up, review, and revise the decisions of the Engineer.

Dispute Resolution

6- Arbitration

- ▶ Disadvantage of Arbitration
 - ▶ Users of international commercial arbitration place speed and economy high on the list of benefits of arbitration as a method of dispute resolution.
 - ▶ Nowadays, both speed and economy do not deem to be a feature of the international contraction arbitration.

Dispute Resolution

6- Arbitration

- ▶ The Arbitration Agreement:
- ▶ Agreements to arbitration are generally two types:
 - a) *An ad hoc agreement.* an agreement where an arbitration agreement does not exist when a dispute arises between the parties, but later the parties in dispute agree to refer already existing dispute to arbitration is referred to as ad hoc.
 - b) *The arbitration clause in an existing agreement.* this type of agreement is one where the parties to a certain contract, usually called the substantive contract, have already agreed to refer any and all of their future disputes to arbitration.

Dispute Resolution

6- Arbitration

- ▶ The Arbitration Agreement (cont'd):
 - ▶ The arbitration agreement shall include:
 - ▶ The applicable law,
 - ▶ The venue of the arbitration,
 - ▶ The rules to be followed, and
 - ▶ The language of arbitration

Dispute Resolution

6- Arbitration

Sub-Clause 20.6 (*FIDIC 1999 Suite*)

- ▶ Unless settled amicably, any dispute in respect of which the DAB'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 three arbitrators appointed in accordance with these Rules, and

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Dispute Resolution

6- Arbitration

(c) the arbitration shall be conducted in the language of communications defined in Sub-Clause 1.4 [Law and Language]

- ▶ The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on

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