NATIONAL ADJUDICATORS LIST (NAMIBIA)
ADMINISTRATED BY THE ENGINEERING PROFESSIONS ASSOCIATION OF NAMIBIA

NAL NEWSLETTER

Quarterly

Engineering Professions Association of Namibia

Volume 2, Issue 1 **October 2012**

Inside this issue:

RECOVERING THE COST OF NON-CRITICAL DELAYS

Clauses which allow Contractors to claim extensions of time are primarily there to protect the Employer's rights to continue to apply the penalty provisions. If such clauses were not in the contract and the Employer caused the Contractor to be delayed, then the Employer's rights to deduct the penalty would fall away and the effect would be that time would become "at large" and the Contractor's only obligation would be to finish within a "reasonable time".

In particular, clauses are usually incorporated into contracts which recognise the Contractor's right to claim an extension of time due to an Employer's delay in giving possession. So, for example in GCC 2010, Clause 5.4.3 states:

"If the Contractor suffers delay to Practical Completion and/ or incurs proven additional cost for the failure of the Employer to give possession in accordance with the terms of this clause, the Contractor shall be entitled to make a claim in accordance with Clause 10.1 …"

and the equivalent clause in the FIDIC suite of contracts, Clause 2.1 [Right of Access to the Site]:

CHRIS BINNINGTON (Managing Director – BCA)

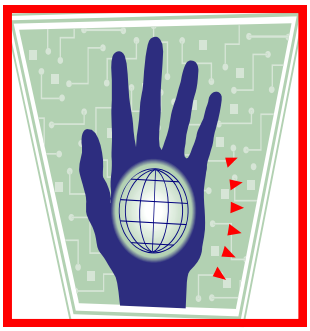
*Continued on **page 9.***

In This Issue

This issue of the *NAL Newsletter* contains up to date information about the current activities involving the EPA National Adjudicator List, the latest figures that may be of interest concerning adjudicator nominations, as well as refinements that are envisaged for the future to ensure that the EPA NAL can continue to provide a valuable, high standard service to the local and possibly even regional construction industry.

Also included in this issue are current articles related to construction contracts from authors in the region and abroad. **Doug Jones AO** of Clayton Utz highlights some of the recent, significant developments in construction dispute resolution affecting the UK, Australia and New Zealand.

We hope you enjoy the publication.



Registered adjudicators are reminded to verify their registration status for the current period by contacting the NAL Registrar.

Visit the EPA website at www.engineers - namibia.org

Any contributions to this Newsletter are welcome!

NAL ACTIVITIES UPDATE

- In the first 10 months of 2012 up to October, 14 adjudicator nominations were made.
- During the above period requests for nomination were made for projects of several large employer organisations such as the Roads Authority, Namwater, City of Windhoek and Namport. Nomination requests were also received from private land developers and consulting firms.
- The majority of requests were made for adjudicators on one-person DAB's, although in a few cases nominations for 3-person DAB's were requested.
- The Evaluation Committee recently considered 5 applications from persons wishing to become registered, or wishing to upgrade their registration category, on the NAL.
- The NAL Committee has implemented the CPD requirement for registered adjudicators for the period ending September 2013.

The Nominations Process

The total number of adjudicators registered on the NAL currently stands at 17, constituted as follows:

Junior Adjudicator category: 6

Adjudicator category: 10

Senior Adjudicator category: 1

There are also 2 Trainee Adjudicators. Upon the recent conclusion of an accreditation process by the Evaluation Committee, one additional Adjudicator and two additional Trainee Adjudicators are also eligible for registration.

The question that arises is whether the number of registered adjudicators is sufficient to deal with the demand from the industry. Parties to a contract that wish to make use of an independent nominating authority such as the EPA - NAL are concerned about the efficiency of the nomination process, and would like the time taken for a nomination to be kept to a minimum. Therefore the NAL Manager, Mr Andreas Helmich, who is responsible for the administration of the nomination process, was requested to provide some information regarding the efficiency of the process. Some questions were put to him, and you can read his comments on **page 3.**.

FROM THE PUBLISHING COMMITTEE

This NAL Newsletter is published by the *NAL Committee* of the *Engineering Professions Association*. Any enquiries regarding any article or information contained herein, or contributions for inclusion in the next issue can be directed to the NAL Registrar, *Engineering Professions Association,* telephone 223009, fax 223009 or e-mail as follows: epa@africaonline.com.na, or the Editor: epa.nalnamibia@gmail.com

Where case law summaries are included in this publication, the comprehensive judgement can be requested from the Editor, Ronald Brunauer, via e-mail at epa.nalnamibia@gmail.com.

Expression of Interest for persons wishing to register on the NAL as Adjudicator

From time to time the EPA NAL calls for expression of interest of persons that are interested in dispute resolution to be registered as adjudicator on the NAL. A call for Expression of Interest will be advertised in the local print media in due course. The application of interested persons usually entails the submission of a cv as well as the completion of a standard form that is available from the Registrar of the NAL, or on the website www.engineers-namibia.org and follow the link to the National Adjudicator List pages.

Applicants can, by means of the application form, evaluate themselves to ascertain whether they achieve the required credits for a particular category of registration. Applicant are further required to attend a course in dispute resolution and adjudication that will be arranged by the EPA this year. Details will be released in a subsequent issue of this Newsletter.

FEEDBACK FROM THE NAL MANAGER: EFFICIENCY OF THE NOMINATION PROCESS

We put the following questions to Andreas Helmich, NAL Manager responsible for the nomination process:

In the opinion of the NAL Manager, are there currently enough adjudicators registered on the NAL to meet the demand of the industry?

So far, it was always possible to find an adjudicator to accept a nomination; however there has been a significant increased in the number of enquiries the Manager has to make to find an available adjudicator. This leaves doubts if there are enough registered adjudicators. During the past year, the availability has decreased, but it is not to my knowledge if it is because all adjudicators are still busy with ongoing cases / DAB's, or due to other work load. For 'junior adjudicators' the situation is less severe, but for 'adjudicators' it is more problematic. Since we currently only have one registered Senior Adjudicator, we have no options here. In summary, I believe, some additional adjudicator registrations might reduce the efforts for the Manager and thus the waiting time for the clients.

On average, how many enquiries must the NAL Manager make before he receives acceptance from an adjudicator for purposes of nomination to a DAB?

For the 56 nomination requests to date, on average 2.125 adjudicators had to be approached per nomination process, with a low of 1 and a high of 7.

What is the expected time required to complete the nomination process, from the time a Party submits a request for nomination to the time that a formal nomination is received by such Party?

As my work load also varies and the responses of adjudicator to enquiries are sometimes slow with reminders having to be sent, the time to complete a nomination has increased over the last year. Some nominations could be completed within less than a week, but others, where the responses were negative or reminders had to be sent, in the worst case (7 attempts) this could take up to a month.

The Engineering Professions Association of Namibia offers the following course

CONSTRUCTION ADJUDICATION

Validated for 1 CPD Point
CESA-234-12/2014

26 OCTOBER 2012

PROTEA HOTEL FURSTENHOF - WINDHOEK

Adjudication is bringing dramatic changes to dispute resolution both internationally and in South Africa, and is rapidly becoming the preferred method for resolving construction disputes. In recent years, the use of adjudication has gained momentum, with developments including:

- The JBCC, South Africa's domestic building contract introduced adjudication through its March 2004 edition;
- The GCC Engineering Contract introduced adjudication in its 2004 edition and again in it's recent 2010 edition;
- The Construction Industry Development Board (CIDB) has endorsed adjudication as best practice for resolving construction disputes and has published rules for adjudication;

The New Engineering Contract and FIDIC have had adjudication procedures in place for some years, and some international jurisdictions have introduced legislation supporting adjudicating.

Most members of the construction industry are unclear as to what adjudication is, how it is applied, and how it differs from other forms of dispute resolution. Lawyers and construction personnel alike do not fully understand this form of dispute resolution and there are few people who understand the process sufficiently well to act as adjudicators.

To assist potential users in preparing for adjudications, BCA offers a one day seminar which introduces the concept, shows how it differs from other forms of dispute resolution, and discusses the adjudication provisions in current standard forms of contract. In this seminar we will also take a step-by-step walk through the adjudication process, following the process from beginning to end.

Contact the EPA for details:epa@africaonline.com.na

Presented by:

BCA Training
engineering & construction contract consultants & trainers

25 YEARS of excellence

The course on Construction Dispute Adjudication is compulsory for persons wishing to be registered on the National Adjudicator's List

ADJUDICATOR NOMINATION

Employer Registration

For lower nomination fees, organisations can register with the EPA NAL.

Contact Registrar at e-mail:

epa@africaonline.com.na

NAL

EPA

EMPLOYERS USING THE NAL

A number of major employer organisations are using the EPA NAL as an independent nominating authority for the nomination of adjudicators to DAB's.

EMPLOYER CATEGORIES

Employers are usually the initiators of construction contracts, and prescribe the type of contract to be used. Since most larger employer bodies in Namibia, such as parastatals and municipalities, use modern forms of contract, it has become necessary for them to have access to adjudicators.

Not all employers have the same need for adjudicators, or to the same extent. Some smaller employers, for example in the private sector, may let only a few contracts every year, while others may let numerous contracts. The NAL has made provision for three categories of 'Employer', depending on the individual needs. Employers requiring several adjudicator nominations annually can register with the NAL and enjoy reduced fees per nomination.

Categories of Employer:

Employer not registered with the NAL (once off nomination)
Employer registered as Minor Employer
Employer registered as Major Employer

Each of the above categories have a unique annual fee (not applicable for employers that are not registered), and corresponding nomination fee.

MEMORANDUM OF AGREEMENT

Employers that wish to have reduced nomination fees need to register as either Major or Minor Employers, and must enter into a Memorandum of Agreement with the EPA.

APPLICABLE DOCUMENT
Memorandum of Agreement - Employers **– available on the EPA website: www.engineers -namibia.org**

In such cases the EPA shall subscribe the Employer to the National Adjudicators' List for a period of one year, within which period the EPA will provide impartial adjudicator nomination services to the Employer / Contractors jointly for Adjudicators to be nominated to the Dispute Adjudication Boards of such projects, awarded to such Contractors, as the Employer may from time to time register with the EPA within the subscription period.

The agreements are based on the EPA's standard form but are subject to amendment upon discussion regarding the employer's specific requirements.

The Engineering Council of Namibia has informed us of the list of names of the 7th Engineering Council as approved by the Minister and published in the Government Gazette dated 14 September 2012, as follows.

ENGINEERING COUNCIL OF NAMIBIA

7TH ENGINEERING COUNCIL OF NAMIBIA

NAMES OF COUNCIL MEMBERS AND THEIR ALTERNATES

AND THE INSTITUTIONS WHO NOMINATED THEM

ASSOCIATION OF CONSULTING ENGINEERS OF NAMIBIA

Section 3(1)(a)(i) of Engineering Profession Act (Act 18 of 1986)

P J FORSTER	**E VILJOEN**	**(Alternate)**
M W HINDJOU	**C C MAXWELL**	**(Alternate)**

THE ENGINEERING PROFESSIONS ASSOCIATION OF NAMIBIA

Section 3(1)(a)(ii) of Engineering Profession Act (Act 18 of 1986)

G W LEICHER	**F MUKETI**	**(Alternate)**
A AL-JAF	**F C JACOBS**	**(Alternate)**
S TEKIE	**V FISCHER-BUDER**	**(Alternate)**

NAMIBIA INSTITUTE OF TECHNOLOGY

Section 3(1)(a)(iii) of Engineering Profession Act (Act 18 of 1986)

M M F M VON JENEY	**H J HENNES**	**(Alternate)**
J K LEICHER	**F JESKE**	**(Alternate)**

MINISTRY OF WORKS, TRANSPORT & COMMUNICATION

Section 3(1)(b) and 3(1)(c) of Engineering Profession Act (Act 18 of 1986)

P KALO	**M SHIKONGO**	**(Alternate)**
E N IKELA	**D N ANDREAS**	**(Alternate)**

POLYTECHNIC OF NAMIBIA

Section 3(1)(d) of Engineering Profession Act (Act 18 of 1986)

Dr Z OYEDOKUN	**L B STEINBRUCK**	**(Alternate)**

UNIVERSITY OF NAMIBIA

PROF F KAVISHE (Co-opted Member)

PUBLIC HOLIDAYS DURING THE 2012 / 2013 RECESS

Public holidays are of interest to Contractors to plan labour related matters. However, from time to time Contractors claim for extension of time, which may cause the completion date to fall within the so-called 'builders holiday' at the end of the year. How does this influence the claim? Alternatively, what happens when a tender period includes the 'builders holiday' period, and how can this be dealt with. The Construction Industry Federation has published the following article which may clarify some issues to be considered by those administrating construction contracts, as well as contractors that need to be aware of provisions for the payment of labour during such period:

Construction Industries Federation of Namibia

PUBLIC HOLIDAYS DURING THE 2012 / 2013 RECESS: CALCULATION OF ANNUAL LEAVE / LEAVE PAY

The Namibian labour legislation does not officially make provision for so-called "Builders' Holidays". However, the **Labour Act, 2007 (Act No.11 of 2007)** does make provision in **Chapter 3, Part D, Clause 23** that the employer determines the date when leave is granted. The annual recess over the Christmas / New Year period is regarded as a custom / tradition in the construction industry. The following examples shown below serve as a GUIDELINE for granting employees' annual leave during the recess period over Christmas / New Year.

1. In terms of the provisions of **Chapter 3, Part C, Clause 22 of the Labour Act, 2007**, all public holidays falling on a day that would otherwise be an ordinary working day for the employees concerned are deemed paid public holidays. Employees shall not be required to work on such a day, but shall receive normal remuneration for the day, nonetheless. Employees who do work are entitled to double remuneration for the actual hours worked on such public holiday.
2. In terms of **Chapter 3, Part D, Clause 23** of the Act an employee shall be granted **at least 4 (four) consecutive weeks' leave** of absence on full remuneration in respect of each period of 12 consecutive months of employment (this translates into 20 working days annual leave for an employee working a 5-day week and 24 working days annual leave for an employee working a 6-day week). The annual leave of employees shall, for each public holiday which falls on a day that would otherwise have been an ordinary working day for such employees and falls within the leave period, be extended by one working day with full remuneration.
3. Public holidays in the 2012 / 2013 festive season are:

Monday 10 December 2012 (International Human Rights Day)
Tuesday 25 December 2012 (Christmas Day) **Wednesday 26 December 2012** (Family Day)
Tuesday 1 January 2013 (New Year's Day)

It follows by illustration that:

CLOSING (last day of work) on **07 December 2012** (5-day week) or on **08 December 2012** (6-day week) **OPEN** (first day of work) on **07 January 2013**, employees are entitled to the following **leave pay**:
5-DAY WEEK: 16 working days + 4 days (public holidays) ► **20 days leave pay**
6-DAY WEEK: 20 working days + 4 days (public holidays) ► **24 days leave pay**
OR
CLOSING (last day of work) on **14 December 2012** (5-day week) or on **15 December 2012** (6-day week) **OPEN** (first day of work), on **14 January 2013** employees are entitled to the following **leave pay**:
5-DAY WEEK: 17 working days + 3 days (public holidays) ► **20 days leave pay**
6-DAY WEEK: 21 working days + 3 days (public holidays) ► **24 days leave pay**

NOTES:

Only the working days illustrated in both examples above may be deducted from the employee's accrued annual leave and **not** the listed extra/additional days (public holidays).

Any leave days of the employee's accrued annual leave not used for the recess period as shown above may be used as casual leave days in the next year.

In terms of Government Gazette **No. 4970 of 19 June 2012** (CIF / MANWU agreement on employment conditions in the construction industry) a service allowance equal to 120 hours of an employee's wage calculated pro-rata to the portion of the year that the employee was in service is payable as part of the December remuneration, except in case of a fair dismissal.

Dispute Resolution Board Foundation

Representation in Namibia

Namibian engineer Riaan De Witt is currently being considered by the Dispute Resolution Board Foundation for appointment as Country Representative in Namibia. We asked Riaan what he would do if he is appointed.

Says Riaan de Witt (prospective DRBF Country Representative) regarding his aims for the DRBF in Namibia:

"*In general I would like to promote the use of alternative dispute resolution in Namibia, especially Adjudication rather than Arbitration or Litigation, because I am convinced of the benefits to the contracting parties. A fist step would be to take up discussions with the Association of Consulting Engineers of Namibia (ACEN) with the aim to persuade consulting engineers and clients of the benefits of amending the provisions governing the referral of disputes to Adjudication rather than Arbitration, especially on smaller projects.*

I would also work hard to increase the number of DRBF members in Namibia and work in close relationship with our other members in Southern Africa."

Riaan is of the opinion that a "bad settlement is better than a good fight".

Background, specialization and expertise:

Riaan's field of expertise is transportation engineering. He is a specialist roads engineer and specializes in Dispute Resolution. Riaan is a qualified Civil Engineer with 19 years experience in road design, construction, project administration, and management. He obtained his B. Eng (Civil) degree at the University of Pretoria in 1993. He also holds an Honours as well as a Masters Degree in Transportation Engineering and has obtained a certificate in Arbitration. He is registered as a Fellow at the Association of Arbitration of Southern Africa as well as a Fellow with the Botswana Institute of Arbitrators.

He is a registered Professional Engineer with the Engineering Council of South Africa (1997) and with the Engineering Council of Namibia (2000). He is also a member of the South African Institute for Civil Engineers and registered as an Adjudicator in Namibia and South Africa. He is also on the President's list of the International Dispute Resolution Foundation.

Continued from cover page:

> *(a) An extension of time for any such delay, if completion is or will be delayed, under Sub Clause 8.4 and*
> *(b) Payment of any such Cost plus reasonable profit, …"*

The problems with these types of clauses are that they recognise the Contractor's entitlement purely in situations of either delay to practical completion alternatively delay to completion. It necessarily follows that where a Contractor is delayed on an activity having free float then, unless the delay extends beyond the total duration of the free float, which would then make that activity critical, any delay within the free float period will have no impact on the time for completion and there is no corresponding clause within General Conditions of Contract which recognises this entitlement and provides a mechanism in terms of which the Contractor would be able to claim some sort of benefit by way of additional cost. Clearly, unless the activity becomes critical, there is no entitlement to claim time. How then does a Contractor go about claiming compensation where additional costs are necessarily incurred as a result of the Employer's interference with the Works causing a delay to a non critical activity?

Take for example the situation of a Contractor who has booked a heavy lift crane for a specific lift on the early start date of a non critical activity which has, say, three weeks' float. Unless the Employer's delay exceeds three weeks in granting access for the lift, that activity will never become critical and therefore will never impact upon the completion date. The Contractor however may be unable to delay the establishment of the crane on site and will thus incur the additional costs of having the crane for the extended period. How then does the Contractor go about claiming the additional cost or is this simply a Contractor's risk?

The answer is to be found within the South African common law in the absence of any clause in the contract which recognises appropriate compensation in these circumstances. The applicable principle is the principle of "mora". The condition of mora is established when the one party places the other party on notice to perform by giving a demand which specifies the performance which is necessary and gives a reasonable time within which the performance must take place. This would be recognised in our law as an "interpellatio". In order to recover the costs in the example I have given above it would be necessary for the Contractor to place the Employer in mora by proper interpellatio.

These principles were illustrated clearly in the well known case of Alfred McAlpine & Son (Pty) Ltd v Transvaal Provincial Administration where the following was stated in the headnote to be the law:

"In our law, the general principle is that, in the case of a contract in which no time for performance has been fixed, the debtor must be placed in mora by interpellatio before damages can be claimed on the grounds of such debtor's non-timeous performance. A mere failure to perform or mere non-performance in the absence of a fixed time for performance, although it may constitute a ground for a defence of exceptio non adimpleti contractus, cannot give rise to a claim for damages because it can never be a breach. It affords no answer to contend that interpellatio is unnecessary where a debtor happens to know or ought to have known when a reasonable time (within which to perform) has elapsed.
The basic requirement of a proper demand (interpellatio) is that it must state a certain date on or before which the debtor is required to perform, and it must make it clear to the debtor that the creditor insists upon performance by that date.
There is no authority in our law for the proposition that the general principles of law relating to mora are not applicable to a complex modern engineering contract. The principles of our law relating to mora are of general application and hold true for all obligations ex contractus."

Put simply, where a specific date is not stated in the contract for performance of an obligation, before the Contractor will be entitled to damages for non performance, it must give notice demanding performance by a specific date in the future, which time must be reasonable in the circumstances.

It may not be sufficient to rely upon the Contractor's programme to establish proper demand (interpellatio). In the same McAlpine case the court had this to say in regard to whether or not a programme was sufficient to constitute proper demand:

"The obvious purpose of such a programme is for the employer and the engineer to see that the contractor intends to execute the work at a sufficient rate or speed to complete the contract within the allotted time shown in the programme. - ***Continued on page 10.*** *Generally speaking, it is not intended to serve as an interpellatio. However, such a construction programme, depending on the details it contains and the way in which it is phrased, can fulfil the function of an interpellatio, but, in my view, that is not the position in the present instance."*

This illustrates the necessity for Contractors to be aware not only of the general terms of their contract but also the general legal framework within which a contract operates. It is insufficient for a Contractor simply to know his way around the contract. He also needs to know his way around the law since otherwise important rights which exist may be lost.

This article is published with the kind permission of Chris Binnington of Binnington, Copeland & Associates.

A Constructive Approach – Changes In Transactions and Dispute Resolution

Doug Jones AO of Clayton Utz highlights some of the recent, significant developments in construction dispute resolution affecting the UK, Australia and New Zealand.

There are two prime issues that continue to confront practitioners within the field of international construction law. The first of these relates to international construction transaction work, and the other to international construction dispute resolution. First, in relation to international construction transaction work, the interaction of the private and public sectors through public private partnerships (PPPs) has given rise to some controversy in some regions, whilst being enthusiastically embraced in others. Secondly, as international construction dispute resolution continues to adapt to meet the needs of the market, it is essential to remain on top of the most recent developments in this area. Both dispute boards and adjudication are increasingly being utilised as methods of dispute resolution (and dispute avoidance), and it is interesting to note how arbitration and litigation are adopting to the changed perceptions and expectations of disputants brought about by these alternatives.

There have been many interesting developments in the transactional area relating to the initiation, structuring and financing of what are commonly referred to as public-private partnership (PPP) projects. These projects have been contracted and developed for a number of years in many jurisdictions around the world, including my own. By number, however, the UK market has seen more PPP projects than any other single market.

The onset of the global financial crisis and resulting difficulty in accessing debt and equity funds for such projects led to a pause in PPP project initiation around the world. However, in the wake of the financial crisis, there is now an increasing engagement between government and the market in a number of jurisdictions as projects are put to bid and are successfully closed. In my own country there have been some very significant successes in closing complex PPP transactions including the new Royal Adelaide Hospital (A$2.5 billion) and the Peninsula Link in Melbourne (A$849 million). Elsewhere, significant PPP projects have also been closed, including the Windsor-Essex Parkway in Ontario, Canada (C$1.4 billion).

The only area in Australia where no new projects have been initiated is in the toll road space, where real concern about the transfer of market risk coincided with the onset of the financial crisis, which has led to the need for the development of a new model to that previously adopted for such projects. We are yet to see that model developed and put to market in Australia.

It is interesting, in this context, to note that a detailed reconsideration of the use and utility of private finance for public infrastructure projects is being undertaken in the market where there have been more PPP transactions than anywhere else: namely, the UK. In December 2011 the UK's economic and finance ministry announced plans to reform what is known in the UK as the Private Finance Initiative (PFI). The government released a call for evidence, inviting the private sector to make contributions suggesting alternative ways in which the private sector and government can work together to deliver infrastructure projects. The UK government cites concerns that the existing model results in contracts that are too costly, inflexible and opaque, and aims to develop a new approach that is less expensive and can access a wider range of financing sources.

It will be interesting to observe the outcome of this inquiry and, in particular, to see whether any change in policy adopted by the UK in the deployment of private finance for such projects will affect the approach taken by other governments around the world. My suggestion in this respect is that, just as the Australian market saw PPP projects being let well before the development of the UK PFI model, the influence of a change in policy in the UK may not significantly impact on other markets, including those in North and South Asia, North America, and other parts of Europe. The second topic of interest relates to the efficient and economical resolution of disputes arising out of construction projects, both international and domestic. the courts of Singapore and Malaysia. It is therefore fair to observe that judges, arbitrators and dispute resolution practitioners in international construction are responding to the need to provide both international and domestic construction activities with efficient and expeditious means of resolution of differences between the parties to the construction process.

As developments continue in both the transactional side and the dispute resolution side of international construction, it is essential to stay abreast of the latest trends, reforms and transformations in the industry. The re-evaluation of the role of the PPP in the UK, and the increasing popularity of Dispute Boards and adjudication are but two examples of the constant evolution of the international construction field. It will no doubt be interesting to continue to track the progress of these developments, whilst retaining an open mind as to what is next for the industry. (*continued on page 12)*

Adjudication has been introduced as an alternative dispute resolution process into a number of common law countries, including the UK, Australia, New Zealand and Singapore. In each of those countries, it has had a profound effect for the construction industry. The adjudication process has been used by many in the industry to obtain expeditious, albeit preliminary, determinations which in the majority of cases have not proceeded to subsequent dispute resolution. This phenomenon has arisen because of the inadequacy of arbitration in a number of these jurisdictions to provide efficient and economical means for the resolution of disputes.

In 2011, during my term as president of the Chartered Institute of Arbitrators, I had a unique opportunity to observe how, in a number of jurisdictions, the efficiency of arbitration processes was being improved in response to a recognised deficiency of celerity and economy. I was also made aware of levels of dissatisfaction being voiced by users of international arbitration, particularly with respect to the arbitration of international construction disputes.

In Australia, we have seen root and branch reform of domestic arbitration with the introduction of the Model Law as the basis for domestic arbitration combined with legislative acknowledgement of the need for economy, efficiency and speed, which arbitral tribunals are required to observe. There have been similar developments in the international arbitration space by both arbitral institutions and international arbitrators anxious to ensure that the processes of international arbitration satisfy the needs of users. Examples of this include the amendments to the ICC Rules, which took effect at the beginning of this year. Further, a number of arbitral institutions introduced expedited arbitration rules, and arbitrators have increasingly been acknowledging the need to adopt processes for arbitration that are designed to suit the needs of particular disputes, as opposed to relying on standard form procedures.

In conjunction with this development has been the growth and success of Dispute Boards as a means of "nipping in the bud" project issues emerging on construction projects, thus substantially reducing the number of disputes needing to be referred to formal dispute resolution. The approach adopted for the use of Dispute Boards varies between jurisdictions. In the international context the FIDIC model has proven successful. The use of dispute boards domestically within the United States, and the application of dispute board processes within Australia, have also proven increasingly useful. These developments, and the various approaches to the use of dispute boards around the world, were the subject of detailed consideration at the international conference of the Dispute Review Board Federation, held in Sydney in May of this year.

The success of a number of domestic courts in finding expeditious ways to determine construction disputes has also been significant. Examples of this can be found in the Technology and Construction Court in the UK, in the commercial lists of a number of Australian states, as well as in the courts of Singapore and Malaysia. It is therefore fair to observe that judges, arbitrators and dispute resolution practitioners in international construction are responding to the need to provide both international and domestic construction activities with efficient and expeditious means of resolution of differences between the parties to the construction process.

As developments continue in both the transactional side and the dispute resolution side of international construction, it is essential to stay abreast of the latest trends, reforms and transformations in the industry. The re-evaluation of the role of the PPP in the UK, and the increasing popularity of Dispute Boards and adjudication are but two examples of the constant evolution of the international construction field. It will no doubt be interesting to continue to track the progress of these developments, whilst retaining an open mind as to what is next for the industry.

END OF PUBLICATION