Fenwick Elliott

The construction & energy law specialists

International Quarterly

Issue 04, 2012

Our newsletter provides informative and practical information regarding legal and commercial developments in construction and energy sectors around the world.

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Dispute adjudication or dispute avoidance under the FIDIC form?

This issue's contract corner looks at avoidance of disputes.

By Jeremy Glover
Partner, Fenwick Elliott

I recently attended the latest Dispute Resolution Board Foundation ("DRBF") Regional Conference in Doha, Qatar.[1] The theme of the conference was "Effective Use of Dispute Boards for Dispute Avoidance and Resolution on Major Projects". One of the more interesting themes to emerge from the conference was the increasing recognition of the value of "dispute avoidance" as a partner with "dispute adjudication". There are always going to be occasions when the best way to resolve a dispute is for an independent third party (be it a Dispute Board or Expert or some other body) to issue a formal decision, but there are other alternatives.

This is something that has been recognised by FIDIC. In 2008, FIDIC expanded the role of the Dispute Board when, in its Gold Book (for use on Design, Build and Operate Projects), it introduced a new sub-cl.20.5 headed "Avoidance of Disputes". This clause states as follows:

> *"If at any time the Parties so agree, they may jointly refer a matter to the DAB in writing with a request to provide assistance and/or informally discuss and attempt to resolve any disagreement that may have arisen between the Parties during the performance of the Contract. Such informal assistance may take place during any meeting, site visit or otherwise. However, unless the Parties agree otherwise, both Parties must be present at such discussions. The Parties are not bound to act upon any advice given during such informal meetings, and the DAB shall not be bound in any future Dispute Resolution process and decision by any views given during the informal assistance process, whether provided orally or in writing.*
>
> *If a Dispute of any kind whatsoever arises between the Parties, whether or not any informal discussions have been held under this Sub-Clause, either Party may refer the dispute in writing to the DAB according to the provisions of Sub-Clause 20.6."*

There has been speculation that this concept would form part of the revisions of the FIDIC Yellow and Red Books when they are finally introduced and this was confirmed by Aisha Nadar[2] at the DRBF Conference in Doha. This clause has the potential to put the DAB at the heart of dispute avoidance.

Now, in England and Wales there has been some disquiet about asking someone who is tasked with adjudicating a dispute to undertake the dual role of formally trying to mediate a settlement. Ten years ago, in the case of *Glencot Development and Design Co. Ltd v Ben Barrett & Son (Contractors) Ltd*,[3] following the commencement of adjudication proceedings, a meeting was held between the parties. The parties reached some measure of agreement in relation to the dispute but a number of issues remained outstanding. The adjudicator was asked by both parties to mediate in order to try and finalise an agreement. Following a day-long mediation, complete agreement on all outstanding issues was not reached and the adjudicator therefore confirmed that the adjudication would have to

continue. However, HHJ LLoyd QC said that the conduct of the adjudicator meant that this was a case of "apparent bias" in

1. The conference ran from 5 to 7 November 2012. In part I was there to co-lead a workshop entitled "The Dynamics of Why Dispute Boards Work".
2. Aisha is a Research Fellow, Construction Contracts and Dispute Resolution at Queen Mary, University of London and a Member of the FIDIC Updates Task Group.
3. [2001] BLR 2007. This was an adjudication carried out in accordance with the Housing Grants, Construction and Regeneration Act 1996, not a FIDIC DAB determination. The main difference between the two is the speed with which the UK adjudication can be carried out, in 28 days as opposed to the 84 days for FIDIC.

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that he appeared to lack impartiality. The dilemma posed by this new clause can be demonstrated by reference to comments made by the Judge in his decision:

> *"There are clearly risks to all when an adjudicator steps down from that role and enters a different arena and is to perform a different function. If a binding settlement of the whole or part of the dispute results, then the risk will prove to be worth taking."*

One difficulty is that in any mediation process, a mediator will often become privy to confidential and other commercial considerations of the parties.[4] A mediator is there to facilitate a settlement. This role is clearly incompatible with that of an adjudicator who is there to decide upon the parties' legal rights and obligations.

Now, sub-cl.20.5 of the FIDIC Gold Book 2008 does not go so far as to talk about mediation, but the same point arises: will a party feel comfortable adopting this process in the knowledge that it might be asking the DAB later to make a formal adjudication on the issue? The DAB may not be bound by any views given during the informal assistance process, but it may be difficult for them to put these views to one side. The likely answer is that this approach will suit some parties more than others, but the important point is that FIDIC is offering the parties the services of the DAB in an alternative way to try and resolve or manage any potential disputes.

In many respects, this new option is a natural extension of the DAB's role. If you have a permanent DAB that is meeting on a regular basis this may already provide an opportunity for informal discussions. The FIDIC Guide to the Gold Book states that:

> *"Prevention is better than cure, and the DAB is entrusted also with the role of providing informal assistance to the Parties at any time in an attempt to resolve any disagreement."*

This is an interesting proposal and it is clearly part of an overall trend to promote the resolution of disputes, which is to be encouraged. The likely position is that in time as more parties become familiar with such a concept, they will be more willing to explore alternative ways and approaches to resolving their differences. We all know that formal disputes, even at a Dispute Board level, can be very costly and time consuming.

The concept, too, should help promote the value of the Dispute Board. FIDIC are also going to replace the concept of the ad hoc Dispute Board, as currently provided for in the Yellow Book, with the standing Dispute Board, which is intended to be introduced at the beginning of a project. There are a number of reasons why this approach may well assist with dispute avoidance from the outset. These include the use of the Dispute Board to establish a common culture (which can be important on major international projects where the parties to the contract come from many different cultural backgrounds) and also to improve communications between the parties (poor relations often being the cause of many an unnecessary dispute. Where a Dispute Board is familiar with a project it can often take a proactive role in anticipating potential problems. The adoption of sub-cl.20.5 of the Gold Book throughout the FIDC suite of contracts may, in time, assist in promoting such an approach.

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4. In the *Glencot* case, the adjudicator was privy to a number of without prejudice offers and it would seem he was also privy to some rather heated discussions.

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Adjudication in Malaysia

By Nicholas Gould
Partner, Fenwick Elliott

Introduction

The use of adjudication as a rapid binding dispute resolution procedure for construction contracts has been slowly spreading around the world. Adjudication was first introduced in the UK in May 1998 as a result of the Housing Grants, Construction and Regeneration Act 1996. The legislated scheme provided that anyone entering into the construction contract (with some exceptions) had the unilateral right to call in an adjudicator if a dispute arose. The adjudicator was to be appointed within 7 days and had to provide a written decision with 28 days. It quickly became apparent that the courts would enforce those decisions very quickly. The general rubric was, and remains, "pay up now argue later". So if you did not like the adjudicator's decision you had no choice but to pay while then going on to arbitration or litigation in order to have the dispute reheard.

Other common law jurisdictions have followed this model. New Zealand adopted the Security of Payment Act, and each of the States in Australia has also introduced adjudication. Singapore introduced a similar process, and now Malaysia has introduced a Security of Payment Act bringing in rapid binding adjudication for those in the construction industry.

The important point about all of this legislation is that anyone carrying out work in those jurisdictions cannot avoid the binding dispute resolution procedure. Disputes can be dealt with quickly and economically, and more importantly the courts will enforce those decisions quickly.

This article looks at the most recent introduction of adjudication in Malaysia. Anyone entering into contracts in Malaysia after 22 June 2012 has a right not just to a statutory payment procedure but also to an adjudication process for resolving disputes.

The Malaysia Act 2012

After much debate the Construction Industry Payment and Adjudication Act 2012 of Malaysia received Royal Assent on 18 June 2012[1]. It came into force on 22 June 2012, and so Malaysia now has a statutory payment and adjudication regime for construction contracts.

The Act applies to all construction contracts made in writing after 22 June 2012 including those entered into by the Government of Malaysia. It applies to all construction work including consultancy agreements, but excludes buildings of less than four storeys that are intended for occupation by a "natural person". The Act takes some of the most successful features of the adjudication and security of payment legislation that has been enacted around the world. It provides a pre-adjudication procedure and then a short-form adjudication process, which takes slightly longer than other statutory adjudication processes.

Payment proceedures

The Act requires the parties initially to follow the payment mechanics of the construction contract. If a party remains unpaid then the pre-adjudication procedure can be used. This requires a payment claim based upon the unpaid claim under the construction contract. The responding party could then admit or dispute the claim in whole or in part within 10 days of the payment claim. A dispute that crystallises from the exchange can then be referred to adjudication.

Adjudication

Adjudication is initiated by a written notice setting out the nature of the dispute and remedy required. An application for the appointment of an adjudicator is made to a single nominating body, which is the Kuala Lumpur Regional Centre for Arbitration "KLRCA". The adjudication claim must be served within 10 working days of receipt of acceptance of the appointment by the adjudicator. The responding party then has 10 days to serve a written response, and the claimant may within 5 working days from receipt of any response serve a reply. Supporting documents are attached to each of the submissions.

The adjudicator then has 45 working days from either the response or the reply, whichever is the later, to issue a written

1. Rules of Malaysia, Act 746, Construction Industry Payment and Adjudication Act 2012. English translation.

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decision. If a response is not issued then the adjudicator has 45 working days from the date on which the response should have been served. The parties can agree to extend time further. The decision must be in writing and should also contain reasons. If the decision is not made within the specified time then the decision is void.

Powers of the Adjudicator

The powers of the adjudicator are set out at section 25 of the Act. The adjudicator can establish the procedures for the adjudication as well as order disclosure and production of documents and set deadlines. He can explicitly draw upon his knowledge and expertise as well as appoint independent experts (but only with the consent of the parties). He can also require that evidence be given on oath. The power to review and revise certificates and other documents is expressly set out. In addition, an adjudicator can award finance costs and interest.

The parties can agree the terms of the adjudicator and his fees. However, if they fail to agree then the current standard terms of appointment and fees of the KLRCA apply. Parties are jointly and severally liable for these, in much the same way as other legislation around the world. However, security for those fees can be requested in the form of a deposit placed with KLRCA. An adjudicator has a specific lien in the Act and so may not be required to release his decision until full payment has been made.

The Act states that an adjudicator's decision is confidential. It is unusual for legislation of this type to include a specific confidentiality provision. This does however address a fundamental issue that is often overlooked; the usual immunity of an adjudicator, in this case KLRCA is also included, stating that no action or suit can be brought against them for any act or omission carried out in good faith.

The decision is binding unless it is set aside by the High Court, finally decided in arbitration or is subject to a settlement between the parties. The Act also specifically provides for the enforcement of an adjudication decision. A party can enforce an adjudication decision by applying to the High Court.

Finally, the limited payment provisions of the Act require that interim payments are made in respect of construction contracts. In the absence of any specific payment clauses then payments are made monthly. Conditional payment is prohibited, thus making any pay-when-paid provisions ineffective.

Conclusion

There is little doubt that those involved in the construction industry in Malaysia will make use of not just the payment procedures but also adjudication under the Act. There will perhaps be some hesitancy early on while those in the industry become familiar with the procedures. However, it will assist in easing cash flow and resolving disputes quickly. It will probably be the contractors that initiate adjudication first against employers that will not resolve claims or make payments. However, it will not be long before subcontractors are also bringing claims against contractors, and so contractors will find themselves very much "in the middle". Those providing professional services will also be able to use the Act to resolve payment issues in respect of their services. Clearly, then, employers and owners engaging in construction work in Malaysia will need to take particular care and attention not just with regard to the Act, but also to the management of their contracts, looking carefully at notices provisions in contracts and claims as they are issued, assessing them and not only dealing with them but also making properly assessed payments.

Other jurisdictions around the world are also considering legislation in order to introduce a rapid adjudication process. No doubt the supply side of the industry will welcome the continual slow introduction of adjudication worldwide.

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The link to the legislation is:
http://www.rcakl.org.my/userfiles/File/CIPAA%20Act%20746%20ENG.pdf

The kind assistance of Muhammad Ehsan Che Munaaim is acknowledged for his comments on this paper, as well as the provision of an English text of the Malaysian Construction Industry Payment and Adjudication Act 2012.

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Bharat Aluminium Co. v Kaiser Aluminium Technical Services, Inc. – A recent Indian Supreme Court decision provides welcome support for a non-interventionist approach to international arbitration

By David Robertson
Partner, Fenwick Elliott

Introduction

The historic tendency of the Indian judiciary to intervene in international arbitration proceedings has been a source of concern for foreign companies participating in construction and energy projects and other business transactions in India. In an encouraging move the recent decision of India's Supreme Court in Bharat Aluminium Co. v Kaiser Aluminium Technical Services, Inc. ("Bharat Aluminium")[1] has reversed earlier authority which endorsed this interventionist approach.

Background

International commercial arbitration in India is regulated by the Arbitration and Conciliation Act 1996 (the "Arbitration Act"). The Arbitration Act is divided into two parts: Part I provides a framework of rules for domestic arbitrations, that is, any arbitration seated in India, including an arbitration involving a foreign party; and Part II provides rules for the recognition and enforcement of foreign arbitral awards, that is, those resulting from arbitrations seated outside India whether or not an Indian party is involved.

The Arbitration Act closely follows the UNCITRAL Model Law on International Commercial Arbitration[2] which provides a suggested legal framework for international arbitration which respects party autonomy and places limits on the extent to which local courts may interfere in the arbitral process, particularly in relation to arbitrations held in other jurisdictions.

However, in a series of decisions the Indian courts severely eroded this principle of non-intervention. In particular, the Supreme Court's own 2002 decision in Bhatia International v Bulk Trading S.A. ("Bhatia International")[3] found that Part I of the Arbitration Act applied equally to arbitrations held outside India, thereby justifying higher levels of court intervention. In another decision, the Court held that any foreign arbitral award that contravened Indian law was illegal and liable to be set aside on the grounds of public policy.[4]

The net effect of these decisions was that the Indian courts had the power to reopen and review any foreign arbitral award, whether seated within India or not and whether or not a party was seeking to enforce that foreign award in India. As a result of this approach, parties who had agreed to resolve their disputes by arbitration in, for example, Singapore could nonetheless be dragged into legal proceedings before the Indian courts even before any attempt at local enforcement was made. This approach was the source of considerable concern amongst foreign parties engaged in commercial transactions in India and had attracted substantial criticism from lawyers and academics in India and elsewhere.

1. Civil Appeal No. 7019 of 2005.
2. http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf
3. (2002) 4 SCC 105.
4. *Oil & Natural Gas Corporation v SAW Pipes* (2003) 5 SCC 705.

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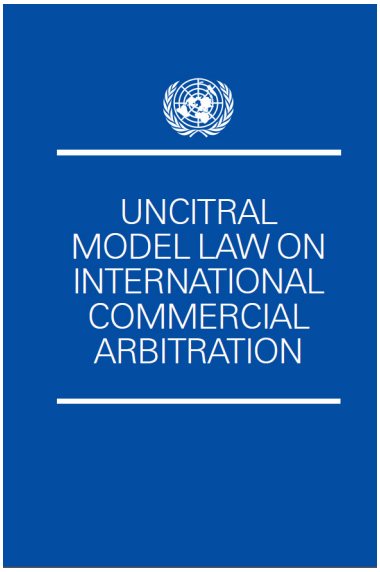
The decision in Bharat Aluminium

In *Bharat Aluminium* the Supreme Court found that by adopting the UNCITRAL Model Law the Indian legislature had accepted the territorial principles contained within the Model Law. According to those principles, the "place" or "seat" of the arbitration agreed by the parties to an arbitration agreement provides the law governing that arbitration. The Court accepted that the Arbitration Act distinguished between domestic awards, as those rendered by arbitral tribunals seated within India, and foreign awards, as those rendered by tribunals seated in other jurisdictions. The Court confirmed that Part I of the Arbitration Act, and the intrusive powers it gives to the courts, only applies to arbitrations seated in India.



The *Bharat Aluminium* decision carries additional weight for two reasons: first it was a consolidation of several cases appealing against first instance decisions concerning the correct interpretation of the Arbitration Act. The Supreme Court therefore had the opportunity to review application of the Act in a range of circumstances; and secondly, the Supreme Court sat as a special five-member "Constitutional Bench"[5] and delivered a unanimous verdict. The present case therefore represents a clear and firm statement of judicial intent in India in relation to international arbitration.

Conclusions

The Supreme Court's decision in *Bharat Aluminium* means that Indian courts will no longer be able to set aside awards (or grant interim measures) in respect of arbitrations that are seated outside India. The decision is to be welcomed and provides firm judicial basis for the non-intervention of the Indian courts in foreign arbitral awards.

It is important to note that when a party seeks to enforce a foreign arbitral award in India the Indian courts will still have the power, under Part I of the Arbitration Act, to refuse enforcement on certain limited grounds, including where enforcement would be contrary to the public policy of India. This reservation of judicial authority is consistent with the UNCITRAL Model Law and is mirrored in most countries' equivalent legislation.[6]

In recognition of the precedent set by its previous decisions, including *Bhatia International*, the Supreme Court stated that its present interpretation of the law will only apply to arbitration agreements entered into after the date of its decision, that is, 6 September 2012. This is somewhat unusual given that the decision corrects interpretation of legislation passed in 1996. Therefore, whilst the decision in *Bharat Aluminium* represents an important step forward, its prospective application will leave considerable uncertainty in relation to arbitration proceedings commenced pursuant to arbitration agreements contained in contracts already in place. It is to be hoped that the Indian courts will be persuaded in such cases to be mindful of the *Bharat Aluminium* decision and resist relying on Part I of the Arbitration Act to intervene in foreign arbitral proceedings.

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5. The decision in *Bhatia International* which was overturned had been given by a three-member panel.
6. See, for example, section 103(3) of the UK Arbitration Act 1996.

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Legal issues surrounding Building Information Modelling (BIM)

By Jeremy Glover
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Currently in the UK, there is a lot of discussion about Building Information Modelling (or BIM). BIM is a way of approaching the design and documentation of a project utilising 3D computer technology which is shared amongst the design and construction teams, incorporating cost, programme, design, physical performance and other information regarding the entire lifecycle of the building in the construction information/building model. In the UK this discussion has largely been generated by the publication of the government's construction strategy which requires that all government projects utilise BIM in the form of a fully collaborative 3D computer model (Level 2) by 2016, with all project and asset information, documentation and data being electronic. Of course internationally, the use of BIM can already be found on projects worldwide. For example, in Norway, the Statsbygg (the Norwegian government's key advisor in construction and property affairs) already use BIM in all public projects.

It is important to remember that BIM is not simply the use of 3D technology – it is a way of design and construction. And as the use of BIM spreads throughout the construction industry, thoughts inevitably turn to the question of the type of legal and contractual implications that may arise. The Singapore BIM Guide[1] notes that:

> *"A basic premise of Building Information Modelling (BIM) is collaboration by different project members at different stages of the life cycle of a facility to insert, extract, update or modify information in the BIM process to support and reflect the roles of each project member."*

Will BIM alter responsibilities for design?

This can lead to concerns about whether or not the use of BIM might alter the traditional allocation of responsibilities as between the client, contractors, designers and suppliers. In the UK, where the government is talking about the implementation of BIM Level 2, the answer to this question is that BIM should not alter those traditional responsibilities to any great degree. I say this because BIM Level 2 is:

> *"a series of federated models prepared by different design teams (the number of models and purpose to be determined by the Employer), put together in the context of a common framework for the purpose of being used for a single project with licences granted to other project teams members to use the information contained in the federated models".*[2]

If you think of each model as a drawing or design in the more traditional sense, then provided your contract clearly defines your role and responsibility in the usual way, you can see why there should not be any significant change. Indeed you should remember that your usual responsibilities will remain. Remember the importance of understanding the design brief and the ongoing obligation to review the design. The new technology and new way of producing design do not change the fundamental legal principles.[3]

What will happen to my contract?

There is also the question of how (if at all) the standard form appointments and

1. www.aces.org.sg/pdf/058-2012_BCA_Singapore%20BIM%20Guide_Version%201.pdf. Version 1.0, May 2012.
2. NBS Roundtable 12 July 2012
3. In time, as the technology bounds on and the collaborative nature of BIM increases, this may (most would say "will") change, but not at Level 2.

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building contracts should be altered to account for the use of BIM. The view of the NEC is that there is no need to do anything more than insert a BIM Protocol into the Works Information or Scope. This is the approach taken by the standard UK contract body, the JCT whose *Public Sector Supplement* suggests incorporating a BIM Protocol as a contract document'. So far, this seems quite simple. But what is not necessarily so straightforward is knowing quite what the BIM Protocol actually is.

What is the BIM Protocol all about?

According to the AEC (UK) BIM protocol, the purpose of the protocol is to:

- To maximise production efficiency through adopting a coordinated and consistent approach to working in BIM;
- To define the standards, settings and best practices that ensure delivery of high quality data and uniform drawing output across an entire project; and
- To ensure that digital BIM files are structured correctly to enable efficient data sharing whilst working in a collaborative environment across multidisciplinary teams both internally and in external BIM environments.

To achieve this, the key features of a typical BIM Protocol should include consideration of the following:

- Definitions;
- The place of the BIM protocol in the priority of the contract documents;
- The obligations of the Employer;
- Who should appoint the BIM Information Manager and when?
- The obligations of project team members;
- Who is to produce the models needed and by when?
- To what extent will there be a collaborative working practice;
- How will the electronic data be exchanged?
- The use of models. Who can amend data once it is incorporated? You can look but not touch?
- Copyright. The need to grant licences related to permitted purposes;
- What are the limitations (if any) on liability associated with models?

Who is the BIM Manager?

Here, it is critical that you understand the terms being used. BIM is (relatively) new. People use different words and terms to define the same role. Here more than ever, you should not assume what a word means. To take one example: the list of key features of the BIM protocol set out above, refers to the BIM Information Manager. Other people might refer to the BIM Model Manager or maybe the Design Co-ordination Manager or even the VDC (Virtual Design to Construction) Manager.

Whatever name the BIM Information Manager goes by, it is an important position. The basic role of the BIM Manager is to coordinate the use of BIM on a project. The BIM Information Manager is responsible for the administration and management of processes associated with Building Information Modelling on a particular project. More specifically, the draft PAS 1192-2:2012[4] requires the BIM Information Manager to:

> "*provide a focal point for all information modelling issues in the project; ensure that the constituent parts of the Project Information Model are compliant with the MIDP [Master Information Delivery Plan]; [and] ensuring that the constituent parts of the Project Information Model have been approved and authorized as "suitable for purpose" before sharing and before issuing for approval*".

This will include having responsibilities for user access to the project BIM Model and for coordinating the submission of the individual designs and integrating them into the project model. The BIM Information Manager should also be in charge of data security and for maintaining records (who submitted what and when, and was it according to the agreed programme) and a data archive.

At Level 2 BIM, it is during the coordination process that the models are linked (or referenced) together into one federated model. A well-drafted protocol will ensure that the liabilities of each designer remain the same, before and after the

4. In the UK, a Publicly Available Specification (PAS) is a sponsored fast-track standard driven by the needs of the client organisations and developed according to guidelines set out by the British Standards Institute.

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incorporation of their design (or model) into the federated model.

This does lead to one further question. If each party is responsible for its own model, to what extent is the BIM Information Manager liable when clashes are not detected or the design is not coordinated? The typical approach, at least at common law, is that set out by the draft PAS 1192-2:2012 which suggests that the Lead Designer shall be responsible for the coordinated delivery of all design information.

In other words, nothing has changed. The role of the BIM Information Manager is therefore not meant to be equivalent of Lead Designer. The Information Manager is responsible for the management of information, information processes and compliance with agreed procedures, not the coordination of design. However, this does need to be spelt out, perhaps in the BIM Protocol; otherwise a potential conflict arises with regards to design and design coordination roles.

The BIM Implementation Plan

Finally, the BIM Information Manager may also be responsible for establishing and implementing the BIM Execution (or Implementation) Plan. One way of looking at this, is as a BIM Programme or Schedule of Works. The Singapore BIM guide defines the "BIM Execution Plan" as a document which sets out:

> *"how BIM will be implemented on a particular project as a result of the collective decision by the members of that project, with the approval of the Employer".*

In Singapore, the BIM Execution Plan is not seen as a contractual document, but the work product of a contract. The BIM Execution Plan should therefore provide a baseline to measure progress throughout the project. It should set out the roles and responsibilities of the project for design delivery (or data drop), model creation, maintenance and collaboration at the various stages of the project. As a consequence it might assist in identifying any additional services or resources that might be needed in the contract.

The BIM Execution Plan should also set out definitions of terms, and details of any file naming conventions, abbreviations and dimensions. Step-by-step checklists are also important; who needs to do what, by when? It may include templates to ensure that it is easier to understand and compare what everyone is doing. It may also set out the process of information approval. The Plan should therefore be considered as being in addition to, but aligned with, the construction programme and the design programme.

Conclusions

At least at Level 2, BIM should not alter the traditional design roles and responsibilities. As always, it is important that these are clearly defined and spelt out. It is also true that at Level 2, there should not be any great need to amend or rewrite the standard forms of contract and professional appointments. However, this is provided that those working with BIM all sign up to a BIM Protocol and agree to produce a BIM Implementation Plan promptly.

The BIM Protocol and the BIM Implementation Plan are the key documents which set out the lines of responsibility for the production and coordination of the design throughout the BIM process. Make sure that your project has these documents and ensure that you understand the terms and definitions used in those documents and the extent to which you are responsible for any particular element of design.

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News and events

Trends, topics and news from Fenwick Elliott

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This edition

We hope that you have found this edition of International Quarterly informative and useful. We aim to keep you updated regarding legal and commercial developments in construction and energy sectors around the world. Fenwick Elliott's team of specialist lawyers have advised on numerous major construction and energy projects worldwide, nurturing schemes to completion with a combination of careful planning, project support and risk assessment. From document preparation to dispute resolution, our services span every stage of the development process.

We also offer bespoke training to our clients on various legal topics affecting their business. If you are interested in receiving bespoke in-house training please contact Susan Kirby *skirby@fenwickelliott.com* for a list of topics.

Dictionary

We are delighted to have launched our new publication - Fenwick Elliott's ***Dictionary of Construction Terms.*** The Dictionary offers a clear and concise explanation of the most commonly encountered legal and technical terms, phrases and abbreviations used throughout the construction industry.

It will save you valuable time when searching for an authoritative explanation of a frequently used term. It will become a practical reference for construction lawyers, practitioners and students as well as those in related industries including planning, property and insurance.

Annual Review

Our 16th Review is now available on our website www.fenwickelliott.com. This annual review contains a round up of the key developments in the construction, engineering and energy arena over the past year and includes a look at key developments in International Arbitration over the past 12 months. We also feature articles on EU procurement, bonds and guarantees, Building Information Modelling (BIM) and contract interpretation.

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Fenwick Elliott to support the FIDIC International Contract Users' Conference 2012

We are proud to support the FIDIC International Contract Users' Conference taking place in London on 5 & 6 December. Nicholas Gould will chair a panel of speakers including Fenwick Elliott's Jeremy Glover in a session entitled "Dispute Boards in practice – overcoming the hurdles". To find out more about our participation at this conference please contact Susan Kirby *skirby@fenwickelliott.com*

About the editor, Jeremy Glover

Jeremy has specialised in construction energy and engineering law and related matters for most of his career. He advises on all aspects of projects both in the UK and abroad, from initial procurement to where necessary dispute avoidance and resolution. Typical issues dealt with include EU public procurement rules, contract formation, defects, certification and payment issues, disruption, loss and/or expense, prolongation, determination or repudiation and insolvency.

Jeremy organises and regularly addresses Fenwick Elliott hosted seminars and provides bespoke in-house training to clients. He also edits Fenwick Elliott's monthly legal bulletin, *Dispatch*.

International Quartely is produced quartely by Fenwick Elliott LLP, the leading specialist construction law firm in the UK, working with clients in the building, engineering and energy sectors throughout the world.

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