Construction Disputes under the FIDIC Contracts in our Region

Piotr Nowaczyk

2014
FIDIC - International Federation of Consulting Engineers

founded in 1913, Geneva
beginning in 1914, Warsaw
FIDIC

- Over 90 countries have joined FIDIC

- Goals:
  - represent the consulting engineering industry globally,
  - enhance the image of consulting engineers,
  - promote a consulting engineering industry,
  - promote quality,
  - promote a code of ethics.

**RED Book** – Conditions of Contract for Works of Civil Engineering Construction

International Form of Contract, independent of any particular Judicial System
FIDIC Standard Forms of Contract

- New 1999 collection
- The new **RED** Book 1999
- The new **YELLOW** Book 1999
- The **SILVER** Book 1999
- The **GREEN** Book 1999
- Who will be responsible for the Design?
The New RED Book

Conditions of Contract for Construction
for building and engineering works designed by the Employer
Conditions of Contract for Plant and Design-Build for electrical & mechanical plant & for building and engineering works designed by the Contractor
Conditions of Contract for EPC / Turnkey Projects

„EPC” means Engineering, Procurement and Construction.

Recommended for the provision on a turnkey basis of a plant.

Contractor takes total responsibility for the design and execution of infrastructure project.
The GOLD Book

Conditions of Contract for Design, Build and Operate Projects
The GREEN Book

Short Form of Contract

Recommended for relatively simple work of short duration.
The FIDIC Approach

Employer’s Risk → RISK → Contractor’s Risk

Price → PRICE → Cost and duration
Risks

• **Insurable Risks**
  - risks of loss or damage or injury occurring during the project’s Life, including:
    - Consequences of accidents due to defective design
    - “Acts of God”
    - Fire
    - Human Error

• **Un-Insurable Risks**
  - leading to Financial and/or time Loss including:
    - Late Possession of Site
    - Changes in design
    - Variations
Multistep Clause 20

- Notice
- Claim
- Engineer Determination
- Dispute
- DAB
- Adjudication
- Dissatisfaction
- Amicable settlement
- Failure to comply
- Arbitration
Notice – clause 20.1

Sub-Clause 20.1 [Contractor’s Claims] – mainly for time or money

• The Contractor shall give a 28 days Notice to the Engineer after it became aware of any event giving rise to a claim for:

  Additional Payment or Extension of Time for completion

• Failure to give notice within 28 days will make the claim time-barred
Claim – clause 20.1

• Fully detailed **Claim** with supporting particulars within **42** days
• Interim Claims possible at monthly intervals
• Final Claim within **28** days after the end of the effects resulting from the event or circumstances
Determination – clause 20.1

• Within **42** days after receiving a claim

• The Engineer shall make „a fair Determination” with approval or disapproval
  • agree or determine the Extension of Time
  • and/or the Additional Payment
Disputes – clause 20.4

• If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works
  either Party may
  refer the Dispute in writing
to the DAB for its decision
Dispute Adjudication Board (DAB)
Appointment of DAB – clause 20.2

- *Ad hoc* or standing DAB
- Standing DAB jointly appointed within the period stated in Appendix to Tender
- DAB shall include 1 or 3 members
- A three Members DAB – each Party shall nominate 1 member
- The Parties will consult both members and shall agree upon the Chairman
- Dispute Adjudication Board Agreement
- Each Party pays half of the DAB’s total remuneration
Adjudication

- Clause 20.2
  - Disputes shall be adjudicated by a DAB

- Clause 20.4
  - Within 84 days the DAB shall give its decision
  - The decision shall be binding
Dissatisfaction – clause 20.4

• Either Party may within 28 days after receiving the Decision give: „Notice of its Dissatisfaction“
Amicable Settlement – clause 20.5

• Both Parties shall attempt to settle the dispute amicably before the commencement of arbitration.

• Mediation

• Arbitration may be commenced on or after the 56 day after the day on which Notice of Dissatisfaction was given, even if no attempt at amicable settlement has been made.
Arbitration – clause 20.6 - general

• 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:
  • The dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC)
  • The dispute shall be settled by 3 arbitrators appointed in accordance with these Rules

• Arbitration may be commenced prior to or after completion of the Works.
Failure to Comply – clause 20.7

• In the event that:
  • neither Party has given Notice of Dissatisfaction,
  • the DAB’s related decision (if any) has become final and binding, and
  • a Party fails to comply with this decision,

then the other Party may refer the case directly to Arbitration.
## Summary

<table>
<thead>
<tr>
<th>Process</th>
<th>Notice</th>
<th>Claim (Interim claims)</th>
<th>Determination (approval / disapproval)</th>
<th>Dispute</th>
<th>DAB</th>
<th>Decision</th>
<th>Total</th>
<th>28 weeks</th>
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<td>Notice</td>
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</table>
International Court of Arbitration ICC

• Established in 1923
• The most recognized ADR institution world-wide
• 132 members of the Court from 85 countries

International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris, France
Tel.: +33 1 49 53 28 28
Fax: +33 1 49 53 28 59
ICC Arbitration Clause

• „Wszelkie spory wynikające z niniejszego kontraktu lub w związku z nim będą rozstrzygane ostatecznie stosownie do Regulaminu Arbitrażowego Międzynarodowej Izby Handlowej przez jednego lub więcej arbitrów wyznaczonych zgodnie z tym Regulaminem.”

• “All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”
The Court of Arbitration at the Polish Chamber of Commerce in Warsaw

- The biggest and the most recognized arbitration court in Poland
- Established in 1950
- Domestic and international cases
- 249 Recommended Arbitrators

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E: info@sakig.pl
# PCC statistics

<table>
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<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
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<td>352</td>
<td>440</td>
<td>396</td>
<td>304</td>
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<td>Construction disputes</td>
<td>64 (25%)</td>
<td>79 (22%)</td>
<td>94 (21%)</td>
<td>79 (20%)</td>
<td>79 (26%)</td>
<td>76 (24%)</td>
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Contact details

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Thank you

Dziękuję