



Day 1

29 June 2017

FIDIC contracts – Claims and disputes under international construction contracts

Chair of the first day:

Aisha Nadar

Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee

- 09.00 - 09.10 **Welcome address and introduction by ICC India**
- **Subhrakant Panda**, President, ICC India, New Delhi (*invited*)
- 09.10 - 09.20 **Welcome by the Chair of the first day**
- **Aisha Nadar**, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee
- 09.20 – 10.30 **An Introduction to the FIDIC forms of contract**
- Background and principles of the FIDIC and its forms of contract
 - FIDIC Procurement Procedures Guide
 - **Aisha Nadar**, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee
 - Description and comparison of the Red, Yellow and Silver Books
 - Key features of new Yellow Book
 - **Siobhan Fahey**, Chartered Engineer & Chartered Arbitrator, Ireland; FIDIC International Accredited Trainer
- 10.30 - 10:55 Questions and answers
- 10:55 - 11.15 *Coffee break*
- 11.15 - 12.00 **The advantages and use of FIDIC contracts in Asia**
- How much are FIDIC contracts used?
 - Which forms of contract are most used?
 - Is a distinction to be made between types of projects, public/private projects and/or any industries in particular?
 - What other forms of contract are used in Asia?
 - **Jim Perry**, Founding Partner, JS Consulting, France; FIDIC President's List of Adjudicators
 - **Rohini Roy**, Chief of Legal Operations, International Operations, Bharat Heavy Electricals Limited, India
 - **Paul Sandosham**, Partner, Head Infrastructure, Energy & Resources (Disputes) S.E.A., Clifford Chance, Singapore

- 12.00 - 12.30 **Introduction to the key concepts of the future FIDIC Conditions of Contract for Underground Works**
- **Charles Nairac**, Partner, White & Case LLP, France; Member, FIDIC-ITA Task Group 10, Contract Form for Tunnelling and Underground Works
 - **Matthias Neuenschwander**, Founder, Neuenschwander Consulting Engineers, Switzerland; Chairman, FIDIC-ITA Task Group 10, Contract Form for Tunnelling and Underground Works
- 12.30 - 13.00 Questions and answers
- 13.00 - 14.30 *Lunch*
- 14.30 - 15.30 **Introduction to Dispute Boards**
- Key concepts and vocabulary: Disputes Boards, Dispute Adjudication Boards, Dispute Review Boards, Dispute Avoidance Boards; advantages and disadvantages of these
 - Presentation of FIDIC's DB procedures
 - Presentation of the ICC's Dispute Board Rules
 - How to enforce a binding DB decision?
- **Murray Armes**, Managing Director, Sense Studio, United Kingdom; FIDIC President's List International Adjudicator and Expert Witness
 - **David Brown**, Partner, Clyde & Co., France; Council Member, ICC Institute of World Business Law
 - **Jagannathan Krishnaswami**, Head – Legal Services, Larsen & Toubro Limited, India
- 15.30 - 15.55 Questions and answers
- 15.55 - 16.15 *Coffee break*
- 16.15 - 17.15 **The ubiquitous Dispute Boards in Asia**
- Prevalence of DRBs in Asia– what are DRB's, where they come from and positive perceptions
 - Expert Determinations in India (someone from the Big Four)
 - Overview of recent infrastructure projects opting for ICC or FIDIC DABs in Asia
 - Trends in the construction space, practical issues and difficulties
- **Tomohide Ichiguchi**, Director, Loan Procurement Policy and Supervision Division, Japan International Cooperation Agency (JICA), Japan
 - **James P. Monteiro**, Principal Partner, JamesMonteiro (Advocates & Solicitors), Malaysia
 - **Dhirendra Negi**, Partner, JSA Advocates & Solicitors, India
- 17.15 - 17.45 Questions and answers
- 17.45 - 19.00 *Cocktail reception*

ICC arbitration in construction matters

Chair of the second day:

Alexis Mourre

President, ICC International Court of Arbitration, Paris

09.00 - 09.20 **Welcome by the Chair of the second day**

An introduction to the ICC International Court of Arbitration, the revised ICC Rules and the ICC International Centre for ADR. ICC experience under FIDIC contracts and on construction disputes

- **Alexis Mourre**, President, ICC International Court of Arbitration, Paris

09.20 - 10.20 **The good, the bad and the ugly: Changing landscape of arbitration in India**

- Have the recent amendments restored faith amongst users?
- To what extent good arbitration regime foster the "Make in India" programme
- Are Courts in India now more receptive to arbitration? What is expected?
- Commercial Courts – Has that been a game changer?

- **Lalit Bhasin**, Managing Partner, Bhasin & Co., India; Member, ICC International Court of Arbitration; President, The Bar Association of India; President, Society of India Law Firms
- **Abhijit Mukhopadhyay**, President (Legal) and General Counsel, Hinduja Group, United Kingdom
- **Sherina Petit**, Partner and Head of India Practice, Norton Rose, United Kingdom

10.20 - 10.45 Questions and answers

10.45 - 11.05 *Coffee break*

11.05 -12.05 **ICC Expedited Rules in practice**

- What are the ICC Expedited Rules?
- Practical examples when they could be chosen
- How do they work for small arbitration claims? And bigger claims ?
- How is expedited arbitration the answer to legitimate user concern about time and costs?

- **Bennar Aydoğdu**, Founder, BennArb Law Firm, Turkey
- **Pui-Ki Ta**, Counsel, ICC International Court of Arbitration, Hong Kong
- **Kunal Vajani**, Partner, Wadia Ghandy, India; Alternate Member, ICC International Court of Arbitration
- **Nicolas Wiegand**, Partner, CMS, Hong Kong

12.05 - 12.30 Questions and answers

12.30 - 14.00 *Lunch*

14.00 - 14.15 **ICC Court activities dealing with FIDIC awards**

- Report on the position of FIDIC's official Observer on the ICC International Court of Arbitration
 - **Aisha Nadar**, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee

- 14.15 - 15.15 **Time is Money: Factors which escalate costs in construction disputes**
- Reasons for delays in construction disputes?
 - Issues related to Court interventions, Public Interest litigation, Land acquisition
 - Dilatory tactics used by one or more parties
 - Institutional framework that helps avoiding the delay
- **Garry Crossley**, Managing Director - Global Construction Practice, Navigant, Singapore
 - **Sitesh Mukherjee**, Partner, Trilegal, India
 - **Charles Nairac**, Partner, White & Case LLP, France; Member, FIDIC-ITA Task Group 10, Contract Form for Tunnelling and Underground Works
- 15.15 - 15.40 Questions and answers
- 15.40 - 16.00 *Coffee break*
- 16.00 - 17.00 **Too many cooks make the broth: Multi-party and multi-contract issues in Asian construction arbitration: a focus on subcontracting**
- Issues raised by multi-party/multi-contracts arbitrations
 - The 2012 ICC provisions on joinder, multiple parties, multiple contracts and consolidation
 - The FIDIC Subcontract for Construction provisions relating to the settlement of multi-party (employer – contractor – subcontractor) disputes
- **Sanjeev K. Kapoor**, Partner, Khaitan & Co, India
 - **Sae Youn Kim**, Chair of International Dispute Resolution Practice, Yulchon, South Korea
 - **Soh Lip San**, Head, Construction & Projects, International Arbitration, Rajah & Tann Singapore LLP, Singapore
 - **Ratan K. Singh**, Advocate & Arbitrator, Chambers of Ratan K. Singh, India; Chairman-India, Society of Construction Law, United Kingdom
- 17.00 - 17.30 Questions and answers
- 17.30 – 17.45 **Closing of the Conference**
- **Abhinav Bhushan**, Regional Director for South Asia, ICC Arbitration & ADR, ICC International Court of Arbitration, Singapore
 - **Aisha Nadar**, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee

We thank our 2017 ICC/FIDIC Programme Committee:

Abhinav Bhushan, Regional Director for South Asia, ICC Arbitration & ADR, ICC International Court of Arbitration, Singapore

Abhijit Mukhopadhyaya, General Counsel, Hinduja Group, United Kingdom

Ciccu Mukhopadhyaya, Senior Advocate, Supreme Court of India, New Delhi

Charles Nairac, Partner, White & Case LLP, France; Member, FIDIC Task Group 10, Contract Form for Tunnelling and Underground Works