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# **FIDIC-SIDiR-EFCA Regional Infrastructure Conference**

**Krakow  
7 & 8 March 2016**

**Lukas Klee**


 International Federation of Consulting Engineers




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## **FIDIC in the Czech Republic**

- **Content:**
- **Implementation History**
- **New Sample Particular Conditions 2016**
- **FIDIC and Procurement Law**
- **DAB**

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## FIDIC in the Czech Republic

- FIDIC Forms are used mainly for Civil Engineering infrastructure public projects.
- Highways, railways, subway, water treatment, but sometimes also for buildings and plants.
- 1999 CONS/Red Book, 1999 P/DB/Yellow Book, 1999 Short Form/Green Book, 2006 White Book.



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## Development of Implementation

- Ignorance of Contract: After 1989 – 1987 Red Book and 1999 Red Book – non-existing or short sample Particular Conditions (but the contractual procedures not used practically).
- Experiments: 2011-2015 – Unbalanced/Inefficient Particular Conditions – Disruptions in Procurement, Disputes, Suspensions.
- 2016 - balanced sample Particular Conditions (back to basics).



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## New Sample Particular Conditions

- How to make people agree on something?
- Trust, Respect, Professionalism, Long-term Visions, Industry interest=same goals.
- How to make people cooperate?
- Experience is not transmissible – bad experience should lead to evolution.



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## Cooperation

- **Key stakeholders must cooperate:** Ministry of Transport, National Infrastructure Funding Agency, Czech Infrastructure Association, Czech Association of Consulting Engineers, Association for Highway Construction and many others.
- **Key to success:** Create a platform for cooperation within the industry, discuss the key issues openly, agree a balanced compromise, find leaders.



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## Home Improvement

- **FIDIC Forms – prepared by Engineers for Engineers. Carefully revised by specialized lawyers to serve the industry.**
- Common Attorney with no experience with construction projects: What about to change something? No problem! Let us create a 100 pages Particular Conditions.
- Political approach: Let us make use of the contract - to get bargaining power, protect the public servants, etc.
- **Output? Disaster for the industry and socio-economic loss for the country.**



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## Do It Yourself = Pat i Mat (Sąsiedzi)



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## Efficient Implementation

- 1) **Correct Translation.** Training. FIDIC Contract Guide.
- 2) **Correct Particular Conditions.** Positive additions (inspiration in newest FIDIC books, NEC...): *Risk register, Time schedule requirements, claim procedure (no reaction of the Engineer), instead of penalties retention of payments, procedure for variation valuation* - improve, not destroy the principles FIDIC Forms, local and client specifics.
- 3) **Efficient Contract Administration and DAB mechanism** – Acceptance, Trust, Plan/Quality Assurance.


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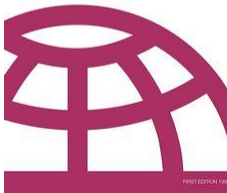
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## New Translations

 **Smluvní podmínky pro VÝSTAVBU**  
PODÁNÍ A KONTROLA STAVBY PROJEKTOVÝCH OBJEKTŮ  
OBECNÉ PODMÍNKY  
PŘÍLOHA PRO PŘÍPRAVU ZVLÁŠTNÍCH PODMÍNEK  
VÝSTAVBY  
VÝSTAVBY O DÍLO  
A DOKLADY O PRŮBĚHU PRÁCE





FIRST EDITION 1998

 **Smluvní podmínky pro STAVBY MENŠÍHO ROZSAHU**  
OBECNÉ PODMÍNKY  
PŘÍLOHA PRO PŘÍPRAVU ZVLÁŠTNÍCH PODMÍNEK  
STAVBY  
STAVBY O DÍLO  
A DOKLADY O PRŮBĚHU PRÁCE




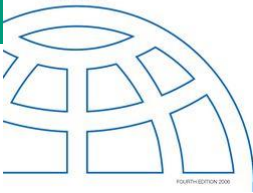
FIRST EDITION 1998

 **Smluvní podmínky pro DODÁVKU TECHNOLOGICKÝCH ZAŘÍZENÍ A PROJEKTOVÁNÍ VÝSTAVBY**  
OBECNÉ PODMÍNKY  
PŘÍLOHA PRO PŘÍPRAVU ZVLÁŠTNÍCH PODMÍNEK  
VÝSTAVBY  
VÝSTAVBY O DÍLO  
A DOKLADY O PRŮBĚHU PRÁCE




FIRST EDITION 1998


 **VZOROVÁ SMLOUVA O POSKYTNUTÍ SLUŽEB**  
mezi objednatelům a konzultantem  
OBECNÉ PODMÍNKY  
PŘÍLOHA PRO PŘÍPRAVU ZVLÁŠTNÍCH PODMÍNEK  
SLUŽBY  
SLUŽBY O DÍLO  
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FOURTH EDITION 2008

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## Golden Principles?

- **Golden principles – National Legislation? New legislation on Government level.**
  - 1) Clear Contract Price Mechanism
  - 2) Transparent Risk Allocation (Ground Conditions, Design), and so on.
- **New Civil Code? Almost no regulation for large projects – generally no conflict with GC FIDIC.**
- **New Public Procurement Law: Flexibility (Variations)?**



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## FIDIC in the Czech Republic

- **Issues in the Czech Republic**
  1. **Interpretation of public procurement law in terms of Variations, Claims and works re-measured above the accepted contract amount.**
  2. The role of the **Contract Administrator** (the Engineer) in public projects.
  3. Lack of knowledge about **DABs**.



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## Variations

1. Variation – legal interpretation issue in post-communist countries.
2. Variation – linguistic issue in Slavic countries.
3. Variation – **EU subventions and ex post inspections.**



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## Variation – legal issue

Variation – legal interpretation:

- **Correct Interpretation:** A contractually pre-agreed necessary change of the works. It is not a change of the contract. It is a Variation = benefit for the employer. **FCG:** „Although Variations are a source of many disputes, Employers are generally unwilling to enter into contracts which prevent them from requiring changes to be made, other than after the taking-over.“

**All variations seen as Additional Works...**  
**New public procurement law will change it.**



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## Variations - linguistic problem

<u>English</u>	<u>German</u>	<u>French</u>	<u>Spanish</u>	<u>Portuguese</u>
<u>Variation</u> means any <u>change</u> to the works, which is instructed or approved as a variation.	<u>Leistungsände rung</u> ist jede <u>Änderung</u> der Arbeiten, die als eine Leistungsände rung angewiesen oder genehmigt ist.	<u>Modifications</u> designe tout <u>changement</u> dans les travaux, qui est ordonné ou approuvé comme une modification.	<u>Variación</u> significa cualquier <u>cambio</u> a las Obras que es requerido o aprobado como una variación.	<u>Variação</u> significa qualquer <u>mudança</u> nas Obras instruída ou aprovada como <u>variação</u> ,



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## Variations - linguistic problem

<u>Czech</u>	<u>Russian</u>	<u>Polish</u>	<u>Slovak</u>
<u>Změna</u> znamená jakoukoliv <u>změnu</u> díla, která je nařízena nebo schválena jako změna.	«Изменение» обозначает любое <u>изменение</u> в работах, внесение которого поручено или согласовано как Изменение.	<u>Zmiana</u> oznacza każdą <u>zmianę</u> w robotach, poleconą lub zatwierdzoną jako zmiana.	<u>Zmena</u> znamená akúkoľvek <u>zmenu</u> diela, ktorá je nariadená alebo schválená ako zmena.

- New Czech Translation: „Variace“



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## Dispute Resolution

### FIDIC Dispute Resolution Mechanism

1. Engineer (Dispute Avoidance + Determinations)
2. DAB (Dispute Avoidance + Decisions)
3. Arbitration/Litigation



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## First Czechoslovak Republic

Czech Conditions of Contract in 1925 - Dispute Resolution mechanism similar to FIDIC:

### XXV. SPORY.

*K urovnání případných sporů mezi kuratoriem a podnikatelem vyžádá se především dobré zdání stavebního dozorce. Kdyby přes to nebylo možno docílití narovnání, rozhodne stavební výbor, a kdyby podnikatel se tím nespokojil, podrobují se obě strany smírcímu soudu Inženýrské komory v Praze.*



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## After 1948

- Highly advanced methods substituted by State Arbitration based on Russian Soviet Arbitration.
- Final and binding awards – appealed only by communist party.



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## After 1989

- Dispute Boards were not used because the FIDIC dispute resolution system was removed via particular conditions.
- With no special construction arbitration and litigation in the Czech Republic, the recent disputes showed the lack of efficient dispute resolution mechanism and sad consequences for all participants of construction projects (and smiling faces of attorneys).



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## 2016

- There is a need for and opportunity to further develop alternative dispute resolution in the CEE, with an emphasis on best practice through the use of construction Dispute Boards.
- **Alternative wording of New Sample Particular Conditions – an Option with DAB. The Czech list of adjudicators under Czech Association of Consulting Engineers is planned to be organized in cooperation with DRBF (Dispute Resolution Board Foundation).**

### Quality Assurance!



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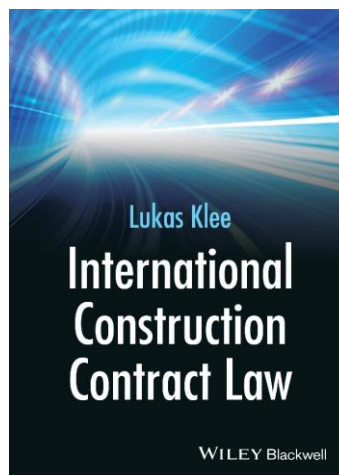
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## International Construction Contract Law (ICCL)

**Thank You for Your Attention!**

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