Welcome to this first-ever edition of the FIDIC Contract Users’ Newsletter.

FIDIC’s popular suite of construction contracts are rightly highly regarded and much used across the globe. Many of the world’s most high-profile construction and infrastructure projects use FIDIC contracts and are run better and more efficiently as a result. The users of FIDIC contracts – clients, contractors and consultants – are an important group of stakeholders for FIDIC and we want to keep in touch with, update and engage with them to highlight the latest developments in the FIDIC contracts arena. That’s why we have launched this newsletter.

Future editions of this newsletter, which will initially be published to coincide with FIDIC’s series of regional contract users’ conferences, will keep people informed about the latest FIDIC contracts news, share experiences of working with FIDIC contracts, highlight forthcoming events and training opportunities and give stakeholders with an interest in this important area a space to exchange ideas and information.

We also hope that the FIDIC Contract Users’ Newsletter will bring together a community of users, keeping them informed about the latest developments that they need to know about and also provide a dynamic platform for news, views and opinion and provide a knowledge exchange for users and the wider contracts community.

I hope that you enjoy this first issue and please do send us your feedback and views on all matters related to FIDIC contracts – we’d love to hear from you!

A sensible approach to construction risk

Dubai-based FIDIC trainer ASEL EL HOUSAN highlights some of the advantages of using the FIDIC suite of documents and the benefits they bring.

The construction industry is unique with its complications and risks and dealing with risks is a daily bread in any project. Having this in mind, risk allocation and sharing have a significant impact on the successful implementation and completion of construction projects.

FIDIC books in their original versions are balanced and fairly allocate risks to the parties and taking such a sensible approach will be reflected in the construction cost and the easy administration of the contract, which should reduce the number of disagreements and disputes.

FIDIC books are written by engineers for engineers, so not only are they easy to understand, but both (writers and users) share the same mindset and approach to the topics. Users of the books are engineers (most of the time continued on page 2 >>>

FIDIC Middle East Contract Users’ Conference

Dubai, 26-27 February 2019 www.fidic.org
A sensible approach to construction risk

>>> continued from page 1

they are not English native speakers), therefore, it is quite important to have in hand an easy language written books to understand and to interpret. FIDIC has succeeded and pioneered the presentation and publishing such forms of contracts.

Starting from the FIDIC 1999 rainbow suite, FIDIC aimed to harmonise the terms and clauses, with more than 80% of the content consistent, and 85% of the definitions and expressions were the same. It is of great help for the users to understand them completely, saving study time whenever the user is using a new set of contracts.

In the Middle East region, 90-95% of the contracts in this market are either FIDIC, or are based on the FIDIC form of contract, therefore people are used to and familiar with its clauses and content. When any bespoke contract is silent in any matter and such issues are not addressed under the governing law, the contract administrators, even the court experts, often refer to FIDIC provisions to find answers and procedures. This shows the significant impact of FIDIC provisions and books on the market here.

The dispute resolution regime under the FIDIC contracts is efficient and should substantially reduce the number of disputes. The implementation of the Dispute Adjudication Board throughout the project’s construction period has proven its success.

However, the Dispute Adjudication Board is not widely used in the region for many reasons, the most important ones are the misunderstanding of the Dispute Adjudication Board’s role and confusion between its role and the Arbitration procedure. The second main reason is the legal system and the unrecognition of the Dispute Adjudication Board’s decision at courts, which will force the parties to go to arbitration to obtain a recognisable award.

It is however worth making the point that FIDIC forms of contract have proven their credibility and flexibility to suit the complications of the construction field over many years with their fair and balanced approach, while addressing all the different situations that will be faced throughout the project.

“FIDIC books are very good platforms for proper contract administration as well as project management.”

The FIDIC contracts committee makes recommendations on which conditions of contract and related documents should be prepared or updated, Committee chair ZOLTÁN ZAHONYI gives an update on the committee’s current work.

FIDIC’s contracts committee has had a very busy period before publishing the updated suite of agreements (February 2017) and the updates of the Red, Yellow and Silver Books (December 2017).

The committee’s key tasks include recommending to the FIDIC board which conditions of contract and related documents should be prepared or updated by FIDIC, assisting the secretariat to set up task groups to monitor their work at agreed intervals and to carry out a final review of the documents for submission to the FIDIC board and also assisting the secretariat in handling queries on the implementation of documents.

Currently active task groups of the contracts committee include:

- Task Group (TG) 4: Drafting the Guide to the Suite of Agreements;
- TG 6: Producing the 2017 Red, Yellow and Silver Book Contracts Guide;
- TG 8: Updating the Short Form of Contract (Green Book);
- TG 9: Completing the 1999 Yellow Book Subcontract Form;
- TG 10: Completing the Tunnelling and Underground Work Contract (Emerald Book);
- TG 11: Completing the Operate, Design-Build and Operate Contract (Bronze Book);

As well as the above, there are a further two task groups covering projects related to the “Golden Principles” and the statistics on worldwide use of FIDIC contracts. In addition, there are several documents in the pipeline which are expected to be published soon as follows:

- The Conditions of Contract for Design, Build and Operate Projects for the Upgrading of Existing Facilities “The Bronze Book”;
- Conditions of Subcontract for Plant and Design-Build [1999 Yellow Book Subcontract];
- Guide for the 2017 Suite of Agreements;
- FIDIC 2017 Contracts Guide.

The contracts committee hopes to have all these documents published in 2019, subject to the availability of voluntary resources to do the necessary work. As well as the above, the committee is also actively working across a number of work areas including dealing with feedback from users, industry relations, conferences, future trends, misuses of contracts and training and events.

So, all in all, we have a busy period ahead.

The latest in FIDIC’s series of regional global conferences for users of its contracts will see members of the FIDIC contracts committee and leading construction law experts update delegates on the latest state of play with the FIDIC Suite of Contracts, which were officially launched at this very same conference in December 2017.

Delegates will get a recap on the main changes introduced in the 2017 editions and the reasons why these were decided by FIDIC to be necessary or an improvement on the previous editions. Expert speakers will respond to some of the points raised in the many articles and commentary on the new suite published in the last few months, thus continuing a dialogue which began a year ago. Those present will also receive an update on how the new suite of contracts has been received by the global industry.

In addition to discussing the 2017 FIDIC contracts, the conference will also host a very useful session on the do’s and don’ts for effective claims management under FIDIC contracts which will give advice and information on how to avoid, contain and handle claims.

There will also be a session of the ever-popular ‘Ask the Contracts Committee’ Q&A where delegates can put questions directly to acclaimed FIDIC experts and advisers to the contracts committee.

Other sessions at the conference will examine the use of FIDIC contracts on particular types of project in the Middle East, the relationship between FIDIC and the multidisciplinary development banks, new guidance on modifying FIDIC conditions, risk and insurance, international case studies, arbitration and alternative dispute resolution. FIDIC is grateful to supporting partner White & Case, supporting sponsors CMS, HFW and Pinsent Masons and associate sponsors Driver Trett, Beale & Co and Masin for their support of the event.

More than 30 FIDIC experts and users are set to speak at the conference providing an unrivalled knowledge base on contracts and how best to use them. The information provided will be clear and easy to understand and every delegate will go away with something new. “The top brains in the industry calling on a wealth of experience and delivering the content in a logical simple manner,” said Henry Mahangi of the Uganda National Roads Authority, speaking about the experience of attending FIDIC users’ conferences. We couldn’t have put it better ourselves!
The advantages of using FIDIC contracts (in the Middle East)

NICHOLAS KRAMER, a partner at the law firm CMS, looks at some of the many advantages of using FIDIC contracts in the Middle East.

FIDIC contracts are widely used throughout the Middle East. Not only are they well known – and have formed the basis of government standard forms, for example in Abu Dhabi, Oman and Saudi Arabia – they are drafted in a clear and easy to understand way.

At the heart of the FIDIC Rainbow Suite – in particular the Red and Yellow Books – is a relatively fair risk-allocation. The procedural framework for claiming additional time and money and notifying claims can also be used to deal with any issue at an early stage, whereby the contract and programme can be used as an effective project management tool.

Risk allocation
The FIDIC Rainbow Suite allocates risk with reference to the party best placed to assume that risk – although the contractor, of course, bears more responsibility under the Silver Book – EPC/Turnkey. Ultimately, the contractor is responsible for providing the design bears the design risk accordingly.

To that end, the risk allocation is fairly balanced, which has been further emphasised by the increased number of reciprocal rights and obligations introduced in the 2017 updates to the Rainbow Suite. For example, Clause 1.13 in the 2017 Yellow, Red and Silver Books, provides that:

a) the contractor and the employer are now both under an obligation to comply with all applicable laws;

b) the contractor is also now under an obligation to assist the employer in obtaining its permits etc. (mirroring the employer’s obligations set out in Sub-Clause 2.2); and

c) the indemnities from the employer to the contractor and from the contractor to the employer for failures to comply with Sub-Clause 1.13 do not apply if the failure has been caused by a failure to provide such assistance.

Procedural framework
Given that FIDIC contracts are generally considered to be easy to navigate, this should result in more effective project management – at least. The Global Construction Disputes Report, published by Arcadis in 2017 and 2018 cites poor contractual administration as the number one cause of construction disputes: “A failure to properly administer the contract remained the most common cause of construction disputes. Staying in the same spot in the rankings this year was the issue of the employer/contractor/subcontractor failing to understand and/or comply with contractual obligations”.

From our perspective, poor contract management compounds other issues, which will inevitably arise on complicated construction and engineering projects. On the flip-side, good contract management will assist managing issues more effectively and help to keep them in perspective.

The procedural mechanisms to notify claims for additional time or money (such as notice provisions and the requirement for substantiation) and engineer’s determinations can help to identify and narrow any issues in dispute – particularly so, with a pragmatic engineer. With the 2017 updates, the message is that greater detail and clarity on the requirements for notices and other communications will reduce the potential scope of and possibility for disputes. Also, if a dispute arises, it can now be dealt with more quickly and proportionately – with greater certainty on the enforcement of DAAB decisions, as well as the opportunity to utilise the ICC Arbitration Expedited Procedure, if appropriate.

In the Middle East, where the use of older forms of FIDIC contracts is still common, the question is: Will the 2017 updates be adopted as the contracts of choice any time soon?

Why I attend FIDIC conferences

Civil Engineer Lawrence M. NJUE of FRAME Consultants in Nairobi explains why he attends FIDIC contract users’ conferences.

The forthcoming FIDIC conference in Dubai has all the makings of being a brilliant event.

It brings together a group of people with diverse expertise in a very casual yet highly professional setting for a meeting of minds and the sharing of unique experiences of the benefits and limitations of the FIDIC contracts. This works as an eye-opener not only to delegates but also to the FIDIC leadership community.

The conference provides a conducive setting for valuable interactions with FIDIC authors and contributors who, as well as offering a wealth of experience in construction matters, manage to elaborate on the contract administration highlighted as a main contributor in successful delivery of contracts. In my experience contract administration is often overlooked by the conventional engineering aspects – e.g. the technical details.

FIDIC conferences are a great forum for anyone keen on developing and growing their experience in the construction industry.
Delegates gather in London for 2018 International Contract Users’ Conference

FIDIC has secured a major agreement with the World Bank that will see the international funding organisation adopt the use of six FIDIC standard contracts for the next five years.

Under the terms of the agreement signed earlier this month, FIDIC has granted the World Bank a non-exclusive licence to refer to the six major FIDIC contracts (see list in notes below) for projects they finance and the documents will be used as part of the bank’s standard bidding documents.

The contracts mainly include the 2017 Second edition FIDIC contracts, which cover a wide range of international construction and infrastructure work, and the World Bank’s move represents a major endorsement for the contracts from a major international funding organisation. FIDIC also expects to announce a similar agreement with another multilateral development bank.

Dr Cyril Chern, FIDIC chief executive, said: “This is a major development for FIDIC and we are delighted that the World Bank has agreed to adopt our 2017 editions of the Rainbow suite of contracts and use them as a key part of their standard bidding documents. This will create more certainty in the market as by adopting the FIDIC contracts major projects the World Bank is saying that they endorse the fair and balanced approach that these documents offer to parties on major construction contracts. The familiarity that the FIDIC contracts bring make it easier to get projects underway as many of the typical commercial risks are clearly addressed in the contracts and all the parties understand their obligations and responsibilities.

Endorsement by the World Bank should provide additional comfort to the financial, institutional and private equity investors operating in the global market to adopt the use of FIDIC standard procurement contracts as an effective tool to mitigate the risk associated with investable infrastructure asset class. Over the coming months, we will be working with our member associations and strategic partners to ensure that the FIDIC 2017 contract editions are translated into five major languages – Arabic, Chinese, French, Portuguese and Spanish – to aid effective use across the World Bank and other multilateral development banks’ operating countries.”

Commenting on the signing of the agreement, Enzo De Laurentis, chief procurement officer at the World Bank, said: “We are very pleased to continue to build on our long collaboration with FIDIC by adopting the standard conditions of contracts in the 2017 suite for use in projects financed by the World Bank, as appropriate and complemented by our Conditions of Particular Application (COPA). Together, the 2017 FIDIC standard conditions and our COPA, will ensure that infrastructure contracts financed by the World Bank continue to be based on an internationally recognised standard and reflect key aspects of our policies and practice related, among others, to managing environmental, social and integrity risks.”

FIDIC president Alain Bentéjac said: “This move by the World Bank represents major international market buy-in for our FIDIC 2017 Second edition contracts and one that we hope will also influence the supply chain to adopt FIDIC contracts thereby creating even more certainty in the planning and delivery of major international construction and infrastructure projects. We look forward to continuing our strong partnership with the World Bank and the other multilateral development banks (MDBs) over the coming years.”

FIDIC accredited trainers sign up

First trainers sign up to the FIDIC Interim Trainers’ Agreement.

Given that accreditation is an extremely important facet of FIDIC’s training programme, we have decided to put in place an interim accreditation process to ensure an immediate and short-term solution in relation to training, particularly with regard to the FIDIC 2017 suite of contract documents. Current registered FIDIC trainers and aspiring trainers have been asked to sign up to the FIDIC Interim Trainers’ Agreement and the list of trainers who have signed up to the agreement is as follows:

- Hak Bong Hyun, Korea
- Salvador P. Castro Jr, Philippines
- Dr Cyril Chern, UK
- Cremena Cotovoea, Romania
- Sarwono Hardjomuljadi, Indonesia
- Giorgiana Tecuci, Romania
- Jorge Diaz Padilla, Mexico
- Mahith Mendis, Sri Lanka
- Tahseen Saleh, Qatar
- Adriana Spanoova, Bulgaria
- Kevin Spence, South Africa
- Murray Armes, UK
- Jaime Gray, Peru
- Amr Achi, Egypt
- Yoshiko Komoto, Japan
- Giovanni Di Folco, Romania
- Flavio Vaz, Brazil
- Dhaavik Parikh, India
- Svend Poulsen, Denmark

Arbitration and Alternative Dispute Resolution

Comparative advantages of FIDIC in relation to other common and standard forms of contract.

Commenting on the quality of this year’s event, a delegate from Egis attending from France said: “This is the only place to really learn what the latest FIDIC developments are and to exchange experiences with the best FIDIC experts,” while another international delegate attending from Israel commented on the “fantastic opportunity to receive in-depth updates from the contracts committee and discuss contractual issues form a world-wide perspective.”

The next FIDIC International Contract Users’ Conference will be held in London again later this year in the first week of December. Dates and venue will be announced soon by FIDIC and event partners Knect365.

The six FIDIC contract documents covered by the FIDIC/World Bank agreement are as follows:

- Conditions of Contract for Design, Build and Operate Projects (“Gold book”) First Edition 2008; and

FIDIC Contract Users’ Conference took place in London on 3-6 December 2018. MICHÉLE COSTA from conference organisers Knect365 reports on another successful event.

The world’s leading FIDIC and construction law experts came together once again at the 31st annual FIDIC International Contract Users’ Conference, held in London on 3-6 December 2018. The conference, which was opened by recently appointed FIDIC CEO, Dr Nelson Ogunshakin, marked one year from the launch of the much anticipated new FIDIC suite of contracts, unveiled at this same forum the previous year.

More than 200 delegates and speakers attended from 36 countries and all five continents to hear about how FIDIC users and practitioners have been receiving the 2017 suite of contract documents. Speakers included several acclaimed FIDIC contracts committee members, leading professional advisors, as well as renowned contractor and employer-side representatives, with senior executive speakers also in attendance from leading firms like GE Power, STRABAG, Power China, Bouygues, Mott MacDonald and Wases & Freytag, to name just a few.

Other major FIDIC users representatives addressing the conference included Enzo De Laurentis, chief procurement officer at the World Bank, and Jack Holt, director of procurement at the European Bank for Reconstruction and Development. These two senior officials joined FIDIC board member Aisha Nadar on stage to provide an overview of recent developments and best practice tools in infrastructure procurement and how to effectively use FIDIC contracts in the procurement process.

In addition to dissecting topics related to the new FIDIC suite, participants also heard about critical issues for the global construction industry including the key dos and don’ts for effective claims management under FIDIC, variations under the FIDIC suite of contract, DACABs role under FIDIC conditions, and

FIDIC accredited trainers sign up
Sales steadily increasing on a global scale

Sales of FIDIC contracts are increasing steadily as international clients recognise the value of their fair and balanced approach. IEVA LIAUGAUDE, FIDIC’s international client manager, offers this update.

Since the launch of its Rainbow Suite 2017 in December 2017, FIDIC has experienced an increase in the number of orders for contracts from clients all over the world. From the small contractor in Daka to a substantial Rail Baltic project covering three Baltic states – all have been using one of the FIDIC contract forms during the last year.

The demand for FIDIC contracts from a variety of public organisations and private sector clients is high due to the internationally acknowledged fair and balanced approach of the documents. In 2018, FIDIC has secured a number of substantial transactions with UN organisations such as the International Labor Organisation as well as the UNHCR. Their projects involve road building schemes empowering the local infrastructure as well as training local labour while using FIDIC balanced contracts. Among many others, extensions have been secured with bilateral banks like KfW and JICA who finance a number of infrastructure projects around the globe.

In relation to private clients, FIDIC contracts are demanded from some of the key players in the market such as IKEA for building their new ventures as well as a number of leading, global independent solar energy providers building sustainable energy plants internationally.

The market is still examining the new forms of contracts which have doubled in size, but attempt to prevent disputes and provide clearer guidance for engineers. Nevertheless, clients still procure a number of 1999 Rainbow Suite Forms of contracts with the 1999 Red book still being the bestseller.

No doubt, the recent agreement with the World Bank featuring the 2017 edition, along with other forms of contract, will change the scenery and FIDIC users will become more confident in using the new Rainbow Suite 2017 forms of contract.

Geographical distribution

Although FIDIC projects have proportional coverage throughout the world, the biggest buyers are concentrated in South Africa and UK since the majority of contracts for African countries are exchanged in Johannesburg, and for European contracts in London. Nevertheless, the Middle East region also shows substantial interest in FIDIC contract usage with the UAE being the main player followed by Qatar and Saudi Arabia.

It is important to note that although the UK and South Africa are placing majority of orders, in the analysis of electronic contract sales, the UAE is expressing a huge interest compared to other countries indicating the increasing technological aptitude of the region to embrace the new, digital methods for contract management tools.

Top ten Q&As from the FIDIC bookshop

1. Delivery time
   When is my order placed after 4pm (GET Time)? If so, your order might only be processed the following day. Did you place your order before or over a public holiday or during a public holiday, or over the weekend? If so, your order will be processed on the next working day.

2. Order by email or snail mail
   We are very sorry, but it is not currently possible to order by email. No purchase order sent by email or snail mail will be handled. Customers need to place their orders online.

3. Obtain a quote or a proforma
   A proforma invoice can be created online at any time. Simply place your order and choose PROFORMA as the payment mode at the end of your purchase. You will then receive a notification email.

4. Shipping methods
   Select standard* or express delivery in the checkout when placing your order. The related cost and delivery delay will be displayed on the page. Deliveries are made Monday to Friday, excluding bank holidays. If you return your items, the express shipping costs will not be refunded.

5. Modify an address in my user account
   You can modify your address once you are logged into your account online.

6. Discount
   Discounts are granted only to FIDIC’s member associations and affiliates.

7. Types of FIDIC publications
   Most FIDIC books are available in the printed, pdf or e-book format. Some older publications might be available only in the electronic format. Electronic contracts are more expensive as each item can be printed out ten times during one year.

8. Purchase an electronic copy
   If you know what you are looking for, go to the bookshop and type it into the “Search” box in the middle of the page. After this, you can refine your search by choosing a “Category” or “Language” in the search filters. Then in the “Select options” box go to the “Format” search filter and select “Downloadable pdf”. Electronic contracts are more expensive as each item can be printed out ten times during one year.

9. Does the product price include duties and taxes?
   The prices of FIDIC products do not include duties and taxes. The purchaser is solely responsible for all duties, taxes and custom fees (including VAT).

10. How do I get confirmation of my payment?
    Payment confirmation invoices are sent after payment via bank transfer. An email notification will be sent. Your invoice payment confirmation pdf will be available from your user account at any time under the tab “Invoices”.

IEVA LIAUGAUDE, FIDIC’s international client manager.
A balanced contract for the global construction market

So, why are FIDIC contracts seen as the pre-eminent standard forms for the global construction market? IBAAD HAKIM, an associate at White & Case LLP, explains.

White & Case has a long history of working with FIDIC contracts, both in negotiating and advising at the outset of a project and in the resolution of claims and disputes.

Throughout this time, the FIDIC suite has been regarded as the pre-eminent set of standard forms in the global construction market. The reasons for this are largely uncontroversial:

- The contracts have traditionally been seen as relatively easy to understand, and to operate. The principal contracts, notably the Red and Yellow Books, have been seen as reasonably balanced, in terms of risk allocation. This can reduce the need for protracted negotiations.
- Financial institutions are generally comfortable with FIDIC contracts, which can often assist in obtaining lender approval. Using the MDB version of the Red Book (known as the Pink Book) helps to ensure "bankability" and is often required by the international development banks, such as the World Bank, with whom it was developed.
- The FIDIC suite also offers a range of options to suit different procurement models, including Employer Design/Remeasurement (Red Book), Design and Build/Lump Sum (Yellow Book) and EPC Turnkey (Silver Book), as well as DBO, Dredging and Professional Services version. This provides genuine choice for the client who is considering the best method of project delivery.

In addition, the General Conditions can be modified by the use of Particular Conditions, on which FIDIC adds some guidance. This provides flexibility where it is required for the needs of the project; more substantial amendment can be achieved under licence from FIDIC.

Ellis Baker and Michael Turrini will be speaking at the Middle East FIDIC Users Conference in Dubai on 27 February, at which the future of the new Second Edition (2017) of the Red, Yellow and Silver Books will be very much on the agenda. Ellis Baker is head of White & Case’s London construction practice group and lead author of the principal text, "FIDIC Contracts: Law and Practice." Michael Turrini is head of construction for White & Case in the Middle East.

Stick to standard forms and that means FIDIC

It is important to be clear about the commencement date of a project, from which the time for completion is starting to count down, and this needs to be made clear in the contract, otherwise, it may lead to conflicts in the interpretation of the contract by both parties.

I will be talking about this at the Dubai conference as well as highlighting changes in the cost of labour and materials during the lifetime of a contract. The FIDIC form of contract gives a contractor the right to be compensated for rising costs due to inflation and this is another good reason to use it.

FIDIC contracts also allow for the contractor to be compensated when costs have risen due to changes in local legislation. In the Middle East this is often excluded in many contracts and so it is important to use a contract like the FIDIC forms which are fair and equitable.

To avoid conflicts and discrepancies in the contract, people should use the FIDIC contracts unamended and pay attention to the governing laws as they affect contractual terms. FIDIC contracts are well drafted and take consideration of balanced risk allocation, along with the cross-relationships between contract provisions.

Problems can be avoided if we use a standard form contract. That means choosing FIDIC.

Building on a strong relationship with the MDBs

FIDIC is continuing to build on its long collaboration with the multilateral development banks (MDBs), working closely with them in the contracts arena, writes FIDIC board member AISHA NADAR.

FIDIC has a long-standing history of committed partnership with the MDBs in the conception and realisation of investments in infrastructure. While it is a primary objective of all construction industry stakeholders to jointly develop fit-for-purpose procurement processes in the commercial sense, the MDBs must do so while fully respecting environmental and social considerations.

FIDIC has long promoted the concept of strategic procurement, with an output-based approach that includes a focus on upfront procurement planning. FIDIC has since early in this partnership engaged with the MDBs in technical exchange to address areas such as:

- Project cost estimates and cost over-runs
- Selection procedures for consultants’ services (Qualifications/Quality Based Selection (QBS))
- Tendering procedures and prequalification
- Standard conditions of contract

The FIDIC Conditions of Contract for Construction have been included by the MDBs as part of their standard bidding documents (SBDs), which the MDBs require their borrowers or aid recipients to follow. For the purpose of international harmonised tender, MDBs required a modified form of the FIDIC Conditions of Contract for Construction, 1st Edition 1999 (“CON1”), in which the General Conditions would contain the standard wording which previously had been incorporated by MDBs in the Particular Conditions.
FIDIC contracts training success in Serbia

FIDIC training courses are gaining tremendous momentum and helping to strengthen a key FIDIC member association. ANDREA SÉHIC, executive director of the Association of Consulting Engineers of Serbia, reports on a Serbian success story.

It has only been ten years since the Association of Consulting Engineers of Serbia (ACES) has been established. We started from scratch and made it to the very top, so how did we make this happen?

FIDIC contracts were no novelty among Serbian engineers, but there was no focal point or umbrella organisation to provide promotion and support to using FIDIC in practice. ACES started its life as a newly formed non-profit organisation in a market that was unstable. The organisation might have been lacking secure material resources, but it had a crystal-clear vision and drive to make a difference and provide knowledge and support to its sector.

Major infrastructure projects financed by international financing institutions were in the pipeline, which meant that use of FIDIC models of standardised contracts would be “a must”. To minimise risks and ensure successful completion of projects, the sector needed to turn to the best solutions. But the success for ACES didn’t happen overnight.

It was a clear strategy, focus and persistence that led the way for ACES. From the early times of working with the training providing company, to a fully independent training organisation, ACES has gained significant experience and has developed extensive know-how in this arena. We followed our strategy, listened to the market, steadily widened internal capacities as well as the portfolio of training events for the growing consulting engineering sector, while at the same time raising the bar for quality in all aspects of managing events despite cheaper options of the competition in the local market.

As a result, ACES has positioned itself as a true leader, not only in Serbia, but in the region as well.

We have just successfully completed our most active year in terms of training events so far. For a small country with a total population of seven million people and a respectively small market, the results are indeed excellent. This only underlines the fact that we have been highly positioned as the second best among all FIDIC national associations around the world that are involved in training provision.

Tangible benefits gained from such efforts are numerous, including significantly enhanced financial and capacity building aspects for the organisation, its member companies and the consulting engineering sector in general.

Achieving a premier position in the professional community when it comes to quality of knowledge provided, fully endorsed and accredited by the FIDIC global organisation, is the key driver for ACES to continue promoting best practice even further.

Building understanding with Turkish translations

In 1987, when the Association of Turkish Consulting Engineers and Architects (ATCEA) became the member association of FIDIC, it intensified its efforts in following and promoting FIDIC practices and guidelines and awareness building in Turkey about FIDIC.

To that end, the ATCEA have taken on the task of translating critical and most commonly used FIDIC documents into the Turkish language to assure their contents reach a wider and broader user base and technical teams in private and public sectors.

In collaboration with FIDIC, ATCEA has translated the four major construction contracts and agreements along with other publications including the 1987 and later 1999 versions of the Red, Green, Yellow and Gray books. FIDIC construction contracts and consulting agreements are mainly used in large infrastructure investment projects financed by major international finance and investment institutions and development banks. Although, they are not used for local construction and consulting services tenders, due to Turkey’s large infrastructure investment portfolio a number of such internationally financed projects were always a driving factor for the increasing demand for these books in original and also in Turkish in recent years.

Better understanding and implementation of FIDIC contracts was also a very important and essential issue for all sides in these contracts, hence, the demand for translated versions together with the original English texts has grown over the years.

In order to be ready for the expected demand for the 2017 version contracts, the ATCEA evaluation board, which I chair, decided to renew our agreement with FIDIC and have the licenses for the translation of the 2017 Rainbow suite and the Client/Consultant Model Services Agreement 5th, Ed (2017 WHITE BOOK). We have signed a new protocol with FIDIC and renewed our licenses as the sole representative of FIDIC in Turkey. We plan to complete the translations of these four books by end of February 2019 and make them available for sale in early April. The Red book is already completed and translations for the others continue.

On 18 April 2019, we will have our 14th annual technical conference. The content this year will be themed around “FIDIC and the new 2017 FIDIC Contracts”. We are planning to invite speakers who can provide insight and give a general perspective on the recent changes in the Rainbow Suite editions and also inform participants about FIDIC and its role in the construction and consulting sector. We hope to introduce the translated versions during our April conference.

Building on a strong relationship with the MDBs

FIDIC was pleased to work with the MDBs in producing a special MDB Harmonised Edition (“CONS MDB”) of the 1999 conditions for MDB financed contracts. The first version of the MDB Harmonised Construction Contract was released in May 2005 with an amended second version in March 2006 and a third amended version in 2010.

Recently, in a move to expand the portfolio of possible project delivery methods, the World Bank has entered into an agreement with FIDIC to adopt the use of six FIDIC standard contracts as a key part of their standard building documents for the next five years. Under the terms of the agreement, FIDIC has granted the World Bank a non-exclusive licence to refer to the six major FIDIC contracts for projects they finance (see page 7).

This latest move sees FIDIC continuing to build on its long collaboration with the MDBs. As a result of the new agreement between FIDIC and the World Bank, the use of FIDIC standard conditions will continue to help ensure that infrastructure contracts financed by the World Bank deliver value for money.
It’s not a FIDIC contract without the Golden Principles

FIDIC has set up a working group to outline the essential characteristics of FIDIC contracts that must not be amended if it is to be recognised as a FIDIC contract. The working group’s chair, HUSNI MADI (pictured), who is also the CEO of Shura Construction Management, explains more.

FIDIC’s general conditions of contract (GC), used for international construction contracts in all legal jurisdictions, are drafted to be based on fair and balanced risk/reward allocation between the employer and the contractor. They are widely recognised as striking an appropriate balance between the reasonable expectations of the parties.

GCs prepared for use in a wide range of projects and jurisdictions inevitably require supplementing with particular conditions (PC) that address the particular requirements of the site location, the unique features of the specific project and the employer’s preferences. It is also often necessary for such PCs to amend the GC to comply with mandatory laws that apply to the site or for consistency with the governing law of the contract.

In an endeavour to promote the use of its contracts as fair and balanced, FIDIC set up working group TG15 under the direction of its contracts committee to articulate those essential characteristics of FIDIC GCs that should not be amended if it is to be recognised as a FIDIC contract. These are referred to as the FIDIC Golden Principles (GPs).

To promote understanding and avoid inhibiting appropriate and necessary amendments to the GCs, the GPs have been formulated at a conceptual level to encapsulate the essence of a FIDIC contract. Each GP expresses a single, readily understood and generally accepted concept. The GPs have been limited to the minimum number necessary for completeness and are listed here (box, right).

The Golden Principles

GP1: The duties, rights, obligations, roles and responsibilities of all the contract participants must be generally as implied in the General Conditions, and appropriate to the requirements of the project.

GP2: The Particular Conditions must be drafted clearly and unambiguously.

GP3: The Particular Conditions must not change the balance of risk/reward allocation provided for in the General Conditions.

GP4: All time periods specified in the contract for contract participants to perform their obligations must be of reasonable duration.

GP5: All formal disputes must be referred to a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision as a condition precedent to arbitration.

“As to avoiding inhibiting appropriate and necessary amendments to the general conditions of contracts, the Golden Principles have been formulated at a conceptual level to encapsulate the essence of a FIDIC contract.”

Case study on late payment in a project

This case study concerns a project administered with the FIDIC Red Book (1987–4th edition), where the project was 365 days. Almost ten interim payments were made and there were cumulative delays of 244 days in payment receipt. Extension of time due to delay in payment in line with clause 4.1 was granted. Despite this, the contractor was delaying. Consultants have given a series of instructions with clause 46.1.[Rate of progress] but the contractor couldn’t adhere to the schedule of works.

Action – Although interest rate was not specified in the special conditions of contract (clause 60.1), it was decided by the client to give prevailing interest rate + 3% for payment delays. The contractor claimed for prolongation cost due to delays in payments which was evaluated and idle days of the contractor was deducted from the claim. Liquidated damages was applied for delays after the formal extension of time as per clause 47.1.[Liquidated damages for delay]. The contractor’s request to waive off LD was rejected although LD was limited to 10% as per clause 47.1.

Interest on delayed payment – Clause 60.1 (Time of payment) allows the contractor to claim interest on delayed payment from the client. But since the rate of interest for delayed payments was not mentioned in the appendix to bid, was the client’s decision to pay interest on this project acceptable as per FIDIC? As per FIDIC clause 60.10, the contractor was eligible to claim interest. The engineer had to take a decision on the rate of interest, which was in accordance with later FIDIC versions.

Liquidated damages – Since the contractor experienced delays in payments from the client, was it a right decision to reject the request from the contractor to waive off LD? FIDIC doesn’t allow waiving off LD on any instances. The contractor was compensated for the delayed payments as per clause 60.10 and given sufficient time to complete the project.

Could the contractor terminate the contract for delayed payment and avoid liquidated damages? Clause 69.1(a) entitles the contractor to terminate their employment due to default of the employer in failing to pay to the contractor the amount due. The contractor could have reduced or leveraged the situation to strike a bargain with the employer but for their own default and financial crisis.

To promote

A case study highlighting late payment in a harbour project in the Maldives will be showcased at the FIDIC contracts conference in Dubai. MANSOOR ALI, director, engineering operations at AL Habshi Engineering Consultants Office, explains.

“As to avoiding inhibiting appropriate and necessary amendments to the general conditions of contracts, the Golden Principles have been formulated at a conceptual level to encapsulate the essence of a FIDIC contract.”
Save the dates!

Future FIDIC Contract Users’ Conferences are taking place in Hong Kong, Mexico City, Livingstone and London so make sure you save the dates today.

Main conference: Tuesday 25 and Wednesday 26 June 2019
Workshops: Monday 24 and Thursday 27 June 2019
Location: Hotel TBC, Hong Kong

3rd FIDIC Latin America Contract Users’ Conference, 10-12 September 2019
Main Conference: Wednesday 11 and Thursday 12 September 2019
Workshops: Tuesday 10 September 2019
Location: Hotel TBC, Mexico City, Mexico

5th FIDIC Africa Contract Users’ Conference, 28-31 October 2019
Main Conference: Tuesday 29 and Wednesday 30 October 2019
Workshops: Monday 28 and Thursday 31 October 2019
Location: Avani Resort, Livingstone, Zambia

32nd FIDIC International Contract Users’ Conference, 2-5 December 2019
Main Conference: Tuesday 3 and Wednesday 4 December 2019
Workshops: Monday 2 and Thursday 5 December 2019
Location: Hotel TBC, London, UK

All dates/locations may be subject to change.