

FIDIC and IBC Legal Present the 7th Annual



FIDIC Asia Pacific Contract Users' Conference

The Essential Guide for Engineering & Construction Law Professionals
to Successfully Use the FIDIC Suite of Contracts, Manage Major
Projects and Resolve Disputes

Main Conference Days: 30th June & 1st July 2015

Workshops: 29th June & 2nd July 2015

Venue: Novotel Singapore Clarke Quay

20+ Speakers, Including:



Siobhan Fahey
FIDIC CONTRACTS
COMMITTEE



Dr. Donald Charrett
MTECC



Sebastian Hök
FIDIC ADJUDICATOR



Zoltán Záhonyi
FIDIC CONTRACTS
COMMITTEE



Stephane Giraud
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DAY 1 – 30th June 2015

08:30 Registration & Coffee

09:00 Opening Remarks from the Chair

09:05 **Overview of Current Developments in FIDIC Contracts by the FIDIC Contracts Committee**

- Global view by FIDIC Contracts Committee on procurement and contracts implementation
- What's the FIDIC Contracts' Committee working on at the moment?
- FIDIC Contract Committee's Task Groups in progress (Yellow book update, Services Agreements, Dredgers, YB/SB Sub-contract form, ODB-Bronze Book)
- In the pipe line (Underground works, FIDIC Glossary of Terms, 'Golden clauses')
- The FIDIC Gold Book and the FIDIC Bronze Book
- Questions & answers

Siobhan Fahey, Member, FIDIC CONTRACTS COMMITTEE (Ireland)



Siobhan Fahey

09:25 **Case Studies Review – Recent Experiences from Users of FIDIC Yellow Book**

This panel session will assemble experienced FIDIC Contract Users from the Asia Pacific regions and industry sectors to share their experiences in using the FIDIC Yellow Book as a key project administration tool in some of the most challenging environments. Delegates will benefit from listening to studies and will also have an opportunity to pose any questions to the panellists. All Case studies will be specific to Asia Pacific and new to this conference. Cases under review include:

- **CASE STUDY 1: Waste Water Treatment Plant Project**
[Yellow Book – Pakistan]

NEW

Stéphane Giraud, Director 'Dams & River Works', EGIS GROUP; FIDIC Expert, Accredited Trainer & Adjudicator (France)



Stéphane Giraud

- **CASE STUDY 2: Road Construction Project**
[Yellow Book – Indonesia]

Sarwono Hardjomuljadi, Special Adviser, MINISTRY OF PUBLIC WORKS (Indonesia)



Sarwono Hardjomuljadi

- **CASE STUDY 3: Jakarta Metro Phase 1**
[Yellow Book – Indonesia]

Anthony Sullivan, Independent Consultant (Thailand)



Anthony Sullivan

10:25 **The Engineer's Roles and Risks Under FIDIC Contracts**

This presentation looks at the roles and risks of an Engineer under FIDIC contracts. The following are some of the issues that the Engineer needs to manage appropriately:

- Communication of risks to the Employer/Contractor
- The importance of aligning the Engineer's contractual obligations under his agreement with the Employer, with the provisions of the head contract
- The limits of the Engineer's authority
- Execution of the Engineer's work within the required parameters of time, cost and quality
- The required extent of inspections during construction to enable the appropriate certification to be provided on completion
- Particular Conditions and the on-going discussion of misuse and core clauses
- Questions & answers

Zoltán Záhonyi, Member, FIDIC CONTRACTS COMMITTEE (Hungary)



Zoltán Záhonyi

Adrias Tan, Senior Contracts Manager, Senior Legal Counsel, HYUNDAI ENGINEERING & CONSTRUCTION CO., LTD (Singapore)



Adrias Tan

11:10 Morning coffee break

11:30 **The White Book in Practice– The Business of Consulting Engineering**

This session examines the use of the White Book in Projects in Asia-Pacific and will explore the following topics:

- Using the White Book to appoint the lead design consultant
- Using the White Book to appoint the Engineer/Employer's Representative under a FIDIC Contract
- The risks arising from innovation
- Standard of performance: Skill and care - what does fit for purpose mean?



- Who should take the risk of unforeseeable matters
- Variation to services and programme
- JV Agreement – split teams and integrated teams
- Areas of concern
- Key principles being considered in the update of the White Book



Dr. Donald Charrett

Dr. Donald Charrett, *Barrister, Arbitrator & Mediator*, **MTECC** (Australia)

12.10 The Red Book in Practice – Recent Experiences

This panel session will assemble experienced FIDIC Contract Users from different Asia Pacific regions and industry sectors to share their experiences in using the FIDIC Red Book as a key project administration tool in some of the most challenging environments. Delegates will benefit from listening to case studies and will also have an opportunity to pose any questions to the panellists. All Case studies will be specific to Asia Pacific and new to this conference. Cases under review include:

- **CASE STUDY 1: Colombo Keells City Waterfront Integrated Resort Project**
[Red Book – Sri Lanka]

Adrias Tan, *Senior Contracts Manager, Senior Legal Counsel*, **HYUNDAI ENGINEERING & CONSTRUCTION CO., LTD** (Singapore)



Adrias Tan

- **CASE STUDY 2: Wheatstone LNG Plant**
[Red Book – Australia]

Philip Loots, *Counsel, Wheatstone Project*, **BECHTEL** (Australia)



Phillip Loots

12:40 The FIDIC Silver Book in Practice

Discuss latest developments and the special features of the EPC/turnkey contract. How are the possibilities for the contractor to claim extensions of time and additional payment more limited than under traditional contracts? These and other key aspects of design-build contracting will be discussed, including:

- Managing cost, time and performance risks on EPC projects
- Employer's base design risk and Contractor design development risk
- Allocation of site condition risk to the Contractor
- Project finance requirements
- Employer's strategies for managing risk
- Contractor's responses to risk burden
- The impact of force majeure on international projects
- Case study
- Questions & answers



Zoltán Záhonyi

Zoltán Záhonyi, *Member*, **FIDIC CONTRACTS COMMITTEE** (Hungary)



Sarwono Hardjomuljadi

Sarwono Hardjomuljadi, *Special Adviser*, **MINISTRY OF PUBLIC WORKS** (Indonesia)

13.20 Networking Lunch

14.20 Managing Claims under FIDIC

This session will discuss ways to try to avoid claims arising in the first place but then, if they do, how to present and pursue a claim under a FIDIC Contract with particular reference to the following topics:

- How to minimise claims and, if the claims are disagreed, how to avoid contested claims from becoming disputes
- Pursuing claims (if you haven't managed to avoid them!)
- Civil v common law comparison: different approaches to claim quantification
- The requirements for notices of claim
- Can the conditions precedent for notices always be enforced?
- What constitutes detailed particulars of a claim?
- The Engineer's obligations



Tony Dymond

Tony Dymond, *Partner*, **DEBEVOISE & PLIMPTON LLP** (United Kingdom)



15.00 **Variations Under the FIDIC Forms of Contract**

NEW

- Does an item of work fall within the contract scope or is it an extra?
- What FIDIC clauses help in assessing whether work is part of the scope?
- Practical issues that arise in applying the FIDIC interpretation clauses.
- What variations can a Contractor refuse to carry out?
- Will a Design & Build Contractor be responsible for the design of variations?
- Can a Design & Build Contractor refuse a variation because it doesn't like the design risk?

Gerlando Butera, Partner, **NABARRO** (Singapore)



Gerlando Butera

15.40 Networking Break & Refreshments

16:00 **Preparation of Tender Dossiers & Particular Conditions and Common Adjustments in the Region**

Once a project is decided, the first step is to determine the procurement procedure and prepare tender documents. These documents comprise Instructions to Tenderers, Conditions of Contract, Employer's Requirements and a Pricing Document. This session will address the principles of preparing these tender dossiers with a focus on Particular Conditions including the regional approach to adjustments, and the contract document titled "Employer's Requirements". This session attempts to look deeper inside what are the focus areas for the parties regarding their risks and responsibilities affected by contract documents, while analysing the following subjects:

NEW

- What should Instructions to Tenderers include?
- Preparing the Particular Conditions under the FIDIC Conditions of Contract
- What are the specific features/purposes of the different contract documents and why are requirements differing from similar nature documents in other types of contract (ea. "the Specification" in the Red Book)
- Accuracy and completeness of Employer's Requirements
- The "intended purpose" – how to define and what might be the pitfalls?
- Questions & answers and discussion of the audience's experience

Anthony Sullivan, Independent Consultant (Thailand)



Anthony Sullivan

16:40 **MDB Harmonized Contract – Recent Developments and Practice in Asia Pacific Region**

The major Multilateral Development Banks (MDBs) adopted the General Conditions of the FIDIC conditions of contract for building and engineering works designed by the Employer (the FIDIC Conditions of Contract for Construction), and its previous version, in their Standard Bidding Documents (SBDs) for major works. The inclusion of the Harmonized FIDIC form of Contract in their SBDs serves to ensure environmentally and socially responsible procurement and successful project delivery. This session aims to provide an overview of the Harmonized FIDIC form of contract, as compared to the FIDIC Red book, and highlight its comparative advantages by exploring cross-cutting issues such as:

- Procurement
- Sustainability
- Value for money
- Questions & answers

Moderator:

Sebastian Hök, Partner, **HÖK, STEIGLMEIER & KOLLEGEN** (Germany)

Panel Speakers:

Tomohiro Kozono, Assistant Director, Loan Procurement Policy and Supervision Division (LPPSD), Financial Cooperation Implementation Department, **JICA** (Japan)

Mark Finegan, Deputy Chief Engineer, **UNITED NATIONS WORLD FOOD PROGRAMME (UNWFP)** (Italy)

Kofi Awanyo, Lead Procurement Specialist, **WORLD BANK** (China)



Sebastian Hök



Tomohiro Kozono



Mark Finegan



Kofi Awanyo

17:30 Chair's Remarks and Close of Day 1 and Drinks Reception



DAY 2 – 1st July 2015

08:35 Registration & Coffee

09:00 Chairman's Opening Remarks

09:05 **Time Bar Application under Civil Law and Common Law Perspective**

NEW *The Time bar for Contractor claims is an essential element of the FIDIC Conditions of Contract. Its project management purpose is however not always fully understood by the Parties, and the onus put on the Contractor is regularly felt as being excessively harsh. This session will provide practical insights as to the reasons behind the application of time bars, their operation under different Governing Laws (civil law vs. common law jurisdictions), ways around it and recent jurisprudence on this matter.*

09:45 **Ask The FIDIC Experts Q&A Session**

NEW Moderator:
Siobhan Fahey, Member, FIDIC CONTRACTS COMMITTEE (Ireland)

Panellists:

Zoltán Záhonyi, Member, FIDIC CONTRACTS COMMITTEE (Hungary)

Svend Poulsen, Project Director, ATKINS; Chair, FIDIC UPDATES COMMITTEE (Denmark)

Sebastian Hök, Partner, HÖK, STEIGLMEIER & KOLLEGEN (Germany)



Siobhan Fahey



Zoltán Záhonyi



Sebastian Hök

10:30 Morning Coffee Break

10:50 **Use of FIDIC Contracts in Current Disaster Reconstruction Projects in Asia-Pacific Region**

NEW **Mr. Rodolfo L. Arias**, Director, SNRDP (Secondary National Road Development Project), MILLENNIUM CHALLENGE ACCOUNT (Philippines)

Mark Finegan, Deputy Chief Engineer, UNITED NATIONS WORLD FOOD PROGRAMME (UNWFP) (Italy)



Rodolfo L. Arias



Mark Finegan

11:30 **Key Issues for Successful Contract Preparation & Implementation**

Many issues can lead to either a project success or failure. An unsubstantiated brief upstream decision may lead to severe downstream consequences. Strategic choices at procurement level are consequently key - the implications of which are not always fully appraised. This session will address how the selection of forms of contract, tender procedures and the preparation of tender documentation should fit the project objectives, budget, Employer's resources and risk allocation sought. The FIDIC Suite of Contracts provides answers for a wide range of needs.

- Facing reality vs. burying one's head in the sand – key drivers at procurement stage, and reflections in tender documentation & procedure
- Key issues for selection of the appropriate procurement method and form of contract – scope definition, time, cost and quality
- Particular Conditions development – the usual temptations of shifting risks to the other Party, and their consequences / from a “we vs. them” approach towards full project ownership with clear delineations
- The FIDIC Suite of Contracts – many answers... for the right questions

James Hannon, Senior Manager Contracts, SARAWAK ENERGY BERHAD (Malaysia)

Alex Wong, Partner, HOGAN LOVELLS LEE & LEE (Singapore)



James Hannon



Alex Wong

12:10 **Making the Most of the Green Book – What Every User Should Know**

The Short Form of Contract is the lesser known amongst the 4 Suites of 1999 FIDIC Forms, yet it is the more widely used in South East Asia as compared to the major books. This session will give the opportunity for delegates to share actual experience in the use of the Green Book, including expedience in developing particular conditions.

- Using the Short of Form of Contract in construction projects and development of particular conditions - advice for users
- Force majeure in the short form of contract
- Comparison with other forms of contract
- Q&A

Rusli Bin Idrus, Director, RBI CONSULTANTS (Malaysia)



Rusli Bin Idrus



12:50 Networking Lunch

14:00 Understanding Dispute Boards

The FIDIC contracts are especially noteworthy in the requirement that all disputes go through the DAB process and that a DAB is mandatory. The speakers will give an overview of this critical area as it applies to the actual operation of a dispute board, their formation, dispute avoidance the issues that can arise, the current legal update on DAB issues and appeals from DAB Decisions and their enforcement.

- Has the FIDIC Sub-clause 20 been properly implemented proactive dispute avoidance
- Can the DAB hold its decisions for 'ransom' appointment of the DAB and removal
- The Contractor is not entitled to its current claim due to the time-barred clause
- The Contractor has brought one of the DAB's decisions to arbitration for enforcement and wants the assistance of the DAB.

Philip Loots, Counsel, Wheatstone Project, BECHTEL (Australia)



Phillip Loots

14:40 When is a So-called "FIDIC Contract" Not a FIDIC Contract?

International construction contracts are sometimes called "FIDIC contracts" when they are derived by making amendments to the standard wording of the FIDIC General Conditions. In some cases, the amendments are such that the essential features of FIDIC contracts, such as balanced risk allocation, are altered beyond recognition as a FIDIC contract. This session is intended to stimulate discussion on this important topic by addressing:

NEW

- What are the essential features of a FIDIC contract?
- What type of modifications to the wording of the GCs makes a contract not a FIDIC contract?
- What type of modifications are acceptable in a "FIDIC contract", so called?
- How should legitimate modifications to FIDIC General Conditions be managed and identified?
- How can FIDIC protect its "brand"?
- Case studies of acceptable and unacceptable modifications to FIDIC contracts.

Dr. Donald Charrett, Barrister, Arbitrator & Mediator, MTECC (Australia)



Dr. Donald Charrett

15:25 Networking Break & Refreshments

15:45 Putting Yourself in the Shoes of the DAB! Interactive Quiz

This session will start by the presentation of a dispute between a Contractor and the Employer on a FIDIC Silver Book (SC 20.1, 20.2, 20.3 & 20.4). The speaker, freshly appointed as 'DAB-on-stage', will then disclose to the audience many of the questions he asks himself during the procedure (either personal questions or procedural ones).

NEW

- The 'DAB-on-stage' will then request the help of the audience: he will propose three possible answers for each question raised by (surprising) events happening during the procedure.
- On each question, the audience (acting as DAB) will help the 'DAB-on-stage', on the way to go, by clicking their best choice
- The majority of answers will decide the path to be followed.
- Procedure will be followed step by step under FIDIC contract mechanisms, and finally leading to (hopefully) the right decisions
- Different paths are possible, and this may end in surprising conclusions? Let's see...

Stéphane Giraud, Director 'Dams & River Works', EGIS GROUP; FIDIC Expert, Accredited Trainer & Adjudicator (France)



Stéphane Giraud

16:20 Arbitration & Alternative Dispute Resolution

This session considers the opportunities for avoidance and early resolution of disputes under the FIDIC contract provisions. This is intended to equip the representatives and advisors of the Parties and the Engineer to make good choices in moving towards a cost effective resolution.

17:10 Close of Main Conference



WORKSHOP A: Introduction to the FIDIC Rainbow Suite of Contracts

29th June 2015, Full Day (09:00 -17:00 - Registration & Coffee from 08:30)

Ideal as a refresher course for experienced FIDIC users or as an introductory session for those just getting acquainted with the potential of the suite. Attend this workshop to acquire essential knowledge of the main forms of contract comprised in the "rainbow" suite of FIDIC contracts. FIDIC contract experts will take you through the entire rainbow book collection and explain in detail the specificities and purposes of each form. FIDIC experts will invite delegates to participate in practical exercises exploring key concepts embodied in the FIDIC contracts.

- Different contract strategies addressed by the FIDIC suite
- Detailed analysis of the FIDIC rainbow collection of forms of contract:

WORKSHOP LEADERS:

Dr. Donald Charrett, Barrister, Arbitrator & Mediator, MTECC (Australia)
Siobhan Fahey, Member, FIDIC CONTRACTS COMMITTEE (Ireland)

- Green Book
- Yellow Book
- Red Book
- Silver Book

- Risk allocation and business processes for the FIDIC suite
- The growing influence of FIDIC's suite of contracts in establishing world-class industry standards
- How FIDIC's major works contracts are being used worldwide
- Comparative advantages of FIDIC in relation to other forms of contract
- Emerging FIDIC users' regions and hot spots



Dr. Donald Charrett



Siobhan Fahey

Led by:



WORKSHOP B: Dispute Avoidance & Resolution in Practice

2nd July 2015, Half Day (09:00 - 12:30 - Registration & Coffee from 08:30)

This interactive workshop is designed to focus on the key issues commonly faced by owners and contractors who are involved in major development, infrastructure and other projects in Asia and who wish to employ sound strategies for avoiding, managing and resolving disputes in an effective manner. Particular areas of focus include the commercial setting for development, claims strategy and DAB and ADR options, arbitration and investment treaty protection for major projects.

- The pros and cons of each stage of FIDIC's dispute escalation processes
- Whether Dispute Adjudication Boards are appropriate for all contracts?

Workshop Leaders:

Iain Black, Partner, Eversheds LLP (Singapore)
Kate Lan, Associate, Eversheds LLP (Singapore)

- Amicable settlement discussions – the benefit of mediation?
- Arbitration under the ICC Rules
- Choice of law – the practical effect of different law for the Contract and Seat of Arbitration
- Enforcement of awards – assistance and interference by courts
- Calls on On Demand Bonds and Parent Company Guarantees – legitimate and illegitimate calls



Iain Black



Kate Lan

Led by:



WORKSHOP C: Construction Claims & Defence

2nd July 2015, Half Day (14:00 - 17:30 - Registration & Coffee from 13:30)

Attend this practical workshop for an introduction to different claims procedures, a deeper understanding of concurrent delay principles and how they are applied, relevant elements within the FIDIC contract suite, when and how to claim under the contract and when to claim for breach, and much more.

- Establishing schedule and cost controls
- Implied terms regarding prevention

- When and how to claim under the contract and when to claim for breach
- Bringing a global claim
- Considerations in EoT assessments: Critical path & cause and effect
- How delay and disruption claims are assessed
- Overhead & additional payment claims
- Prolongation, disruption and acceleration cost claims

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Workshop Sponsor:



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FIDIC Asia Pacific Contract Users' Conference

Main Conference Days: 30 June & 1 July 2015

Workshops: 29 June & 2 July 2015

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	Book by 8th May 2015	Book by 5th June 2015	Standard Price
Full Event: 2-day main conference + full-day "Intro to FIDIC Contracts" workshop + both half-day workshops	SAVE US \$700 <input type="checkbox"/> US \$4196	SAVE US \$500 <input type="checkbox"/> US \$4396	SAVE US \$300 <input type="checkbox"/> US \$4596
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Specify your workshop(s):

- Workshop A, 29 June, full-day: **Introduction to the FIDIC Rainbow Suite of Contracts**
- Workshop B, 2 July, half-day, morning: **Dispute Avoidance & Resolution in Practice**
- Workshop C, 2 July, half-day, afternoon: **Construction Claims & Defence**

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