FIDIC and IBC Legal Present the 27th Annual

FIDIC International 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: 2 & 3 December 2014
Workshops: 1 & 4 December 2014
Venue: Grange City Hotel, London

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MAIN CONFERENCE DAY ONE: 2nd December 2014

08:15 Registration & Coffee

08:50 Opening Remarks
- Global view by FIDIC Contracts Committee on procurement and contracts implementation;
- FIDIC Contract Committee’s Task Groups in progress (Yellow book update, Services Agreements, Dredgers, YB/SB Sub-contract form, ODB-Bronze Book, mm)
- In the pipe line (Underground works, FIDIC Glossary of Terms)
- To be seen on the horizon

Enrico Vink, Managing Director, FIDIC (Switzerland)
Kaj Möller, Member, FIDIC CONTRACTS COMMITTEE, FIDIC Executive Committee Member, President, SWECO INTERNATIONAL (Sweden)

09:10 FIDIC Rainbow Suite – Updates
Members of the Updates Task Force will give delegates an insight into the latest developments with FIDIC contracts for major works, why these are needed, what are the expected key features and the target timescale for publication.

- Latest developments:
  - Yellow book
  - Red book
  - Silver book
- Questions & answers

Svend Poulsen, Project Director, ATKINS, Chair, FIDIC UPDATES COMMITTEE (Denmark)
Aisha Nadar, Consultant, Procurement and Dispute Resolution, Advokatfirman Runeland; Special Adviser, FIDIC MDB TASK GROUP, Member, FIDIC UPDATES TASK GROUP (Sweden)

09:40 FIDIC Design Build Procurement Alternatives
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? We will look at these and other key aspects of design-build contracting, 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
- Questions & answers

Jonathan Hosie, Partner, MAYER BROWN (United Kingdom)
Christopher Fellowes, Partner, MAYER BROWN (United Kingdom)
Zoltán Záhonyi, Member, FIDIC CONTRACTS COMMITTEE (Hungary)

10:35 Coffee Break

10:55 The FIDIC Forms for Design, Build and Operate Contracts
The concept of Design Build and Operate projects is proving very popular for both the construction of new facilities (The Gold Book) and the upgrading of existing facilities (The new Bronze Book). The speakers will give an overview of both these documents, including:

- Introduction to the 2008 Gold Book (DBO)
- Key Issues in the Gold Book
- Development of the new Bronze Book (ODB)
- Features of the Bronze Book
- Questions & answers

Des Barry, Member, FIDIC CONTRACTS COMMITTEE (Ireland)
Michael Mortimer Hawkins, Special Advisor, FIDIC CONTRACTS COMMITTEE (Sweden)

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11:30 **MDB Harmonized Contract – Latest Developments**  
**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 SDBs 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  

Aisha Nadar, Consultant, Procurement and Dispute Resolution, Advokatfirman Runeland; Special Adviser, FIDIC MDB TASK GROUP; Member, FIDIC TASK GROUP (UK)  

**New**  
**Kitty Villani-Haman, Procurement Director, COUNCIL OF EUROPE DEVELOPMENT BANK (France)**  

**Evgeny Smirnov, Senior Procurement Specialist, EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (UK)**

12:10 **Head to Head: Employers V Contractors Discuss Limitation of Liability Dredging and Reclamation Case Study**  
Edward Corbett, Member, FIDIC DREDGING & RECLAMATION UPDATE TASK GROUP (UK)  

**New**  
**Marnix Vandenberghe, Head of Legal Department, JAN DE NUL GROUP (Belgium)**  

13:00 Networking Lunch

14:10 **The Business of Consulting Engineering - Using FIDIC Forms of Agreement**  
*The business of consulting engineering is extremely varied not only in the nature of the service provided but also in the contractual matrix and expectations placed on the consultant. Is it possible to find a one size fits all consultancy services agreement that will satisfy end user/client/owners as well as supply chain design and build contractors? The latest update of the White Book and the JV Agreement will be discussed in this context.*  
- White Book update  
- Standard of performance  
- Who should take the risk of unforeseeable matters  
- Skill and care - what does fit for purpose mean  
- Variation to services and programme  
- JV Agreement – split teams and integrated teams  
- Questions & answers  

Mike Roberts, Head of Contracts, MOTT MACDONALD (UK)

15:10 **How can FIDIC Adapt to New & Emerging Business Sectors**  
*Existing contract forms and models for risk sharing in the wind industry: industry background; risk profile during development, construction and operation; choice of contracting model and form*  
- The offshore case: 1. Increased risk profile, 2. Tension between supply/construction contracts and vessel contracts, 3. Case study: Sample wind project; Windtime; FIDIC Dredging and Reclamation contract  
- How contract models and format can help allocate and mitigate risk  
- How FIDIC can adopt to the wind industry: a case for a new form of construction contract for offshore wind?  

Martin Sandgren, Co-Head of Legal, SIEMENS WIND POWER A/S (Denmark)

16:00 Networking Break & Refreshments

16:20 **What to Do and What Not to Do as the Engineer Under A FIDIC Contract: The Engineer’s and the Engineer’s Roles and Risks under FIDIC Contracts**  
*This presentation looks at the roles and risks of an Engineer under FIDIC contracts. The Engineer’s role may involve design and other responsibilities to the Employer under the FIDIC White Book, as Engineer under the Red or Yellow Books or design for the Contractor under the Yellow or Silver Books. There may be more than one role, as in a situation where the engineer is initially engaged by the Employer to prepare a preliminary design, and is subsequently novated to the Contractor to prepare the final design. The Engineer’s obligations and the consequent risks involved may go beyond the traditional “due care, skill and diligence” and include higher standards or the requirement that the design be fit for purpose. The risks in each engagement need to be understood and appropriately managed. The following are some of the issues that the Engineer needs to manage appropriately:**  
- Understanding the client’s real requirements – these will depend on whether the client is the Employer or the Contractor  
- Proper documentation of the Engineer’s contract for services  
- Scope of the Engineer’s services to be provided  
- Communication of risks to the Employer/Contractor  
- The risks arising from innovation

Dr Donald Charrett  
Siobhan Fahey

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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

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

Siobhan Fahey, Member, FIDIC CONTRACTS COMMITTEE (Ireland)

Philip Jenkinson, Principal Consultant, ATKINS; Chair, FIDIC CONTRACTS COMMITTEE (United Kingdom)

Simon R. Worley, Chartered Civil Engineer; FIDIC Accredited Trainer; Member, FIDIC SUB-CONTRACT TASK GROUP (United Kingdom)

17:20  Ask the Expert: FIDIC Q&A
- Questions and answer session from the day’s topics
- Questions that the contracts committee have for users
- Tell FIDIC how you think they could adapt going forward

Moderator: Christopher R. Seppälä, Legal Adviser to the FIDIC Contracts Committee, Partner, WHITE & CASE (France)

17:45  Close of Day 1 and Drinks Reception Hosted by MAYER BROWN

MAIN CONFERENCE DAY TWO: 3rd December 2014

08:15  Registration & Coffee

08:55  Chair’s Opening Remarks

Siobhan Fahey, Member, FIDIC CONTRACTS COMMITTEE (Ireland)

09:00  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

Vincent Leloup, Senior Advisor, EC HARRIS (France)

Gary Kitt, Partner – Regional Head of Contract Solutions, Europe, EC HARRIS (United Kingdom)

Michael Fletcher, Senior Consultant – Contract Solutions, EC HARRIS (United Kingdom)

09:40  Avoiding and Pursuing 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 try to avoid claims
- Pursuing claims (if you haven’t managed to avoid them!)
- Civil v common law comparison: different approaches to claim quantification

Adrian Bell, Partner & Solicitor Advocate, CMS CAMERON MCKENNA (United Kingdom)

Raid Abu-Manneh, Partner, MAYER BROWN (United Kingdom)

Lukas Klee, Head of Legal, METROSTAV A. S. (Czech Republic)

10:20  Morning Coffee Break

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10:40 Time Bar Application under a Civil Law and a Common Law Perspective

Time bar for claims is an essential element of the FIDIC Conditions of Contract. Its project management purpose is however not always fully perceived 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 reason 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.

- Why impose time bars under FIDIC Contracts?
- Time bars – is the guillotine so sharp?
  - Civil law perspective
  - Common law perspective
- Does the Gold Book have it right?
- A recent court decision – the OHL SA vs. Her Majesty’s Attorney General for Gibraltar case - TCC, London, 16th April 2014

Nicholas Gould, Partner, FENWICK ELLIOTT (United Kingdom)
Vincent Leloup, Senior Advisor, EC HARRIS (France)
Jeremy Glover, Partner, FENWICK ELLIOTT (United Kingdom)

11:20 International Case Studies Review – Three Experiences From FIDIC Users

This panel session will assemble experienced FIDIC Contract Users from a number of regions and industry sectors to share their experiences in using FIDIC as a key project administration tool in some of the most challenging environments. Delegates will benefit from listening to a number of case studies and will also have an opportunity to pose any questions to the panellists. Case studies include:

Case Study 1 – Sub-Sea Projects
- Using FIDIC Yellow book in offshore / sub-sea projects
- Risk negotiation from a buyer’s and subcontractor’s perspective
- Understanding which elements to incorporate
- Administration considerations

Henrik Larsen, Legal & Tendering, NORDIC OFFSHORE MARINE (Denmark)

Case Study 2 – FIDIC vs. Non-FIDIC Based Contract?
- Two similar railway signalling projects in the same country for the same customer
- One of them is based on FIDIC’s Yellow Book ed. 1999; the other one is not
- Advantages of using FIDIC from a contractor’s perspective

Patrick Waldner, Head of Contract Management, THALES AUSTRIA GMBH (Austria)

Case Study 3 – ITER – Construction of Fusion Reactor
- Using FIDIC Red and Yellow books
- Modifications of FIDIC Template due to:
  - the status of Fusion for Energy as European Joint undertaking
  - the public procurement constraints
  - the French law
  - the nuclear law
- Adaptation of the variation clause
- Adjudication process

Karoly Olajos Tamas, Legal Service Unit, Project Legal Group, FUSION FOR ENERGY (Spain and France)

12:25 Using BIM as a Modeling Standard under a FIDIC Project – Recent Experiences

Building Information Modelling (BIM) enables designers and constructors to link construction and asset data to geo-spatial and geometric data – creating rich information sources that can be shared and re-used throughout the life of an asset. The widespread adoption of BIM has accelerated following the commitment of the UK Government and other administrations to mandate the use of BIM on projects. This session will examine the scope that BIM has to improve project outcomes on civil engineering projects and some of the commercial, project process and cultural issues that need to be addressed to enable project teams to realise the full potential of this transformational way of working.

- What is BIM and what do the conference delegates need to know to have an informed viewpoint?
- How will the use of BIM on a project add value to the client and project participants?
- What recent developments have there been, and what are the lessons learned from early adopter projects?
- What are the key commercial and contractual issues associated with the use of BIM on projects – will BIM reduce or increase risk?
- How are projects using BIM successfully procured – are any changes needed to current practice?
- How will BIM evolve in the future, and will the FIDIC contract need to adapt to this change

Christopher J P Miers, Managing Director, PROBYN MIERS (United Kingdom)
Simon Rawlinson, Partner, EC HARRIS (United Kingdom)
14:00 **Dispute Boards in Action**

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, the issues that can arise, the current legal update on DAB issues and appeals from DAB Decisions and their enforcement.

To demonstrate the various issues that arise in an actual dispute board setting the DAB will hold a hearing to listen to, deliberate and then decide issues raised by the hypothetical Parties:

- The Lambertinia National Roads and Transport Ministry (The Employer)
- MegaBig Construction JV (The Contractor)

The issues at the hearing to be brought before the DAB will include:

- Has the FIDIC Sub-clause 20 been properly implemented
- Can the DAB hold its decisions for ‘ransom’
- Since the Employer has not agreed the DAB the unilateral appointment by FIDIC of the DAB is invalid.
- The Contractor is not entitled to its current claim due to the time-barred clause.
- The Contractor wants to remove one of the DAB members but the Employer does not.
- The Contractor has brought one of the DAB’s decisions to arbitration for enforcement and wants the assistance of the DAB.

Moderator: Aisha Nadar, Consultant, Procurement and Dispute Resolution, Advokatfirman Runeland; Special Adviser, FIDIC MDB TASK GROUP; Member, FIDIC UPDATES TASK GROUP (Sweden)

The DAB:

- Dr Cyril Chern, Barrister, CROWN OFFICE CHAMBERS LONDON; Chartered Architect; Member, FIDIC ASSESSMENT PANEL FOR ADJUDICATORS; Secretary, DISPUTE BOARD FEDERATION; FIDIC Adjudicator (United Kingdom)
- Dr Nael Bunni, Chartered Engineer; Chartered Arbitrator; Special Advisor, FIDIC CONTRACTS COMMITTEE; Leader, FIDIC SUBCONTRACT TASK GROUP; FIDIC Adjudicator (Ireland)
- Peter H J Chapman, Chartered Civil Engineer, Barrister at Law, Chartered Arbitrator; Chair, FIDIC ASSESSMENT PANEL FOR ADJUDICATORS (United Kingdom)
- David Brown, Partner, CLYDE & CO (France)

15:20 Networking Break & Refreshments

15:40 **Question & Answer Session**

16:05 **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).

- 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)

16:40 **Arbitration & Alternative Dispute Resolution**

This session considers provisions for avoidance and resolution of disputes under the provisions of the FIDIC contracts.

It is intended to help to equip representatives and professional advisors to the Parties and the Engineer in viewing disputes and their resolution in a strategic and cost-effective way.

- How disputes arise and when they arise
- Role of FIDIC contract provisions in avoidance/prevention of disputes
- The opportunities offered by the Amicable Settlement provisions and their effective operation
- A strategic approach to international arbitration

Ellis Baker, Head of Construction & Engineering Practice Group, WHITE & CASE; Lead Author, FIDIC Contracts in Law and in Practice (Informa, 2009) (United Kingdom)

Dr Nael Bunni, Chartered Engineer; Chartered Arbitrator; Special Advisor, FIDIC CONTRACTS COMMITTEE; Leader, FIDIC SUBCONTRACT TASK GROUP; FIDIC Adjudicator (Ireland)

Nicholas Baatz QC, Barrister, ATKIN CHAMBERS (United Kingdom)

17:40 Close of Main Conference

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WORKSHOP A: 
Introduction to the FIDIC Rainbow Suite of Contracts 
1st December, Full Day 
(09:00 - 16:30 - 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
- 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

Led by 
Sebastian Fahey  Dr. Donald Charrett

WORKSHOP B: 
Practical Comparison of Approaches under Civil and Common Law Jurisdictions 
1st December, Full Day 
(09:00 - 16:30 - Registration & Coffee from 08:30)

Expertly chaired by Dr. jur. Wolfgang Breyer of Breyer Rechtsanwälte, this workshop will provide delegates with a comparative analysis of the different approaches to Civil and Common Law contracts. The first part of the session will give an introduction to the sources of applicable law and a detailed overview of the key difference and similarities of construction contracts under German and French Civil Law and well as English Common Law and GCC Countries Civil Law. Attendees will then be invited to explore how to handle international FIDIC construction contracts under civil and common law jurisdictions through an interactive case study. Session coverage includes:

- Detailed comparison of construction contracts and introduction to sources of law under:
  - German Civil law
  - English Common Law
  - French Civil law
  - GCC Countries Civil law
- Handling FIDIC international construction contracts under civil and common law jurisdictions
- Interactive session: problem scenarios on how FIDIC operates under applicable law

Led by 
Dr. jur. Wolfgang Breyer

WORKSHOP C: 
Advanced Dispute Resolution Techniques 
4th December, Half Day 
(09:00 - 12:30 - Registration & Coffee from 08:30)

This workshop is an opportunity for discussion and involves working through a “mock dispute” that progresses through FIDIC’s dispute escalation provisions. Rupert Chatit, Barrister, Arbitrator & Mediator, Atkin Chambers, will guide you through tools for avoiding and resolving disputes. By attending this workshop, you will gain a comprehensive understanding of:

- Practical issues, options and solutions in avoiding and resolving disputes: when negotiating contracts and during projects.
- The pros and cons of each stage of FIDIC’s dispute escalation processes.
- Approval / disapproval of claims and determinations.
- Dispute Adjudication Boards.
- Amicable settlement discussions.
- Arbitration, including enforcement of awards.
- Calls on on-demand bonds and the constraints in FIDIC’s Conditions of Contract.

Led by 
AtkinChambers Barristers

WORKSHOP D: 
Construction Claims & Defence 
4th December, 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.

- Bringing a global claim
- Relevant elements within the FIDIC contract suite
- Establishing schedule and cost controls
- Concurrent delay principles and how they are applied
- Implied terms regarding prevention
- When and how to claim under the contract and when to claim for breach
- 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

Led by 
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WHEN AND WHERE

Venue: Grange City Hotel

Fidic International Contract Users’ Conference
Main Conference Days: 2 & 3 December 2014
Workshops: 1 & 4 December 2014

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