

## LAUNCH OF NEW FIDIC CONTRACT CONDITIONS

The "contracts of choice" for the world's most high-profile construction and infrastructure projects have been updated. FIDIC launched revised versions of its internationally recognized Red Book, Yellow Book and Silver Book, replacing the renowned 1999 FIDIC Suite of Contracts.

The International Federation of Consulting Engineers (commonly known as FIDIC, acronym for Fédération Internationale Des Ingénieurs-Conseils) launched its much anticipated 2017 FIDIC Suite of Contracts at its annual users' conference which took place on 5 and 6 December 2017 in London. FIDIC has published revised versions of its internationally recognized "Rainbow Suite", namely the Red Book (Building and Engineering Works), the Yellow Book (Plant and Design-Build) and the Silver Book (EPC/Turnkey Projects).

FIDIC's new 2017 conditions of contract replace the renowned FIDIC 1999 Suite of Contracts which governed many of the world's high-profile construction and infrastructure projects due to the flexible and adaptable approach of the FIDIC model contracts across several jurisdictions. As such, the FIDIC conditions of contract are currently - and will certainly remain - the "contract of choice" for international infrastructure and process plant projects, particularly in Eastern Europe, Africa, the Middle East and Asia.

The newly released contracts reflect a long-awaited update and response to the changing needs of the construction industry. In doing so, FIDIC adopted best practices and international standards in preparing the FIDIC books to reflect the challenges construction contracts face in a quickly developing and highly digitalized future.

The new, more prescriptive 2017 FIDIC books now consist of 21 clauses of General Conditions of Contract rather than 20, and include far-reaching amendments compared to the 1999 model provisions. The core aim of the majority of changes is increased clarity and certainty to reduce the risk of disagreements and thereby increase the probability of successful projects. In particular, the following modifications will have the largest impact on parties to international construction agreements based upon the FIDIC books:

- The former Clause 20 [Claims, Disputes and Arbitration] has been split into Clause 20 [**Employer's and Contractor's Claims**] and Clause 21 [**Disputes and Arbitration**] to separate 'day-to-day' Parties' claims from Parties' disputes. To highlight the distinction in the contractual approach, Employers' Claims are no longer part of Clause 20 since these are now dealt with in Clause 21 in the same way as Contractors' claims;
- **Sub-Clause 3.7 [Determinations]** of the Red and Yellow Books 2017, which replaces Sub-Clause 3.5, details the **Engineer's role in dealing with Parties' claims** and introduces a **step-by-step procedure** with time limits;

- **Sub-Clause 8.3 [Programme]** has been updated with **additional requirements** for the **initial programme** and all **revised programmes** to be submitted to the Engineer (under the Red and Yellow Books 2017) or to the Employer (under the Silver Book 2017), i.e. the **critical path** and any float or linked activities, **key delivery dates** for plant and materials, as well as any **delays** and the **sequence and timing of remedial works** shall be displayed;
- **Sub-Clause 20.2 [Claims for Payment and/or EOT]** prescribes the **step-by-step procedure** to be followed for **Employers' and Contractors' claims** for time and/or money. If the Engineer (under the Red and Yellow Books 2017) or the other Party's (under the Silver Book) initial response is that the Notice of Claim is time-barred due to the 28 day time-bar provision, but the claiming Party disagrees, the claiming Party is required to include these points in the fully detailed claim and these need to be taken into account in the agreement/determination;
- **Sub-Clause 21 [Constitution of the DAAB]** provides for a **"standing" Dispute Avoidance/Adjudication Board (DAAB)**, i.e. the board is appointed at the start of the Contract and is in place for the duration of the Contract; furthermore, the procedure to obtain the DAAB's decision and a Party's failure to comply with such decision has been clarified in Sub-Clauses 21.4 [Obtaining DAAB's Decision] and Sub-Clause 21.7 [Failure to Comply with DAAB's Decision].

The above, however, reflects only the most important changes. The new FIDIC books include further extensive changes, both in terms of length and effect. Whether as Employer, Contractor or Engineer, it is essential that all parties are fully aware of the amendments and what these mean for them.

In our next client alerts we will keep you updated on those issues which require particular attention in contract negotiations, claim management and arbitration in international construction contracts and construction disputes.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna almost 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



**Thomas Anderl**  
Partner  
[thomas.anderl@wolftheiss.com](mailto:thomas.anderl@wolftheiss.com)  
T: +43 1 51510 5494



**Wolfgang Müller**  
Partner  
[wolfgang.mueller@wolftheiss.com](mailto:wolfgang.mueller@wolftheiss.com)  
T: +43 1 51510 5490

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Wolf Theiss  
Schubertring 6  
AT – 1010 Vienna

[www.wolftheiss.com](http://www.wolftheiss.com)