FIDIC contracts – Claims and disputes under international construction contracts

Chair of the first day:
Aisha Nadar
Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee

09.00 - 09.10 Welcome address and introduction by ICC India
- Subhrakant Panda, President, ICC India, New Delhi

09.10 - 09.20 Welcome by the Chair of the first day
- Aisha Nadar, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee

09.20 – 10.30 An Introduction to the FIDIC forms of contract
- Background and principles of the FIDIC and its forms of contract
- FIDIC Procurement Procedures Guide

- Aisha Nadar, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee

- Description and comparison of the Red, Yellow and Silver Books
- Key features of new Yellow Book

- Siobhan Fahey, Chartered Engineer & Chartered Arbitrator, Ireland; FIDIC Contracts Committee; FIDIC President’s List Adjudicator; FIDIC International Accredited Trainer

10.30 - 10:55 Questions and answers

10:55 - 11.15 Coffee break

11.15 - 12.00 The advantages and use of FIDIC contracts in Asia
- How much are FIDIC contracts used?
- Which forms of contract are most used?
- Is a distinction to be made between types of projects, public/private projects and/or any industries in particular?
- What other forms of contract are used in Asia?

- Jim Perry, Founding Partner, JS Consulting, France; FIDIC President’s List of Adjudicators
- Rohini Roy, Chief of Legal Operations, International Operations, Bharat Heavy Electricals Limited, India
- Paul Sandosham, Partner, Head Infrastructure, Energy & Resources (Disputes) S.E.A., Clifford Chance, Singapore
Day 1 (cont’d)                                               29 June 2017

12.00 - 12.30  Introduction to the key concepts of the future FIDIC Conditions of Contract for Underground Works

•  Charles Nairac, Partner, White & Case LLP, France; Member, FIDIC-ITA Task Group 10, Contract Form for Tunnelling and Underground Works
•  Matthias Neuenschwander, Founder, Neuenschwander Consulting Engineers, Switzerland; Chairman, FIDIC-ITA Task Group 10, Contract Form for Tunnelling and Underground Works

12.30 - 13.00 Questions and answers

13.00 - 14.30 Lunch

14.30 - 15.30 Introduction to Dispute Boards

- Key concepts and vocabulary: Disputes Boards, Dispute Adjudication Boards, Dispute Review Boards, Dispute Avoidance Boards; advantages and disadvantages of these
- Presentation of FIDIC’s DB procedures
- Presentation of the ICC’s Dispute Board Rules
- How to enforce a binding DB decision?

•  Murray Armes, Managing Director, Sense Studio, United Kingdom; FIDIC President’s List International Adjudicator and Expert Witness
•  David Brown, Partner, Clyde & Co., France; Council Member, ICC Institute of World Business Law
•  Jagannathan Krishnaswami, Head – Legal Services, Larsen & Toubro Limited, India

15.30 - 15.55 Questions and answers

15.55 - 16.15 Coffee break

16.15 - 17.15 The ubiquitous Dispute Boards in Asia

- Prevalence of DRBs in Asia– what are DRB’s, where they come from and positive perceptions
- Expert Determinations in India
- Overview of recent infrastructure projects opting for ICC or FIDIC DABs in Asia
- Trends in the construction space, practical issues and difficulties

•  Tomohide Ichiguchi, Director, Loan Procurement Policy and Supervision Division, Japan International Cooperation Agency (JICA), Japan
•  James P. Monteiro, Principal Partner, JamesMonteiro (Advocates & Solicitors), Malaysia
•  Dhirendra Negi, Partner, JSA Advocates & Solicitors, India

17.15 - 17.45 Questions and answers

17.45 - 19.00 Cocktail reception
ICC arbitration in construction matters

Chair of the second day:
Alexis Mourre
President, ICC International Court of Arbitration, Paris

09.00 - 09.20 Welcome by the Chair of the second day
An introduction to the ICC International Court of Arbitration, the revised ICC Rules and the ICC International Centre for ADR. ICC experience under FIDIC contracts and on construction disputes

- Alexis Mourre, President, ICC International Court of Arbitration, Paris

09.20 - 10.20 The good, the bad and the ugly: Changing landscape of arbitration in India
- Have the recent amendments restored faith amongst users?
- To what extent good arbitration regime foster the “Make in India” programme
- Are Courts in India now more receptive to arbitration? What is expected?
- Commercial Courts – Has that been a game changer?

- Lalit Bhasin, Managing Partner, Bhasin & Co., India; Member, ICC International Court of Arbitration; President, The Bar Association of India; President, Society of India Law Firms
- Abhijit Mukhopadhyay, President (Legal) and General Counsel, Hinduja Group, United Kingdom
- Sherina Petit, Partner and Head of India Practice, Norton Rose, United Kingdom

10.20 - 10.45 Questions and answers

10.45 - 11.05 Coffee break

11.05 - 12.05 ICC Expedited Rules in practice
- What are the ICC Expedited Rules?
- Practical examples when they could be chosen
- How do they work for small arbitration claims? And bigger claims?
- How is expedited arbitration the answer to legitimate user concern about time and costs?

- Bennar Aydoğdu, Founder, BennArb Law Firm, Turkey
- Pui-Ki Ta, Counsel, ICC International Court of Arbitration, Hong Kong
- Kunal Vajani, Partner, Wadia Ghandy, India; Alternate Member, ICC International Court of Arbitration
- Nicolas Wiegand, Partner, CMS, Hong Kong

12.05 - 12.30 Questions and answers

12.30 - 14.00 Lunch

14.00 - 14.15 ICC Court activities dealing with FIDIC awards
- Report on the position of FIDIC’s official Observer on the ICC International Court of Arbitration
  - Aisha Nadar, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee
14.15 - 15.15 Time is Money: Factors which escalate costs in construction disputes
- Reasons for delays in construction disputes?
- Issues related to Court interventions, Public Interest litigation, Land acquisition
- Dilatory tactics used by one or more parties
- Institutional framework that helps avoiding the delay
  - Jon Prudhoe, Managing Director, Singapore & Hong Kong, Asia Pacific Construction Practice Leader, Navigant, Singapore
  - Sitesh Mukherjee, Partner, Trilegal, India
  - Charles Nairac, Partner, White & Case LLP, France; Member, FIDIC-ITA Task Group 10, Contract Form for Tunnelling and Underground Works

15.15 - 15.40 Questions and answers

15.40 - 16.00 Coffee break

16.00 - 17.00 Too many cooks make the broth: Multi-party and multi-contract issues in Asian construction arbitration: a focus on subcontracting
- Issues raised by multi-party/multi-contracts arbitrations
- The 2012 ICC provisions on joinder, multiple parties, multiple contracts and consolidation
- The FIDIC Subcontract for Construction provisions relating to the settlement of multi-party (employer – contractor – subcontractor) disputes
  - Sanjeev K. Kapoor, Partner, Khaitan & Co, India
  - Sae Youn Kim, Chair of International Dispute Resolution Practice, Yulchon, South Korea
  - Soh Lip San, Head, Construction & Projects, International Arbitration, Rajah & Tann Singapore LLP, Singapore
  - Ratan K. Singh, Advocate & Arbitrator, Chambers of Ratan K. Singh, India; Chairman-India, Society of Construction Law, United Kingdom

17.00 - 17.30 Questions and answers

17.30 – 17.45 Closing of the Conference
  - Abhinav Bhushan, Regional Director for South Asia, ICC Arbitration & ADR, ICC International Court of Arbitration, Singapore
  - Aisha Nadar, Member, FIDIC Executive Committee and Chair of Procurement Policy Sub-Committee

We thank our 2017 ICC/FIDIC Programme Committee:
Abhinav Bhushan, Regional Director for South Asia, ICC Arbitration & ADR, ICC International Court of Arbitration, Singapore
Abhijit Mukhopadhya, General Counsel, Hinduja Group, United Kingdom
Ciccu Mukhopadhaya, Senior Advocate, Supreme Court of India, New Delhi
Charles Nairac, Partner, White & Case LLP, France; Member, FIDIC Task Group 10, Contract Form for Tunnelling and Underground Works