Objective

FIDIC Conditions of Contract are the most widely used standard forms of contract in international construction and disputes have been submitted to the ICC International Court of Arbitration since their first edition in 1957. This ICC/FIDIC conference which will be held on 2-4 June 2008 in Houston will review the procedure for claims and disputes under FIDIC contracts and explain the legal entitlements of the contractor and employer, and will also focus on the specific features of dispute resolution in international construction contracts in the United States and explore practical implications and current developments. Led by a team of world-renowned experts in this field, sessions will be structured to encourage interactive discussion among participants.

Who should attend?

This conference will be of particular interest to all businesspeople involved in construction matters and dispute resolution: engineers, contractors, government officials, financial institutions, arbitrators and legal advisors, amongst others.
CLAIMS AND DISPUTES UNDER INTERNATIONAL CONSTRUCTION CONTRACTS

Welcome addresses

Overview of the FIDIC contract forms and the new MDB contract

Presentation of the FIDIC contract forms used in public contracts, the Red Book and now the new Multilateral Development Banks’ Harmonized Construction Contract (MDB Contract), as well as the other major FIDIC forms, the Yellow and Silver Books.

- Who uses the contract forms and why?
- What are their specific features? How are the Yellow and Silver Books used in privatized Build Operate Transfer (BOT) projects?
- What are the implications of the new MDB contract?
- What is their future role?

An American lawyer’s perspective of FIDIC contract forms

The new FIDIC Design-Build Operate (DBO) Contract

Lunch

First demand guarantees: Their use and abuse in construction disputes

- Their impact on construction disputes

Dealing with unforeseeable events

- How to deal with unforeseeable events under the Red, Yellow and Silver Books?
- What are the contractor’s and the employer’s entitlements to additional money and time? How do they obtain them?

Multi-tier dispute resolution procedures under the FIDIC contract

Dispute Boards (DB)

- What are DBs?
- What is the procedure for the pre-arbitral settlement of disputes by the engineer under the pre-1999 editions and by a Dispute Adjudication Board (DAB) under the 1999 editions?
- Advantages and disadvantages of DABs?
- FIDIC’s “standing” DAB versus an “ad hoc” DAB
- Similarities and differences between the FIDIC and the ICC Dispute Board Rules
- What qualifications should DAB members have? How should they behave?
- What is the prospect of court enforcement of the DAB’s decisions?

Sub-clause 20.5 of the FIDIC contracts and amicable dispute resolution (ADR)

The settlement techniques that will be discussed in this session include negotiation, mediation and other possibilities with specific reference to the ICC ADR Rules.

- What can parties do within the 56 days allowed for in sub-clause 20.5 of the FIDIC contracts to get a dispute settled?
- Why does FIDIC have a requirement to attempt amicable settlement before commencement of arbitration?
- Options available to settle construction disputes not settled by a DAB, during this 56-day period, and before arbitration

Dinner
Role of the expert in international construction disputes
- Experts appointed by Parties and experts appointed by the arbitral tribunal
- Legal relationships and liability? The mandate given to the experts
- Power of the expert and procedures to be followed by him or her
- Practical advice

Pre-arbitral referee, conservatory and interim measures
- Provisional decisions taken by a neutral before commencement of an arbitral procedure or a state judicial procedure
- Power of the neutral; advantages and disadvantages
- Conservatory and interim measures taken during the course of an arbitration procedure; competence to decide; power to decide and nature of the measures; legal value and enforceability

Arbitration with state parties
- Involvement of state and para-state entities, parties in international commercial arbitration; arbitrability; enforcement of the award
- Investment arbitration based on multilateral treaty (ICSID) and/or bilateral investment treaty

Lunch

Mega Projects in Texas

Techniques for controlling time and costs in international commercial arbitration
- The proposal of the ICC Commission on Arbitration
- Presentation of the conclusions of the Task Force of the ICC Commission for Reducing Time and Costs in International Arbitration; special aspects concerning international construction arbitration

Enforcement of arbitral awards in the US and worldwide – general presentation and practical problems
- What are the current practical problems of enforcement?
- To what extent can contractors’ liens or other security services be available to secure enforcement?
- How may the position of the contractor as creditor, be affected by the rights of lenders to the employer (e.g. in BOT type projects) at the enforcement stage?
- What happens when States immunity is involved?
- New trends & developments
- Do’s and Don’ts

Closing

Speakers
- C. Mark Baker, Senior Partner, Fulbright & Jaworski LLP, Houston, Texas, United States; Member, ICC Commission on Arbitration
- Steve Butler, General Counsel, Parsons Brinckerhoff Inc., Boston, Massachusetts, United States
- Cyril Chern, Barrister, Crown Office Chambers, London, United Kingdom
- Susan Combs, Comptroller of the State of Texas, United States
- Ed Emmett, Harris County Judge, Texas, United States
- Jason A. Fry, Secretary General, ICC International Court of Arbitration, Paris
- Hugh E. Hackney, Shareholder, Greenberg Traurig PA, Dallas, Texas, United States
- Nicolas Henchie, Partner, Construction & Engineering Group, Mayer Brown International LLP, London, United Kingdom
- Charles Molineaux, Arbitrator, Construction Arbitration Worldwide, McLean, Virginia, United States
- Mark A. Nadeau, Managing Partner, DLA Piper Phoenix Office; Policy Committee Member, Phoenix, Arizona, United States
- Christopher M. Paparella, Partner, Hughes Hubbard & Reed LLP, New York City, New York, United States
- Glenn Ransier, Senior Director, American Express Bank Ltd, New York City, New York, United States; Member, ICC Task Force on Guarantees
- Ann Ryan Robertson, Attorney, Ajamie LLP, Houston, Texas, United States; Member, ICC Commission on Arbitration
- Robert A. Rubin, Special Counsel, McCarter & English LLP, New York City, New York, United States
- Eric A. Schwartz, Partner, Dewey & LeBoeuf, Paris, France; Former Secretary General, ICC International Court of Arbitration; Alternate Member (United States), ICC International Court of Arbitration; Council Member, ICC Institute of World Business Law
- Estuardo Sierra, Corporate Counsel, Wärtsilä North America, Inc., Houston, Texas, United States
- Robert J. Smith, Shareholder, Akerman Senterfitt Wickwire Gavin, Madison, Wisconsin, United States
- Todd Wetmore, Partner, Shearman & Sterling LLP, Paris, France
International construction contracts and the resolution of disputes

Working Language: English

The FIDIC Contract Guide will be referred to throughout the conference. Each participant is advised to have a copy. The guide contains the full texts of the FIDIC Construction, Design-Build and EPC/Turnkey contracts. Copies can be ordered by contacting the FIDIC Bookshop www.fidic.org/houston2008; Tel: +41 22 799 49 00 Fax: +41 22 799 49 01 fidic.pub@fidic.org or order and pay on-line. The general conditions of the MDB Harmonised Edition of the FIDIC Construction Contract can be downloaded from www.fidic.org/mdb

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Post: ICC SERVICES – Events Department
87, boulevard Haussmann
75008 Paris, France

Registration will be confirmed upon receipt of the registration form and conference fee.

Registration fees

The registration fee covers all conference documentation, the welcome reception on Monday, two lunches, and a dinner on Tuesday night.

Until 1 May 2008: “Early-bird” special
- For ICC and FIDIC members: 650 US$
- For non-members: 750 US$

After 1 May 2008
- For ICC and FIDIC members: 760 US$
- For non-members: 860 US$

Travel and accommodation

Participants are responsible for making their own travel and hotel arrangements. ICC has however negotiated a quota of rooms at “The Houstonian” at the following preferential rates: single room 199$, double room additional 20$, concierge level additional 50$ per night excluding taxes. Details will be sent to you upon receipt of your registration form and registration fee. All room reservations must be guaranteed by a credit card. The pre-reservation cut-off date is May 11, 2008. Hotel reservations received after May 11, 2008 will be accepted on a space and/or rate available basis only.

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ICC Events is eligible for CLE credit under New York’s approved jurisdiction procedures, it is an approved MCLE provider by the State Bar of California and the State Bar of Texas and is a Law Society and General Council of the Bar of England and Wales External CPD Course Provider. French Bars: this training has been sent for CNB approval.

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Registration form TIH0806

2 – 4 June 2008
Houston, Texas 77024
The Houstonian Hotel, 111 North Post Oak Lane

Co-organized by ICC and FIDIC

International construction contracts and the resolution of disputes

Participant information

TITLE / FIRST NAME / LAST NAME

POSITION

COMPANY NAME

ADDRESS

CITY / STATE / ZIP CODE

COUNTRY TEL.

CONTACT E-MAIL FAX

Until 1 May 2008: “Early-bird” special
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☐ For non-members: 750 US$ *

After 1 May 2008
☐ For ICC and FIDIC members: 760 US$ *
☐ For non-members: 860 US$ *

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For group rate: please contact Houston@iccwbo.org

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