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HICAC 2025

HICAC 2025 – HO CHI MINH CITY INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE

Raising the Bar:

Enhancing Quality in Dispute Resolution for Vietnam's Construction Projects – Bridging International Expertise with Domestic Practice

10th & 11th
APRIL 2025

REX HOTEL SAIGON
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2025 **HO CHI MINH CITY INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE**

Raising the Bar:

Enhancing Quality in Dispute Resolution for Vietnam's Construction Projects – Bridging International Expertise with Domestic Practice

INTRODUCTION

Building on the success of the 2024 event, the Vietnam International Arbitration Centre (VIAC) and the Society of Construction Law – Viet Nam (SCLVN) co-organize the **Ho Chi Minh City International Construction Arbitration Conference – HICAC 2025**. This year's Conference main theme is "Raising the Bar: Enhancing Quality in Dispute Resolution for Vietnam's Construction Projects – Bridging International Expertise with Domestic Practice".

HICAC 2025 aims to bring together professionals from the construction industry, legal experts, arbitrators, and academics to discuss the latest trends, practices, and developments in construction arbitration. Vietnam is witnessing significant growth in both construction activities and the demand for quality and efficient construction dispute resolution. This conference, featuring diverse domestic and international perspectives, will provide valuable insights into legal regulations and practical applications, helping businesses in navigating dispute resolution. In addition to informative panel discussions, the conference will provide networking opportunities to foster collaboration and promote the best practices among international delegates and enterprises. The conference will also be a timely platform to contribute to legal reform, particularly the Law on Construction and the Law on Commercial Arbitration, facilitating business activities and streamlining the dispute resolution process.

05
Content sections

39
Domestic & Foreign Expert

06
Sideline events

150+
In-person Participants

10+
Partners

MAIN EVENT

Time

Day 01
8.30 AM – 5.00 PM
10th April 2025 (Thursday)

Day 02
8.30 AM – 12.00 PM
11th April 2025 (Friday)

Venue

REX HOTEL SAIGON,
141 Nguyen Hue, Ben Nghe ward,
District 1, HCMC, Vietnam

HICAC 2025

TENTATIVE AGENDA

SECTION C *(held concurrently with Section D)*

Dispute Avoidance for Construction Projects

8.30 am – 12.00 pm, 11 April 2025 (Fri)
Lotus A Meeting Room, Rex Hotel Saigon

Duration (AM)	Content
	Session C1 – FIDIC contract & Dispute Resolutions
8.30 – 10.00	**ADR under FIDIC forms of contract in the context of Vietnamese Law** **Dr. Nguyen Thi Hoa** – *Lecturer at Ho Chi Minh City University of Law*
	Localizing FIDIC Dispute Resolution Mechanism in China's Construction Contracts: Experiences and Challenges **Ms. Liu Siyu** – *Partner at DeHeng Law Offices*
	Multi-tier Dispute Resolution under FIDIC Contracts **Ms. Asel El Housan** – *Founder and the Managing Director of AEH UK Limited*
	Bridging the Gap in Construction Dispute Procedures Between FIDIC Standard Contracts and Vietnamese Law **Mr. Vu Le Bang** – *Partner & HCMC Office Co-Representative at Branch of Nishimura & Asahi (Vietnam) Law Firm in Ho Chi Minh City*
	Panel Discussion **Moderator: Dr. Nguyen Thi Hoa** – *Lecturer at Ho Chi Minh City University of Law*
10.00 – 10.30	**Tea-break**
	Session C2 – Lesson Learned from Dispute Board (DB) Applications
10.30 – 12.00 PM	**Evaluating the Efficacy of DAB and DAAB as Dispute Resolution in infrastructure projects in India: Practical Implementation or Mere Stepping Step before Arbitration?** **Mr. Ajit Kumar Mishra** – *Executive Director, Dedicated Freight Corridor Corporation of India Limited*
	Avoiding construction disputes in Thailand **Mr. Chamnan Pichedpan** – *Advisor at Construction Lawyers Society and member of Thai Dispute Board institute as well as Construction Arbitration Centre (Asia-Pacific)*
	Bridging Conflicts: The Role of Dispute Boards in Indonesia's Legal System **Mr. Kurniadhi Widjojo** – *Civil Engineer, Lecturer, Mediator and Fellow of the Institute of Dispute Board for Construction*
	Panel Discussion **Moderator: Ms. Tong Thi Thu Thao** – *FIDIC Certified Contract Manager*
12.00 PM	**End of Section C**

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES UNDER FIDIC FORMS OF CONTRACT IN CONTEXT OF VIETNAMESE LAW

Dr. Nguyen Thi Hoa[1]

Introduction. FIDIC is the abbreviation of the French term (Fédération Internationale des Ingénieurs Conseils - International Federation of Consulting Engineers). FIDIC originated from the meeting that decided to establish it took place in Ghent, Belgium in 1913 with the support and participation of three initial members, the associations of consulting engineers from Belgium, France and Switzerland.[2] In 1914, FIDIC issued its first charter. In the following years, FIDIC did not really develop because it was affected by the First and Second World Wars. Since 1950, FIDIC has received additional members from Australia, Canada, South America and the United States, marking the development of this organization.[3] To date, FIDIC has had the participation of consulting engineer associations from about 93 countries and territories including Vietnam.[4] Therefore, the FIDIC forms of contract have an excellent opportunity to be applied in countries around the world. Furthemore, apart from the support of professional organizations that are members of FIDIC, FIDIC also receives support from other international organizations such as the World Bank and multinational development banks through promoting the application of FIDIC forms of contract at international level.[5]

In Vietnam, the support for the application of the FIDIC forms of contract is also reflected in the provisions of law. Specifically, paraphraphe 3 of Article 54 of Decree No. 37/2015/ND-CP dated April 22, 2015 of the Vietnamese Government providing in detail construction contracts states that "*organizations and individuals are encouraged to apply the set of contract conditions of the International Federation of Consulting*

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[1] Lecturer at International Law Faculty- Ho Chi Minh City University of Law and member of the Executive Committee of Society of Construction Law of Viet Nam.

[2] Nguyen Thi Hoa, "Procédures de règlement des litiges en matière de construction appliquant les contrats-types FIDIC", PhD thesis defended at Panthéon-Assas University Paris 2, in December 2018, p. 39.

[3] FIDIC official website:https://fidic.org/history, accessed February 25, 2025.

[4] Information published by FIDIC on the page: https://fidic.org/membership/membership_associations, accessed February 25, 2025.

[5] https://fidic.org/history, accessed February 25, 2025.

Engineers (FIDIC), standard forms of construction contracts in establishing and implementing construction contracts. When applying standard forms of construction contracts, the parties must adjust the contract content to comply with the provisions of Vietnamese law." In fact, recently, in December 2024, the author of the present writing conducted a survey on the application of the FIDIC contract model in Vietnam for 20 experts in which there is a question "Have you ever worked with the FIDIC forms of contract?" and received 100% of the answers saying that they had worked with the FIDIC contract forms. The above practice shows that research on the FIDIC forms of contract in general and the dispute resolution mechanism in particular according to the FIDIC forms of contract in the context of Vietnamese law become useful.

1. ADR mechanisms under FIDIC forms of contract

Since its establishment, FIDIC has issued many contract forms. However, the most famous and first form is the Red Book with the full name *of Conditions of Contract for Works of Civil Engineering Construction* which was issued in 1957 and then amended many times such as in 1987, 1999 and 2017.[6] In Vietnam, when conducting a research project on the application of FIDIC forms of contract in Vietnam, the author of the present writing also conducted a survey of 20 experts with the question "Which FIDIC forms of contract have you worked with?" and 18 answers mentioned Red Book - accounted for 90% of the respondents. This shows the popularity of the Red Book application in Vietnam. Thus, in the present writing, the author will use Red Book as an example for analysis.

Regarding Alternative Dispute Resolution (ADR) mechanism, there can be various interpretations, but in the present writing, the term of ADR is to refer to procedures to resolve disputes outside of court.[7] For those ADRs, from the FIDIC first model issued in 1957 and then revised in 1987, both version of Red Book were built by giving the authority to resolve disputes to engineers. Specifically, Article 67.1 of the 1987 Red Book stipulates that "*If a dispute of any kind arises between the Employer and the Contractor in connection with, or arising out of, the Contractor or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certification or valuation of the*

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[6] Ellis Backer, Anthony Lavers, and Rebecca Major, "Introduction to FIDIC suite of contracts",https://globalarbitrationreview.com/guide/the-guide-construction-arbitration/fifth-edition/article/introduction-the-fidic-suite-of-contracts#footnote-141, accessed March 1, 2025.

[7] Nguyen Thi Hoa and Tran Hoang Tu Linh, "Alternative Dispute Resolution and the Application of the Multitiered Dipsute Resolution Clause in the International Construction Secteur", Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, DOI: 10.1061/(ASCE)LA.1943-4170.0000589.

Engineer, the matter in dispute shall, in the first place, be referred to in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made regarding this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor shall state that it is made regarding this Clause." In the case that the engineer makes a decision but the parties are not satisfied and the dispute cannot be resolved amicably, the parties may submit the dispute to arbitration according to Article 67.2 as follows:

"*Any dispute in respect of which*:

a. the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 67.1, and

b. amicable settlement has not been reached within the period stated in Sub-Clause 67.2

shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute".

However, after a long time of application, the role of the engineer in resolving disputes in the 1987 Red Book has been criticized a lot. This is because according to the FIDIC forms of contract, the engineer is an entity appointed and paid by only one party - the employer - to supervise the contractor's completion of the work. Therefore, the engineer is considered to have an interest related to the dispute between the contractor and the employer of the contract applying the Red Book.[8] Therefore, in 1999, FIDIC amended the Red Book by no longer assigning the engineer the authority to resolve disputes and this role was replaced by a new entity - Dispute Adjudication Board (DAB). Specifically, Clause 20.4 of the 1999 Red Book stipulates that "*If dispute (of any kind whatsoever) arises between the parties in connection with or arising out of the contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the engineer, either party may refer the dispute in writing to the DAB for its decision, with copies to the other party and the*

[8] MICHAEL R LUDLOW, "Engineer's role under FIDIC standard conditions of contract", Int'l. Bus. Law., vol. 20, no. 10, November 1992, p. 525-533.

Engineer." Although the Red Book was later amended in 2017, the authority of the DAB to resolve disputes remains.

2. Application of FIDIC dispute resolution procedures in Vietnam

2.1. DAB mechanism

Regarding the procedure for resolving construction contract disputes by the Dispute Resolution Board mechanism, Vietnamese law has provisions in paragraph 2, Article 45 of Decree No. 37/2015/ND-CP as follows:

"In case the parties to a contract have an agreement to resolve a contract dispute through mediation conducted by an agency, organization or one or several expert individuals (generally referred to as the dispute resolution board), then the settlement of the dispute through the dispute resolution board is regulated as follows:

a) The dispute resolution board may be stated in the contract at the time of signing or established after a dispute occurred. The number of members of the dispute resolution board shall be agreed by the parties. Members of the dispute resolution board must be people with professional qualifications appropriate to the content of the dispute, experience in resolving contract disputes and understanding legal regulations related to construction contracts.

b) Within twenty-eight (28) days from the date of receipt of the mediation conclusion of the dispute settlement board, if a party does not agree with the conclusion, it has the right to object and these disputes will be resolved by Arbitration or Court in accordance with the provisions of law; if after the above time limit, no party objects to the mediation conclusion, it is considered that the parties have agreed with the conclusion. Thus, the parties have to comply with the mediation conclusion.

c) The cost for the dispute resolution board is included in the construction contract price and is equally divided for each party to the contract, unless otherwise agreed by the parties."

Comparing the above provisions with Article 20 of the Red Book 2017, there are the following positive points:

Firstly, Vietnamese law allows the parties to choose a DAB mechanism. However, the Decree does not have specific regulations on how to establish a DAB. Therefore, when agreeing to choose a DAB to resolve their dispute, the parties must establish by themselves a clearer DAB's member selection process to have a basis for implementation, such as the number of DAB and when the DAB will be established.

Thus, when applying the FIDIC forms of contract, these shortcomings can be overcome because, for exemple, according to the provisions of Article 20.1 of the Red Book 1999, there are clear regulations on how to select DAB members. Precisely, FIDIC recommends that the parties should establish a list of entities that can be selected as members of the DAB in the contract documents right from the time of signing the contract. Then, if a dispute arises, the parties only need to select members from this list. In addition, Article 21.2 of the Red Book 2017 also foresees the situation where a party is unwilling to select a DAB member to delay dispute resolution by recommending that the parties to the contract anticipate at the time of signing the contract an entity with the authority in the place of that of unwilling party to appoint a DAB members.

Second, regarding the conditions for becoming a member of the DAB, Vietnamese law requires that the DAB's members need to be "a person with professional qualifications appropriate to the content of the dispute, experience in resolving contract disputes and understanding legal regulations related to construction contracts". This is different from the requirements of FIDIC. Specifically, for exemple, in Article 3.3. The General Conditions of Dispute Board set out the knowledge criteria for DAB members as follows: *"a) have experience and/or understanding of the type of works to be carried out under the contract; b) have experience in interpreting construction contract documents and engineering contract documents; c) be proficient in the language for communication specified in the contract documents (or the language agreed upon by the parties and the DAAB)*". In terms of this stipulation, the Red Book does not require that DAB members need to have knowledge of law relevant to the construction contract. This raises the question of whether, if the contract is governed by Vietnamese law, a foreign expert can be selected as a member of the DAB and, if so, what criteria are used to confirm that this entity has "knowledge of the provisions of Vietnamese law" chosen by the parties for the contract? For the author of the present writing, if the DAB has only one member and the law applicable to the contract is Vietnamese law, the requirement that the sole member "need to have knowledge of Vietnamese law" is unavoidable because Article 45 of Decree 37/2015/ND-CP uses the terms "need to…". In other words, at least one member of the DAB must have knowledge of Vietnamese law. Nevertheless, there is a wide margin for the parties to choose members of the DAB under Vietnamese law, this is because the law does not require experts to be law university graduates. As a result, the parties can rely on many other factors to prove the "knowledge of law" of the DAB's members, such as training certificates in law… With this understanding, the Vietnam Construction Law

Association has also published a list of experts in many different aspects of construction contracts which can be an effective channel for the parties to the contract to choose DAB's members. In addition to the above factors, there is also a view that, because Decree 37/2015/ND-CP uses the term "mediation" - (In case the parties to a contract have an agreement to resolve a contractual dispute through mediation conducted by an agency, organization or one or several expert individuals (generally referred to as the dispute settlement board)) - DAB can be considered a mediation procedure so that the parties can choose members from the list of mediators of the mediation centers.[9] For the author of the present writing, the parties have many ways to choose DAB members from the list of professional associations or mediation centers if they wish. However, the parties should note that the selection of members from a mediation center should not amount to the fact that the DAB procedure has to be conducted according to the mediation rules of that center. This is because the DAB, for example, according to the FIDIC Red Book, has its own rules and the parties can modify and supplement it to make this entity operate in accordance with the reality of each project. Therefore, the parties still have the right to choose the operating mechanism of DAB according to the provisions of the FIDIC forms of contract. This is also because even if the parties consider DAB as a "mediation" in the sense of Vietnamese law, Decree No. 22/2017/ND-CP of the Government dated February 24, 2017 on commercial mediation at Article 14, paragraph 1 stipulates that "the parties have the right to choose the mediation rules of a commercial mediation organization to conduct mediation or agree by themselves on the order and procedures for mediation".

Finally, regarding the enforcement of the DAB's dispute resolution decision, Decree 37/2015/ND-CP clearly stipulates that if no party objects the DAB's final conclusion after 28 days from the date of its receipt, the parties lose the right to object and are obliged to execute that conclusion. Furthermore, recently, when being asked by the Ho Chi Minh City Urban Railway Management Board, the Ministry of Construction issued a written response in the text No. 2234/BXD-KTXD dated May 22, 2024 that "the contract signed between the parties applies the FIDIC forms of contract, with provisions on the dispute resolution through DAB, however, there is no specific information on the time of signing the contract. In case the contract is within the scope of regulation of Decree No. 37/2015/ND-CP*: - DAB procedure is stipulated in Article*

[9] Nguyen Minh Hang and Tran Thi Viet Trinh, "Plan to establish a Dispute Resolution Board in construction contracts by conciliation method",file:///Users/macbook/Downloads/FWPS-Vol-2-No-2-Paper-7.pdf, accessed March 30, 2025.

45 of Decree No.37/2015/ND-CP is a model of resolving contract disputes on a voluntary basis agreed and committed by the parties to the contract. Therefore, when agreeing on the decision of DAB, the parties must be obliged to comply with the contents of the signed contract…". According to this understanding of the Vietnamese Ministry of Construction, it can be comprehensible that if the parties do not object to the decision of the Dispute Resolution Board within the time limit specified in the contract, the opportunity for the recalcitrant party to refuse enforcement of DAB's decision is very difficult. This provision of Vietnam also exists in Article 21.4.4 of the Red Book 2017. Therefore, it can be seen that there are many advantages of Vietnamese law for the parties to choose the mechanism for resolving construction contract disputes through the DAB. Moreover, if the parties consider lack of fairness and justice in the solution given by the DAB, FIDIC also provides for another dispute resolution mechanism by way of arbitration. In addition, for the decision of the DAB that is considered final and binding on the parties, FIDIC also foresees for a mechanism to enforce this decision by an arbitration which will be analyzed below.

2.2. Dispute resolution by way of arbitration

Regarding the dispute resolution procedure by way of arbitration according to the FIDIC forms of contract, one of the special features of this procedure lies in the arbitrator's authority over the results of the dispute resolution procedure by the DAB. Notably, Article 20.7 of the Red Book 1999 and Article 21.7 of the Reb Book 2017 provide that the parties to the contract can refer disputes related to non-compliance with the dispute resolution decision of DAB to arbitration as follows:

Red Book 1999 – Article 20.7	**Red Book 2017 – Article 21.7**
In the event that: (a) Neither party has given notice of dissatisfaction within the period stated in subclause 20.4 [Obtaining dispute adjudication board decision],	In the event that a Party fails to comply with any decision of the DAAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 21.6 [Arbitration] in which case Sub-Clause 21.4 [Obtaining DAAB's Decision] and Sub-Clause 21.5 [Amicable Settlement] shall not apply to this reference. The arbitral tribunal (constituted under Sub-Clause 21.6 [Arbitration]) shall have the power,

(b) the DAB's related decision (if any) has become final and binding, and

(c) a party fails to comply with this decision,

then the other party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under sub-clause 20.6 [arbitration], sub-clause 20.4 [obtaining dispute adjudication board decision] and sub-clause 20.5 [amiable settlement shall not apply to this reference.

by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under applicable law or otherwise), the enforcement of that decision.

In the case of a binding but not final decision of the DAAB, such interim or provisional measure or award shall be subject to the express reservation that the rights of the Parties as to the merits of the Dispute are reserved until they are resolved by an award.

Any interim or provisional measure or award enforcing a decision of the DAAB which has not been complied with, whether such decision is binding or final and binding, may also include an order or award of damages or other relief.

Comparing the two provisions mentioned above, the notable difference between the 2017 Book and the 1999 Book is that the first one defines the arbitral tribunal's power more clearly at the point that the latter is able to issue an "award" when resolving a dispute related to a party's failure to comply with the DAB's dispute resolution results that have been considered final and binding – because it was not objected by any party within the time limit for objections provided in the contract -. Thus, the question arises whether or not, according to Vietnamese law, the parties can agree on the situations in which the arbitral tribunal can resolve the dispute related to the enforcement of the DAB's decision – especially for a decision that has been considered final and binding – by an award or by a decision? This question arises because currently, Vietnamese law still does not have specific provisions on a mechanism to help ensure the enforcement of the DAB's decision.

Regarding this issue, paragraph 10, Article 3 of the Law on Commercial Arbitration of Vietnam of 2010 provides that "an arbitral award is a decision of the arbitral tribunal resolving the entire content of the dispute and terminating the arbitration proceedings". Therefore, if the parties only bring a dispute related to the enforcement of the DAB decision, the arbitral tribunal's decision answering whether or not a party must enforce the DAB decision can be considered a final award to be

recognized and enforced in Vietnam. This mechanism can be an effective way to help the dispute resolution procedure through DAB gain more trust from relevant entities. Furthermore, in the context of international arbitration, the arbitration procedural rules of some international arbitration centers such as SIAC and ICC have streamlined and expedited procedures for simple cases with low value, allowing the arbitral tribunal to issue an award within 3[10] or 6 months[11]. If the above mentioned mechanisms are combined at the same time, they will help these contractual mechanisms of dipsute resolution to be more effective in practice and gain the trust of relevant entities.

Conclusion. In general, Vietnamese law encourages parties to resolve commercial business disputes through procedures established by the parties themselves. This is also reflected in paragraph 8, Article 146 of the Construction Law, which states that *"the principles and procedures for resolving construction contract disputes are as follows: a) Respecting contractual agreements and commitments during contract performance, ensuring equality and cooperation; b) Contracting parties are responsible for negotiating to resolve disputes themselves. In case the contracting parties cannot negotiate, the dispute shall be resolved through mediation, commercial arbitration or court in accordance with the provisions of law*". Therefore, the dispute resolution mechanisms under the FIDIC forms of contract are also supported by Vietnamese law. The remaining issue is the good faith of the parties in complying with those dispute resolution mechanisms. This article hopes to provide some suggestions for practitioners to refer to when applying dispute resolution mechanisms stipulated in FIDIC contract models so that these mechanisms can bring more advantages in Vietnam.

References:

1. Ellis Backer, Anthony Lavers, and Rebecca Major, "Introduction to FIDIC suite of contracts",https://globalarbitrationreview.com/guide/the-guide-construction-arbitration/fifth-edition/article/introduction-the-fidic-suite-of-contracts#footnote-141, accessed March 1, 2025.
2. ICC Rules of Arbitration 2021- Appendix VI – Expedited Procedure Rules
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[10] SIAC Rules 2025, Schedule 2 - Streamlined Procedure, Section 15.

[11] ICC Rules of Arbitration 2021- Appendix VI – Expedited Procedure Rules, Article 4

4. Nguyen Thi Hoa, Procedure for the revision of construction materials applying FIDIC contract types", PhD thesis at Panthéon-Assas University Paris 2, defended in December 2018, p. 39.
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6. Michael R. Ludlow, "Engineer's role under FIDIC standard conditions of contract", Int'l. Bus. Law., vol. 20, no. 10, November 1992, p. 525-533.
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8. https://fidic.org/history, accessed February 25, 2025.
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ALTERNATIVE DISPUTE RESOLUTION PROCEDURES UNDER FIDIC FORMS OF CONTRACT IN CONTEXT OF VIETNAMESE LAW

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Member of the Executive Committee of SCLVN

ISSUES/CONTENTS

1. ADR mechanisms under FIDIC forms of contract

2. Application of FIDIC's ADRs in context of Vietnamese law

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1. ADR mechanisms under FIDIC forms of contract

When is there a dispute?

Art. 1.1.29: "Dispute " means any situation where:
(a) one Party makes a claim against the other Party (which may be a Claim, as defined in these Conditions, or a matter to be determined by the Engineer under these Conditions, or otherwise);
(b) the other Party (or the Engineer under Sub-Clause 3.7.2 [Engineer's Determination]) rejects the claim in whole or in part; and
(c) the first Party does not acquiesce (by giving a NOD under Sub-Clause 3.7.5 [Dissatisfaction with Engineer's determination] or otherwise),

provided however that a failure by the other Party (or the Engineer) to oppose or respond to the claim, in whole or in part, may constitute a rejection if, in the circumstances, the DAAB or the arbitrator(s), as the case may be, deem it reasonable for it to do so.

1. ADR mechanisms under FIDIC forms of contract

When is there a dispute?

Claim → Response to claim/Silence from Engineer → Dissatisfaction from either party → **DISPUTE**

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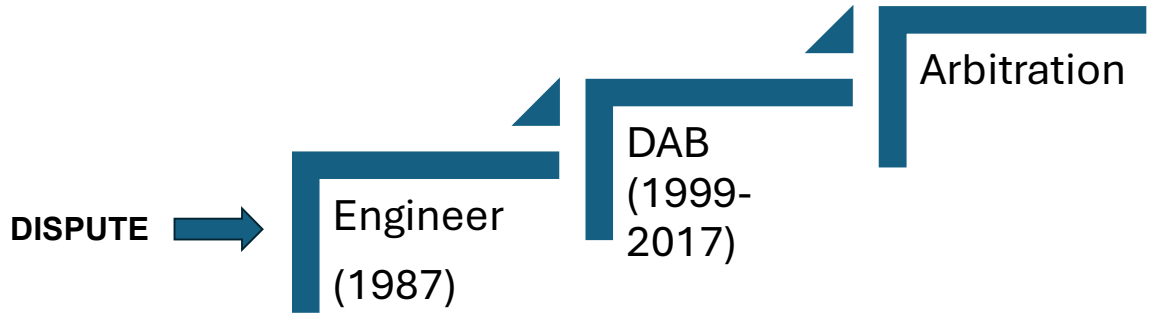
1. ADR mechanisms under FIDIC forms of contract



2. Application of FIDIC dispute resolution procedures in Vietnam

2.1. Dispute Adjudication Board (DAB)

Para. 2, Art. 45, Decree No. 37/2015/ND-CP

"In case the parties to a contract have an agreement to resolve a contract dispute through mediation conducted by an agency, organization or one or several expert individuals (generally referred to as the dispute resolution board), then the settlement of the dispute through the dispute resolution board is regulated as follows:

Qualification of DAB's members

*a) The dispute resolution board may be stated in the contract **at the time of signing or established after a dispute** occurred. The number of members of the dispute resolution board shall be agreed by the parties. **Members** of the dispute resolution board must be people with professional qualifications appropriate to the content of the dispute, experience in resolving contract disputes and **understanding legal regulations related to construction contracts**.*

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2. Application of FIDIC dispute resolution procedures in Vietnam

2.1. Dispute Adjudication Board (DAB)

Para. 2, Art. 45, Decree No. 37/2015/ND-CP

The proceedings of dispute resolution by DAB

b) Within twenty-eight (28) days from the date of receipt of the mediation conclusion of the dispute settlement board, if a party does not agree with the conclusion, it has the right to object and these disputes will be resolved by Arbitration or Court in accordance with the provisions of law; if after the above time limit, no party objects to the mediation conclusion, it is considered that the parties have agreed with the conclusion. Thus, the parties have to comply with the mediation conclusion.

Payment for DAB

c) The cost for the dispute resolution board is included in the construction contract price and is equally divided for each party to the contract, unless otherwise agreed by the parties."

2.1. Dispute Adjudication Board (DAB)

❖ **Qualification of DAB's members**

Para. 2, Art. 45, Decree No. 37/2015/ND-CP

*a) **Members** of the dispute resolution board must be people ….**understanding legal regulations related to construction contracts**.*

Red Book 2017

"a) have experience and/or understanding of the type of works to be carried out under the contract;
b) have experience in interpreting construction contract documents and engineering contract documents;
c) be proficient in the language for communication specified in the contract documents (or the language agreed upon by the parties and the DAAB)".

2.1. Dispute Adjudication Board (DAB)

❖Qualification of DAB's members

Para. 2, Art. 45, Decree No. 37/2015/ND-CP

*a) **Members** of the dispute resolution board must be people ….**understanding legal regulations on construction contracts**.*

Red Book 2017

"a) have experience and/or understanding of the type of works to be carried out under the contract;
b) have experience in interpreting construction contract documents and engineering contract documents;
c) be proficient in the language for communication specified in the contract documents (or the language agreed upon by the parties and the DAAB)".

2.1. Dispute Adjudication Board (DAB)

❖Qualification of DAB's members

What is evidence for **"understanding legal regulations related to construction contracts" if the law applicable to contract is Vietnamese law?**

Graduate from a University of Law of Viet Nam?

Certificate for participation in Vietnamese construction and contract law class?

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2.1. Dispute Adjudication Board (DAB)

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c) be proficient in the language for communication specified in the contract documents (or the language agreed upon by the parties and the DAAB)".

2.1. Dispute Adjudication Board (DAB)

❖Qualification of DAB's members

Where can practitioners find experts for DAB's members?

- SCL VN's list of experts?
- Expert list of arbitration centers?
- Expert list of mediation centers?

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2.2. Arbitration under FIDIC form of contract

❖ Arbitration

Red Book 2017
Article 21.7

In the event that a Party fails to comply with any decision of the DAAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, ***refer the failure itself directly to arbitration*** *under Sub-Clause 21.6 [Arbitration] in which case Sub-Clause 21.4 [Obtaining DAAB's Decision] and Sub-Clause 21.5 [Amicable Settlement] shall not apply to this reference.* ***The arbitral tribunal*** *(constituted under Sub-Clause 21.6 [Arbitration]) shall* ***have the power****, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure* ***or an award*** *(as may be appropriate under applicable law or otherwise),* ***the enforcement of that decision****.*

2.2. Arbitration under FIDIC form of contract

❖ Arbitration

Can the arbitral tribunal give an award to enforce a DAB's decision under Vietnamese law?

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2.2. Arbitration under FIDIC form of contract

❖Vietnamese Law on Commercial Arbitration 2010

Para. 10, Art. 3

"an arbitral award is a decision of the arbitral tribunal resolving the entire content of the dispute and terminating the arbitration proceedings".

Without interim or partial award

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Thank you for your attention!

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LOCALIZING FIDIC DISPUTE RESOLUTION MECHANISM IN CHINA'S CONSTRUCTION CONTRACTS: EXPERIENCES AND CHALLENGES

LIU SIYU – SPEAKER
Partner, DeHeng Law Offices

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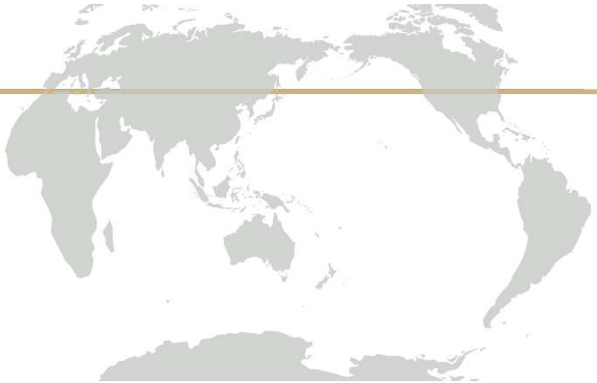

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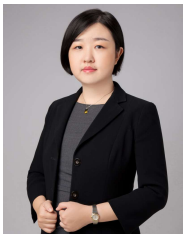
Education Background Peking University (B. Sc., L.L.M)/ The University of Chicago (L.L.M)
Tongji University (M.E.M)

Professional Qualifications Bar admission in the P.R. China & New York State of the USA
Chartered Builder of Chartered Institute of Building in UK (MCIOB)

Practice area Cross-border Project Development and Construction, Dispute Resolution



LIU Siyu, Partner of DeHeng Law Offices

Affiliations

- Arbitrator, Shanghai Arbitration Commission (SHAC)
- Arbitrator, Shanghai International Economic and Trade Arbitration Commission (SHIAC)
- Member and expert of the legal service committee of China Construction Industry Association
- Mediator in Construction sector, Mediation Platform of the People 's Supreme Court of China
- Team member for drafting of the model Design-Build/EPC Contract issued by the Ministry of Housing and Urban-Rural Development of the P.R. China (MHURD)

Recognitions

- Future Star in Construction and Real Estate, 2024 Benchmark Litigation China
- Most Recommended 80 Chinese Construction Lawyers and Recommended Lawyer for the Belt and Road Construction Disputes, Engineering News-Record (ENR) /Architecture Times in 2021/2023

Overview of Construction Disputes in China in Year 2024

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Dispute Resolution Institution	Total Cases Accepted	Construction Cases Accepted	Percentage of Construction Cases
Chinese Courts (Data from Wolters Kluwer)	2695070	86594	3.21%
China International Economic and Trade Arbitration Commission (CIETAC)	6013	1735	28.85%
Beijing Arbitration Commission (BAC)	14060	6841	48.66%
Shanghai Arbitration Commission (SHAC)	8047	3378	41.98%
Shanghai International Economic and Trade Arbitration Commission (SHIAC)	4028	1289	32.00%
Shenzhen Court of International Arbitration (SCIA)	14518	956	6.58%

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FIDIC and China's Model Construction Contracts

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Type	FIDIC	China's Model Construction Contracts
Construction Contract	Conditions of Contract for Construction (Red Book)	Standard Construction Bidding Documents Issued by National Development and Reform Commission, etc.
	Short Form of Contract (Green Book)	Model Contract for Construction Works Issued by Ministry of Housing and Urban-Rural Development
DB/EPC Contract	Conditions of Contract for Plant & Design Build (Yellow Book)	Standard Design-Build Bidding Documents Issued by National Development and Reform Commission, etc.
	Conditions of Contract for EPC-Turnkey Projects (Silver Book)	Model DB/EPC Contract for Construction Projects Issued by Ministry of Housing and Urban-Rural Development
Contract for Specific Project	MDB Harmonised Edition of the Conditions of Contract for Construction (Pink Book)	Standard Construction Bidding Documents for Highway Projects Issued by Ministry of Transportation
	Conditions of Contract for Underground Works (Emerald Book)	Standard Construction Bidding Documents for Railway Projects Issued by National Railway Administration
	Form of Contract for Dredging and Reclamation Works (Blue Book)	Conditions of Contract for Civil Works of Water Resources and Hydropower Projects Issued by the Ministry of Water Resources
	.....	.....

Comparison of Multi-Tier Dispute Resolution Mechanism under FIDIC and China's Model Construction Contracts

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(2017 FIDIC and 2020 China's MCC)		Engineer's Determination	DAB's Decision	Amicable Settlement	Mediation	Arbitration/ Litigation
Dispute Resolution Body	FIDIC	Engineer/Employer's Representative	DAB/DAAB	N/A	N/A	ICC
	China's MCC	Supervision Engineer	DAB	N/A	Mediator	Arbitration / Local Court
Optional or not	FIDIC	Not optional	Not optional	Optional	N/A	Not optional
	China's MCC	Not optional	Not optional if parties agree to use DAB	Optional	Optional	Not optional
Outcome is Binding or not	FIDIC	Binding unless challenged	Binding	Binding	N/A	Binding
	China's MCC	Binding unless challenged	Binding upon signing by the parties	Binding	Binding	Binding
Outcome is Final or not	FIDIC	Final unless challenged	Final unless challenged	Subject to judicial review	N/A	Final
	China's MCC	Subject to judicial review	Subject to judicial review	Subject to judicial review	Subject to judicial confirmation	Final

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Engage in Each Tier: Optional or Mandatory?

Duty to Engage in Each Tier

- **Model Contracts are not Mandatory in Nature**
  - Model contracts are subject to revisions by the parties
- **Optional Tiers**
  - Most tiers under model contracts are optional in general

Consequences of Refusal to Engage

- **Proceeding Unilaterally**
  - The other party may proceed unilaterally with this tier and the following tiers
- **Breach of Contract**
  - The other party may claim for damages, however it is not commonly seen in practice

Impact on Right to Arbitrate/Litigate

- **Substantive Impact**
  - Rarely leads to inadmissibility or dismissal
- **Procedural Impact**
  - Proceedings may be delayed at acceptance stage, or due to objections raised by the other party

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Outcome of Each Tier: Binding or Final ?

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Challenge – sending Notice of Dissatisfaction (NOD) within time limit

- Consequence 1 – Outcome will not become binding/final
- Consequence 2 – Proceed with the following tiers
- Consequence 3 – Distinguish the accepted and unacceptable outcome (partial challenge)

Binding – means the parties shall comply with the outcome

- Failure of sending NOD within time limit will render the outcome as binding on the parties
- Failure to comply with the outcome may constitute breach of contract and lead to damage claim even unilateral termination

Final – means arbitrators / judges have no power to open up the outcome

- Outcome cannot be enforced unless converted through Trial / Payment Order / Judicial Confirmation for Mediation Agreements, which involves different level of substantive review
- Outcome may be regarded as factual evidence/ expert witness statement

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THE FIDIC GOLDEN PRINCIPLES

FIRST EDITION 2019

DAB Mechanism: Nature, Appointment, Review Procedure and Legal Effect

Nature of DAB

- **Type of Disputes**
  - All types of disputes?
  - Only technical and commercial disputes?
- **Standing v Ad Hoc**
  - Upon signing the Contract
  - Certain period after signing the Contract
  - Certain period after dispute arising

Appointment of DAB

- **Appointing Mechanism**
  - One, three or more?
  - Each party appoint one member and chairperson appointed by the other members
- **Appointing Entity**
  - Court / Government
  - Abitration Commisions
  - Industry Associations

Review Procedure

- **Form of Review**
  - Documentary based?
  - Hearing based?
  - Site inspection/visit
- **Timeline for Review**
  - 14 / 28 / 84 days?
  - Such period as may be agreed otherwise
- **Cost Sharing**

Legla Effect of Decision

- **Binding**
  - Effect of Challenge
  - Effect of failure to conply
- **Final**
  - Effect of Challenge
  - Review by arbitrator/judge
- **Enforceable**
  - Payment Order
  - Judicial Confirmation

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Thank you for your attention!

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Multi-tier Dispute Resolution under FIDIC Contracts

Asel El Housan
AEH UK Limited

ISSUES/CONTENTS

1 Waivable and Non-Waivable Time Bar

2 FIDIC 1999 Process

3 FIDIC 2017 Process

4 Conclusion

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Waivable and Non-Waivable Time Bars

- Non-Waivable Time Bar nullifies the claiming party's claim, while the Engineer has the power to waive the time bar in the waivable time bar.
- FIDIC 2017 changed the Notice and particular claim submission time bar and added a non-waivable time bar for the referral of the Dispute to the DAAB.

FIDIC 1999 Process

S/C	Action	Time Bar
2.5	Employer's Claim	ASAP
20.1	Contractor's Notice* Particular** Engineer's Response	28 Days 42 Days 42 Days
3.5	Agreement or Determination	No Time Bar
20.4	DAB Referral DAB Decision*	No Time Bar 84 Days
20.4	NOD*	28 Days
20.5	Amicable Settlement	56 Days
20.6	Arbitration	No Time Bar
20.8	No DAAB in place	No Time Bar
20.7	Enforcement of F&B DAB Decision	No Time Bar

* Non-Waivable Time Bar
** Waivable Time Bar

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FIDIC 2017 Process

S/C	Action	Time Bar
20.2.1 20.2.2 20.2.4 20.2.4	Notice of Claim** Engineer's Reply to delayed NOC Fully Detailed Claim** Engineer's Reply to delayed FDC (Partially)	28 Days 14 Days 84 Days 14 Days
3.7.3 3.7.3	Agreement Determination	42 Days 42 Days
3.7.5	NOD*	28 Days
21.4.1 21.4.3	DAB Referral* DAB Decision*	42 Days 84 Days
21.4.4	NOD*	28 Days
21.5	Amicable Settlement	28 Days
21.6	Arbitration	No Time Bar
21.8	No DAAB in place	No Time Bar
21.7	Enforcement of F&B DAB Decision	No Time Bar

* Non-Waivable Time Bar
** Waivable Time Bar

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Bridging the Gaps in Construction Dispute Claim Procedures under FIDIC Model Contracts and Vietnamese Law

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Partner of Nishimura & Asahi (Vietnam) Law Firm

Executive Committee Member of SCLVN

Abstract

Construction contract disputes are among the most complex and challenging disputes to resolve in Vietnam and globally. The dispute settlement process can be time-consuming and place a significant financial burden on both parties. At the same time, it may strain the cooperation between the contractor and the employer in fulfilling the construction contract. The concept of claim procedures has been created to help handle conflicts between parties during the performance, aiming to prevent them from escalating into challenging lawsuits and to reduce significant disputes between parties while enhancing the efficiency of the construction contracts.

The claim procedures are the pre-litigation stage outlined in both Vietnamese law – as a domestic framework – and the FIDIC model contracts – as an internationally recognized standard. Understanding and effectively implementing these claim procedures helps minimize conflicts and protects the parties' rights and interests. However, there are some gaps between the claim procedures and their consequences under the FIDIC model contracts and the law of Vietnam, which may practically result in significant obstacles to the application and the effect of claims.

This paper will examine the regulations for claim procedures for construction disputes under FIDIC model contracts and Vietnamese law from theoretical and practical perspectives. It will identify the challenges inherent in applying these frameworks and provide

recommendations to enhance the effectiveness of claims and dispute resolution processes in construction disputes to create a foundation for legal harmonization of the claim procedures and improve their efficiency.

Keywords: Claim procedures, FIDIC model contracts, Vietnamese construction contracts, construction dispute resolution.

1. Introduction

1.1 The Concept of Claim

During the execution of a construction project, disputes and unresolved issues may arise among stakeholders, potentially affecting the project timeline, costs, and the rights and interests of the involved parties.[1] These challenges highlight the critical need for an effective mechanism to allocate risks[2] and swiftly resolve conflicts to ensure the smooth progression of the project. The concept of "Claim" in construction contracts was established to provide a structured approach for addressing disputes, mitigating financial risks, and maintaining project efficiency, recognizing this necessity.

The concept of "Claim" was first introduced in the initial edition of the FIDIC Red Book, published in 1957, and has since been maintained and further developed in subsequent editions.[3] In Vietnam, this concept was first briefly mentioned under Circular 02/2005/TT-BXD as one of the clauses of an EPC contract without any stipulation or guidance.[4] Much

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[1] Chaitanya Khekale, Nityanand Futane: Management of Claims and Disputes in Construction Industry. International Journal of Science and Research 4(5), 849 (2015), https://www.ijsr.net/archive/v4i5/SUB154227.pdf, last accessed 2025/03/02.

[2] Ellis Baker, Richard Hill, and Ibaad Hakim: Allocation of Risk in Construction Contracts. The Guide to Construction Arbitration. 5th edn. Global Arbitration Review (2023), https://globalarbitrationreview.com/guide/the-guide-construction-arbitration/fifth-edition/article/allocation-of-risk-in-construction-contracts, last accessed 2025/03/02;

Axel-Volkmar Jaeger and Götz-Sebastian Hök: FIDIC - A Guide for Practitioners. p. 358. Springer (2010).

[3] Christopher R. Seppälä: Contractor's Claims Under the FIDIC Contracts for Major Works. Construction Law Journal, 5 (2005), https://www.fidic.org/sites/default/files/13%20seppala_cont_claims_2005.pdf, last accessed 2025/03/02.

[4] Construction Contract Form No. 03/BXD/HDXD of Decree 02/2005/TT-BXD.

later, it was formally incorporated and stipulated under Decree 48/2010/ND-CP.[5] It has continued to be regulated under the currently applicable Decree 37/2015/ND-CP,[6] reflecting the country's effort to align with international construction contract standards.

Under the current FIDIC Red Book, specifically the 2017 edition, which serves as the primary subject of discussion in this paper, a Claim is explicitly defined as a request or assertion by one party against the other based on an entitlement arising from the contract's terms and conditions or applicable laws.[7] In contrast, under Vietnamese law, a Claim is understood as the right of one party to redress against the other for a breach or incomplete performance of contractual obligations.[8]

Thus, it is commonly understood that a Claim in a construction contract typically refers to the Contractor's entitlement of additional payment, an extension of time (EOT), as reflected in former versions of FIDIC.[9] However, the Claim, nowadays, is not solely limited to the Contractor's entitlement. However, the Employer and any party to the contract can initiate any entitlement or relief they believe they should grant.[10]

1.2 The role of Claim procedures in construction disputes

Construction projects are inherently long-term processes, frequently involving competing interests related to project timelines, huge budgets, and enormous impacts on parties' benefits. Notwithstanding diligent planning and execution, disputes may arise at any stage of the construction progress concerning matters such as alleged breaches of contract or unforeseeable

[5] Article 43 of Decree 48/2010/ND-CP.

[6] Article 44 of Decree 37/2015/ND-CP.

[7] Sub-Clause 1.1.6, FIDIC 2017 Red Book.

[8] Article 44.1 of Decree 37/2015/ND-CP.

9 Sub-clause 20.1, FIDIC 1999 Red Book, Sub-clause 20.1, FIDIC 2017 Red Book.

[10] Sub-Clause 20.1, FIDIC 2017 Red Book.

physical conditions. When such conflicts cannot be resolved through negotiation or alternative dispute resolution mechanisms, litigation becomes necessary, presenting a distinct set of challenges for all involved parties.

Hence, the existence of the Claim process is to early resolve conflicts at the time when they arise since, at that time, every record, document, witness, and related person is still on the site,[11] and prevent challenging lawsuits later where the facts and evidence cannot be fully collected.

Indeed, the Claims procedures allow parties to promptly address contractual inadequacies before they escalate into disputes while protecting their rights through timely communication and documentation. By setting time bars, document requirements, and required procedures, a problem during the construction process shall be raised promptly and contemporarily via a Notice of Claim (NoC) for the parties' investigation. It ensures all parties are aware of potential issues and can take proactive measures. Notably, the Engineer can timely give instructions to the Contractor to solve problems, or the Employer has enough time to prepare finance for the additional work. Then, parties can continuously monitor, update, and assess the outcome of claims to account for changing circumstances or new information arising during the project. If the issue could be entirely settled through the Claim procedures, prolonged disputes would undoubtedly be avoided at the end of the construction project.[12]

Furthermore, establishing a Claim procedure mechanism facilitates a streamlined resolution of conflicts before a dispute, as parties can amicably settle these conflicts per the provisions stipulated under the FIDIC framework. It also strengthens the execution of a contract by fostering efficient cooperation between the parties, thereby promoting completion and avoiding unnecessary lawsuits that may impact the project's progress and success.

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[11] Axel-Volkmar Jaeger and Götz-Sebastian Hök: FIDIC - A Guide for Practitioners. p. 361. Springer (2010).

[12] *Id, p. 359.*

In summary, the Claim procedures may bring advantages to parties to the construction contracts, as follows: (i) Every party shall be aware of arisen issues early which may affect the project and benefits of parties; (ii) Parties have opportunities to keep contemporary records to resolve issues and avoid future arguments; (iii) Parties can negotiate and apply alternative measures to reduce the effects of the issues and prevent disputes, and (iv) Parties can remain their goodwill cooperation for the completion of the project. The nature and purpose of Claim procedures are established in FIDIC; however, Vietnamese law has yet to provide a unified approach to their definition and application. As mentioned in the following sections, this matter has led to difficulty in practice.

1.3 The Prevalence of Claim Procedure in Vietnam

Claims and disputes are common in large-scale infrastructure projects. Most recently, as seen in Ho Chi Minh City's Metro Line No. 1 (Bến Thành – Suối Tiên), on June 6, 2024, the Ho Chi Minh City Urban Railway Management Board (MAUR) reported that the project has accumulated around 300 contractor claims worth more than VND 30 trillion—70% of the total project investment.[13] These include three significant disputes: two with the Sumitomo-Cienco 6 joint venture and one with Hitachi.[14] In particular, Hitachi has filed a claim at the Vietnam International Arbitration Centre (VIAC), seeking JPY 23.72 billion (approximately VND 4 trillion) for additional costs due to project delays.[15]

Similarly, in 2021, in the Nhon Station - Hanoi Railway Station Urban Railway Line project, in which the Hyundai - Ghella Contractor Joint Venture (HGU) was the contractor, HGU made three claims for additional costs against the Hanoi Management Railway Board

[13] VnEconomy, https://vneconomy.vn/bi-nha-thau-nhat-ban-kien-4-000-ty-dong-chu-dau-tu-metro-so-1-tp-hcm-len-tieng.htm, last accessed 2025/03/02.

[14] *Id.*

[15] *Id.*

(MRB) with a total value of around USD 114.7 million (equivalent to VND 2.5 trillion).[16] HGU exercised its right to claim under the FIDIC Contract in order to address the additional costs associated with MRB.[17] The settlement was prolonged due to the lack of documents provided by MRB and Systra, the project engineer.[18]

Both projects above applied FIDIC contracts, while construction projects are funded by public investment capital, which Decree 37/2015/ND-CP governs.[19] Indeed, the number of claims in both cases is enormous, namely 300 claims with the value of VND 30 trillion for Ho Chi Minh City's Metro Line No. 1[20] and three claims valued at USD 114.7 million for Nhon Station of Ha Noi metro.[21] If the progress to settle claims had been resolved to the mutual satisfaction and agreement of all parties, the dispute volume would have been reduced, and subsequently, the dispute resolution would have become less complex.

2. Legal framework for Claim procedures

2.1 Claim procedures under FIDIC

(a) Overview of Claim procedures

Under FIDIC Red Book, a Claim may raised by both Employer and Contractor when

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[16] Tuoi Tre Online, https://tuoitre.vn/bi-doi-boi-thuong-114-7-trieu-usd-chu-dau-tu-metro-nhon-ga-ha-noi-noi-gi-20211105174632634.htm, last accessed 2025/03/02.

[17] *Id*.

[18] *Id*.

[19] VnEconomy, https://vneconomy.vn/bi-nha-thau-nhat-ban-kien-4-000-ty-dong-chu-dau-tu-metro-so-1-tp-hcm-len-tieng.htm, last accessed 2025/03/02; Tuoi Tre Online, https://tuoitre.vn/bi-doi-boi-thuong-114-7-trieu-usd-chu-dau-tu-metro-nhon-ga-ha-noi-noi-gi-20211105174632634.htm, last accessed 2025/03/02.

[20] VnEconomy, https://vneconomy.vn/bi-nha-thau-nhat-ban-kien-4-000-ty-dong-chu-dau-tu-metro-so-1-tp-hcm-len-tieng.htm, last accessed 2025/03/02.

[21] Tuoi Tre Online, https://tuoitre.vn/bi-doi-boi-thuong-114-7-trieu-usd-chu-dau-tu-metro-nhon-ga-ha-noi-noi-gi-20211105174632634.htm, last accessed 2025/03/02.

the following circumstances happen: (i) The Employer is entitled to any additional payment or Defects Notification Period (DNP) from the Contractor; (ii) The Contractor is entitled to any additional payment or EOT from the Employer; (iii) Either party consider entitling any other entitlements or relief against the other. Concerning grounds (i) and (ii), which pertain to Claims for extensions of time and additional payment, adherence to the Claim procedures stipulated by the FIDIC contract is mandatory. Failure to comply with these procedures shall result in the discharge of all liability related to the event or circumstance giving rise to the Claim. Consequently, non-compliance may lead to waiving the claiming party's entitlement to such Claims.[22]

Conversely, the third ground encompasses Claims falling outside the purview of grounds (i) and (ii), wherein a party asserts entitlement to compensation, time extensions, or other forms of relief. As articulated in FIDIC guidance, this category may extend to encompass diverse forms of contractual relief associated with work execution, including the interpretation of contractual provisions for clarification, the rectification of ambiguities or discrepancies within contract documentation to ensure internal consistency or the issuance of a formal declaration affirming a party's contractual rights.[23] Notably, FIDIC does not prescribe a specific procedural framework for Claims under this third ground. Instead, it stipulates that such Claims are to be resolved by Sub-Clause 3.7 (Agreement and Determination), thereby vesting the Engineer with the authority to adjudicate their validity.[24]

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[22] Philip Norman, Leanie van de Merwe: Claims Resolution Procedures in Construction Contracts, In: GAR's The Guide to Construction Arbitration (Global Arbitration Review), Lexology (2019). https://www.lexology.com/library/detail.aspx?g=9da7a998-dc09-4b61-9387-080f6ee156fb, last accessed 2025/03/02.

[23] Guidance for the Preparation of Particular Conditions - FIDIC 2017 Red Book, p. 46.

[24] Sub-Clause 20.1, FIDIC 2017 Red Book.

(b) Notification and submission of claim

Initially, when a Contractor or Employer identifies a Claim in a construction project contract, they must submit a NoC to the Engineer as soon as practicable but no later than 28 days from the date that the claiming Party is aware or should have become aware of the event or circumstance giving rise to the Claim.[25] This timely submission is crucial, as failure to comply results in, on the one hand, the forfeiture of the right to any additional payment, an adjustment of the Contract Price, an extension of Time for Completion (for the Contractor as the claiming Party), or an extension of the DNP (for the Employer as the claiming Party).[26] On the other hand, the other Party shall be discharged from any liability in connection with the event or circumstance giving rise to the Claim.

In cases where the NoC is served late, the Engineer must, within 14 days upon the reception of the NoC, issue a notice regarding the late submissions and determine its validity.[27] The NoC shall be deemed valid if the Engineer fails to respond within this time limit. The Engineer will then review any disagreement from the non-claiming party as part of the agreement or determination process for the claim. If NoC is confirmed valid, the claiming Party must submit a Fully Detailed Claim within the required time limit. When the NoC is deemed invalid by the Engineer, the claiming Party still has the right to justify the late submission within the Fully Detailed Claim.[28]

After serving the valid NoC, under Sub-Clause 20.2.4 of the FIDIC 2017 Red Book, a Fully Detailed Claim must be submitted to the Engineer within 84 days from when the party became aware or should have become aware of the event or circumstance giving rise to the

[25] Sub-Clause 20.2.1, FIDIC 2017 Red Book.

[26] *Id.*

[27] Sub-Clause 20.2.2, FIDIC 2017 Red Book.

[28] *Id.*

Claim, or another period approved by the Engineer.[29] If the claim arises from a continuing event, the 84-day period begins from when the event started to affect the project.[30] The Fully Detailed Claim must include a clear description of the event or circumstance giving rise to the claim, the legal and contractual basis for the claim (with references to relevant contractual provisions), a detailed calculation of any EOT and/or additional payment sought, contemporary records substantiating the Claim, and any other supporting documents necessary to justify the entitlement.[31] If the claiming Party has not submitted this Fully Detailed Claim within the agreed period, the NoC will lapse and become invalid.[32]

During the process of carrying out claim procedures, contemporary records are required to substantiate the claim. The FIDIC 2017 Red Book defines contemporary records as prepared or generated simultaneously, or immediately after, the event or circumstance giving rise to the Claim. The Engineer may monitor the Contractor's contemporary records, instruct the Contractor to maintain additional contemporary records and be responsible for overseeing compliance with these requirements. However, this does not imply that the Engineer accepts the accuracy or completeness of the Contractor's contemporary records.[33]

After the claiming Party submits a NoC and a Fully Detailed Claim, the Engineer plays a central role in reviewing, accepting, and determining the Claim by Sub-Clause 3.7 of the FIDIC 2017 Red Book.[34] Once the Fully Detailed Claim is submitted, the Engineer will check whether the Claim meets the procedural requirements under Clause 20, including whether the

[29] Sub-Clause 20.2.4, FIDIC 2017 Red Book.

[30] Sub-Clause 20.2.6, FIDIC 2017 Red Book.

[31] Sub-Clause 20.2.4, FIDIC 2017 Red Book.

[32] *Id.*

[33] Sub-Clause 20.2.3, FIDIC 2017 Red Book.

[34] Sub-Clause 20.2.5, FIDIC 2017 Red Book.

Claim was submitted within the prescribed time limits and whether it is supported by sufficient documentation, such as contemporary records, legal justifications, and calculations of entitlement. Then, the Engineer will respond with approval or disapproval and provide detailed comments within the required time limit by the agreement procedure and the Engineer's determination under Sub-Clause 3.7.[35] Once having approved or disapproved a claim, the Engineer shall attempt to reach an amicable settlement with parties or issue a determination.

Any agreement or determination then shall be binding on both Parties.[36] A party dissatisfied with the Engineer's determination must formally register their disagreement through a Notice of Dissatisfaction. This notification served upon both the other party and the Engineer, serves as the critical first step in initiating the dispute resolution process, as outlined within the contract.[37]

A detailed description and procedural flowchart of the FIDIC 2017 claims process are illustrated in the Appendix I for further reference.

(c) Key changes in FIDIC Claim procedures and their implications

Compared to the prevalent 1999 FIDIC edition, the FIDIC 2017 introduces several significant advancements and clarifications within the claim administration processes.

Firstly, a notable distinction lies in the separation of claim procedures from dispute resolution, as codified in distinct clauses within the FIDIC 2017 suite of contracts, in contrast to their combined treatment in the FIDIC 1999 editions. The claim procedures are consequently

[35] *Id.*

[36] Sub-Clause 3.7.4, FIDIC 2017 Red Book.

[37] Sub-Clauses 1.1.29 and 3.7.5, FIDIC 2017 Red Book.

regulated in the FIDIC 2017 more detailed than in the FIDIC 1999.[38]

Secondly, a significant amendment introduced in the FIDIC 2017 requires both the Employer's and the Contractor's claims to comply with the same Claim procedure.[39] Previously, the FIDIC 1999 specifically regulated the Employer's claims under Sub-Clause 2.5, with claim procedures for the Employer being separate and somewhat different from those for the Contractor's claims. Specifically, in the FIDIC Red Book 1999, the Contractor was required to issue its notice within 28 days of becoming aware of an event or circumstance giving rise to the claim and to submit a fully detailed claim within 42 days. By contrast, the Employer was merely required to notify the engineer *"as soon as reasonably practicable after [it] became aware of the event or circumstance giving rise to the claim."*[40] This version of the FIDIC Red Book did not explicitly set time limits/time bars or require the same level of detail for the Employer's claims as it did for the Contractor's claims. When comparing the Employer's and Contractor's claims as regulated in the FIDIC 1999 edition, it is evident that it favors the Employer in terms of claim procedures, as it does not explicitly stipulate a deadline for submitting claims. It means that the Employer's claims have a broader scope, as the absence of a strict time bar makes it easier for the Employer to enforce claims even when notification is delayed. In contrast, if the Contractor fails to provide notice within 28 days, the Contractor's claim may be lapsed.

As a result, the updated FIDIC 2017 addressed this significant imbalance by requiring

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[38] Frédéric Gillion, Rob Morson, Sarah Jackson, Chloé De Jager: The New FIDIC Suite 2017: Significant Developments and Key Changes. International Construction Law Review, p. 398 (2018), https://fidic.org/sites/default/files/ICLR%20Article_The%20New%20FIDIC%20Suite%202017_October%202018%20%5B2018%5D%20ICLR%20384.pdf, last accessed 2025/03/02.

[39] *Id, p. 399.*

[40] Sub-Clause 2.5, FIDIC 1999 Red Book.

the Employer to comply with the same standards as the Contractor. Thus, the Employer's and Contractor's claims were merged into a single regulation under Clause 20. This revision establishes parity between the Employer's and the Contractor's claims, ensuring that both are subject to equitable treatment.

Thirdly, the FIDIC 2017 emphasizes the role of the Engineer in ensuring that all claims are determined reasonably, acting with neutrality and without being deemed to represent the Employer,[41] a provision that was not explicitly stipulated in the previous edition. Although the Employer appoints the Engineer and typically represents the Employer in most aspects of the Contract, under this Sub-Clause, the Engineer must exercise impartiality, ensuring that both Parties are treated equitably, fairly, and without bias.[42]

Fourthly, the scope of the claim is widened by the inclusion of claims in the third ground that may have arisen from *"entitlement or relief ... of any kind whatsoever"* in the FIDIC 2017 Red Book, under Sub-Clause 20.1(c). This provision encompasses any entitlement or relief that a party may be granted under the applicable law governing the Contract, including, for instance, the right in certain civil law jurisdictions to suspend work in response to the other party's failure to fulfill its contractual obligations. Accordingly, the Engineer's authority is broad to issue determinations regarding legal entitlements arising beyond the contractual framework under the provisions of the applicable law. It represents a significant expansion of the Engineer's scope of authority in making determinations.

Fifthly, the time bars in relation to the claim submissions under the FIDIC 1999 and the FIDIC 2017 are quite different. While both the FIDIC 1999 and the FIDIC 2017 provide the time bar for the submission of the NoC being within 28 days after becoming aware, or when he should have become aware, of the event or circumstance giving rise to the claim, the time

[41] Sub-Clause 3.7, FIDIC 2017 Red Book.

[42] Sub-Clause 3.7, Guidance for the Preparation of Particular Conditions - FIDIC 2017 Red Book.

bar for the submission of the full detailed claim of the FIDIC 2017 is longer than the FIDIC 1999, with 84 days in the FIDIC 2017 and 42 days in the FIDIC 1999. Moreover, the FIDIC 2017 introduces a more structured and detailed mechanism, incorporating distinct time-bars that govern the lifecycle of a claim and subsequent dispute resolution, in particular:

(i) The time bar for Notice of Dissatisfaction (NOD): In accordance with Sub-Clause 20.2.5 the FIDIC 2017, after receiving a claim, the Engineer shall proceed under Sub-Clause 3.5 of the FIDIC 2017. If a Party is dissatisfied with the Engineer's determination under such Sub-Clause 3.7 of the FIDIC 2017, it must issue a NOD within 28 days, as required by Sub-Clause 3.7.5 of the FIDIC 2017. If no NOD is issued within this period, the Engineer's determination becomes final and binding on both Parties.

(ii) The time bar to refer DAAB: Following the issuance of the NOD, under Sub-Clause 21.4.1.(a) of the FIDIC 2017, the disputing Party must refer the matter to the Dispute Avoidance/Adjudication Board (DAAB) within 42 days. If the dispute is not referred within this timeframe, the NOD is rendered invalid, and the Engineer's determination prevails.

This evolution from FIDIC 1999 to FIDIC 2017 reflects a deliberate shift toward stricter procedural discipline, i.e., specific time bars to submit NOD and refer DAAB for the settlement of the NOD, but facilitates the claiming party in the preparation of full detailed claim, i.e., the longer time for the submission. The introduction of multiple time-bars under the 2017 edition underscores the importance of prompt notice, thorough substantiation, and timely progression of claims and disputes. By imposing distinct deadlines at each stage, FIDIC 2017 seeks to enhance contract administration, prevent delays, and ensure greater finality and certainty in the resolution of claims.

2.2 Claim under Vietnamese law

(a) Overview of Claim under the law of Vietnam

Within the Vietnamese legal framework, specifically under Decree 37/2015/ND-CP, as amended ("**Decree 37**") and subsequent amendments, procedures for addressing contractual issues and disputes during construction projects are established, wherein the concept of 'Claims' is implicitly recognized. According to Article 44 of Decree 37, a Claim may arise when one party detects the other party's failure to perform the obligations agreed upon during the contract performance.[43] In this case, the detecting party has the right to request the other party to fulfill such obligations by lodging a Claim with foundations or specific evidence against the other party about this matter.[44] It mirrors pretty similar to the Claims procedures following FIDIC provisions.

Nevertheless, it may be linguistic confusion that the wording of 'Khiếu nại' in Article 44 of Decree 37 may be susceptible to translation or interpretation as 'complaint' – an administrative procedure, thereby obscuring the distinct legal concept of 'claim.' This misinterpretation is prevalent in state-funded projects, where the contractual relationship risks being construed as an administrative hierarchy. Consequently, the non-state party's position is diminished to that of a complainant, subject to the state party's unilateral justification and approval through administrative procedures.

(b) Procedures for lodging Claims during contract performance

Within 56 days of an issue arising where one party fails to perform its contractual obligations per the terms agreed upon in the contract, the party detecting the breach must promptly notify the other party and lodge a formal Claim. If the Claim is submitted after these 56 days, both parties shall be required to comply strictly with the terms and conditions set out

[43] Article 44.1 of Decree 37.

[44] Article 44.1 and 44.2 of Decree 37.

in the contract.[45]

Under Vietnamese law, no explicit provisions detail the formal requirements or specific format for filing a complaint. The law just requires that Claims be sent to the correct transaction address or the designated communication address as agreed upon and specified in the contract.[46] The contents of the Claim must set out the legal grounds, accompanied by supporting evidence and detailed explanations to substantiate the claims being raised.[47]

Within 28 days from the date of receiving the Claim, the receiving party must provide grounds and evidence demonstrating that the complaint is inconsistent with the terms of the contract. If such grounds and evidence are deemed unreasonable or fail to prove that the complaint is unfounded, the receiving party shall be considered to have accepted the content of the Claim. Failure to respond within the prescribed 28-day period shall also be deemed as acceptance of the Claim's content.[48]

In cases where the parties under the contract cannot resolve the claims, they shall be escalated into disputes. They will be settled per the dispute resolution provisions set forth in this Decree.[49]

3. Gaps and recommendations in the Vietnamese legal framework

3.1 Difference between the Vietnamese regulatory framework and FIDIC regulations

The differences between the Vietnamese regulatory framework and FIDIC regulations likely stem from their distinct legal origins, risk allocation approaches, and enforcement

[45] Article 44.3 of Decree 37.

[46] Article 44.5 of Decree 37.

[47] Article 44.2 of Decree 37.

[48] Article 44.4 of Decree 37.

[49] Article 44.5 of Decree 37.

mechanisms. For instance, while FIDIC regulations are based on international best practices in construction law, emphasizing contractual autonomy, risk-sharing, and standardization to facilitate cross-border infrastructure projects, Vietnamese law follows a civil law system, where state control plays a dominant role in construction regulations. Decree 37 and other related laws impose mandatory requirements, prioritizing government oversight and the interest of parties over contract autonomy, which may cause unforeseeable damage to a party. These gaps affect the execution of construction contracts and the Claim procedure, leading to legal uncertainty and procedural inconsistencies.

Understanding the differences between the Vietnamese regulatory framework and FIDIC regulations is essential for parties involved in construction contracts in Vietnam. While FIDIC regulations follow internationally recognized standards with explicit provisions on risk allocation and contract management, Vietnamese laws impose mandatory requirements rooted in state management and the country's legal perspective. Therefore, the provisions under FIDIC and Vietnamese law differ in several aspects, and these differences can significantly affect the execution of construction contracts in general and the exercise of the Claim procedure in particular.

(a) The categories of Claims

The scope of claims under Vietnamese law and FIDIC regulations reflects a fundamental difference in approach.

Under Decree 37, the right to file a claim is narrowly confined to breaches arising from a party's failure to perform under the contractual terms. As reflected in Article 44.1 of Decree 37, this breach-centric approach ties claims directly to non-performance or improper performance under the contract.

In contrast, FIDIC contracts adopt a broader definition of claims, allowing parties to submit claims based on various factors, many of which are not necessarily contractual breaches.

This broader definition, set out in Sub-Clause 1.1.6 of the FIDIC 2017 Red Book, allows parties to seek relief for issues beyond simple breaches, as a "Claim" may include any entitlement or relief under any Clause of the FIDIC, or otherwise in connection with, or arising out of, the contract or the execution of the works. It enables parties to raise claims not only for breaches but also for events such as unforeseeable site conditions,[50] changes in law,[51] variations instructed by the engineer,[52] or adjustments to time and cost caused by external[53] or exceptional events.[54] This comprehensive approach reflects FIDIC's focus on equitable risk allocation and flexibility, ensuring that parties have precise mechanisms to address breach-related claims and those triggered by external factors beyond their control.

(b) The consequence of the failure to comply with the Claim procedure

While FIDIC expressly states that failure to initiate a claim for payment and/or EOT and DNP within the specified timeframe results in the loss of the right to claim,[55] Vietnamese law provides no clear guidance on the legal consequences of failing to submit a timely claim.

In particular, under Decree 37, if a party fails to raise a claim within the stipulated period, the law requires both parties to continue performing their obligations per the signed contract. This procedural flexibility may appear less rigid than FIDIC's strict time-bar mechanism, but it also introduces legal uncertainty, particularly in the event of disputes. Without clear legal consequences for late claims, parties may still attempt to pursue such claims during later stages of dispute resolution. It leads to prolonged arguments over admissibility and

[50] Sub-Clause 4.12, FIDIC 2017 Red Book.

[51] Sub-Clause 13.6, FIDIC 2017 Red Book.

[52] Sub-Clause 13.3.1, FIDIC 2017 Red Book.

[53] Clause 8, FIDIC 2017 Red Book.

[54] Sub-Clause 18.1, FIDIC 2017 Red Book.

[55] Sub-Clause 20.2.1, FIDIC 2017 Red Book.

potentially inconsistent interpretations by different dispute resolution bodies. This ambiguity can create significant risks for foreign investors, who may be more familiar with FIDIC's definitive time-bar rules and mistakenly assume that failing to claim on time automatically forfeits their rights when Vietnamese law takes a more open-ended approach. This consequential difference raises a legal question of whether FIDIC's provision on losing the right to claim after exceeding the stipulated time limit aligns with and is enforceable under Vietnamese law.

Given that although Vietnamese law provides a statute of limitations for enjoying rights or releasing from obligations,[56] this statute of limitations shall be regulated and determined by the law according to Article 149 of the 2015 Civil Code. It may be construed that the waiver of contractual rights and obligations due to non-compliance with stipulated timeframes is exclusively within the purview of statutory law, as exemplified by the waiver of rights under Article 13 of the Law on Commercial Arbitration.[57] Therefore, the loss of rights due to non-compliance with contractual timeframes may raise controversies in practice.

(c) The differences regarding the time limits for Claim procedures

Under Vietnamese law, Claim procedures in construction contracts are primarily governed by Decree 37, which applies mandatorily to contracts related to construction projects funded by public investment capital, state capital outside public investment, and construction contracts between enterprises executing public-private partnership (PPP) projects with its contractors.[58] It means that for construction projects funded by state capital, the application of

[56] Articles 150.1 and 150.2 of the Civil Code.

[57] Under Article 13 of the Law on Commercial Arbitration, a party that detects a violation of this Law or the arbitration agreement but continues to conduct arbitral proceedings and does not protest the violation within the time limit set by this Law will lose its right to protest at the arbitration or court.

[58] Article 1.2 of Decree 37.

Decree 37 is compulsory. On the other hand, Decree 37 just encourages relevant organizations and individuals to refer to its provisions when formulating and managing construction contracts for projects funded by non-state capital sources.[59] It indicates that Decree 37 serves as a non-binding reference framework for privately-funded construction projects, meaning parties can either adopt its provisions or apply alternative contractual standards, such as the FIDIC Model Contracts, based on mutual agreement between the contracting parties.

The issue is that it is typical for projects involving state capital - including those with the Employer being state authority and contractors and those where private main contractors engage subcontractors to execute state-funded projects - to be signed in the form of the FIDIC contract.[60] While the law of Vietnam allows the claiming party to raise a claim within 56 days from the date of the event and the response time bar for the recipient is 28 days, the corresponding timelines in FIDIC Contract 2017 are shorter, with 28 days for the submission of a Claim and 14 days for the Engineer's response. This discrepancy may raise a legal issue for the prevailing application of them since construction may be under the direct government of both the FIDIC contract and Decree 37, especially in the correlations (i) the state Employer and the Contractor, (ii) the private Employer and the Contractor and (iii) the main Contractor and the Sub-Contractor in the state-funded projects.

❖ *The state Employer and the Main Contractor*

The answer in this situation may be clear: the claim procedures and corresponding time limits set out under Decree 37 must be applied because the Employer is a state entity and the state funds the construction project.[61]

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[59] *Id.*

[60] International Bar Association, FIDIC – Construction Law International – October 2023, question 2. https://www.ibanet.org/fidic-clint-october-2023, last accessed 2025/03/02.

[61] Article 1.2 of Decree 37.

Given that the application of the FIDIC contract is allowable in this case, Decree 37 requests parties to adjust the FIDIC contracts to align with the regulatory framework of Decree 37.[62] Therefore, the claim procedures and consequences under the FIDIC contract may need to be adjusted in conformity with Decree 37. In such cases, the parties may mutually agree to amend the Particular Conditions of the FIDIC contract to ensure compliance with Decree 37. This approach aligns with the contractual flexibility permitted under FIDIC, which allows modifications through the Particular Conditions.[63]

❖ *The private Employer and the Contractor*

In contrast, for projects financed entirely by private capital, if the parties agree to adopt FIDIC contracts, the claim procedures and time limits will follow the provisions of FIDIC because, in this case, they are not the compulsory subject of Decree 37.[64]

❖ *The main Contractor and the Sub-Contractor in the state-funded projects*

The legal status of subcontracts between private main contractors and subcontractors within the state-capital projects presents a more complex regulatory challenge. Specifically, the direct and mandatory applicability of Decree 37 to such subcontracts remains a subject of legal ambiguity.

On one hand, it could be argued that the subject of these subcontracts pertains to state-funded projects, thereby necessitating the mandatory application of Decree 37. On the other hand, given that the parties to the subcontracts are private entities and the payment and cash flow associated with these agreements are derived from private funds, it may be more appropriate to recommend the application of Decree 37 rather than insisting on strict conformity.

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[62] Article 54.3 of Decree 37.

[63] Clause 1.5, FIDIC 2017 Red Book.

[64] Article 1.2 of Decree 37.

3.2 Recommendations

While Vietnamese law provides specific mechanisms for handling contractual disputes, its claim procedures remain underdeveloped compared to the structured approach under FIDIC contracts. The following recommendations are proposed to harmonize Vietnamese law with international best practices and improve dispute resolution efficiency.

One of the most significant limitations of Vietnamese law is the absence of a well-defined claim mechanism akin to Clause 20 of the FIDIC 2017 Red Book. The complaint mechanism under Decree 37 lacks detailed procedures regarding claim submission, required supporting documentation, and a structured timeline for claim resolution. Instead, it merely serves as a notification from one party to the other, asserting that the latter has failed to fulfill its contractual obligations. This results in ambiguity, inconsistency, and potential disputes between contractual parties since Decree 37 does not provide whether parties must proceed with Claim procedures to enjoy or be reset or waive their rights. To address this gap, Vietnamese construction law should introduce a requirement for detailed claim documentation, including contemporary records, legal justifications, financial calculations, and technical assessments, to facilitate fair and objective evaluations.[65] It would discourage frivolous claims and ensure that only well-substantiated claims move forward. These changes will help standardize claim-handling practices, reduce ambiguity, and ensure that claims are addressed before they escalate into disputes. It aligns Vietnamese law more closely with international contractual standards, increasing its attractiveness to foreign investors.

Beyond the amendment to the law, equipping project managers and engineers with

[65] Seminar on Legal Obstacles, Risks, and Solutions for Construction Contractors in Vietnam, p. 28, https://www.viac.vn/images/News-and-Events/Events/VAW2023/1205%20VIAC%20VACC/Tai-lieu-su-kien-12.05-chieu.pdf, last accessed 2025/03/02.

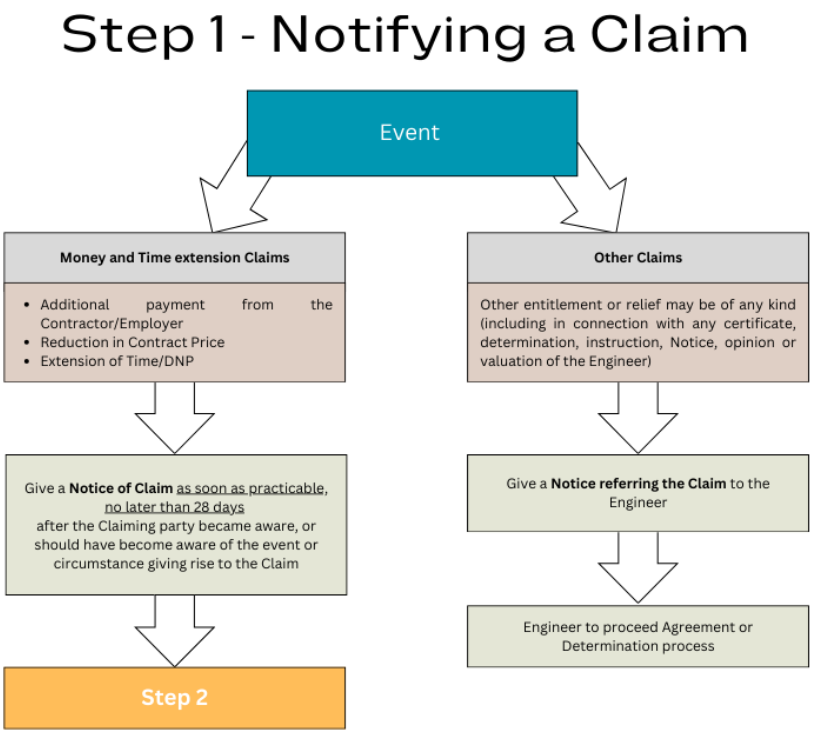
comprehensive legal knowledge concerning FIDIC claim procedures and relevant Vietnamese law will significantly enhance claim resolution efficiency.[66] Specifically, individuals whom parties appoint as their representatives at the site need to be provided with practical knowledge, helping professionals enhance their skills in managing claims and resolving disputes effectively because their awareness and action will be present to parties in the execution of the claim procedures. Suppose they could analyze and handle claims and understand claim procedures under FIDIC contracts and Vietnam law. In that case, they can recognize and proactively address potential claim situations as soon as they arise rather than reacting after disputes emerge. A proactive approach to dispute prevention will encourage these personnel to diligently collect and record pertinent information, documents, data, and factual evidence throughout the project lifecycle. This meticulous record-keeping documentation practice will facilitate prompt and informed decision-making during entitlement-generating events, thereby streamlining the settlement of arising claims and reducing the likelihood and severity of potential disputes.[67]

Furthermore, the contract management and conclusion should be focused on making the claim procedures more transparent and efficient. Specifically, the harmonization and customization of claim procedures within the construction contract should be prioritized, considering national regulatory frameworks and FIDIC model contract provisions.

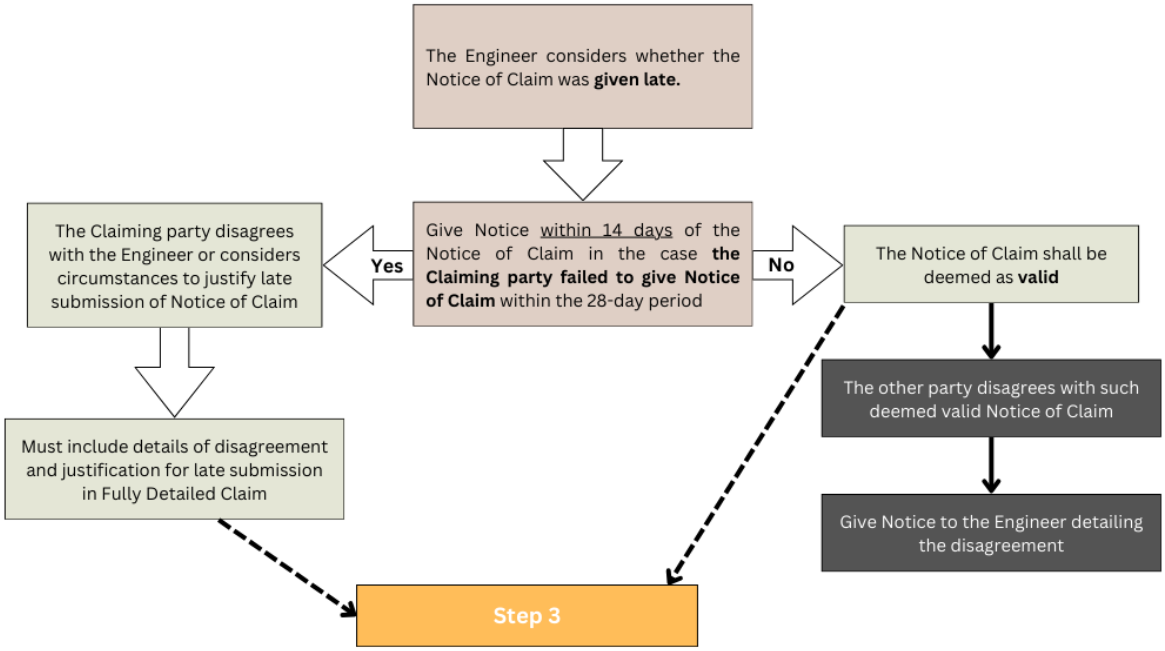
[66] Enterprise News Magazine, https://diendandoanhnghiep.vn/phong-tranh-rui-ro-trong-hop-dong-xay-dung-10143482.html, last accessed 2025/03/02.

[67] *Id*.

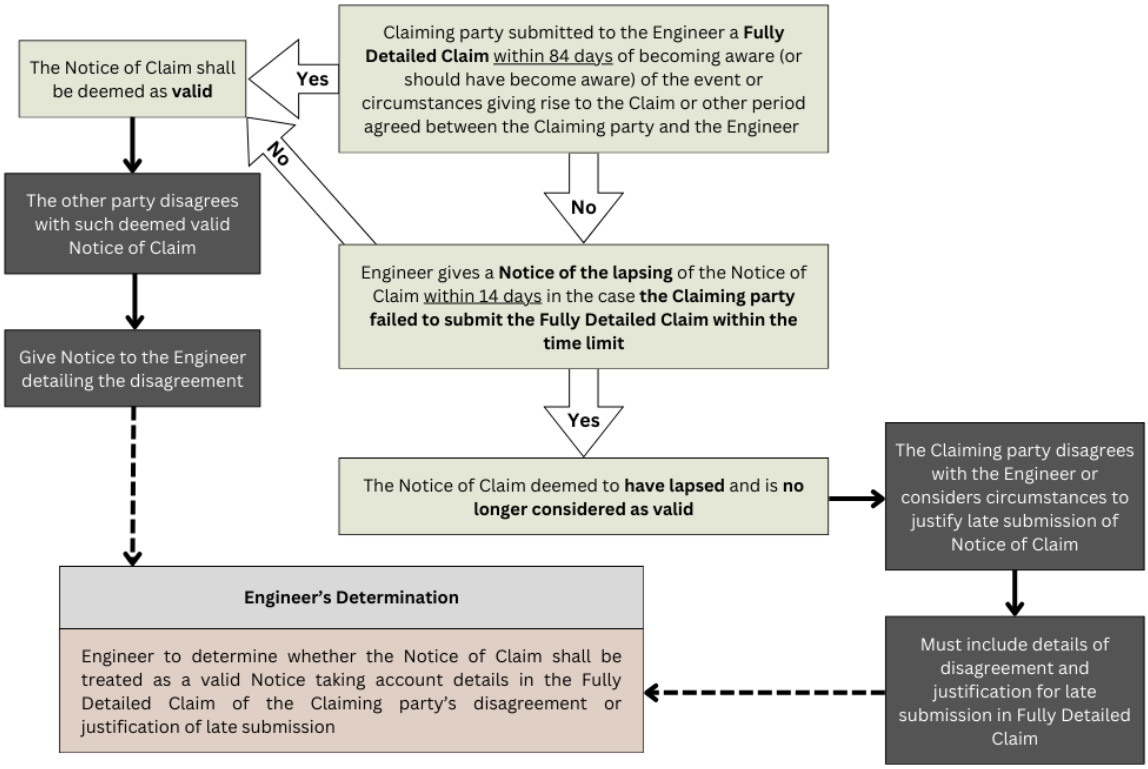
Appendix 1: ILLUSTRATION OF CLAIM PROCEDURES



Step 2 - The Engineer's Initial Response



Step 3 - Particularising the Claim



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Bridging the Gaps in Construction Dispute Claim Procedures under FIDIC Model Contracts and Vietnamese Law

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HO CHI MINH CITY INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE
Raising the Bar: Enhancing Quality in Dispute Resolution for Vietnam's Construction Projects – Bridging International Expertise with Domestic Practice

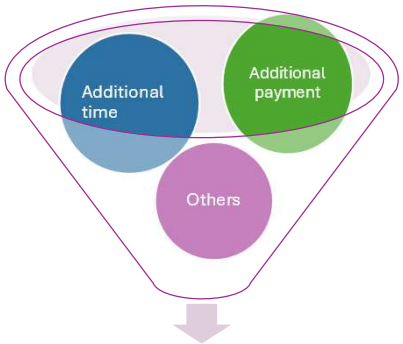
INTRODUCTION

HICAC 2025

NISHIMURA & ASAHI

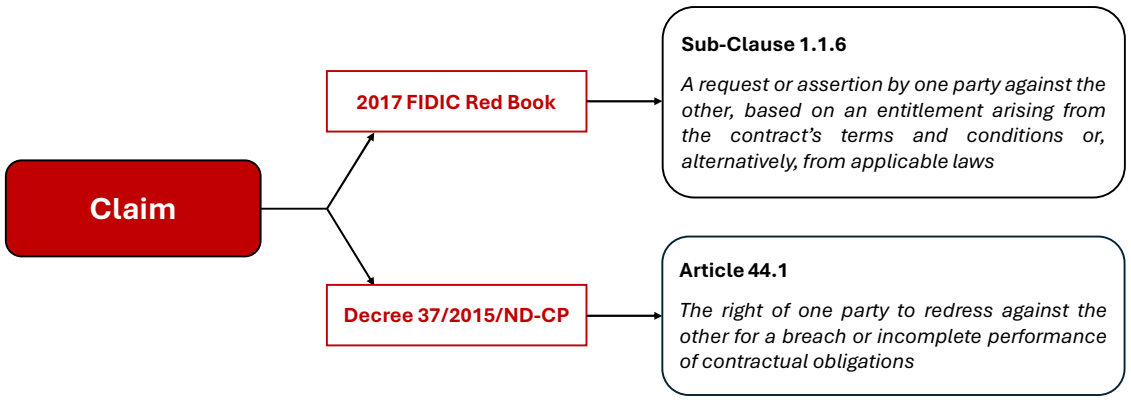
THE CONCEPT OF CLAIM

FIDIC	**FIDIC Red Book, 1957**
Vietnamese law	**Decree 48/2010/ND-CP** **Circular 02/2005/TT-BXD:** (a clause of EPC Contract)

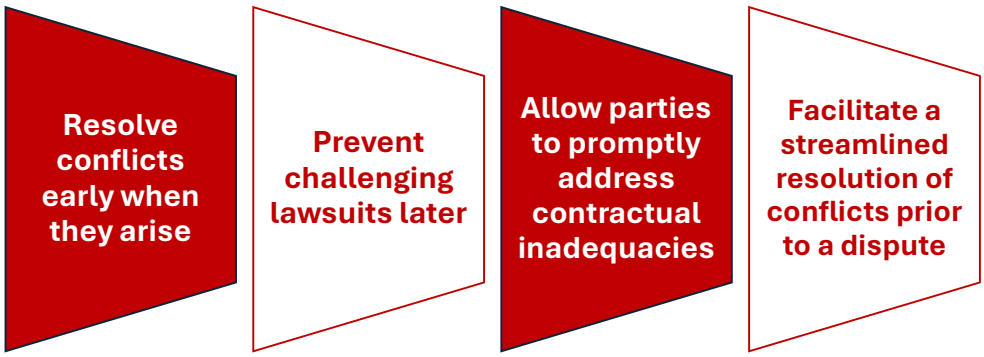


Claim

THE CONCEPT OF CLAIM



THE ROLE OF CLAIM PROCEDURES IN CONSTRUCTION DISPUTES



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THE ROLE OF CLAIM PROCEDURES IN CONSTRUCTION DISPUTES

Advatanges to parties to the construction contracts

1. Every party shall be aware of arisen issues early which may affect to the project and benefits of parties
2. Parties have opportunities to keep contemporary records to resolve issues and avoid future arguments
3. Parties can negotiate and apply alternative measures to reduce the effects of the issues and prevent disputes
4. Parties can remain their goodwill cooperation for the completion of the project

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THE PREVALENCE OF CLAIMS IN CONSTRUCTION PROJECTS

Case 1: Metro Line No. 1 (Bến Thành – Suối Tiên)

- **Total contractor claims:** ~300 claims, valued at **VND 30 trillion** (≈70% of project investment)
- There are three major disputes between MAUR and contractors, i.e., Sumitomo-Cienco 6 and Hitachi.

Case 2: Nhon - Hanoi Railway Station Urban Railway Line project

- **Total contractor claims:** USD 114.7 million (equivalent to VND 2.5 trillion)
- The settlement was prolonged due to the lack of provided documents

=> If the progress to settle claims had been resolved satisfactorily to all parties, the dispute volume would have been reduced, and the dispute resolution progress would have become less complex.

LEGAL FRAMEWORK FOR CLAIM PROCEDURES

CLAIM PROCEDURES UNDER FIDIC

OVERVIEW

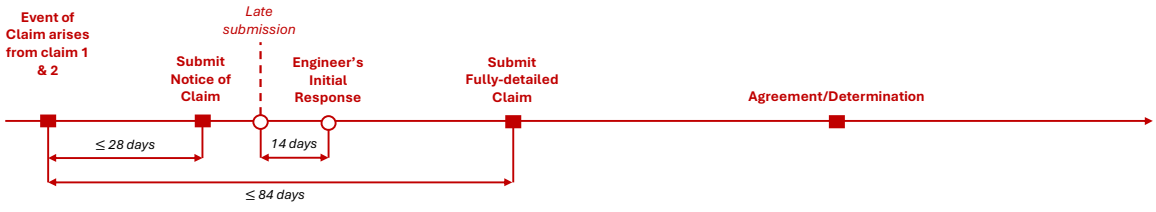
Claim

by Employer or Contractor

1. **Employer is entitled to any additional payment or Defects Notification Period (DNP) from Contractor**
2. **Contractor is entitled to any additional payment or EOT from Employer**
3. **Either party consider entitling any other entitlements or relief against the other**

***(*)** Failure to follow the procedures may result in loss of liability and the claiming party's right to make the Claim.*

CLAIM PROCEDURES UNDER FIDIC



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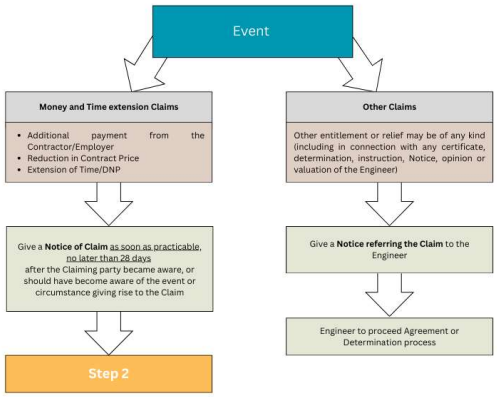
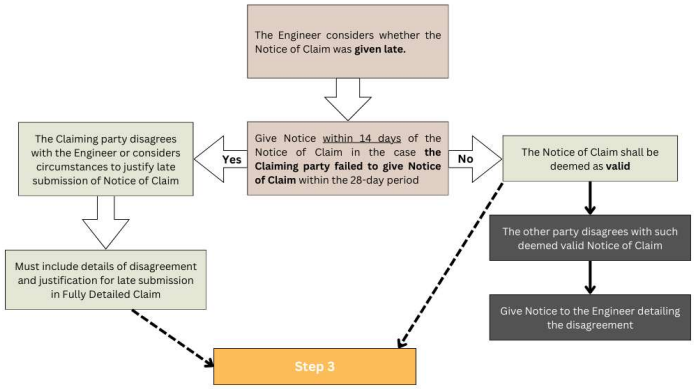
Step 1 - Notifying a Claim



Step 2 - The Engineer's Initial Response



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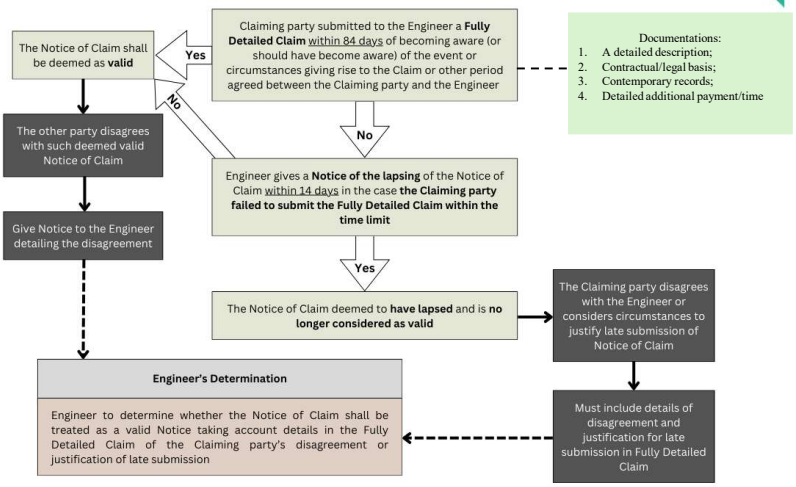
Step 3 - Particularising the Claim



CLAIM PROCEDURES UNDER FIDIC

Key changes in FIDIC Claim procedures

Comparison:

1999 and 2017

1. Separation of claim procedures from dispute resolution
2. Same claim procedures for Employer and Contractor
3. Emphasizes the role of the Engineer
4. Scope of the claim is widened by the inclusion of claims in third ground
5. Different time bars for claim procedure-related submissions

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CLAIM PROCEDURES UNDER VIETNAMESE LAW

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VIAC VIETNAM INTERNATIONAL ARBITRATION CENTRE

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OVERVIEW

One party detects the other party's **failure to perform the obligations as agreed in the contract** during the contract performance

The detecting party may **lodge a Claim**

(*) The term "Khiếu nại" in Article 44 of Decree 37 may cause confusion, as it can be misinterpreted as "complaint" (an administrative procedure), rather than the legal concept of a "claim"

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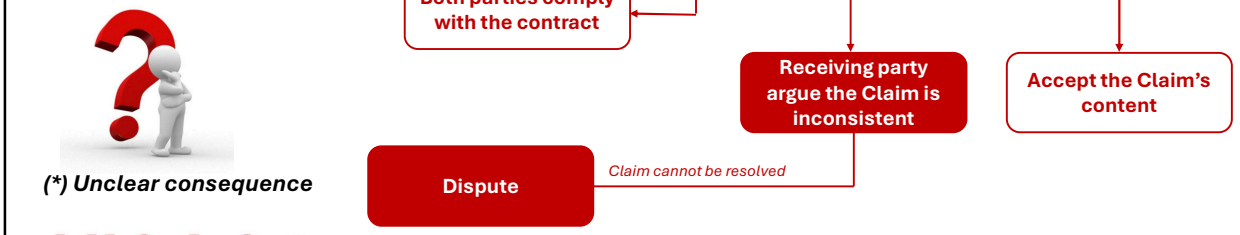
CLAIM PROCEDURES UNDER VIETNAMESE LAW



(*) Unclear consequence

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GAPS AND RECOMMENDATION IN VIETNAMESE LEGAL FRAMEWORK

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VIETNAMESE REGULATORY FRAMEWORK VS. FIDIC REGULATIONS

The categories of Claims	The consequence of failure to comply	The difference in time limits

• *Decree 37*: ties claims directly to **non-performance or improper performance** under the contract
• *FIDIC:* allows parties to submit claims based on various factors which are **not necessarily contractual breaches**
	• *Decree 37*: the law merely requires both parties to **continue performing their obligations** in accordance with the signed contract.
	  • **Unclear consequence** (loss of right) if claiming party fails to comply with regulations.
	• *FIDIC:* failure to initiate a claim results in the **loss of the right to claim**
		• *Decree 37*:
		  • raise a claim within 56 days
		  • response within 28 days by the receipt party
		• *FIDIC:*
		  • raise a claim within 28 days
		  • Engineer's response within 14 days

RECOMMENDATIONS

Vietnamese construction law should detail claim documentation, procedures and consequence (compliance and non-compliance).

Equipping project managers and engineers with legal knowledge on claim procedures.

Ensuring that claim procedures in construction contracts are clear, transparent, and efficient by harmonizing and tailoring them to align with both national law and FIDIC regulations.

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Q&A

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Thank you for your attention!

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Evaluating the Efficacy of Dispute Adjudication Boards (DAB) and Dispute Avoidance/Adjudication Boards (DAAB) in Infrastructure Dispute Resolution in India: Practical Implementation or Mere a Stepping Step Before Arbitration? [1]

Abstract:

This paper examines the practical impact of Dispute Adjudication Boards (DAB) and Dispute Avoidance/ Adjudication Boards (DAAB) in resolving infrastructure disputes in India, as well as whether they represent a genuinely effective mechanism or merely serve as a preliminary step before arbitration. Drawing on FIDIC's binding/interim-binding approach, the paper highlights how these boards—particularly DAABs under the 2017 FIDIC suite—provide real-time, expert-led adjudications and encourage proactive dispute avoidance.

Empirical evidence, including multi-lateral development bank project data, suggests that only a small fraction of DAB/DAAB decisions progress to full arbitral proceedings, indicating a high acceptance rate among contracting parties. Yet, in Indian public-sector contexts (e.g., Airports Authority of India and National Highways Authority of India), the efficacy varies depending on whether boards are structured as standing bodies with external experts (closer to FIDIC's vision) or internal committees vulnerable to bias and delays.

Indian courts, generally upholding contract autonomy, treat such pre-arbitral steps as mandatory unless the contract is silent or unworkable, while Singaporean jurisprudence—relevant when it is the seat of arbitration—reinforces this procedural requirement under the lex arbitri.

This paper thus evaluates whether FIDIC-style DAB/DAAB provisions in Indian public contracts offer a genuinely quicker, cost-effective path to resolution, or if they function mainly as a formal hurdle before arbitration. Findings suggest that, when properly constituted and adhered to, DAB/DAAB can significantly reduce adversarial proceedings, yet partial or internal implementations risk undermining its potential as a robust dispute resolution tool.

Keywords: FIDIC Contracts, DAB, DAAB, binding decision, enforceability, adjudication, Indian Law

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Evaluating the Efficacy of Dispute Adjudication Boards (DAB) and Dispute Avoidance/Adjudication Boards (DAAB) in Infrastructure Dispute Resolution in India: Practical Implementation or Mere a Stepping Step Before Arbitration?

Contents

1. Introduction

Infrastructure projects in India—ranging from large-scale highway ventures to airport expansions—commonly experience disputes over time extensions, additional payments, and unforeseen site conditions. Traditionally, such controversies have proceeded to litigation or arbitration, each of which can be costly and time-consuming. Increasingly, Dispute Adjudication Boards (DAB) and Dispute Avoidance/Adjudication Boards (DAAB) are seen as a more expedient solution, largely due to the international influence of the Fédération Internationale des Ingénieurs-Conseils (FIDIC) suite of contracts.

Notwithstanding these international endorsements, the actual effectiveness of DAB/DAAB in India's public sector has been inconsistent. The Airports Authority of India (AAI) and the National Highways Authority of India (NHAI), for example, have adopted dispute board mechanisms but differ significantly in structural execution. Additionally, the question arises whether such boards genuinely resolve disputes or merely serve as a contractual box-ticking exercise before the main event of arbitration.[2]

Against this backdrop, this paper aims to:

1. Examine the FIDIC-based concept of DAB and DAAB, explaining how it arose historically.
2. Assess how Indian public-sector bodies implement or modify DAB/DAAB processes in practice.
3. Analyse case law from Indian courts, exploring whether a referral to a DAB is considered mandatory or can be treated as "directory."
4. Address the interplay between Indian law as the governing law of the contract and Singaporean law as a potential seat of arbitration.

Through these discussions, the paper clarifies whether the DAB/DAAB framework is indeed efficacious or if it stands as a stepping stone overshadowed by eventual arbitration.

2. Historical Background of Dispute Boards

2.1 Emergence of the Dispute Review Board (DRB) in the United States

The roots of Dispute Boards lie in the United States, where the technique was pioneered in the mid-1970s. One of the earliest reported successes was in the

[2] 'Standard Operating Procedures for Dispute Boards in India' (ICA 2016), available at https://icaindia.co.in/pdf/Final-SOP.pdf

Eisenhower Tunnel project (1975), Colorado. Here, a panel of independent experts was placed on site to review emerging disputes, issuing non-binding recommendations—a concept soon replicated in major tunnelling, highway, and dam projects.[3]

Over the 1980s, DRBs gained a strong track record, especially in states like Florida and California, which mandated a form of DRB for large public works. Construction litigators and engineers praised DRBs for dramatically reducing both the scope and cost of formal disputes.[4]

2.2 The FIDIC Endorsement: From DAB to DAAB

Outside the U.S., the Dispute Board model caught international attention. The World Bank and other multi-lateral lenders encouraged or required such boards for large-scale financing. Yet, the real turning point was FIDIC's 1995 Orange Book, which introduced Dispute Adjudication Boards (DABs) featuring interim-binding or binding decisions, rather than mere recommendations.[5]

FIDIC's 1999 "Rainbow Suite" (Red, Yellow, and Silver Books) enshrined DABs as a staple:

- Sub-Clause 20.4 provided a standard procedure wherein disputes were referred to the DAB for decision, with a 28-day Notice of Dissatisfaction allowed thereafter.
- The DAB's decision was binding immediately—"pay now, argue later."

By 2017, FIDIC refined DABs into DAABs (Dispute Avoidance/Adjudication Boards), highlighting a stronger dispute-avoidance function.[6] Under the 2017 forms, DAAB members must visit sites regularly, proactively offering informal opinions to pre-empt disputes from maturing.

3. FIDIC's DAB/DAAB Framework

3.1 Mechanism and Philosophy

The FIDIC approach to dispute boards rests on two major premises:

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[3] "The History of the Dispute Review Board," DRBF Foundation Papers, 2003. Available at https://www.drb.org/history.

[4] "Prevention and Resolution of Disputes using Dispute Review Boards", IR23-2, CII, University of Texas.

[5] FIDIC Conditions of Contract for Design-Build and Turnkey (Orange Book), First Edition, 1995.

[6] Sub-clause 21, FIDIC Conditions of Contract for Construction (Red Book), Second Edition, 2017.

1. Standing Panel: The board is typically appointed at contract start, visiting the site at intervals. This fosters continuity and real-time familiarity with the project's technical and contractual environment.
2. Prompt Decisions: Once a dispute is formally referred, the board must decide within a short, fixed time (commonly 84 days).[7] Parties are bound to comply, though they may serve a Notice of Dissatisfaction within 28 days if they wish to escalate.

This structure aims to minimize project disruption, preserve relationships, and ensure liquidity: if a contractor is owed money, it can receive payment swiftly; if additional time is due, it is granted expeditiously. Importantly, the board's authority is derived from contractual clauses typically found in Sub-Clauses 20.4–20.8 (1999) or 21.3–21.7 (2017).

3.2 The "Pay Now, Argue Later" Principle

A hallmark of the DAB/DAAB system is the interim-binding effect of decisions.[8] The losing party must comply—often paying the required amount or taking corrective measures—while retaining the right to initiate arbitration. This approach addresses the recurring problem in construction: cash-flow. Contractors often face crippling delays if they do not receive timely payments for recognized entitlements, while employers benefit from the continuity of works.

3.3 DAAB's Additional Focus on Avoidance

Under the 2017 FIDIC forms, the rename from DAB to DAAB underscores an avoidance dimension.[9] The board is encouraged to provide informal advice at the parties' joint request, preventing controversies from escalating into formal disputes. This evolution aligns with the growing global interest in dispute prevention rather than mere resolution.

4. The Indian Public-Sector Experience

4.1 Overview

India's public sector faces major pressure to deliver infrastructure expansions: roads, railways, airports, and ports. The inherent complexity of multi-year projects—where land acquisition, design changes, contractor-subcontractor relationships, and unforeseen site conditions frequently spark claims—necessitates robust dispute resolution frameworks.

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[7] Sub-clause 21.4.3, FIDIC Conditions of Contract for Construction (Red Book), Second Edition, 2017.
[8] Sub-clause 21.4.4, FIDIC Conditions of Contract for Construction (Red Book), Second Edition, 2017.
[9] "FIDIC RAINBOW SUITE ed.2017 , Second edition of the Red, Yellow & Silver Books", available at https://fidic.org/sites/default/files/press%20release_rainbow%20suite_2018_03.pdf.

The World Bank and Asian Development Bank have financed numerous Indian projects on condition that multi-tier dispute resolution is embedded. While DRB or DAB processes appear in these contracts, local adaptations in agencies like the Airports Authority of India (AAI) and the National Highways Authority of India (NHAI) show varying degrees of alignment with FIDIC.

4.2 Airports Authority of India (AAI) and the "Dispute Resolution Committee" (DRC)

The AAI calls its board a Dispute Resolution Committee (DRC), typically constituted ad hoc once a dispute arises.[10] Key issues:

1. Internal Composition: DRC members often come from different AAI departments—engineering, finance, legal. Consequently, contractors frequently allege partiality or at least a lack of independence.
2. Extended Duration: While the official timeline might be 45 or 75 days, actual data shows the DRC can take 200–300 days or longer.
3. High Arbitral Reversal Rate: In studied cases, about 92% of claims were denied by the DRC, but multiple arbitral tribunals later awarded contractors significantly higher sums.

Hence, the AAI's approach appears to stray from the FIDIC concept of independent experts, reducing the board's perceived legitimacy and fueling further disputes.

4.3 National Highways Authority of India (NHAI) FIDIC-Based DAB

NHAI, conversely, often adheres more closely to the FIDIC model:

1. Three-Member Panel: Each side nominates one member subject to mutual acceptance, with the pair selecting a neutral chair.
2. Standing Role: The board (sometimes referred to as "Dispute Review Board" but effectively an adjudicative body) is typically in place from project start.
3. Enforceable Decisions: Once decided, parties comply or issue a Notice of Dissatisfaction. Many disputes remain resolved at that stage, though about 60% of initial decisions have favored NHAI, resulting in some arbitration challenges.

Despite some confusion in nomenclature—DRB vs. DAB—the principle is consistent with FIDIC Sub-Clause 20.4[11], requiring the board to provide binding determinations. Indian courts have repeatedly upheld the mandatory nature of this step.[12]

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[10] Airports Authority of India, "General Conditions of Contract," Clause 25.
[11] Sub-clause 20.4, FIDIC Conditions of Contract for Construction (Red Book), Second Edition, 2017.
[12] Abhiram Infra Projects Pvt. Ltd. v. Bangalore Water Supply and Sewerage Board, Com.A.P.No.49/2020.

5. Empirical Indicators and DRBF Data

5.1 Indian Cases: Summarized Observations

- **AAI Cases**:
    - Out of around 75 claims in 10 studied instances, the internal DRC ruled in favor of AAI ~92% of the time.[13]
    - The average time from the first hearing to final DRC recommendation could exceed 200–300 days, far above the recommended period.
    - Arbitration consistently reversed or modified many DRC findings, awarding contractors greater sums.
- **NHAI Cases**:
    - In about 18 disputes, the DAB initially supported NHAI in ~60% of claims.[14]
    - Some decisions were reversed or heavily revised in arbitration, but significantly fewer than under the AAI approach.
    - Because these boards were typically external, neutral experts, contractors more often accepted decisions, reducing friction.

5.2 DRBF's ~10–15% Escalation Rate

On a global scale, the **Dispute Resolution Board Foundation (DRBF)** references a broad statistic: only **10–15%** of disputes decided by DAB proceed to full arbitration or litigation.[15] The rest are accepted or minimally negotiated. This suggests DABs perform effectively, saving time and cost.

5.3 Empirical Insights from the 2024 King's College International Survey

The 2024 King's College Dispute Boards International Survey[16] collected data from ~300 respondents worldwide, in which, approximately 15% of total respondents were from India or dealt with Indian projects, with an additional 10% from the broader South Asia region.

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[13] Sumit Sharma & Sushil Kumar Solanki, "An Analysis of Dispute Review Boards in Public Sector Organizations in India", International Journal of Advances in Engineering and Management (IJAEM) Volume 4, Issue 5 May 2022, pp 90-100.

[14] Ibid.

[15] Dispute Board FAQs, The Dispute Resolution Board Foundation, available at https://www.drb.org/db-faqs.

[16] King's College London, *2024 Dispute Boards International Survey: A Study on the Worldwide Use of Dispute Boards over the Past Six Years* (2024) (Nazzini and Macedo Moreira) https://doi.org/10.18742/pub01-203 accessed 1 November 2024

The survey presented that the non-binding recommendations were accepted without further challenge in ~80% of instances, interim-binding decisions were complied with immediately in ~70% of cases, with ~15% seeing partial compliance or delayed compliance and only ~10% escalated to arbitration.

Multi-lateral development banks like the World Bank have also reported that the DAB approach fosters better project continuity, given the immediate compliance.[17] However, the presence of an external panel of experts is frequently highlighted as a key success factor; boards staffed by internal employees can erode trust.

6. Legal Framework: Pre-Arbitral DAB Requirements

6.1 Indian Legal Perspective

6.1.1 Contractual Autonomy and Mandatory Steps

Under Indian contract law, parties generally have the freedom to stipulate multi-tier dispute resolution processes, and courts uphold such clauses unless they contravene public policy or become unworkable.[18] As long as the contract states that DAB referral is a condition precedent to arbitration, Indian courts treat it as mandatory.

National Highways Authority of India (NHAI) v Pati-Bel (JV)

In this Delhi High Court case, the court refused to entertain an arbitration reference for certain disputes because they had not first been presented to the DAB.[19] The bench emphasized that FIDIC-style Clause 20.4 confers a clear contractual right for the parties to demand the dispute be first adjudicated by the board. This underscores India's pro-enforcement stance.

Union Territory of J & K v SP Singla Constructions Pvt Ltd

A portion of an arbitral award—pertaining to prolongation costs—was set aside when the court found that claim had never been raised before the DAB.[20] The court held that if the contract spells out the DAB as a first-tier forum, the parties must honour that method. Failing to do so invalidates the subsequent arbitral award on that dispute.

6.1.2 Exceptions and Directory Interpretation

Some parties cite older rulings or alternative lines of case law where conciliation or mediation steps were found "directory."[21] Yet courts typically distinguished such

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[17][17] World Bank, *Procurement Guidance: Standard Bidding Documents for Works, Harmonized Edition*, 2020.
[18] *M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd.*, (2009) 7 SCC 696.
[19] *National Highways Authority of India (NHAI) v Pati-Bel (JV),* O.M.P. (COMM) 314/2017.
[20] *Union Territory of J & K v SP Singla Constructions Pvt Ltd.*, (02.02.2023 - JKHC) : MANU/JK/0027/2023.
[21] *M/s Oasis Projects Ltd v. The Managing Director, National Highway and Infrastructure Development Corporation Ltd.*, 2023/DHC/000828.

purely consensual processes (where either party can unilaterally halt negotiations) from a robust DAB mechanism with formal timelines and binding decisions. The presence of language akin to "shall refer the dispute to the DAB" strongly indicates mandatory compliance.

Moreover, where the DAB cannot be constituted or fails to issue a timely decision, Clause 20.8 (1999 FIDIC) or 21.7 (2017 FIDIC) sometimes permits direct arbitration.[22] Such exceptions do not undermine the mandatory principle; rather, they clarify that the parties must use the DAB route if it is properly functional.

6.2 Singaporean Law as Lex Arbitri

When Indian contracts opt for foreign seat for examples, Singapore as the seat of arbitration, the lex arbitri typically controls issues of compliance with multi-tier steps. Under judgments like *IRC v Lufthansa*,[23] the seat court examines whether the tribunal has jurisdiction or whether claims are admissible if the mandatory precondition was bypassed.

BBA v BAZ[24] clarified that a precondition to arbitration might be classified as going to jurisdiction or "admissibility," yet either way, the seat's law typically enforces the requirement. The default approach is that an arbitral tribunal seated in Singapore must ensure that "the dispute is ripe for arbitration" by verifying DAB compliance.

7. Is DAB/DAAB a Mere Stepping Stone Before Arbitration?

7.1 The Step-Before-Arbitration Critique

Critics argue that a DAB or DAAB is merely an extra rung—especially if parties commonly file a Notice of Dissatisfaction or eventually arbitrate. Indeed, some studies show that in heavily contested claims, the dissatisfied side almost automatically escalates. However, the real question is whether a significant portion of disputes never reach the arbitration stage at all.

7.2 Practical Evidence of Efficacy

The 10–15% escalation statistic from DRBF data stands out: meaning, roughly 85–90% of disputes see acceptance of the board's decision, or at least do not proceed to formal arbitration.[25] Even in India, a portion of NHAI's disputes do conclude at the DAB level. The reason might be that the losing party, after evaluating the board's reasoning, finds the cost-risk of arbitration unworthy. Moreover, once money is "paid now" or time is extended, parties can progress with fewer hindrances.

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[22] Sub-Clause 20.8, FIDIC 1999 Red Book; Sub-Clause 21.7, FIDIC 2017 Red Book.
[23] *International Research Corp PLC v. Lufthansa Systems Asia Pacific Pte Ltd.*, [2013] SGCA 55.
[24] *BBA v. BAZ*, [2020] SGCA 53.
[25] Supra note 15.

7.3 The Indian Public Sector's Mixed Record

Under the AAI's DRC system, the high reversal rate in arbitration leads to a suspicion that DRC is, for contractors, merely a stepping stone.[26] Yet that stems primarily from the board's composition—internal employees of AAI—leading to perceived bias. If AAI were to adopt a fully neutral DAB or DAAB with external experts, the acceptance rate might rise, resembling the NHAI or global experiences.

Hence, the challenge is not that the DAB/DAAB concept is inherently flawed, but that partial or incomplete implementations degrade its effectiveness.

8. Discussion and Analysis

8.1 Strengths and Weaknesses of the FIDIC Approach

1. Strengths
    - Timely Resolution: A standard 84-day limit fosters swift outcomes.
    - Binding Nature: "Pay now, argue later" ensures compliance, crucial for contractor cash-flow.
    - Institutional Legitimacy: FIDIC's global reputation underpins acceptance across jurisdictions.
2. Weaknesses
    - Needs Proper Experts: If the board lacks recognized independence or relevant expertise, results may not be trusted.
    - Requires Commitment: If one party simply ignores the board or fails to comply, the contract's remedies revolve around arbitration anyway, undermining the speed advantage.

8.2 Key Observations for India

- Need for External Membership: As shown in AAI's DRC, purely internal staff fosters minimal trust. The high reversal rate leads to protracted disputes.
- Mandatory Clause Enforcement: Indian courts consistently treat DAB/DAAB references as condition precedents. Parties cannot unilaterally bypass them absent express textual or factual justification (such as the board not being formed in time).[27]

[26] Mathusha Francis, Thanuja Ramachandra & Srinath Perera, Disputes in Construction Projects: A Perspective of Project Characteristics, 14 J. Legal Aff. & Disp. Resol. Eng'g & Constr. (May 1, 2022).
[27] National Highways Authority of India (NHAI) v Pati-Bel (JV), O.M.P. (COMM) 314/2017.

- Efficiency Gains: Where properly implemented, the NHAI approach more closely mirrors FIDIC's neutral panel concept, delivering at least partial acceptance, with fewer fully escalated disputes.

8.3 Potential Reforms

1. Enhanced Neutrality: Procuring Entity could revise its works manual and contract documents to require at least one or two external experts. This would align with the 2017 DAAB emphasis on independence.
2. Time Compliance: Procuring Entity needs to reinforce the scheduling discipline—if a board is consistently missing deadlines, or parties are stalling appointments, the step's value erodes.
3. Judicial Guidelines: Indian courts may consider standard guidelines clarifying that pre-arbitral DAB processes in FIDIC-based contracts are enforceable absent a direct contractual exception.

9. Conclusion

DAB and DAAB systems, entrenched in FIDIC's standard forms and embraced by multi-lateral development banks, present a powerful mechanism for timely, on-site dispute resolution. Critically, they can reduce the cost and prevalence of full-scale arbitration, consistent with DRBF's statistic that only around 10–15% of DAB decisions proceed further.

In India, the concept has found traction in organizations and in projects funded by the multilateral banks, which largely follow the FIDIC approach. Some departments though maintain an internal committee model that frequently see a mismatch between board outcomes and subsequent arbitral awards, hinting that "internal DAB" can undercut the notion of neutrality.

From a legal standpoint, Indian courts:

1. Typically uphold multi-tier dispute resolution clauses, especially if FIDIC-based contract clause, as mandatory.
2. Require disputants to exhaust the DAB step before arbitration, except if forming or convening the board is impossible or severely delayed.
3. In parallel, Singapore law—as a favored seat for many cross-border Indian contracts—also enforces the precondition under the lex arbitri, making it a procedural barrier.

Hence, whether DAB or DAAB truly addresses disputes or stands as a stepping step partially depends on the independence and efficiency of the board's structure. When

boards are external and pre-arbitral steps are adhered to, they often effect a genuine solution without further escalation. However, if boards remain internal, biased, or unworkably slow, they may become mere preludes to eventual arbitration.

Overall, FIDIC's "avoid now or adjudicate promptly" ethos holds substantial promise for Indian infrastructure disputes—provided that the parties comply with the precondition in good faith, the board is sufficiently neutral, and the mandatory timelines are enforced.

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DAB/DAAB in India: Practical Implementation or Mere a Stepping Step Before Arbitration

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Presentation Scheme

1 FIDIC Dispute Resolution Framework

2 Global Perspective

3 Indian Public Sector Scenarios

4 Legal Framework in India

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FIDIC Evolution with Dispute Resolution

1995

Orange Book

Orange Book introduced DAB with binding or interim-binding decisions

1999

Rainbow Editions

Rainbow Suite (Red, Yellow, Silver) made DAB standard: Clause 20.4

2017

Rainbow- 2nd Ed

DAAB with more emphasis on dispute avoidance.

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FIDIC Dispute Resolution Framework

Mechanism & Philosophy

- Quick timeline (~84 days) to issue decisions.
- Party Autonomy in DB Constitution
- Power to adopt inquisitorial approach
- DB appointed at contract start (preferably standing board).
- Periodic site visits to become familiar with progress.

"Pay Now, Argue Later" Principle

- DAB/DAAB decisions 'typically' binding.
- Immediate compliance required; any dissatisfaction can go to arbitration
- Aims to maintain cash flow & avoid work slowdowns.

DAAB's Additional Focus on Avoidance

- 2017 FIDIC: the Board can give informal opinions if both parties request.
- Goal: prevent disagreements from turning into formal claims.
- Regular site visits (every 70–140 days).

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Indian Public Sector Scenario

- Large expansions in roads, airports, railways and other infrastructure projects in India.
- Infrastructure investments in India are expected to grow at a CAGR of 15.3%, reaching a market value of $1.45 trillion in the next five years
- Settlement of disputes through Arbitration and Litigation is long drawn and expensive
- Dispute settlement through pre-arbitral and pre-litigation stage needs emphasis and concerted implementation
- Often financed by multi-lateral banks viz. the World Bak, ADB, requiring multi-tier dispute resolution.
- In addition to DAB as in FIDIC, pre-arbitral adjudication have been adopted:
  - Dispute Resolution Board (DRB)
  - Dispute Resolution Committee (DRC)
  - Conciliation
  - Mediation
  - Expert Determination

Empirical Indicators

Dispute Resolution Board Foundation (DRBF) Data:

~10–15% of DAB decisions globally proceed to final arbitration.

India:

- Mixed performance across departments
- AAI Cases: 92% claims rejected at DRC, but large portion reversed or revised in arbitration.
- NHAI Cases: 60% claims for the employer, fewer escalations, smaller reversals.

Driving Parameter:

- DAB acceptance rate is high if neutral & timely.
- Board composition (internal vs. external) significantly affects trust.

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Empirical Indicators – KCL Survey 2024

•Survey from ~300 respondents worldwide (15% India-based).

•**Key Points**:

- 80% acceptance of non-binding DRB recommendations.
- 70% immediate compliance with interim-binding DAB decisions.
- Only ~10% eventually escalate to arbitration.
- Regular site visits & "informal opinions" reduce claims.

Indian Legal Framework: Pre-Arbitral Steps

•**Indian Perspective**:

- Contractual autonomy = if DAB is mandatory, must be followed.
- Courts see DAB as condition precedent to arbitration.

•**Example**: *NHAI v. Pati-Bel*: Arbitration not entertained if DAB step not exhausted.

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Indian Legal Framework: Status of DAB

•Courts generally treat multi-tier Dispute Resolution clauses as mandatory if "shall refer."

•However, if the DAB is not formed or fails to issue a decision on time, arbitration can proceed.

•Notable rulings:

- *Union Territory of J&K v. SP Singla*
- *Capacite Infraprojects v. T. Bhimjyani Realty*

Indian Legal Framework: Status of DAB

•DAB/DAAB, as used in FIDIC forms, significantly reduce adversarial proceedings: only ~10–15% escalate.
•With proliferation of FIDIC Contract Forms in India, dispute resolution through adjudication route will increase
•Indian courts:
- Enforce the "condition precedent" approach.
- Provide narrower grounds for bypassing the DAB.

- Real problem id Parties' deference due to bad decisions from the Board
- With increased training and exposure, the quality of board will increase and so does the Parties' reliance on Dispute Boards

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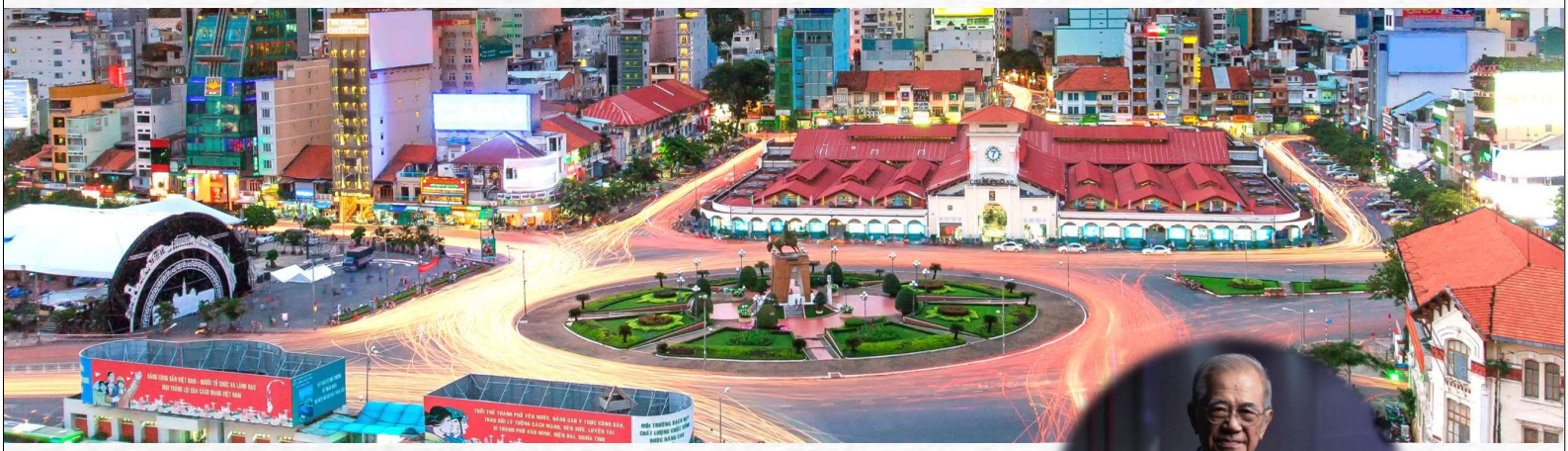


Avoiding construction disputes in Thailand

CHAMNAN PICHEDPAN – SPEAKER
Advisor, Construction Lawyers Society Thailand

Construction Lawyers Society Thailand

Established in 2019, the Construction Lawyers Society aims to promote and develop practical knowledge in cross-sectoral areas involving construction and law, construction contract, and construction management.

The Construction Lawyers Society provides legal advices, capacity building activities, and knowledge sharing via different platforms including seminars, Facebook, Podcast, and YouTube.

In collaboration with several partners in public and private sectors such as professional associations, universities, and arbitration institutes, the Construction Lawyers Association also actively produce series of standard contracts, books, guidelines. Additionally, members of the team are occasionally invited to give lectures and conduct workshops on relevant topics.

Our experiences (Before set up CLS)

- Baiyoke Tower I
- Baiyoke Tower II
- Thai Health Promotion Foundation
- New Head Office (Able)
- Claim and Dispute in construction
- Etc.

Our experiences (After set up CLS)

- GPO projects
- State Hospital Projects
- Private international school
- Local standard contracts
- Etc.

Baiyoke Tower I and Tower II

Picture from Baiyoke Sky Facebook

Standard of Contract

Book

CONTENTS

Construction Claims and Disputes

1. Claim occurs in every project
2. Claim evolves into Dispute
3. Quick resolution needed
4. Court in not best option
5. Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution

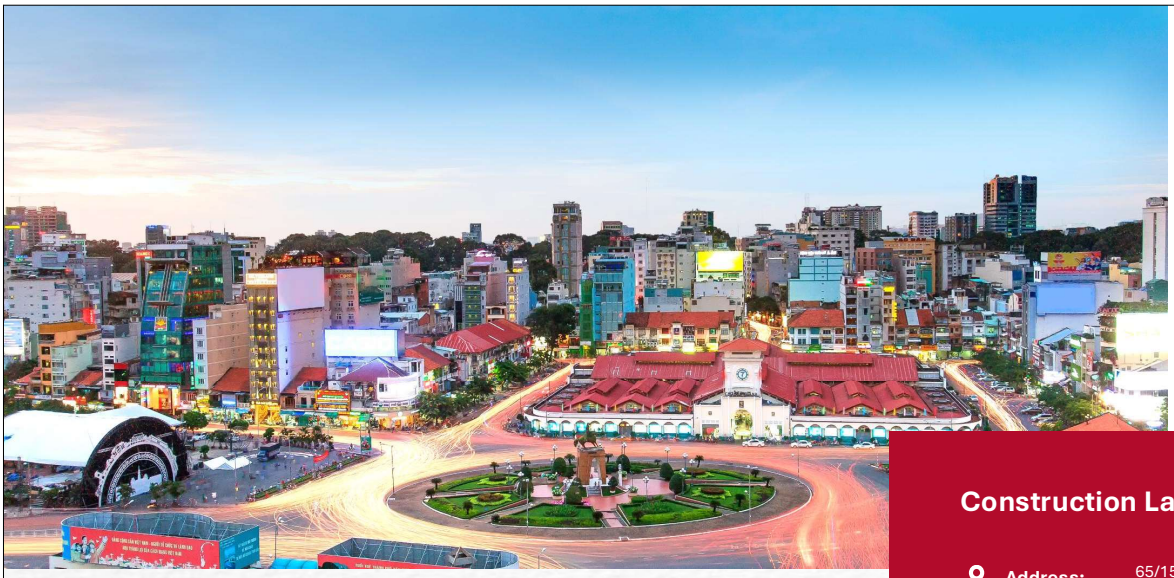
1. Negotiation or Amicable Settlement
2. Mediation or Conciliation
3. Dispute Board
4. Arbitration

Avoiding construction disputes by Dispute Board

1. Dispute Board has 2 important functions
2. Avoidance only
3. Adjudication only
4. Combine functions
5. Appoint from beginning of Construction Contract

Avoiding construction disputes in Thailand

1. Avoidance is important
2. Difficulties of appointing Dispute Board in Thailand
3. Use of FIDIC DAAB in Thailand



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Bridging Conflicts:
The Role of Dispute Boards in Indonesia's Legal System

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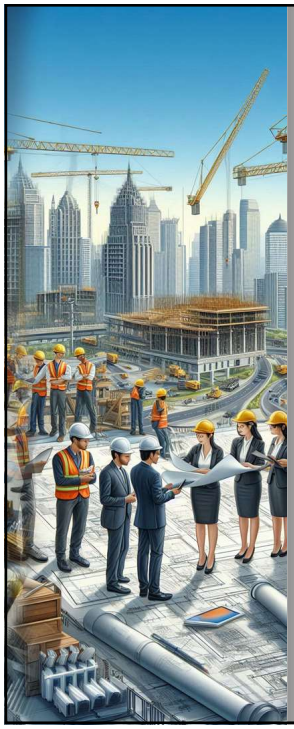
Consultant for Ministry of Public works and Housing at the Directorate General of Housing
Consultant for National Public Procurement Agency(LKPP)

The Dispute Board: A Global Perspective

1. Origin in the 1970s (USA):
- First used in the Boundary Dam Tunnel Project (Washington, USA) in 1975.
- Designed to reduce delays and legal costs in long-term construction projects.

2. Adopted by Multilateral Agencies:
- World Bank, ADB, EBRD, and other IFIs began requiring Dispute Boards in funded projects.
- Especially effective in international, multi-stakeholder infrastructure projects.

3. Dispute Board Types:
- DRB (Dispute Review Board) – recommends a solution (non-binding).
- DAB (Dispute Adjudication Board) – issues binding decisions, used in FIDIC.
- DAAB (Dispute Avoidance/Adjudication Board) – both avoids and resolves disputes (FIDIC 2017).



The Dispute Board: A Global Perspective

4. Key Benefits:
- Solves disputes on-site and in real time.
- Reduces arbitration and litigation cases.
- Improves project delivery, cash flow, and relationships.

5. Global Practice:
- Successfully used in over 60 countries
- Recognized as international best practice for major construction projects.

The FIDIC Model & Dispute Boards

1. FIDIC's Role in Global Construction:

- FIDIC = International Federation of Consulting Engineers
- Its contracts are **globally used in infrastructure**, especially donor-funded projects
- Promotes **fairness, neutrality, and balanced risk allocation**

2. Evolution of Dispute Boards in FIDIC:

- **1999 FIDIC (Red/Yellow/Silver Books):** Introduced **DAB** (Dispute Adjudication Board)
- **2017 FIDIC Suite:** Replaced DAB with **DAAB** (Dispute Avoidance/Adjudication Board)
- DAAB is **standing**, proactive, and empowered to assist in **avoiding** disputes

3. Types of Dispute Boards:

- **Ad-hoc:** Formed *after* a dispute arises
- **Standing:** Formed *at the start* of the contract and active throughout
- FIDIC 2017 mandates a **Standing DAAB** for all major contracts

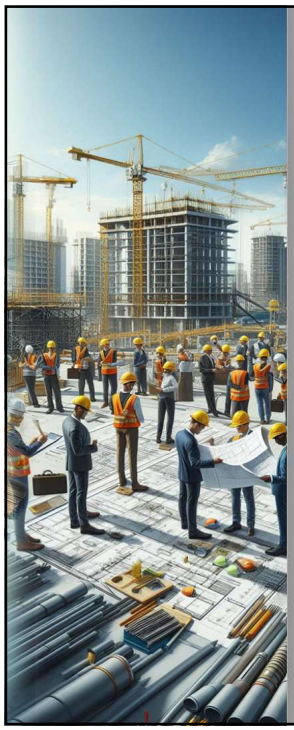
The FIDIC Model & Dispute Boards

4. DAAB Responsibilities:

- Issue **binding decisions** (can be referred to arbitration if not accepted)
- Give **informal advice** to prevent disputes
- Participate in **site visits**, meetings, and progress monitoring

5. Benefits for Contractors & Employers:

- Quicker resolution = **less disruption** to work
- Expert-driven = **more technical accuracy**
- Reduces overall **legal and reputational risk**



Understanding Legal Foundations: Civil Law vs. Common Law

1. Two Major Legal Traditions:

- **Common Law**
  - Origin: UK, USA, Australia, etc.
  - Law evolves from **court decisions (precedents)**
  - Judges have **greater discretion**
- **Civil Law**
  - Origin: Continental Europe (e.g., France, Germany)
  - Law is based on **codified statutes**
  - Judges apply and interpret written law with **less discretion**

Key Differences in Dispute Resolution:

2.

Aspect	Common Law	Civil Law
Source of Law	Precedents + Statutes	Codified statutes
Judge's Role	Active interpreter	Neutral applier
Role of ADR	Flexible, contract-based	Needs statutory support
Contract Interpretation	Based on prior rulings	Based on literal meaning

3. Implications for Dispute Boards:

- **In Common Law** countries: Dispute Boards are often accepted even without formal legal backing
- **In Civil Law** countries (like Indonesia & Vietnam): Legal tools (e.g., laws, decrees) must **explicitly recognize ADR**
- Therefore, **formal legal basis is *crucial*** for Dispute Boards to be enforceable

Indonesia's Civil Law System in Practice

1. Historical Foundation:
- Based on Dutch Civil Code (Burgerlijk Wetboek) Kitab Undang Undang Hukum Perdata
- Adopted during colonial era and still forms the backbone of private and commercial law
- Emphasizes codified rules over judicial precedent

2. Characteristics of Indonesian Civil Law:
- Judges interpret statutes, not create new rules
- Court decisions do not bind future cases
- Customary law (adat) and religion may supplement but not override statutes
- Legal certainty depends on written law

Indonesia's Civil Law System in Practice

3. Implications for ADR (Alternative Dispute Resolution):
- ADR mechanisms must be expressly authorized by law
- Contractual ADR clauses (e.g., Dispute Board clauses) require statutory legitimacy to be enforceable
- Legal evolution is gradual and must follow formal legislative processes

4. Role of Government Institutions:
- Ministry of Public Works, Supreme Court, and BPKP /BPK(audit agency) have significant influence
- Presidential Regulations, Ministerial Decrees, and Government Rules are legally binding and critical for ADR development

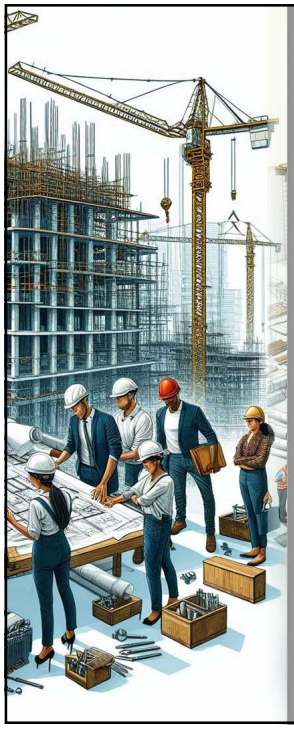
Modernizing Construction Law: Law No. 2/2017

1. Law No. 2 of 2017 (New Law):

- **Replaces and updates** previous Law
- More aligned with **modern construction practices and international standards**
- Removes problematic clauses (especially on **mandatory litigation**)
- Emphasizes **professionalism, quality assurance, and legal clarity**

2. Key Improvement:

- **No longer mandates litigation** for construction disputes
- Opens the door for **formal ADR mechanisms**
- Recognizes the need for **early, technical resolution methods** like **Dispute Boards**

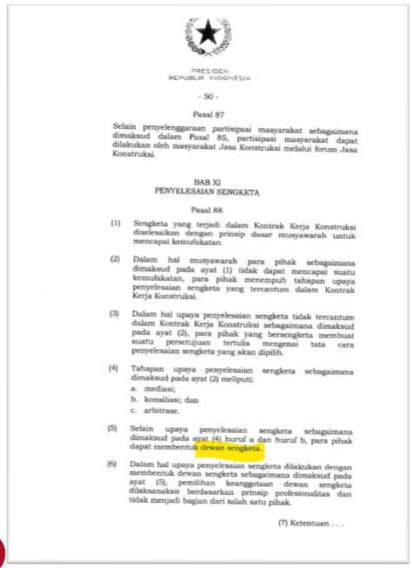


Article 88 of Law No. 2/2017: A Foundation for ADR

1. Article 88 – Key Provisions:

"Disputes in construction services shall be resolved through Alternative Dispute Resolution (ADR)"

- Lists of **dispute resolution** options:
  - **Mediation**
  - **Conciliation**
  - **Arbitration**
  - **Mediation and Conciliation can be combined to form a Dispute Board**



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Pasal 87

Selain penyelenggaraan partisipasi masyarakat sebagaimana dimaksud dalam Pasal 85, partisipasi masyarakat dapat dilakukan oleh masyarakat Jasa Konstruksi melalui forum Jasa Konstruksi.

BAB XI
PENYELESAIAN SENGKETA

Pasal 88

(1) Sengketa yang terjadi dalam Kontrak Kerja Konstruksi diselesaikan dengan prinsip dasar musyawarah untuk mencapai kemufakatan.

(2) Dalam hal musyawarah para pihak sebagaimana dimaksud pada ayat (1) tidak dapat mencapai suatu kemufakatan, para pihak menempuh tahapan upaya penyelesaian sengketa yang tercantum dalam Kontrak Kerja Konstruksi.

(3) Dalam hal upaya penyelesaian sengketa tidak tercantum dalam Kontrak Kerja Konstruksi sebagaimana dimaksud pada ayat (2), para pihak yang bersengketa membuat suatu persetujuan tertulis mengenai tata cara penyelesaian sengketa yang akan dipilih.

(4) Tahapan upaya penyelesaian sengketa sebagaimana dimaksud pada ayat (2) meliputi:
a. mediasi;
b. konsiliasi; dan
c. arbitrase.

(5) Selain upaya penyelesaian sengketa sebagaimana dimaksud pada ayat (4) huruf a dan huruf b, para pihak dapat membentuk dewan sengketa.

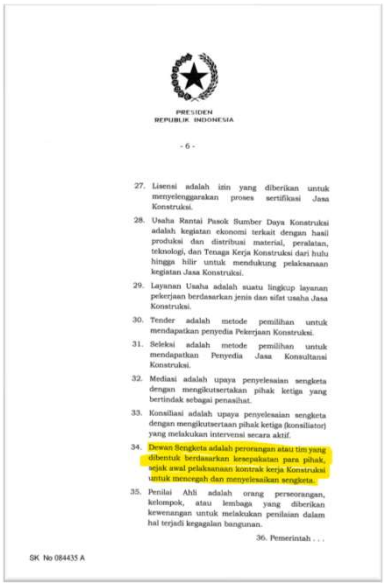
(6) Dalam hal upaya penyelesaian sengketa dilakukan dengan membentuk dewan sengketa sebagaimana dimaksud pada ayat (5), pemilihan keanggotaan dewan sengketa dilaksanakan berdasarkan prinsip profesionalitas dan tidak menjadi bagian dari salah satu pihak.

(7) Ketentuan ...

From Law to Practice: Regulatory Support for Dispute Boards in Indonesia

Other than Article 88, Law No. 2 of 2017
There are some supporting Regulations
That Empower Dispute Boards:

- PP (Peraturan Pemerintah/Government Regulation)No. 14/2021
  - Amendment to PP No. 22/2020 (Implementation Regulation of Law 2/2017)
  - Recognizes non-litigation dispute resolution mechanisms and introduces Dispute Board



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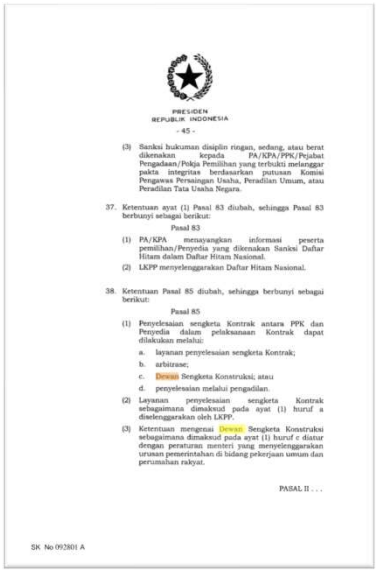
27. Lisensi adalah izin yang diberikan untuk menyelenggarakan proses sertifikasi Jasa Konstruksi.
28. Usaha Rantai Pasok Sumber Daya Konstruksi adalah kegiatan ekonomi terkait dengan hasil produksi dan distribusi material, peralatan, teknologi, dan Tenaga Kerja Konstruksi dari hulu hingga hilir untuk mendukung pelaksanaan kegiatan Jasa Konstruksi.
29. Layanan Usaha adalah suatu lingkup layanan pekerjaan berdasarkan jenis dan sifat usaha Jasa Konstruksi.
30. Tender adalah metode pemilihan untuk mendapatkan penyedia Pekerjaan Konstruksi.
31. Seleksi adalah metode pemilihan untuk mendapatkan Penyedia Jasa Konsultansi Konstruksi.
32. Mediasi adalah upaya penyelesaian sengketa dengan mengikutsertakan pihak ketiga yang bertindak sebagai penasihat.
33. Konsiliasi adalah upaya penyelesaian sengketa dengan mengikutsertakan pihak ketiga (konsiliator) yang melakukan intervensi secara aktif.
34. Dewan Sengketa adalah perorangan atau tim yang dibentuk berdasarkan kesepakatan para pihak, sejak awal pelaksanaan kontrak kerja Konstruksi untuk mencegah dan menyelesaikan sengketa.
35. Penilai Ahli adalah orang perseorangan, kelompok, atau lembaga yang diberikan kewenangan untuk melakukan penilaian dalam hal terjadi kegagalan bangunan.

36. Pemerintah . . .

SK No 084435 A

From Law to Practice: Regulatory Support for Dispute Boards in Indonesia

- Perpres (Peraturan Presiden/Presidential Decree)No. 12/2021
  - Amendment to Perpres No. 16/2018 on Government Procurement
  - Includes ADR options (including Dispute Boards) in government project procurement



PRESIDEN
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(3) Sanksi hukuman disiplin ringan, sedang, atau berat dikenakan kepada PA/KPA/PPK/Pejabat Pengadaan/Pokja Pemilihan yang terbukti melanggar pakta integritas berdasarkan putusan Komisi Pengawas Persaingan Usaha, Peradilan Umum, atau Peradilan Tata Usaha Negara.

37. Ketentuan ayat (1) Pasal 83 diubah, sehingga Pasal 83 berbunyi sebagai berikut:

Pasal 83

(1) PA/KPA menayangkan informasi peserta pemilihan/Penyedia yang dikenakan Sanksi Daftar Hitam dalam Daftar Hitam Nasional.
(2) LKPP menyelenggarakan Daftar Hitam Nasional.

38. Ketentuan Pasal 85 diubah, sehingga berbunyi sebagai berikut:

Pasal 85

(1) Penyelesaian sengketa Kontrak antara PPK dan Penyedia dalam pelaksanaan Kontrak dapat dilakukan melalui:
a. layanan penyelesaian sengketa Kontrak;
b. arbitrase;
c. Dewan Sengketa Konstruksi; atau
d. penyelesaian melalui pengadilan.
(2) Layanan penyelesaian sengketa Kontrak sebagaimana dimaksud pada ayat (1) huruf a diselenggarakan oleh LKPP.
(3) Ketentuan mengenai Dewan Sengketa Konstruksi sebagaimana dimaksud pada ayat (1) huruf c diatur dengan peraturan menteri yang menyelenggarakan urusan pemerintahan di bidang pekerjaan umum dan perumahan rakyat.

PASAL II . . .

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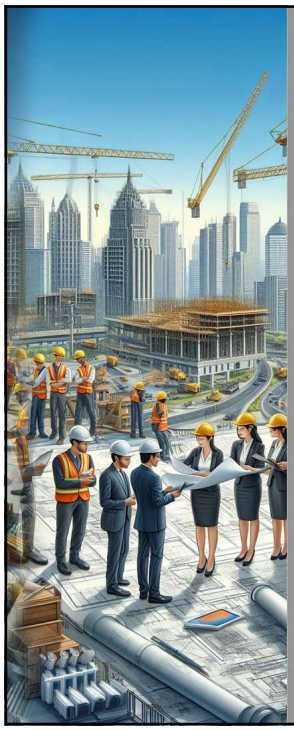
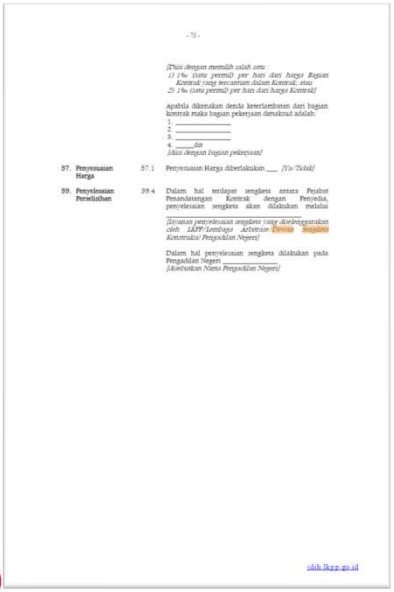


- LKPP Regulation No. 12/2021
  - Guideline on Government Goods/Services Procurement
  - Outlines technical procedures for resolving disputes in state-funded projects
  - Supports early dispute resolution to maintain project timelines and budgets
  - Dispute Boards mentioned as part of the ADR landscape



- 9 -

[Pilih dengan memilih salah satu :
1) 1‰ (satu permil) per hari dari harga Bagian Kontrak yang mengantum dalam Kontrak; atau
2) 1‰ (satu permil) per hari dari harga Kontrak]

Apabila dikenakan denda keterlambatan dari bagian kontrak maka bagian pekerjaan dimaksud adalah:
1. _____
2. _____
3. _____
4. _____dst
[Jika dengan bagian pekerjaan]

87. Penyesuaian Harga — 87.1 Penyesuaian Harga diberlakukan ___ [Ya/Tidak]

89. Penyelesaian Perselisihan — 89.4 Dalam hal terdapat sengketa antara Pejabat Penandatangan Kontrak dengan Penyedia, penyelesaian sengketa akan dilakukan melalui: [Layanan penyelesaian sengketa yang diselenggarakan oleh LKPP/Lembaga Arbitrase Provinsi Sengketa Konstruksi/Pengadilan Negeri]

Dalam hal penyelesaian sengketa dilakukan pada Pengadilan Negeri _____
[diisikan Nama Pengadilan Negeri]

jdih.lkpp.go.id

- Ministerial Regulation No. 11/2021 (PUPR)
  - Technical Guidance on Construction Dispute Boards
  - First regulation to explicitly regulate Dispute Boards (Dewan Sengketa)
  - Provides clear rules on:
  - How and when to establish a Dispute Board

MENTERI PEKERJAAN UMUM DAN PERUMAHAN RAKYAT
REPUBLIK INDONESIA

PERATURAN MENTERI PEKERJAAN UMUM DAN PERUMAHAN RAKYAT
REPUBLIK INDONESIA
NOMOR 11 TAHUN 2021
TENTANG
TATA CARA DAN PETUNJUK TEKNIS DEWAN SENGKETA KONSTRUKSI

DENGAN RAHMAT TUHAN YANG MAHA ESA

MENTERI PEKERJAAN UMUM DAN PERUMAHAN RAKYAT
REPUBLIK INDONESIA,

Menimbang : bahwa untuk melaksanakan ketentuan Pasal 96 ayat (6) Peraturan Pemerintah Nomor 22 Tahun 2020 tentang Peraturan Pelaksanaan Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi sebagaimana telah diubah dengan Peraturan Pemerintah Nomor 14 Tahun 2021 tentang Perubahan atas Peraturan Pemerintah Nomor 22 Tahun 2020 tentang Peraturan Pelaksanaan Undang-Undang Nomor 2 Tahun 2017 tentang Jasa Konstruksi dan Pasal 85 ayat (3) Peraturan Presiden Nomor 12 Tahun 2021 tentang Perubahan atas Peraturan Presiden Nomor 16 Tahun 2018 tentang Pengadaan Barang/Jasa Pemerintah, perlu menetapkan Peraturan Menteri Pekerjaan Umum dan Perumahan Rakyat tentang Tata Cara dan Petunjuk Teknis Dewan Sengketa Konstruksi.

Mengingat : 1. Pasal 17 Ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;
2. Undang-Undang Nomor 39 Tahun 2008 tentang Kementerian Negara (Lembaran Negara Republik

jdih.pu.go.id

From Theory to Reality: Implementing Dispute Boards in Indonesia

1. Current Implementation Status:

KUHPer – Indonesian Civil Code (Burgerlijk Wetboek)

- Inherited from Dutch Civil Code
- Still serves as the foundation of private law in Indonesia
- Article 1338 of KUHPer:

"Semua perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya."

("All legally made agreements shall bind the parties as law.")

✅ Reinforces freedom of contract

✅ Strong basis to enforce Dispute Board provisions in contracts

✅ Dispute Boards are increasingly adopted in public infrastructure projects, Supported by Ministry of Public Works (PUPR), National Public Procurement Agency (Lembaga Kebijakan Pengadaan Barang/Jasa Pemerintah), SOE" (State-Owned Enterprises) "BUMN" (Badan Usaha Milik Negara),

From Theory to Reality: Implementing Dispute Boards in Indonesia

2. Notable Projects Using Dispute Boards:

- Toll Road Projects – Managed by BUMNs
- ADB/WB funded
- Urban Transport (MRT)
- Australian Embassy in Indonesia was one among the first to adopt Dispute Board

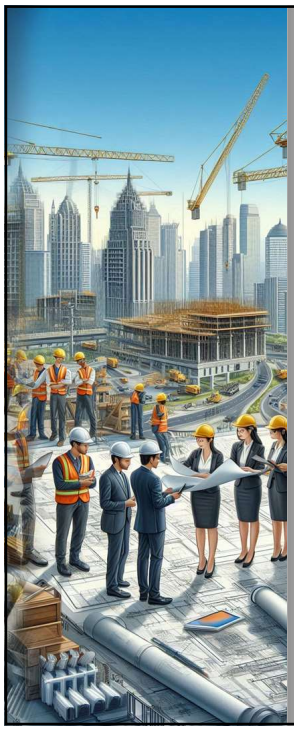
Prof Sarwono Hardjomuljadi

The Court of Appeal in Persero II: How to enforce "binding but non-final" Dispute Board Decisions under the FIDIC Form of Contract

By Robbie McCrea, Associate, Fenwick Elliott

PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation [2015] SGCA 30

This article is a follow-up to two International Quarterly ("IQ") articles on the Persero series of cases, the first of which followed the Persero I Court of Appeal decision in Issue 01, 2011 and the second followed the Persero II High Court decision in Issue 12, 2014.[1] As promised we have continued to monitor the progress of this influential series of cases, and we set out below our conclusions on the enforcement of non-final DAB decisions following the latest (and final) decision by the Court of Appeal in Persero II.



3. Institutional and Contractual Support:

PUPR Ministry Circulars often require dispute boards for high-risk projects

SOEs increasingly insert DB clauses in contracts (especially with foreign contractors)

Multilateral Development Banks (ADB, World Bank) now encourage or require DBs

Government-funded and donor-funded projects now include Dispute Boards (Dewan Sengketa)

4. Challenges Still Faced:

⚠️ Limited awareness among project owners

⚠️ Some DB clauses inserted late or with unclear procedures

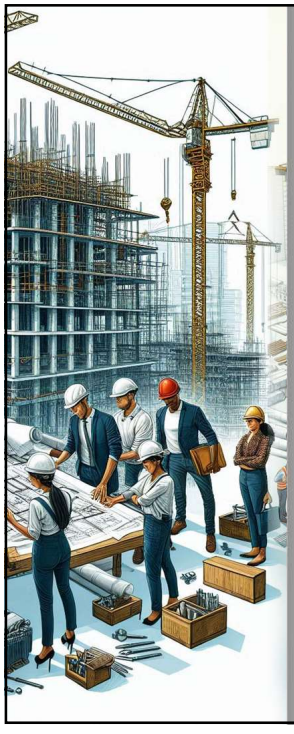
⚠️ Cultural tendency toward post-dispute escalation vs. early prevention

5. Opportunities for Collaboration with other countries:

🤝 Countries with Common law traditions

🤝 Countries with Civil law traditions

🤝 Potential for joint capacity building, knowledge exchange, or harmonization of DB practices



Dispute Boards in Civil Law Countries: Indonesia's Journey & Future Collaboration

1. Key Takeaways from Indonesia's Experience:

✅ Strong legal foundation through Law No. 2/2017 Article 88

✅ Formal support from PP, Perpres, LKPP, and Ministerial regulations

✅ Dispute Boards now used in major national and international projects

2. Lessons Learned:

🔍 Early integration of Dispute Boards is more effective than reactive disputes

🔍 Legal clarity enables ADR legitimacy and contract enforceability

🔍 Regulatory alignment helps bridge international standards and national law

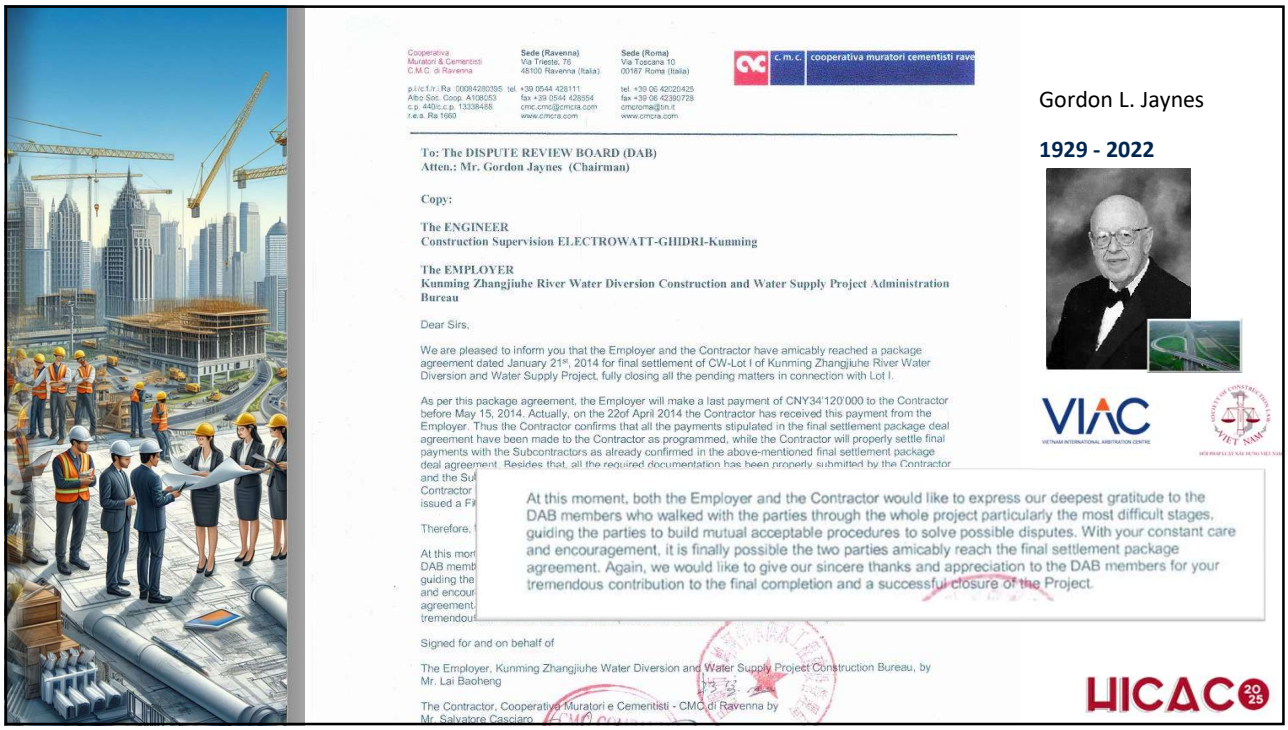
3. Shared Opportunities with ：

🤝 Countries operate under civil law systems

🤝 Common interest in reducing project delays and litigation

🤝 Potential for ASEAN-level knowledge-sharing on DB standards and best practices

🤝 Opportunity to build joint training programs, cross-border DB panels, or regional dispute resolution frameworks


c. m. c. cooperativa muratori cementisti ravenna
To: The DISPUTE REVIEW BOARD (DAB)
Atten.: Mr. Gordon Jaynes (Chairman)
Copy:
The ENGINEER
Construction Supervision ELECTROWATT-GHIDRI-Kunming
The EMPLOYER
Kunming Zhangjiuhe River Water Diversion Construction and Water Supply Project Administration Bureau
Dear Sirs,
We are pleased to inform you that the Employer and the Contractor have amicably reached a package agreement dated January 21st, 2014 for final settlement of CW-Lot I of Kunming Zhangjiuhe River Water Diversion and Water Supply Project, fully closing all the pending matters in connection with Lot I.
As per this package agreement, the Employer will make a last payment of CNY34'120'000 to the Contractor before May 15, 2014. Actually, on the 22of April 2014 the Contractor has received this payment from the Employer. Thus the Contractor confirms that all the payments stipulated in the final settlement package deal agreement have been made to the Contractor as programmed, while the Contractor will properly settle final payments with the Subcontractors as already confirmed in the above-mentioned final settlement package deal agreement. Besides that, all the required documentation has been properly submitted by the Contractor
At this moment, both the Employer and the Contractor would like to express our deepest gratitude to the DAB members who walked with the parties through the whole project particularly the most difficult stages, guiding the parties to build mutual acceptable procedures to solve possible disputes. With your constant care and encouragement, it is finally possible the two parties amicably reach the final settlement package agreement. Again, we would like to give our sincere thanks and appreciation to the DAB members for your tremendous contribution to the final completion and a successful closure of the Project.
Signed for and on behalf of
The Employer, Kunming Zhangjiuhe Water Diversion and Water Supply Project Construction Bureau, by Mr. Lai Baoheng
The Contractor, Cooperativa Muratori e Cementisti - CMC di Ravenna by Mr. Salvatore Casciaro
Gordon L. Jaynes
1929 - 2022
VIAC
HICAC 2025


Resources
https://www.padsk.org
https://www.drb.org/dispute-board-manual
https://www.jica.go.jp/Resource/activities/schemes/finance_co/procedure/guideline/pdf/DisputeBoardManual_201203_e.pdf
https://www.fidic.org
https://www.baaik.org
Dispute Board Manual
March 2012
International Conference On Dispute Resolution Improvement of Construction Quality
Forthcoming Events
News
Committed to Quality, Integrity and Sustainability
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Cảm ơn rất nhiều

Thank you for your attention!

FX Kurniadhi Widjojo, ST, MM, MT, FIDSK

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Ir. Hambali, ST, MT, FIDSK

Konsultan & Dosen dalam bidang Pengadaan dan Kontrak Konstruksi

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Formal Education

2023 – Pendidikan Profesi Insinyur ITB - Bandung
2004 – Magister Teknik Prasarana Lingkungan Permukiman, ITS Surabaya
*1999 – Sarjana Teknik Sipil – **UNDIP, Semarang***

Work Experience

2024 – sekarang	Tenaga Ahli Kontrak Konstruksi MKMP Proyek Sinergi BI
2022 – sekarang	Tenaga Ahli Pengadaan dan Kontrak Konstruksi **PT. Transportasi Jakarta**
2021 – 2022	Tenaga Ahli Kontrak Konstruksi pada **Proyek Jalan Tol Cisumdawu Phase 2 dan Phase 3**
2000 – 2021	Pejabat Struktural pada **Kementerian PUPR & Pemerintah Daerah**
	Kepala Balai Pengadaan Jasa Konstruksi Jawa Barat
	Kepala Bagian Hukum & Komunikasi Publik Ditjen Bina Konstruksi
	Kepala Balai Pelatihan Konstruksi Surabaya
	Kepala Sub Bagian Data dan Informasi Setditjen Bina Konstruksi
	Kepala Seksi Jalan dan Jembatan Dinas PU Kabupaten Kaur
	Kepala Seksi Perencanaan Dinas Tata Kota dan Permukiman Kota Lubuklinggau

Organization / Other Activities

Dosen Manajemen dan Kontrak Konstruksi ITENAS Bandung
Asesor pada LSP SAKTI Ikatan Ahli Konstruksi Indonesia Bandung
Pengurus dan Anggota Perkumpulan Ahli Dewan Sengketa Konstruksi
Anggota Dispute Resolution Board Foundation (DRBF USA)
Anggota Society of Construction Law – Indonesia

VIETNAM INTERNATIONAL ARBITRATION CENTRE

SOCIETY OF CONSTRUCTION LAW VIET NAM
HỘI PHÁP LUẬT XÂY DỰNG VIỆT NAM

HICAC 2025

2025 HO CHI MINH CITY INTERNATIONAL CONSTRUCTION ARBITRATION CONFERENCE

Raising the Bar:

Enhancing Quality in Dispute Resolution for Vietnam's Construction Projects – Bridging International Expertise with Domestic Practice

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