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FIDIC SUITE OF CONTRACTS 2017 – NEW DISPUTE RESOLUTION REGIMES

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3rd INTERNATIONAL ARBITRATION CONFERENCE

ARBITRATION BETWEEN QATARI LAW AND INTERNATIONAL CONVENTIONS

Introduction

The New FIDIC Contract Suite 2017

- New Red, Yellow and Silver Books
- Seeks to address shortcomings of the old FIDIC 1999 1st Edition and also hangovers where 1987 4th Edition is still in use
- A number of new key features
- But essentially they build on FIDIC themes

A RECAP OF THE OLD REGIME

FIDIC RED BOOK 1999 1ST EDITION

- Employer Claims
- SC 2.5
- Engineer's determination SC 3.5
- Inter party agreement and fair determination
- Assumption of success
- No real lead in to the dispute resolution provisions at SC 20.2 onwards
- Deductions and set off for 'successful' Employer claims
- Contractor Claims
- SC 20.1
- Conditions precedent?
- Time bars?
- Disputes lead to SC 20.2 Dispute Adjudication Board
- Notice of Dissatisfaction (SC 20.5) leads to Amicable Settlement
- 56 days
- Failing which the Parties move to Arbitration with SC20.6

OLD RED BOOK

DAB V ARBITRATION

- DAB
 - 1 to 3 members
 - Usually deleted by lawyers
 - Moves to ADR
 - Inherent time and costs make it akin to a quasi or mini arbitration
 - Appendix provides an agreement and procedural rules
- Arbitration
 - 3 arbitrators
 - Reliance on ICC
 - Neutral venue recommended
 - English language
 - Nothing to prevent commencing while mid works unless amended

NEW FIDIC RED BOOK

2017 2nd EDITION

- Contract Claims
 - All wrapped up in SC20.1 and 20.2
 - Additional provisions to address perceived shortfalls on the last contract form
 - Claims for EOT and/ or money
- Now also deals specifically with:
 - Notice of claim
 - Engineer's initial response
 - Contemporary records
 - Fully detailed claim
 - Agreement or determination of the claim
 - Claims of continuing effect
 - General requirements

NEW FIDIC RED BOOK

DAAB

- Dispute Avoidance/ Adjudication Board SC 21.1-21.4
- 1 or 3 members
- Recommends a standing DAAB but ad-hoc is possible
- SC21.3 allows for informal help based on joint party requests – non-binding
- Appendix includes DAAB agreement and procedural rules
- Guidance drives towards ADR:
 - Direct negotiations
 - Expert determination (ICC rules)
 - Mediation (ICC rules)
 - Any other ADR
 - Poses potential conflict with Qatari law

NEW FIDIC RED BOOK

Arbitration

- SC21.4
 - Notice of dissatisfaction in relation to DAAB
- SC21.5 28
 - days Amicable settlement period
- SC21.6
 - Commence arbitration under ICC rules
 - Guidance looks to UNICTRAL as an alternative
- Choose 1 or 3 arbitrators
- Neutral venue recommended
- Engineer can be brought as a witness
- Previous DAAB evidence and arguments can be expanded upon
- SC 21.6 allows for costs implications where a Party fails to cooperate
- Guidance looks to:
 - Currency and proportions arising out of long term proceedings
 - Joinder of other disputes

FIDIC 2017 NEW DISPUTE RESOLUTION REGIMES

Conclusions

- The new forms are welcomed
 - Some criticism as expected
- Addresses previous shortcomings
- Focus on dispute avoidance
- Employers will not be happy about being part of the same claims regime as Contractors
- But that is the primary cause of most formal disputes
- Will we use it in Qatar?
 - Unlikely at this stage
 - New forms from the Public Sector likely to take precedence

Thanks for listening ...

Questions ...

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