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THE DISPUTES POWERHOUSE

## Claims Procedure and Dispute Resolution under the revised FIDIC Conditions

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ICP Working Weekend

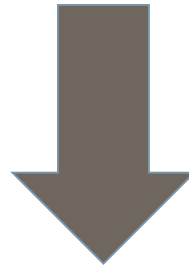
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# Introduction

- General dispute resolution framework has not changed
- Main steps in 2017 FIDIC Conditions still the same:
  - (1) Notice of Claim
  - (2) Engineer's Determination
  - (3) Decision by DAB
  - (4) Amicable settlement negotiations
  - (5) ICC arbitration

## Splitting Clause 20

- Old Clause 20: “Claims, Disputes and Arbitration”



- New Clause 20: “Employer’s and Contractor’s Claims”
- New Clause 21: “Disputes and Arbitration”

## Changes to notice requirements

- Notice: “*written communication which identifies itself as a Notice and issued in accordance with Sub-Clause 1.3*” (Sub-Clause 1.1.56)
- Achieve additional clarity / certainty
- Avoid disputes and tactical manoeuvres
- Potential to achieve dispute avoidance?
- Advance warning obligations (Sub-Clause 8.4)

## New claims procedure (Clause 20)

- Same procedure for Employer's and Contractor's claims
- Claim: *“a request or assertion by one Party to the other Party for an entitlement or relief under any Clause of these Conditions or otherwise in connection with, or arising out of, the Contract or the execution of the Works”* (Sub-Clause 1.1.6)
- Three categories of claims (Sub-Clause 20.1):
  - Claims for payment (or reduction in the Contract Price)
  - Claims for extension of time
  - Claims for entitlement other than for time or money

## “Other claims”

- Shorter procedure:
  - Referred to Engineer for agreement or determination (Sub-Clause 3.7)
  - Notice “as soon as practicable”
  - Engineer acts “neutrally” (no need to obtain Employer's prior consent)

## Claims for time / money

- New claims procedure in Sub-Clause 20.2
  - See Flowchart
- Parties bound by clear timetable / conditions precedent
- Additional time-bars
  - submission of details of contractual or legal basis of Claim (84 days after awareness of event / circumstance)
  - submitting disputed determination of the Engineer to DAAB (42 days of the Notice of Dissatisfaction)

# Claims for time / money

	Notice of Claim	Fully detailed claim
Time limit	As soon as practicable and within <b>28 days</b> after becoming aware (or should have become aware) of the event or circumstance	Within <b>84 days</b> after becoming aware (or should have become aware) of the event or circumstance, or as agreed by the Engineer
Contents	Written description of event or circumstance, expressly identified as a "Notice"	A statement of the contractual and/or other legal basis of the Claim



## Revised dispute resolution (Clause 21)

- Focus on dispute avoidance
- Standing DAAB (Dispute Avoidance/Adjudication Board) instead of ad hoc DAB
- Assistance and informal discussions to resolve disagreements (mediation function)
- Constitution of DAAB even where one Party objects
- DAAB decision binding on Parties and Engineer

## Revised arbitration provision (Clause 21)

- Time period to attempt amicable settlement reduced to 28 days
- ICC Arbitration: “one or three arbitrators” (to enable ICC Expedited Procedure)
- Arbitral tribunal has power to enforce DAAB decision through interim / provisional measures or partial award

## Conclusion

- Focus on dispute avoidance and real-time claim / dispute resolution
- Detailed claims procedure for additional clarity / certainty
- Increased administrative burden placed on both Employers and Contractors
- International construction community will need to adjust to new processes



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Thank you!

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