

# The new FIDIC books (Red, Yellow and Silver) have arrived

Just before the end of 2017, FIDIC (Fédération Internationale des Ingénieurs-Conseils) released the new versions of its so-called Red, Yellow and Silver Books. They concern rewritten versions of the standard contract forms of the same name of 1999 which are well established in the international construction business.

The 2017 editions are part of a larger whole of contracts. This is referred to as the so-called "rainbow" of contracts, because of the colourful binders of the individual books. The 2017 editions are suitable for a large number of projects, whereby the choice for one or the other depends chiefly on the desired risk profile:

- Red Book ("Conditions of contract for construction for building and engineering works designed by the employer"): The contractor builds. The design is provided by the client.
- Yellow Book ("Conditions of contract for plant and design-build"): In addition to the performance of the construction activities, the contractor is also responsible for the design.
- Silver Book ("Conditions of contract for engineering, procurement and construction"): In addition to the construction and design responsibilities, the contractor also accepts the majority of the contractual risks.

Most of the principles and clauses are the same in the three books. The main distinction is in the difference in risk allocation. For instance, in the context of the Silver Book the risks of, among others, mistakes in the client's requirements, unforeseeable circumstances and exceptionally bad weather conditions, are with the contractor. In addition, the Red and Yellow Book talk about an engineer who "manages" the contract between the client and the contractor. This intermediary is not present in commissions executed according to the Silver Book.

The 2017 editions are not mere "make-overs" of the 1999 editions, which can still be used. There are several changes and clarifications. The contracts are 50% longer than the 1999 versions. FIDIC justifies this through its objective to offer the parties more clarity and project management tools. It wants to avoid disputes between the parties by, among others,

- giving a meticulous description of the claim procedure. In this way the notification term of 28 days is made applicable to both the contractor and the client. Other deadlines were also added.
- the obligatory establishment by the parties of a Dispute Avoidance / Adjudication Board

shortly after the conclusion of the contract. Unlike in the 1999 editions, it is therefore not an ad hoc but a permanent body. Parties can request "informal assistance" in order to avoid a dispute from forming.

The future will have to show to what extent the 2017 editions are given their place in the (international) construction sector. After all, they continue to compete with their predecessors in 1999 which are less complex and are established in practice. Moreover, there is the major role of national law, the compatibility of which with the FIDIC contracts always needs to be verified.

For more information about this specific subject, contact Kris Lemmens and Jan De Leyn.

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