

### **13. Abstrakt (anglicky)**

The Fédération Internationale des Ingénieurs-Conseils FIDIC (International Federation of Consulting Engineers) organisation was founded in 1913 by France, Belgium and Switzerland. The UK did not join until 1949. The first edition of the Conditions of Contract for Works of Civil Engineering Construction was published in August 1957 having been prepared on behalf of FIDIC and the Fédération Internationale des Bâtiment et des Travaux Publics (FIBTP).

FIDIC forms of contract are intended to be suitable for projects being carried out around the world by all types of employers, often in a civil law environment. The forms are not only written in formal legal English, they are also obviously drafted with a common law background in mind which will typically affect the interpretation of the conditions.

FIDIC recommends its conditions for international use and that is the reason why FIDIC created its conditions on a two part basis. There are the specific and general conditions. FIDIC warns from changing the general part and recommends to do all the changes (because of local law requirements or because of the project specialities) in the particular part, however, the FIDIC standard forms are useful also for the domestic use.

FIDIC CONS are used as contract conditions for the Czech Republic public procurement within the area of infrastructure construction projects.

The purpose of this thesis is to analyze the influence of the FIDIC conditions on the domestic construction contracts and also within the area of international trade. I would like to point out its

influence on the construction business in the Czech Republic, because there is no doubt about this effect.

This thesis deals mainly with the First Edition 1999 of the international contract conditions FIDIC CONS<sup>353</sup> (Conditions of Contract for Construction), FIDIC P/DB (Conditions of Contract for Plant and Design-Build<sup>354</sup>) a FIDIC EPC (Conditions of Contract for EPC/Turnkey Projects<sup>355</sup>).

Accordingly this paper is set out in the following sections providing firstly a brief overview of the history and development of the FIDIC form in the first chapter. The chapter two provides the contract conditions in the construction industry, continuing with the description of the FIDIC standard forms of contracts (mentioned hereinbefore) in the chapter three. The next section 4 provides some interesting issues relate to the use of the FIDIC conditions in the Czech Republic legal system. Important goal of this paper is to analyze some of these specific institutes originating often from the Anglo-American law system but used in Czech legal environment.

The structure of *lex mercatoria* is far from clear and the same we could mention about the position of FIDIC conditions within this structure. This position is not obvious and I am not satisfied with the opinions considering these conditions to be nothing but a sample or guide. In my opinion there is much more about it. I would like to share as well my opinion in regard to the discussion for considering a *lex constructionis* as a distinct area from or within the *lex mercatoria*. Whereas it is submitted that there is much about international construction which is unique and growing, *lex constructionis* deserves separate consideration.

---

<sup>353</sup> Also called „Red Book“.

<sup>354</sup> Also called „Yellow Book“.

<sup>355</sup> Also called „Silver Book“.

Thus I continue with these international trade matters (including *lex mercatoria* aspects) in the chapter 5.

Next section 6 deals with the risk allocation and insurance. The FIDIC contract conditions are well known for internal cohesion mainly in the aspect of risk allocation, claims and dispute settlement. My effort in this thesis has led to the presentation of some interesting opinions on risk and their allocation under construction contracts (whereas the FIDIC conditions originate from the Anglo-American law system, nevertheless, they are also used in civil code countries). The basic sense has been to describe precisely the allocation of risks of the contractor and the employer within the FIDIC CONS, P/DB and EPC. The knowledge of risk allocation is important not only for lawyers but also for all the team members of construction project not only in the stadium of realization but also in the stage of tender preparation.

The chapter 7 deals with the contract price, chapter 8 provides the claims and the chapter 10 the claim management. Claim is *inter alia* a specific technical term used in construction industry. A specific technical definition could sound as follows: „Claim is a specific requirement of one contracting party for extension of time for completion and/or additional payment that could be noticed to the other contracting party on the basis of an event or circumstance that is foreseen in a contract clause or otherwise in connection with the Contract. The contract provides special rules for claim procedures and compliance with these rules is a condition for successful achievement of the requirement.”

One of the most important efforts within this thesis is to analyze and create an effective claim management system. I propose (with help of the inside and outside analysis) a claim management system intended for the purpose of local conditions public procurement projects. The solution of this system has been arranged

in 5 parts. The first part is formed by a processes description, the second creates a checklist of the contractor claims, the third part forms the team structure, the fourth the model letters and the fifth the operations descriptions.

Chapter 9 refers to the disputes resolution. The FIDIC conditions provide special clauses for dispute settlement creating an independent system. Whereas this system is rather based on an Anglo-American law tradition, there are some specific matters to be dealt with.

The last section includes a vocabulary of specific construction industry terms in four languages.