

In The Name Of God

Some Considerations in International Contracts

FIDIC Forms of Contract

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Your Team

1. Technical, Engineers.
2. Financial, Economists and/or Industrial Engineers.
3. Commercial, Bankers and/or Business Specialists.
4. Legal, Lawyers.

Role of Lawyers

- Don't let lawyers negotiate on your behalf.
- Always have a lawyer review the draft of the contract or draft it for you.
- Make your own decision.

Role of Law

Clause 5

Applicable Laws

- Governing Law (Law Governing the Substance of the Contract).
- Law Governing Procedures.

If not specified, the applicable law will be the law of the place of litigation or arbitration.

- Law Governing Enforcement of Awards.

New York Convention of 1958.

Systems of Law

1. The Romano-Germanic group
2. The common law group.
3. The Islamic law group including those with origins from the first two groups.
4. The socialist laws group.

Role of Law

Applicable Law of the Contract

1. Express choice of the applicable law
Doctrines of “Freedom of Contract”
2. Inferred choice of the applicable law
Arbitration Clause, Residence of the parties, Currency, Nature and location of the subject matter of contractual obligations.
3. No choice of the applicable law.
Principles of conflicts of laws.

Jurisdiction Place

Interpretation of the Law

Strict Sense (Dictionary) Interpretation.

Liberal (Intent Dominated) Interpretation.

The Court System

Language

- The ruling language.
 - Second language is for convenience.
 - Sub clause 5.1 (a) of FIDIC Red Book.
 - Translate, translate back independently.
 - Make sure every one has the same understanding of each term.
 - Have a good definition section, Clause 1.

TORT

- Tort of Nuisance

- Tort of Libel

In permanent form, no proof of damage is needed, may be criminal.

- Tort of Slander

In non-permanent form, proof of damage is needed, not criminal

- Tort of Trespass

To Land, To Chattel, To person

- Occupiers' Liability

- Tort of Negligence

Duty of care is owed, Duty has been breached, Damage or injury is suffered as a result of the breach

Prerequisites of a Contract

1. Intent
2. Agreement, definitive offer and unqualified acceptance.
3. Consideration (exception: Sealed Contract.)
4. Capacity.
5. Legality.

Limitation Periods

- Discoverability
- Occurrence

Privity of Contract

- No one who is not a party to a contract will be responsible or eligible for benefit.
- Rights and benefits are assignable unless expressly forbidden under the contract.
- Responsibilities and obligations are assignable provided all parties involved agree.

Discharge of Contracts

- Performance of obligations
- Agreement to discharge
- Pursuant to express terms
- Frustration
- Breach of obligation (fundamental)

Breach of Contract

- Warranty
- Repudiation
- Direct and indirect damages
- Penalty clauses
- Quantum meruit
- Substantial compliance
- Specific performance
- Injunction

Contract Interpretation

- Rule of “Contra Proferentem”
- Parole Evidence Rule
- Implied Terms

Drafting Principles

- Who should draft? (Contra Proferentem)
- Try to prepare and present the first draft.
- Prepare your draft based on accepted forms of contract.

Sharing of Risks

Accept as many risks as you
prudently are able to.

Dispute resolution risks