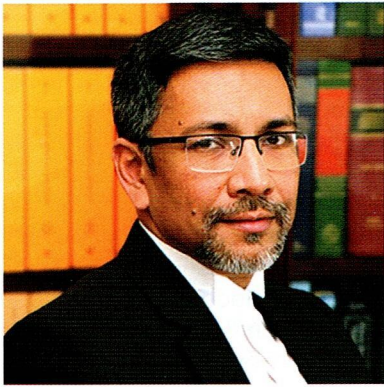




Major Infrastructure Projects in Bangladesh: A Perspective on FIDIC Contracts and Dispute Boards

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Introduction: Use of FIDIC Contracts in Bangladesh

Bangladesh is currently undergoing major infrastructure upgrades, transitioning rapidly into a more robust and dynamic economy. The national landscape is being fundamentally reshaped by an array of mega-projects, ranging from deep-sea ports, extensive bridge networks, and mass rapid transit railway systems to massive airport terminal expansions and advanced power generation facilities. To effectively govern the complex matrices of these large-scale capital investments, international standard form contracts are universally employed.

The internationally recognized suite of contracts published by the International Federation of Consulting Engineers, widely known as FIDIC, remains the foremost choice in this jurisdiction. From the initial procurement stages, often utilizing the FIDIC Standard Prequalification Form for Contractors, to final completion, the adoption of FIDIC contracts provides a universal language for engineers, international contractors, and public employers. These forms offer a balanced allocation of risk, standardized administrative procedures, and a highly predictable framework for project management and dispute resolution. In Bangladesh, public procurement entities and multinational consortiums rely heavily on FIDIC conditions to navigate the complex realities of project execution.

This reliance ensures that unforeseen events, design variations, and delays are managed through an established contractual mechanism rather than immediately escalating into hostile, project-paralyzing litigation. Crucially, the FIDIC framework introduces structured claims procedures and dispute resolution mechanisms. These mechanisms, particularly the mandatory notice provisions under the general conditions of contract, ensure that grievances are aired,

evaluated, and resolved contemporaneously, preventing the accumulation of unresolved claims at the project's conclusion.

FIDIC Books and Their Dispute Resolution Mechanisms

In the realm of large-scale, internationally financed infrastructure projects, the selection of the appropriate FIDIC contract depends entirely on the procurement strategy and risk allocation desired by the employer. For traditional civil engineering and infrastructure projects where the employer bears the design responsibility, such as major highways, bridges, and extensive dredging works, the classic FIDIC Red Book (Conditions of Contract for Construction, Second Edition 2017, Reprinted 2022 with amendments) remains the industry standard. However, as projects grow in technical complexity, employers increasingly prefer to transfer the design risk to the contractor. In these scenarios, which include the construction of advanced power generation facilities, modern water treatment plants, and complex mass rapid transit railway systems, the FIDIC Yellow Book (Conditions of Contract for Plant and Design Build, Second Edition 2017, Reprinted 2022 with amendments) is extensively utilized.

Furthermore, when an employer requires absolute certainty regarding the final contract price and completion date, shifting almost all completion and design risks to the contractor—a structure typical of privately financed independent power projects or large-scale turnkey infrastructure—the FIDIC Silver Book (Conditions of Contract for EPC/Turnkey Projects, Second Edition 2017, Reprinted 2022 with amendments) is the instrument of choice. For smaller-scale or less complex works, the FIDIC Green Book (Short Form of Contract, Second Edition 2021) is typically deployed.

Particularly in projects heavily funded by overseas development assistance, such as major airport

extensions and new terminal constructions, the FIDIC Conditions of Contract for Construction Multilateral Development Bank Harmonised Edition, commonly referred to as the Pink Book, is predominantly utilized. This specific edition is tailored to accommodate the stringent administrative requirements of participating multilateral development banks while maintaining the core principles of the traditional Red Book. Aviation infrastructure projects, for instance, are uniquely intricate, marrying heavy civil engineering with highly specialized electromechanical systems, baggage handling networks, and navigational technologies, making the Pink Book highly suitable for such multi-disciplinary endeavours. When drafting Particular Conditions to amend these standard forms, parties are strongly advised to adhere to The FIDIC Golden Principles (First Edition 2019) to ensure the fundamental, balanced risk allocation inherent to FIDIC contracts remains intact.

A defining feature across this entire suite of FIDIC contracts is a robust and tiered dispute resolution mechanism. Recognizing that modern infrastructure projects involve massive capital investments, highly specialized systems, and rigid operational constraints, the FIDIC framework fundamentally prioritizes dispute avoidance and real-time resolution. The mechanism mandates a progressive, step-by-step approach to conflict resolution. Initially, claims must be submitted to the Engineer—or the Employer's Representative in the case of the Silver Book—for a formal and objective determination. If either party is dissatisfied with this determination, the matter is referred to an independent Dispute Board. The issuance of a Dispute Board decision, which is binding on an interim basis, can then be followed by a mandatory period of amicable settlement, allowing parties a window to negotiate commercially before any unresolved issues are ultimately subjected to international or domestic arbitration. This tiered approach is universally designed to prevent technical and financial disagreements from halting critical project progress.

Formation and Benefits of Dispute Board Resolution

The formation of a Dispute Board under the FIDIC framework involves the appointment of independent, impartial experts, typically comprising one or three members, mutually agreed upon by both the employer and the contractor. In major infrastructure projects, a standing Dispute Board is highly recommended and often mandated by international lenders. A standing board is

constituted at the commencement of the project and conducts regular site visits, allowing the members to become intimately familiar with the project's factual, technical, and administrative nuances long before any formal dispute materializes.

The benefits of a Dispute Board are manifold. Primarily, it serves a proactive function in dispute avoidance. By maintaining a continuous presence, the board can offer informal opinions and facilitate dialogue between the parties before entrenched positions lead to formal claims. When a formal referral is made, the Dispute Board provides a swift, technically informed, and commercially viable decision within a strict contractual timeframe, usually eighty-four days. This rapid resolution mechanism ensures that cash flow—universally recognized as the lifeblood of the construction industry—is maintained, preventing the derailment of the project schedule. By providing an interim, binding resolution, the Dispute Board ensures that work continues unhindered while preserving the commercial relationship between the contracting parties, allowing the project to proceed to completion without the shadow of pending litigation halting progress.

Complexity Involving Managing Large Scale Disputes

Managing disputes in large-scale infrastructure is fraught with technical, administrative, and legal complexities. Mega-projects rarely involve a single isolated contractor; they feature an interdependent web of main contractors, nominated subcontractors, statutory utility providers, and third-party specialists. Delays in one sector—such as the delayed handover of a project site, failures by a nominated subcontractor to install critical electromechanical components, or utility providers failing to relocate existing power lines—cascade through the entire project timeline.

The complexity is magnified by the necessity of integrating advanced technological systems within live operational environments, whether it involves integrating a *new mass transit line *with existing urban traffic grids, synchronizing a new power plant with the national transmission network, or commissioning specialized security networks in an active airport. Disputes frequently arise over the interface between these different systems, delays caused by third-party dependencies, and the stringent testing phases required before a facility can be deemed operationally ready. To mitigate such technical disputes, strict adherence to quality frameworks is essential, as emphasized in FIDIC's

Guide to the Interpretation and Application of the ISO 9001:2015 Standard for the Consulting Engineering Industry and Improving the Quality of Construction: A guide for actions (2004).

These dependencies frequently trigger fierce disputes over the issuance of Taking-Over Certificates and the extension of the Defects Notification Period. An employer may issue a full Taking-Over Certificate to alleviate a contractor's cash-flow constraints by releasing retention monies, only to later argue that the facility is technically inoperable due to pending specialized testing, such as non-operational trials, system integration testing, or revenue operational trial periods.

Furthermore, profound complexities arise at the intersection of private contract law and public administrative law. Employers in these mega-projects are usually statutory government authorities subject to stringent public finance regulations, ministerial oversight, and sovereign audits. When an international contractor seeks strict enforcement of the FIDIC contract's payment mechanisms, the employer frequently counters with defenses rooted in statutory audit findings and public-law duties, creating a highly complex legal battlefield that the Dispute Board must carefully navigate.

Factual and Legal Arguments for the Parties

When disputes crystallize in infrastructure mega-projects, presenting factual and legal arguments is an immense logistical and strategic undertaking. Rather than hinging on a single isolated technicality, these disputes generate huge document bundles that demand grueling and meticulous factual analysis across years of project history. Furthermore, because Dispute Board chairpersons are frequently seasoned professionals with formidable legal backgrounds, parties cannot rely solely on engineering explanations. Legal submissions must be rigorous, integrating precise contractual interpretation with robust citations of relevant domestic and international case law to substantiate positions on public law, statutory duties, and equitable doctrines.

Navigating the Dispute Board hearing itself demands exceptional trial and advocacy skills. These proceedings are highly dynamic and often require the physical presence of various project stakeholders, including main contractors, specialized subcontractors, and technical experts. Factual witnesses and experts play a crucial role and must be thoroughly prepared, as they are routinely subjected to probing, inquisitorial

questions directly from the Board members. Consequently, formulating a cohesive, overarching case strategy is paramount. Given the sheer scale of the proceedings, managing such disputes necessitates a major, multi-disciplinary legal team capable of simultaneously executing several complex components—ranging from forensic delay analysis and quantum calculations to advanced legal advocacy.

Binding Nature and Voluntary Compliance

A cornerstone of the FIDIC dispute resolution mechanism is the interim binding nature of Dispute Board decisions. The contract explicitly mandates that once a decision is rendered, both parties must promptly give effect to it, ensuring that cash flows and physical execution of the works continue unabated. However, this binding status is provisional. If a party rejects the Board's findings, it has the absolute right to file a Notice of Dissatisfaction within a strict contractual timeframe—typically twenty-eight days. Filing this notice formally rejects the decision and preserves the party's right to escalate the dispute to amicable settlement and, ultimately, arbitration.

Despite this readily available escalation route, the system's true efficacy relies heavily on voluntary compliance. What typically hinders parties from proceeding to the next level of arbitration is not a lack of legal options, but practical project realities: the prohibitive costs of international arbitration, the massive consumption of management time, and the severe practical disruption to the project. Furthermore, because Dispute Board decisions are generally of high quality and technical accuracy, overturning them is notoriously difficult. A well-reasoned decision often provides a realistic preview of an arbitral award, thereby promoting voluntary compliance and commercial settlement, even for public sector employers who may otherwise be constrained by bureaucratic apprehension and the fear of subsequent audits.

Cost, Time, Confidentiality and Other Issues

While Dispute Boards save immense time and cost compared to arbitration—delivering expert decisions in months rather than years, with each party typically bearing its own legal expenses—they present unique challenges regarding privacy. In theory, alternative dispute resolution offers a highly confidential forum. In the daily reality of infrastructure mega-projects, however, strict confidentiality is frequently overlooked or practically impossible to maintain. The sheer scale

of these projects involves a massive influx of personnel from joint-venture contractors, nominated subcontractors, consultants, and government agencies, all frequently operating out of shared project offices. With so many individuals directly or indirectly involved, sensitive project data and dispute strategies inevitably permeate the wider project ecosystem.

Other persistent issues in these disputes include the management of currency exchange risks and financing charges. With multilateral funding routed across borders, exchange rate fluctuations and complex banking transfers frequently trigger disputes over financial shortfalls, requiring the Board to meticulously analyze the contractual allocation of financial risks to determine liability for delayed payments.

Conclusion

The successful delivery of modern, large-scale infrastructure megaprojects in Bangladesh requires considerably more than just engineering excellence; it demands highly sophisticated, fair, and efficient contract administration, guided by comprehensive frameworks like FIDIC's Definition of Services Guidelines: Infrastructure Construction / Civil Works. The suite of FIDIC contracts, coupled with the mandatory Dispute Board mechanism, provides the optimal and internationally tested framework for navigating the inevitable conflicts that arise in such complex environments. However, the framework is ultimately only as effective as the parties utilizing it.

Both employers and contractors hold a profound responsibility to administer the contract in absolute good faith. Contractors must ensure meticulous compliance with project specifications, maintain transparent reporting practices, and strictly adhere to contractual notice provisions to preserve their rights. Employers, particularly government and statutory entities, must respect the independence and authority of the Engineer and ensure timely responses to requests for variations and approvals. Employers must actively ensure that their internal administrative and auditing procedures do not unlawfully obstruct their adherence to the binding timelines of the private contract.

These mega-projects involve a highly complex matrix of large international engineering firms, seasoned lawyers, and key government officials. Just as technical experts are rigorously chosen—a process underscored in FIDIC's Guidelines for the Selection of Consultants (Second Edition 2013)—navigating this intricate ecosystem makes it

absolutely essential to have experienced external legal counsel on board from the very beginning of the project. A critical observation in the Bangladeshi context is that domestic entities often do not hire external lawyers at the onset, choosing rather to engage them at the very end when arbitration is imminent. Relying solely on in-house capacity simply does not help when managing the rigorous demands of FIDIC contract administration, early dispute avoidance, and the strategic nuances of Dispute Boards.

Both parties must embrace the collaborative spirit of the Dispute Board mechanism, viewing it not as a preliminary legal battlefield, but as an essential project management tool designed to ensure mutual commercial and operational success. As we commemorate the 15th BIAC Anniversary and convene the 1st Bangladesh ADR Summit, it is my sincere hope that the early integration of legal expertise and the continuous refinement of Dispute Board practices will serve as a resilient cornerstone for our nation's ongoing infrastructural and economic development.

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