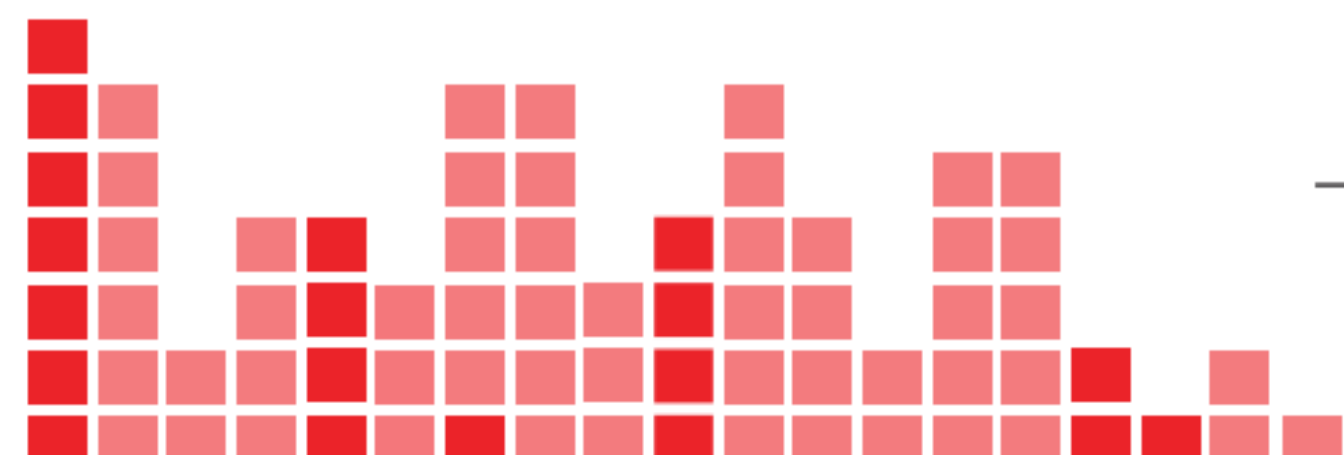




**CONSTRUCTION
LAW
INSTITUTE**

CONSTRUCTION ARBITRATION

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Disputes

24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to any Adjudicator appointed under the contract **within 14 days of the notification of the Project Manager's decision.**

25.2 Any Adjudicator appointed under the contract shall give a decision in writing **within 28 days of receipt of a notification of a dispute,** providing that he is in receipt of all the information required to give a decision.



Arbitration

Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision.

If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

25.4 Any arbitration shall be conducted in accordance with the Arbitration and Conciliation Act 2000 or such other formal mechanism specified in the SCC, and in the place shown in the SCC.



AMICABLE SETTLEMENT

Sub-Clause 20.5 (Sub-Clause 20.7 in the Gold Book) provides that: “both Parties shall attempt to settle the dispute amicably before the commencement of arbitration” .

If the Parties fail to settle their dispute, either Party may refer the dispute to arbitration on or after the 56th day following the date that the notice of dissatisfaction was given even if no attempt at amicable settlement has been made



ARBITRATION UNDER THE ICC RULES

Rules of Arbitration of the International Chamber of Commerce (ICC Rules) – unless agreed otherwise.

- ICC arbitration is administered and scrutinised. It is paid for by the Parties on an ad valorem basis (i.e. based on the amount in dispute).
- A consequence of arbitrating under ICC Rules is that the Parties agree to waive their rights to appeal insofar as permitted by the law governing the arbitration.



SEAT OF ARBITRATION

Choosing the seat of arbitration.

The Parties should agree the 'seat' or 'place' of the arbitration and include this in the contract in the Particular Conditions.



DAB A PRECONDITION TO ARBITRATION



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Sub-Clause 20.4 states that “Disputes shall be adjudicated by a DAB...”.

BUT: Sub-Clause 20.8 (Sub-Clause 20.11 in the Gold Book) provides that a Party may refer a dispute directly to arbitration without obtaining a DAB decision or attempting to settle the dispute amicably if “there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise”

FIDIC 2017

Where there is no DAAB in place “whether by reason of the DAAB’s appointment or otherwise” , Sub-Clauses 21.4 and 21.5 will not apply, and the Dispute may be referred directly to arbitration under Sub-Clause 21.6 without prejudice to any other rights.

- There may be cost penalties for failing to cooperate in constituting a DAAB (Sub-Clause 21.6).
- The failure to comply with a DAAB decision is a Dispute which may itself be referred directly to arbitration whether binding or final and binding (Sub-Clause 21.7).



FIDIC 2017

The arbitral tribunal may enforce the decision on an interim or provisional basis via “a summary or other expedited procedure”.

Non-compliance with a binding or final and binding DAAB decision under Sub-Clause 21.4 is now a ground for suspension and/or termination under Sub-Clauses 15.2.1(a)(iii), 16.1(d) and 16.2.1(d) to the extent that such failure constitutes a “material breach” of the Employer’s obligations under the Contract



FINALITY

- ICC Arbitration is final.
- ICAMEK rules, Arbitration is final.
- CADER rules, Arbitration is final.
- Either party may apply to set aside the award on limited grounds under S. 34 of the Arbitration and Conciliation Act (Cap. 4).



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