



Co-organized by ICC and FIDIC

## International construction contracts and the resolution of disputes

São Paulo, 16 - 17 June 2011

## Programme

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## Claims and disputes under international construction contracts

- 09.00 - 09.30 **Welcoming addresses**
- **Eduardo Carvalho Tess Filho**, Chairman, Law and Globalization Commission, São Paulo State Bar
  - **François Baillon**, Commercial Director, FIDIC
  - **Fernando da Costa Cattapan**, Vice-President, Associação Brasileira de Consultores de Engenharia (ABCE)
  - **Arnoldo Wald**, Vice-Chairman, ICC Brazil; Founding Partner, Wald e Associados Advogados, Brazil; Arbitrator; Professor of Private Law, University of the State of Rio de Janeiro; Member, ICC International Court of Arbitration; Chairman, ICC Brazil Arbitration Commission
- Welcome by the Chairman of the first day**
- **Christopher R. Seppälä**, Partner, White & Case LLP, France; Alternate Member for the United States, ICC International Court of Arbitration; Associate Member, ICC Institute of World Business Law; Special Advisor to FIDIC Contracts Committee
- 09.30 - 10.10 **Overview of the FIDIC contracts for major works**  
Presentation of the FIDIC Red Book, Yellow and Silver Books.
- Who uses these contract forms and why?
  - What are their specific features? The historic role of the Red Book. How are the Yellow and Silver Books used in privatized Build Operate Transfer (BOT) projects?
  - What is their future role?
  - **Aisha Nadar**, Research Fellow, Construction Contracts and Dispute Resolution, Centre for Commercial Law Studies, Queen Mary, University of London, United Kingdom; Member, FIDIC Updates Task Group
- 10.10 - 10.25 Q & A
- 10.25 - 10.45 **FIDIC in Central and South America**
- **Roberto Hernandez Garcia**, Managing Partner, COMAD, S.C. Law Firm, Mexico
  - **Pablo Laorden**, Managing Partner, Lambal Abogados, Spain; FIDIC Accredited Trainer
- 10.45 - 11.00 Q & A
- 11.00 - 11.20 *Coffee break*
- 11.20 - 11.35 **The MDB Harmonised Construction Contract**
- **Sebastian Hök**, Senior Partner, Hök, Steiglmeier & Kollegen, Germany; FIDIC Adjudicator
- 11.35 - 11.50 **The FIDIC Subcontract for Construction**
- **Siobhan Fahey**, Chartered Engineer and Chartered Arbitrator, Ireland; Member, FIDIC Subcontract Task Group
- 11.50 - 12.05 Q & A
- 12.05 - 12.25 **FIDIC Construction and Plant and Design-Build Contracts: recent experience**  
The new Portuguese version of the FIDIC Construction Contract
- **Cecilia Misu**, Senior Consultant Contract Management, Siemens AG, Germany
  - **Pedro Siza Vieira**, Managing Partner, Linklaters LLP, Portugal
- 12.25 - 12.45 Q & A

- 12.45 - 14.00 *Lunch*  
*Presentation of the FIDIC Portuguese Construction Contract by **Victor Carneiro**,  
President, Associação Portuguesa de Projectistas e Consultores*
- 14.00 – 14.20 **FIDIC EPC/Turnkey Contract: recent experience**
- **Julio César Bueno**, Partner – Projects, Construction and Engineering Contracts Area, Pinheiro Neto Advogados, Brazil
- 14.20-14.40 Q & A
- 14.40– 15.00 **Role of the expert in international construction disputes**  
Experts appointed by Parties and experts appointed by the arbitral tribunal.  
Legal relationships and liability? The mandate given to the experts.  
Power of the expert and procedures to be followed by him or her.  
Practical advice. ICC International Centre for Expertise
- **Luiz Olavo Baptista**, Partner, L.O. Baptista Advogados, Brazil; Council Member, ICC Institute of World Business Law
- 15.00-15.20 Q & A
- 15.20 - 15.45 *Coffee break*
- 15.45-16.30 **Dispute Adjudication Boards (DAB)**
- What are DABs?
  - What is the procedure for the pre-arbitral settlement of disputes by the engineer under the pre-1999 Adjudication editions and by a Dispute Adjudication Board (DAB) under the 1999 editions?
  - Advantages and disadvantages of DABs?
  - FIDIC's "standing" DAB versus an "ad hoc" DAB;
  - Similarities and differences between the FIDIC and the ICC Dispute Board Rules
  - What qualifications should DAB members have? How should they behave?
- **Sebastian Hök**
  - **Herfried Wöss**, Partner, Wöss & Partners, Mexico
- 16.30 – 17.10 **Dispute Adjudication: developments and challenges**
- Practical issues and difficulties
  - Lessons learnt from experience
  - What is the prospect of enforcement of the DAB's decisions by State courts and arbitral tribunals?
- **Volker Jurowich**, Managing Director, JuCon International, Germany; FIDIC Adjudicator
  - **Christopher R. Seppälä**
- 17.10 - 17.30 Q & A
- 17.30 *Presentation of "Arbitragem Comercial Internacional: A Convenção de Nova Iorque e o Direito Brasileiro", São Paulo, Saraiva, 2011 by Arnoldo Wald and Selma Ferreira Lemes*
- Cocktail reception kindly hosted by Pinheiro Neto*

## ICC arbitration and post-arbitration phase

- 09.00 - 09.10 **Welcome by the Chairman of the second day**  
The revision of the ICC Arbitration Rules. An introduction to the ICC International Court of Arbitration, and an overview of its role in the Region. ICC experience under FIDIC contracts and on construction disputes.
- **Emmanuel Jolivet**, General Counsel and Deputy Director for ICC Dispute Resolution Services, ICC International Court of Arbitration, Paris
- 09.10 - 10.00 **Construction arbitration involving State parties**  
Involvement of state and para-state entities, parties in international commercial arbitration, Arbitrability.
- **Mathieu de Boisséson**, Partner, Darrois Villey Maillot Brochier, France ; Associate Member, ICC Institute of World Business Law
  - **Selma Ferreira Lemes**, Partner, Selma Lemes Advogados; Professor of Arbitration at São Paulo Law School of Fundação Getúlio Vargas, Brazil; Alternate Member for Brazil, ICC International Court of Arbitration
  - **Rodrigo Francisco Martini**, Legal Counsel, Techint Engenharia e Construção, Brazil
  - **Moderator: Eleonora Coelho**, Partner, Castro, Barros, Sobral, Gomes Advogados, Brazil; Vice-President, Brazilian Arbitration Committee - CBAr
- 10.00 - 10.15 Q & A
- 10.15 - 10.35 *Coffee break*
- 10.35 - 11.25 **Arbitrating construction disputes: multiparty and multicontract issues**  
Presentation of the different issues arising out of arbitration with multiple parties. Issues raised by arbitration relating to multi-contract situations. The provisions of the new FIDIC Subcontract for Construction provisions relating to the settlement of multi-party (employer – contractor – subcontractor) disputes.
- **Christopher R. Seppälä**
  - **Jose Emilio Nunes Pinto**, Founding Partner, José Emilio Nunes Pinto Advogados, Brazil
  - **Moderator: Emmanuel Jolivet**
- 11.25 - 11.40 Q & A
- 11.40 - 12.20 **Assessment of the evidence and calculation of damages in construction cases**
- How to organize and deal with documents
  - Experts: Witness experts or appointed by the Arbitral Tribunal
  - Interpretation of Model Contractual Clauses / General Conditions v. Specific Conditions
  - Interpretation of Force Majeure Clauses in Construction Clauses
  - Who bear additional costs in Turn Key Contracts?
- **João Bosco Lee**, Partner, Lee, Taube e Gabardo Sociedade de Advogados, Brazil
  - **Eduardo Oliveira Gedeon**, Legal Director, Oderbrecht America Latina & Angola, Brazil
  - **Moderator: Ana Carolina Beneti**, Associate, Pinheiro Neto Advogados, Brazil
- 12.20 - 12.35 Q & A
- 12.35 - 14.00 *Lunch*

- 14.00 - 14.20 **Specificities of international construction arbitration in Brazil**
- **Arnoldo Wald**
- 14.20 - 14.35 Q & A
- 14.35 - 15.05 **Strategies and case management issues in construction arbitration**
- Preparation phase
  - Beginning and pursuing an ICC construction arbitration
  - Selection of Arbitrator(s)
  - Time bars and other jurisdictional issues
  - Strategies of the Claimant and the Respondent
  - **Adriana Braghetta**, Partner, L.O. Baptista Advogados Associados S/C, Brazil; President, Brazilian Arbitration Committee - CBAr
  - **Marcelo Ferro**, Partner, Ferro, Castro Neves, Daltro & Gomide Advogados, Brazil
- 15.05 - 15.20 Q & A
- 15.20 - 15.40 *Coffee break*
- 15.40 - 16.10 **Enforcement of arbitral awards – practical problems**
- What are the current practical problems of enforcement?
  - To what extent can contractors' liens or other security services be available to secure enforcement?
  - How may the position of the contractor as creditor, be affected by the rights of lenders to the employer (e.g. in BOT-type projects) at the enforcement stage?
  - What happens when State immunity is involved?
  - New trends & developments.
  - Do's and Don'ts.
  - **Carlos Alberto Carmona**, Partner, Marques Rosado, Toledo Cesar & Carmona Advogados, Brazil
  - **C. Ryan Reetz**, Partner, DLA Piper LLP (US), Florida, United States
  - **Moderator: Emmanuel Jolivet**
- 16.10 - 16.30 Q & A
- 16.30 - 17.30 **Questions & answers session on ICC Arbitration**
- This panel will address questions submitted by conference participants in advance. It will offer the participants a unique opportunity to have a dialogue with the ICC Court and the ICC Secretariat directly. The participants will hear international arbitration practitioners express their views on practices related to ICC arbitration such as the process of selection of arbitrators, the confirmation, nomination and challenges of arbitrators; how to reduce time and costs in arbitration; practices involving Brazilian parties in arbitrations and other topics submitted by the participants.
- **Jose Ricardo Feris**, Managing Counsel, ICC International Court of Arbitration, Paris
  - **Selma Ferreira Lemes**
  - **Emmanuel Jolivet**
  - **Arnoldo Wald**
- 17.30 - 17.45 **Synthesis and closing by Emmanuel Jolivet**