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Book Review

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Book review

FIDIC Red Book: A Companion to the 2017 Construction Contract

Jakob B. Sørensen. ICE Publishing, London, UK, 2019, ISBN 978-0-7277-6434-8, £60-00, 225 pp.

FIDIC Silver Book: A Companion to the 2017 EPC/Turnkey Contract

Jakob B. Sørensen. ICE Publishing, London, UK, 2019, ISBN 978-0-7277-6436-2, £60-00, 223 pp.

There have been ample guides to the International Federation of Consulting Engineers' (Fidic) Red and Silver Book construction contracts, but only a few notable ones for the 2017 editions. *FIDIC Red Book: A Companion to the 2017 Construction Contract* and its sister companion *FIDIC Silver Book: A Companion to the 2017 EPC/Turnkey Contract* are a first-aid tool for anyone working under these two forms of contract. These are must-have guides for both novice and experienced users of the contracts. They are easy to read and readily relate to the contracts proper with succinct sections. These cover an apt introduction to the whole of the Fidic suite of contracts among other international forms of construction contract and a brief overview of each clause and subclause and how they are interconnected. The guides end with two appendices giving concise practical advice on using the Fidic forms of contract and a handy summary of the special provisions in the previous section that would draw every reader's attention with its pure simplicity.

The guides are strikingly similar to each other but with relevant material and principles in each individual section based on the purpose and nature of either contract. The author eases the reader into the guides with general educational material followed by a light read on the background of each contract. The guides touch with simple commentary on other forms of contract, including the NEC suite that is in use on many different construction projects across many countries. They also highlight the simplicity of the Fidic contracts and thus acceptability in many a jurisdiction.

The guides cover two of Fidic's three major forms of contract: the Red Book and the Silver Book. The former deals with building and engineering works that are predominantly designed by the employer, whereas the latter covers works on turnkey projects. A handy flow chart in the first section of the guides that accords with Fidic's intentions provides a convenient route to choosing, from seven different forms of contract between employers and contractors, the right contract for a particular type of work, design responsibility, costs, funding and risk allocation.

The guide for the Red Book highlights the 2017 amendments that include aiding clarity with the addition of extra details including step-by-step processes for project management, payment provisions and various methods of dispute resolution. This goes a long way in assisting the parties in managing the contract and with it the works. The author cites as non-improvements the limitations of the procedure under clause 20 with its numerous cut-off provisions that apply to all claims but concludes these to be easily curtailable through the special provisions. He adds that this may be a more nuanced route to the contractor's claims.

The Red Book guide cites amendments in another area of the contract requiring a closer look: insurance. Clause 19 simplifies the process and provides good provisions, but these do not necessarily suit all types of work, rendering the clause inapplicable in many cases. Once again, this is easily rectifiable through the special provisions that come into play to cater

to the particular requirements for insurance terms for each project individually. This is typically decided by practical considerations across a range of all construction contracts, not just the Fidic suite.

Clause 1.5 receives an early mention in the guides as it lists, in order of priority, up to a maximum of 11 categories of document making up, as applicable, the contract in its entirety. For the Red Book, these range from the contract agreement, letters of acceptance and tender and the various types of conditions right through the drawings, schedules, joint venture undertaking and any other documents as applicable. These are explained in simple terms for anyone to follow. Similarly, the Silver Book guide identifies eight types of document, starting with the contract agreement, various conditions and employer's requirements to the schedule, tender and joint venture undertaking as relevant and any additional documents that may prove necessary.

Both guides helpfully remind the reader of Fidic's incorporation of specimens of the contract agreement (and, if used, likely acceptance in many jurisdictions), some of the schedules and the letter of acceptance in the Red Book and the former two in the Silver Book, for which the letter of acceptance is inapplicable.

Caution needs to be exercised, the guides emphasise, when attempting to make changes to the standard general conditions given the wealth of knowledge and enriched experience behind the standard forms of contract from their wide use. It is not unreasonable to expect some adjustments to the general conditions, but within reason. Otherwise, it would defeat the object to introduce wholesale changes, rendering them effectively as a rewritten version.

There are distinct differences in some critical sections between the Red and Silver Books, in particular work management and risk sharing between the parties. These are recognised in the guides, which naturally reflect what each contract stands for. The role of the engineer in the Red Book is to manage the works fairly and reasonably on behalf of the employer and in some cases impartially and independently. Under the Silver Book, the engineer is replaced by the employer's representative who is responsible for the daily running of the project.

The related Silver Book guide homes in on this eloquently, pointing to the employer's representative's strict scope of obligations with a narrow influence on the contractor's daily running of its operations. It also brings to mind the relevance of clause 3.5, which shifts the employer's representative's stance, when performing obligations under it, as not necessarily being deemed to be working for the employer.

The guide references the simplification of clause 14's payment process in the absence of the engineer, and thus his certification, as one less intermediate hurdle to overcome. For this and the aforementioned reasons, the Silver Book is not compatible with employers' sought close supervision of the contractor's work.

As for risk carrying, unlike the Red Book, the Silver Book attributes the vast majority of risk to the contractor. The guide confirms this, pointing to the Silver Book placing almost all risk on the contractor, but concludes that ultimately it is the employer who ends up paying in any event. It further highlights the employer incurring the costs in this respect regardless of whether the risk materialises or not. This is notwithstanding the contract

confining the employer's risk to clause 5.1 with the added provisions of clauses 2.5 and 4.12. The guide concludes that the Silver Book may not be appropriate for many projects for which other forms of contract may be better placed for work execution.

The guides then move to Section 2 ('General conditions') to delve into each individual clause and subclause in the Red and Silver Books with a brief description of their construction, what they entail and how best to apply them. The section is a welcome part of the guides, starting with a category-based list of definitions of main contract terms in clause 1 that accords with the second edition of the *Conditions of Contract*. What follows are effectively all that a reader would wish for: 21 chapters appertaining separately to each of the Red Book's and Silver Book's clauses – a recommended read. It is here where experienced and inexperienced users of the contracts will find answers to practically most questions. Of course, the current editions of the books are relatively new, having come out in 2017. Thus, there are bound to be some early-use issues, but this section goes a long way to construct, with explanations, the clauses and subclauses in each book. These, in many a case, include extracts from the contract which are complemented with the author's commentary and aided with a few flow charts. However, it would be useful to have more 'what-if' scenarios against the select few adopted.

The books end with two appendices: Appendix A gives a handy mini guide and Appendix B, special provisions. The former lists the contract documents that are explained earlier for each of the two separate forms of contract

(the Red and Silver Books), and the latter elaborates on the special provisions with a lot of helpful suggestions for drafting these into the contracts. However, the guides caution against introducing too many special provisions, restricting these to a project's specific requirements. The final act in the 225- and 223-page paperback guides is a comprehensive, better-than-expected, 11-page index.

The reviewer views the new contract amendments to be an improvement over the previous superseded editions of the Red Book and Silver Book, which the two guides in this review encapsulate with admirable clarity. The guides reassure the reader that those who are familiar with using the previous editions of the Red and Silver Books will find the new 2017 editions to be just as easy as they follow the same format, sequence and clauses with minor refinements.

The two guides are available as a convenient set of companions to the three contracts: the Red Book, the Silver Book and the Yellow Book. The set may be a bit pricey at £150 from ICE Publishing, but for such a handy and easy-to-follow resource with a comprehensive coverage of the general conditions in all three forms of contract, it is an indispensable first port of call to all users regardless of their level of experience. The reviewer strongly recommends the guides to anyone who is involved in these major contracts on any project in any jurisdiction.

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