

Do FIDIC contracts work in GEORGIA?

With the growth of state and private infrastructure projects, FIDIC contracts are becoming increasingly popular in Georgia. The use of FIDIC contracts has also been actively promoted by international financial institutions like the World Bank in the implementation of infrastructure projects in Georgia. The use of FIDIC contracts, which has become an internationally recognized and widely used practice, offers rigorous standards and enhanced clarity in construction projects. However, the legal ecosystem of a particular state is extremely important for the proper operation of any contract, and FIDIC contracts are no exception. This article explores the increased use of FIDIC contracts in Georgia and related challenges stemming from potential conflicts in Georgian law and legal practices.

What is a FIDIC Contract?

The Fédération Internationale des Ingénieurs - Conseils (FIDIC) was founded in 1913 by consulting engineers and has developed standard contract forms for various types

of construction works and services, presenting diverse models for the implementation of these projects.

Developing over 50 years as the international standard for the construction industry, FIDIC contracts have gained widespread acceptance due to their well-balanced risk allocation and the equitable distribution of roles and responsibilities between the client (employer) and the service provider (contractor). This has contributed to their active use in the global construction market.

One of the key features of FIDIC contracts is that it introduces the role of an engineer - an impartial professional who serves as a contract administrator. The engineer takes on the duties of the technical and contractual supervision and management of a contract. This makes FIDIC contracts an attractive choice, particularly for non-professional employers. It is noteworthy that in this type of contract, the engineer plays a pivotal role in a three-tier dispute resolution

process. The engineer's decisions constitute the initial step for resolving disputes between the employer and the contractor, followed by a referral to a dispute board and subsequently, if not resolved, arbitration.

How often do we see FIDIC Contracts in Georgia?

The Red Book (both the versions released in 1999 and 2017), as well as the Pink Book, which featured revisions of the Red Book by multilateral development banks (MDBs) in 2010, are the most actively used forms of FIDIC contracts in ongoing infrastructure projects in Georgia, forming the basis for works carried out in accordance with designs prepared by an employer.

Many public infrastructure projects in Georgia, including highways and road projects, fiber optic cables, railways, hydropower plants, and water system projects are being implemented under FIDIC contracts, and its well-tested mechanisms are being integrated into Georgian legislation. For instance, on April 27, 2022, the Georgian government issued a decree regarding the incorporation of a price indexation mechanism, which ensures a balance against inflation of pre-agreed components (as proposed by FIDIC, Sub-Clause 13.7, Adjustment for Changes in Cost) in all state infrastructure procurement contracts.

FIDIC contracts are gaining popularity within the private sector as well, with an increasing number of hotels, hospitals, residential complexes and other facilities being constructed under FIDIC contracts, including the Yellow Book form, which serves as the basis for works undertaken according to the contractor's design.

How does Georgian law come into play?

Despite their wide international usage and acceptance, FIDIC contracts are based on common law, which can sometimes lead to misunderstandings when applied in the civil law context. Given that Georgia is a civil law country, there may be some points of contention between Georgian law and the provisions of FIDIC contracts. It is important to correctly identify such differences when drafting the particular conditions of a contract.

In our experience, disputes often arise concerning matters mandatorily regulated by Georgian legislation. For instance, one of the most disputable matters in FIDIC contracts being implemented in Georgia is the timeframe for submitting a claim. Specifically, Georgian legislation provides that a statutorily established limitation period for initiating a claim cannot be changed by the agreement of the parties. However, it is standard for a FIDIC contract to impose a 28-day limitation period for notifying a claim to the counterparty to be able to claim it later. This controversial issue, together with other matters, is something that needs to be considered during the preparation of particular conditions.

Another critical issue to be noted is the existence of a dispute adjudication board (DAB) as the precondition of applying to arbitration. Georgian judicial practice is erroneously developing towards regarding the arbitration agreement invalid if the contract considers DAB, which is against the general understanding of FIDIC contracts. Even though there has thus far only been one such case in 2021, where this has occurred, the matter is concerning and requires more attention from scholars and field practitioners. This decision has rightly drawn criticism from the construction sector and arbitration experts.

Despite the FIDIC's explicit recommendation against altering their standard contract terms, it is regrettably common in Georgia for some FIDIC contractual terms to be altered. This practice compromises the fundamental principles of FIDIC contracts and disrupts a crucial equilibrium, often resulting in contradictory provisions.

These are just a few examples of conflicts between FIDIC contracts and Georgian legislation and practice. Neglecting the specifics of the local regulatory framework or that of FIDIC contracts during the drafting process can lead to substantial challenges down the line. So, do FIDIC contracts work in Georgia? It is our overwhelming opinion that they certainly do, but only with the assistance of an experienced lawyer who is not only familiar with FIDIC-related specificities but also Georgian law - and has mastered the art of making these two work together.



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