

國際工程企業爭端解決方案 與仲裁實務

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I. FIDIC國際工程標準契約簡介

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FIDIC Golden Principles 2019

Emerald Book 2019
(Underground Works)

YBSC (2019)

The rainbow suite

FIDIC 國際工程標準契約

- FIDIC全稱：Fédération Internationale Des Ingénieurs-Conseils
International Federation of Consulting Engineers
國際諮詢工程師聯合會

- FIDIC合約四大體系：



紅皮書 (Red Book)

施工合同條件



黃皮書 (Yellow Book)

生產設備和設計
-施工合同條件



銀皮書 (Silver Book)

設備採購施工EPC
-交鑰匙工程合同條件



綠皮書 (Green Book)

簡明合同格式

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FIDIC 契約範本內容

一般條款/通用條件 General Conditions

- ◆FIDIC對該特定工程類別制定的、具有普遍適用性的標準
- ◆原則上不建議修改

特定條款 / 專用條件 Particular Conditions

- ◆在一般條款/通用條件上，根據具體項目的適用法律、項目特點、業主需求等，對一般條款/通用條件進行的修改和補充，以實現契約的本地化調整



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紅皮書 (Red Book)

Conditions of Contract for Construction (2nd. Edition 2017; reprinted 2022 with amendments). For Building and Engineering Works Designed by the Employer, 亦稱為：《施工合同條件》、Construction Contract

業主提供設計，廠商按圖施工。由工程師 (Engineer) 為契約管理、監督工程、核付工程款。業主應全程被告知，並且有權為變更指示。契約金額可以是依實作數量結算或固定總價。

The Employer does nearly all the design. The Engineer administered the Contract, monitored the construction work and certified payment. The Employer was kept fully informed, could make variations, etc. The payment is made according to bills of quantities or lump sums for approved work done.

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粉紅皮書 (Pink Book)

Construction Contract MDB Harmonised Ed (Version 3: June 2010 Harmonised Red Book) For Building and Engineering Works Designed by the Employer MDB Harmonized Edition (June 2010), 亦稱為：《施工合同條件—多邊開發銀行和諧版》

以 Red Book 為基礎，配合多家開發銀行要求的修訂條款，統整其招標文件，FIDIC於 2005 年推出初版的粉紅皮書 (Pink Book)，加註 Multilateral Development Bank Harmonized Edition (MDB Harmonized Edition) 的字樣；最新的版本為2010年的第三版。

In response to the Multilateral Development Banks (MDBs) desire to harmonise their bid documents with amendments made to the Red Book, the FIDIC responded by issuing the Conditions of Contract for Construction MDB Harmonised Edition in 2005; the latest version (the 3rd version) being issued in 2010.

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黃皮書 (Yellow Book) Part 1 of 2

Conditions of Contract for Plant & Design-Build (2nd Edition, 2017; reprinted 2022 with amendments). For Electrical & Mech. Plant & for Building & Engineering Works Designed by the Contractor, 亦稱為：《生產設備與設計-施工合同條件》、Plant and Design-Build Contract

由廠商負責大部分的設計，例如工廠或設備的細部設計，以確保工程符合「業主需求」(Employer Requirements)。由工程師 (Engineer) 為契約管理、現場監督設備的製造、安裝或工程、及核付工程款。契約金額通常為固定總價按里程碑付款。

The Contractor (or Supplier) does the majority of the design, e.g., the detail design of the plant or equipment, so that the plant met the "Employer Requirements". The Engineer administered the Contract, monitored the manufacture and erection on site or construction work and certified payment. The payment is made according to achieved milestones generally on a lump sum basis.



黃皮書 (Yellow Book) Part 2 of 2

1963 年初版時採用的名稱是 Conditions of Contract for Electrical and Mechanical Works, Including Erection on Site, 契約標的是機電工程，以對應土木工程。1999 年全面改版時名稱改為 Conditions of Contract for Plant and Design-Build, for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor, 契約標的擴大納入由廠商設計的土木工程。

The Yellow Book was originally titled "Conditions of Contract for Electrical and Mechanical Works, Including Erection on Site" governing "electrical and mechanical works" (as opposed to building and engineering works), when it was first published in 1963. In its 1999 edition, it was renamed as "Conditions of Contract for Plant and Design-Build, for Electrical and Mechanical Plant and for Building and Engineering Works Designed by the Contractor" to cover "building and engineering works designed by the contractor" as well.



銀皮書 (Silver Book) Part 1 of 3

Conditions of Contract for EPC/Turnkey Projects (2nd Edition, 2017; reprinted 2022 with amendments), 亦稱為：《設計採購施工（EPC） / 交鑰匙工程合同條件》、EPC/Turnkey Contract

常見於煉油廠或發電廠興建工程，當業主希望由廠商承擔所有的設計及建造風險，把處於可以運營的煉油廠或發電廠「交鑰匙」給業主。此外，在基礎建設工程，例如：公路、鐵路、橋樑、污水處理廠、輸電線、水壩、水力發電廠等，當出資的業主有下列考量，希望採取固定總價交鑰匙的方式時，亦可採用。

For Process Plant or a Power Plant, the Employer wishes the Contractor to take total responsibility for the design and construction of the process or power facility and hand it over ready to operate "at the turn of a key". If it is an Infrastructure Project (e.g., road, rail link, bridge, water or sewage treatment plant, transmission line, dam or hydropower plant) or similar where the Employer - who provides the finance - wishes to implement the Project on a Fixed-Price Turnkey Basis.

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銀皮書 (Silver Book) Part 2 of 3

業主希望契約約定的**契約金額及時程**具有較高的確定性；業主希望工程項目只涉及雙方，而不需要工程師（Engineer）的參與。只要最終的結果符合契約約定的指標，業主並不想涉入日常的工程進度。並且，業主願意支付（在倘若相同的工程項目使用黃皮書時）較高的契約金額，以換取由廠商來承較高的契約風險，來確保最終契約金額及完工時程能具有較高的確定性。

The Employer wishes a higher degree of certainty that the agreed contract price and time will not be exceeded. The Employer wishes - or is used to - the Project being organised on a strictly two party approach, i.e. without an "Engineer" being involved. The Employer does not wish to be involved in the day-to-day progress of the construction work, provided the end result meets the performance criteria he has specified. The Employer is willing to pay more for the construction of his Project (than would be the case if the Conditions of Contract for Plant and Design-Build were used) in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time.

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銀皮書 (Silver Book) Part 3 of 3

此外，在由民間出資（或由政府與民間共同出資）的BOT項目，或類此由特許權人承擔所有融資、興建與運營風險的項目中，各方當事人（包括贊助方、貸款方及業主等）均希望見到支付廠商較高的金額，以換取由廠商來承較高的契約風險，來確保最終契約金額及完工時程能具有較高的確定性。業主也有與上述相同的考量，即：只要最終的結果符合契約約定的指標，業主並不想涉入日常的工程進度。

In addition, in Privately Financed (or Public/Private Financed) Project of BOT or similar type where the Concessionaire takes total responsibility for the financing, construction and operation of the Project, the parties concerned (e.g., sponsors, lenders and the Employer) are willing to see the Contractor paid more for the construction of the Project in return for the Contractor bearing the extra risks associated with enhanced certainty of final price and time. The Employer does not wish to be involved in the day-to-day progress of the work, provided the end result meets the performance criteria he has specified.

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綠皮書 (Green Book)

Short Form of Contract (2nd Edition, 2021), 《簡明合同格式》

與前述紅皮書、黃皮書、銀皮書不同，這是較為簡短的工程契約範本，專門為具有下列特性的工程而撰擬：

- 金額較小（如 50 萬美元以下）、
- 工期較短（例如 6 個月以下）、或
- 涉及簡單或重複性作業的工程（例如浚渫工程）。

設計不論是由業主、或工程師（Engineer/Architect）提供或由廠商負責均可。契約標的可以是 土建、機電或其他工程。

If the price for the contract is relatively small, say under US\$ 500,000, or the construction time is short, say less than 6 months, or the work involved is relatively simple or repetitive - dredging work might be a good example:

then consider using the Short Form of Contract, which is a completely new FIDIC Book specially prepared for such projects.

It does not matter whether the design is provided by the Employer (or his Engineer/Architect if he has one) or by the Contractor. It does not matter whether the project involves construction, electrical, mechanical, or other engineering work.

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藍綠皮書 (Blue-Green Book)

Form of Contract for Dredging and Reclamation Works (Dredgers Contract; Second Edition, 2016), 亦稱為 Dredgers Contract

特別針對**挖浚與填海**工程的工程契約範本，其與前述紅皮書、黃皮書、銀皮書有多處不同。最重要的是，本契約範本在撰擬之初即與國際疏濬公司協會 (International Association of Dredging Companies, 簡稱 IADC) 合作，因此在一開始就納入許多廠商的意見。現行版本是2016年版。

This form is designed specifically for use in connection with dredging and reclamation projects. It differs from the major forms in many ways but perhaps most importantly that it was drafted in close collaboration with the International Association of Dredging Companies (IADC) and as such has a great input from contractors from the outset. The current version of the Form of Contract for Dredging and Reclamation Works is issued in 2016.

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金皮書 (Gold Book)

Conditions of Contract for Design, Build and Operate (DBO) Projects (1st Edition, 2008), 亦稱為《生產設備、設計、建造及運營項目合同條件》

這回應了業界長期以來表示需要涵蓋**設計、興建與運營**的契約範本，以回應逐漸增加關於希望廠商不僅是興建後即離開，而是接下來負責營運及維護的需求。本契約範本被形容為內建營運及維護的黃皮書。第一版係於2008年出版。

It is a design, build and operate (DBO) contract that the industry has needed for some time to reflect the ever growing trend that contractors no longer construct something then go away but also maintain and operate the facility for many years to come. It has been described as a Yellow Book with an operate and maintenance contract bolted on; the First Edition of the Conditions of Contract for Design, Build and Operate Projects was issued in 2008.

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翡翠皮書 (Emerald Book)

Conditions of Contract for Underground Works (1st Edition, 2019)

適用於由廠商依據業主提供的設計參數及地質/岩土基線報告 (Geotechnical Baseline Report) 進行設計的地下工程，由FIDIC 於2019 年與國際隧道和地下空間協會 (International Tunnelling and Underground Space Association, ITA-AITES) 共同推出，立基於國際隧道和地下空間協會就近15年來關於隧道與地下工程之最佳實踐的調查結果。

Conditions of Contract for Underground Works designed by the Contractor according to the reference design by the Employer and the Geotechnical Baseline Report. It is published by the FIDIC in a joint endeavour with the International Tunnelling and Underground Space Association (ITA-AITES). It is based on the enquiries on international best practice in contracting of tunnelling and underground construction works conducted by the ITA-AITES during the last fifteen years.

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白皮書 (Book)

Client/Consultant Model Services Agreement 5th Ed (2017 White Book), 亦稱為《業主/諮詢工程師標準服務協議書》

規範業主與**工程師**間之權利義務的契約範本。

This is a model contract governing the rights and responsibilities between the owner and engineer.

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FIDIC黃金五原則 (FIDIC Golden Principles)

1 契約所有參與方的職責、權利、義務、角色以及責任一般都在通用條件中默示，並與項目的需求相符。

The duties, rights, obligations, roles and responsibilities of all the Contract Participants must be generally as implied in the General Conditions, and appropriate to the requirements of the project.

2 專用條件的起草必須明確和清晰。

The Particular Conditions must be drafted clearly and unambiguously.

3 專用條件不得改變通用條件中風險與回報分配的平衡。

The Particular Conditions must not change the balance of risk/reward allocation provided for in the General Conditions.



4 契約中規定的各參與方履行義務的時間必須合理。

All time periods specified in the Contract for Contract Participants to perform their obligations must be of reasonable duration.

5 除非與契約的實體準據法衝突，所有正式的爭端在提付仲裁之前**必須**先提交爭端避免及裁決委員會（DAAB）或爭端裁決委員會（DAB）取得臨時具有約束力的決定為先決條件。

Unless there is a conflict with the governing law of the Contract, all formal disputes must be referred to a Dispute Avoidance/Adjudication Board (or a Dispute Adjudication Board, if applicable) for a provisionally binding decision as a condition precedent to arbitration.

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1999 Yellow Book



2017 Yellow Book (2nd Ed)

Design-and-build

Design-only

Build-only or Supply-only



Yellow Book Subcontract (2019)



Client/Consultant Model Services Agreement 5th Ed (2017 White Book)



1999 Red Book Subcontract (2011)

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離岸風電與 FIDIC 契約¹

文 / 陳希佳

興建離岸風電項目常見的契約架構

興建離岸風電項目的契約架構與傳統電力產業（例如火力發電站）不同。傳統電力產業經常採用「統包契約」的方式，業主表明其需求，承包而負責設計、採購、施工，承擔較多的風險（經常包括不可預見的地下狀況等），並且將承擔該等風險的成本反映在契約金額中。相對地，離岸風電在歐洲發展之初，基於成本考量，多是採取所謂「高度分散」(Extreme Multi-Contracting) 的契約架構，由業主（通常即該項目的特殊事業實體 Special Purpose Vehicle，簡稱 SPV）分別就風機供應、風機安裝船、基礎供應、基礎安裝船、離岸、岸上變電站、電纜供應、佈置等等簽訂契約（如圖一）。這種契約架構對於業主而言最大的風險在於各個契約的界面管理，愈是分散的契約架構，業主需管理的界面愈多。聰明的業主可以順利處理採取分散的架構所帶來的項目管理責任，並非所有的業主均擅於管理界面。

其後，為減少業主的界面責任，逐漸發展出較為收斂的架構，例如：分為「風機供應、風機安裝、電纜、基礎、機電」風機服務合約（如圖二），或進一步收斂為「風機供應」、「機以外設施的設計、採購、建築、安裝」、「輸出電纜」三層加機服務合約（如圖三）。

在離岸風電相關的工程中，經常採用以「FIDIC 黃皮書」基礎加以修訂的契約。以下僅就契約中沒有互撞免賠協議的約定，根據一般法律原則，當發生人員傷亡、財產損失或環境污染時，應由有損失的一方來承擔相應的責任。稱之為「損失責任主義」。但對於海洋工程項目中的高風險性，在另一作業區域的文文外，又涉及許多複雜的因素，各方人員、船隻以及環境發生損失的風險很高，如果採取基於一般法律原則的損失責任主義，則每發生一次事故，相關各方可能對各方的可歸責任發生爭議，為釐清各方責任而導致大量的訴訟成本和時間成本，也可能產生重複保險諸多問題，為解決上述問題，海洋風電領域為了保障保險行業對項目的正確風險轉讓²，其核心概念是：藉由

互撞免賠 (Knock-for-Knock) 協議

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來源與基本概念

互撞免賠 (Knock-for-Knock, 簡稱 KKK) 協議常見於海洋工程項目的合同與章程中，其起源在於處理各方人員傷亡、財產損失以及環境污染等風險的責任分配。是海洋工程項目劃分風險和責任的一個基本機制。由於離岸風電項目中涉及多層承包關係，分佈在海上作業空間交叉作業的特性與海洋工程項目施工的情況相類似，故此條款被採納並廣泛應用於離岸風電的工程合約中。

過失責任主義 vs KKK 機制

在沒有特別約定的情況下，一般過失責任的歸責原則是過失責任主義，即在發生事件時，就過失的發生有過失的一方承擔過失的責任。經常用於碰撞船隻的情況如下：

- 碰撞事件發生時關於過失的認定；
- 當碰撞船隻的船主決定過失及責任的歸責；
- 碰撞船隻的法律及過失費用；
- 碰撞船隻的船主決定是否存在共同過失及如何共同過失時，各方的損失責任比例；

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希佳博士已擔任多項專業機構中擔任代理人、主任律師、董事或顧問律師，並為許多大型船務和海洋工程項目提供法律服務，也經常在國際和區域性會議中擔任發言人，上述包括以英文、中文或粵語進行。希佳博士於 2011 年獲頒多項由 Hong Kong Legal Practice Award 頒發之「入選律師 (Champion)」獎。希佳博士在《中國法律時報》(China Law & Practice) 及《建築工程法律》(Construction Law) 等刊物中發表多篇文章及評論。希佳博士的網站是 <http://www.hkadr.com/hkadr/adr/adr/adr/>

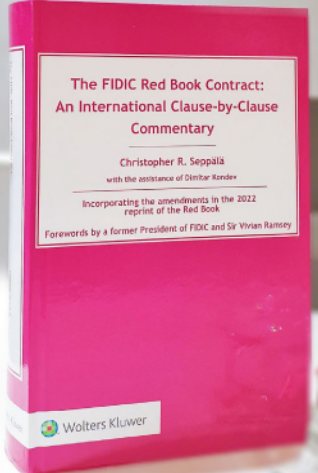




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延博網讀

FIDIC 紅皮書合同：國際的逐條釋義

——導讀與書評

(The FIDIC Red Book Contract:

An International Clause-by-Clause Commentary)

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FIDIC紅皮書國際逐條 釋義 (The FIDIC Red Book Contract: An International Clause-by-Clause Commentary) ——導讀與書評

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壹、前言

2023年國際工程法律界的盛事（至少就筆者而言，沒有之一），是曾擔任 FIDIC 契約委員會（Contracts Committee）委員、法律／特別顧問 30 餘年，多次參與 FIDIC 一系列契約範本（包括紅皮書）的改版，亦為國際商會國際仲裁院榮譽副院長的 Christopher R. Seppälä 先生出版了《FIDIC 紅皮書國際逐條釋義》（The

FIDIC Red Book Contract: An International Clause-by-Clause Commentary）一書（下稱「本書」）。作者 Seppälä 先生多年來結合其工作經驗，筆耕不輟，就工程與國際仲裁相關主題出版逾 80 篇論文，篇篇擲地有聲，是理論與實務界經常援引的經典，其就 2022 年再版 2017 年版紅皮書所著之逐條釋義自是業界人士常備案頭的重要參考，廣受好評。曾任職英國高等法院主持技術與工程法庭

摘要：國際工程法學界重量級專家克里斯托弗·塞帕拉（Christopher R. Seppälä）先生著作了《FIDIC 紅皮書合同：國際的逐條釋義》（*The FIDIC Red Book Contract: An International Clause-by-Clause Commentary*）一書，並於 2023 年由荷蘭威科集團的克魯維爾國際法律出版公司（Kluwer Law International）出版。作者 Seppälä 先生曾多次參與 FIDIC 國際諮詢工程師聯合會（法文為 *Fédération Internationale des Ingénieurs-Conseils*，取其前綴簡稱為 FIDIC；英文為 *International Federation of Consulting Engineers*，本文使用簡稱 FIDIC）一系列合同模板（包括紅皮書）的改版，是撰寫紅皮書逐條釋義的不二人選。他除了從英美法的角度進行釋義之外，還着重從大陸法的角度進行分析與評論，並且援引國際法律原則及國際仲裁裁決，完全名實相副地從“國際”視角逐條釋義。筆者經作者 Seppälä 先生邀請為其撰寫書評，倍感榮幸，非常樂意提供導讀與書評供大家參考。筆者先說明 FIDIC 及其出版之合同範本，再逐次介紹本書的各章概要，最後和大家分享閱讀本書的心得及書評，期待這些分享能協助讀者更有效率、流暢地享受這場極為豐富的知识盛宴。

* 陳希佳，中國國際經濟貿易仲裁委員會仲裁員，特許仲裁學會（CIArb）特許仲裁員（Chartered Arbitrator），眾才國際律師事務所合夥人。

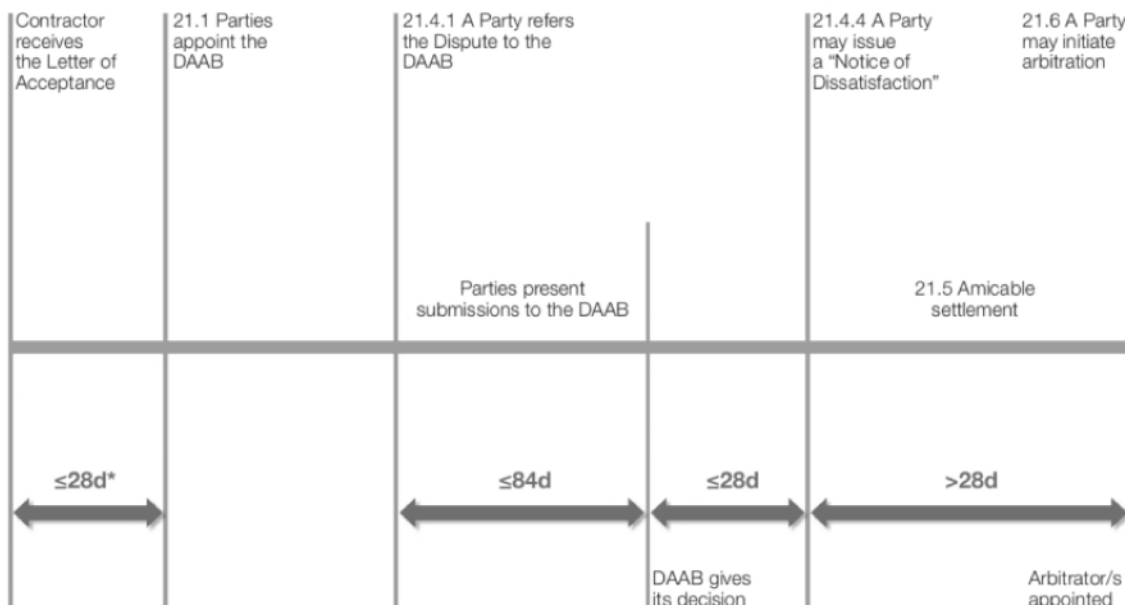


下載全文



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Typical Sequence of Dispute Events Envisaged in Clause 21



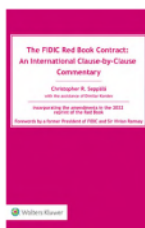
* If not stated otherwise in the Contract Data (Sub-Clause 21.1)



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Figure 11 Procedure for Claims Unrelated to Time and/or Money

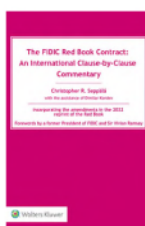
Cumulative n° of days	Procedure
N.A.	1. The claiming Party must notify the other Party or the Engineer of a requested entitlement or relief resulting in a Claim
N.A.	2. The other Party or the Engineer disagrees (or is deemed to have disagreed)
N.A.	3. The claiming Party must, by a Notice, refer the Claim to the Engineer under SC 3.7 'as soon as practicable', together with details of the claiming Party's case and the disagreement



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Figure 11 Procedure for Claims Unrelated to Time and/or Money

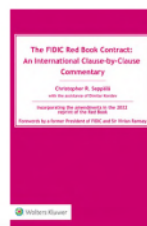
Cumulative n° of days	Procedure
84	4. The Engineer must agree or determine the Claim under SC 3.7 within 84 days
112	5. Assuming no agreement, either Party may give a NOD in respect of the Engineer's determination (or deemed determination) within 28 days, creating a Dispute – otherwise the determination is final and binding
154	6. A Dispute must be referred to the DAAB within 42 days of giving or receiving a NOD – otherwise the NOD is invalid



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Figure 11 Procedure for Claims Unrelated to Time and/or Money

Cumulative n° of days	Procedure
238	7. The DAAB has 84 days to give a decision
266	8. Either Party may give a NOD in respect of the DAAB 's decision within 28 days after receiving it – otherwise the decision is final and binding
294	9. Both Parties have to attempt amicable settlement for 28 days
294 and thereafter	10. If the Dispute is not settled, either Party may refer it to arbitration



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Figure 12 Procedure for Claims for Time and/or Money

Cumulative n° of days	Procedure
0	1. An 'event or circumstance' giving rise to a Claim occurs
28	2. The claiming Party must: (1) give a Notice of Claim to the Engineer within 28 days after it became aware/should have become aware of the 'event or circumstance' (otherwise the Notice of Claim is invalid) and (2) keep contemporary records
42	3. The Engineer must give any Notice of objection to the validity of Notice of Claim within 14 days after receiving it – otherwise Notice of Claim is deemed provisionally valid



28

Figure 12 Procedure for Claims for Time and/or Money

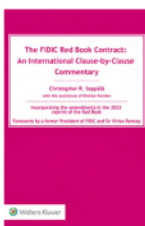
Cumulative n° of days	Procedure
84	4. The claiming Party must submit a fully detailed Claim within 84 days after it became aware/should have become aware of the 'event or circumstance' (if the contractual/legal basis of the Claim is not submitted, the Notice of Claim is invalid)
98	5. The Engineer must give any Notice of objection within 14 days after the expiry of the above 84-day period if the claiming Party has failed to submit the contractual/legal basis of the Claim – otherwise the Notice of Claim is deemed provisionally valid



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Figure 12 Procedure for Claims for Time and/or Money

Cumulative n° of days	Procedure
168	6. The Engineer must agree or determine the Claim under SC 3.7 including validity of Notice of Claim , within 84 days after receiving a fully detailed Claim
196	7. Assuming no agreement, either Party may give a NOD in respect of the Engineer's determination within 28 days of receiving it, creating a Dispute – otherwise the determination is final and binding



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Figure 12 Procedure for Claims for Time and/or Money

Cumulative n° of days	Procedure
238	8. A Dispute must be referred to the DAAB within 42 days of the giving or receiving of a NOD – otherwise the NOD is invalid
322	9. The DAAB has 84 days to give a decision
350	10. Either Party may give a NOD in respect of the DAAB's decision within 28 days after receiving it – otherwise the decision is final and binding

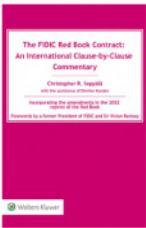


Figure 12 Procedure for Claims for Time and/or Money

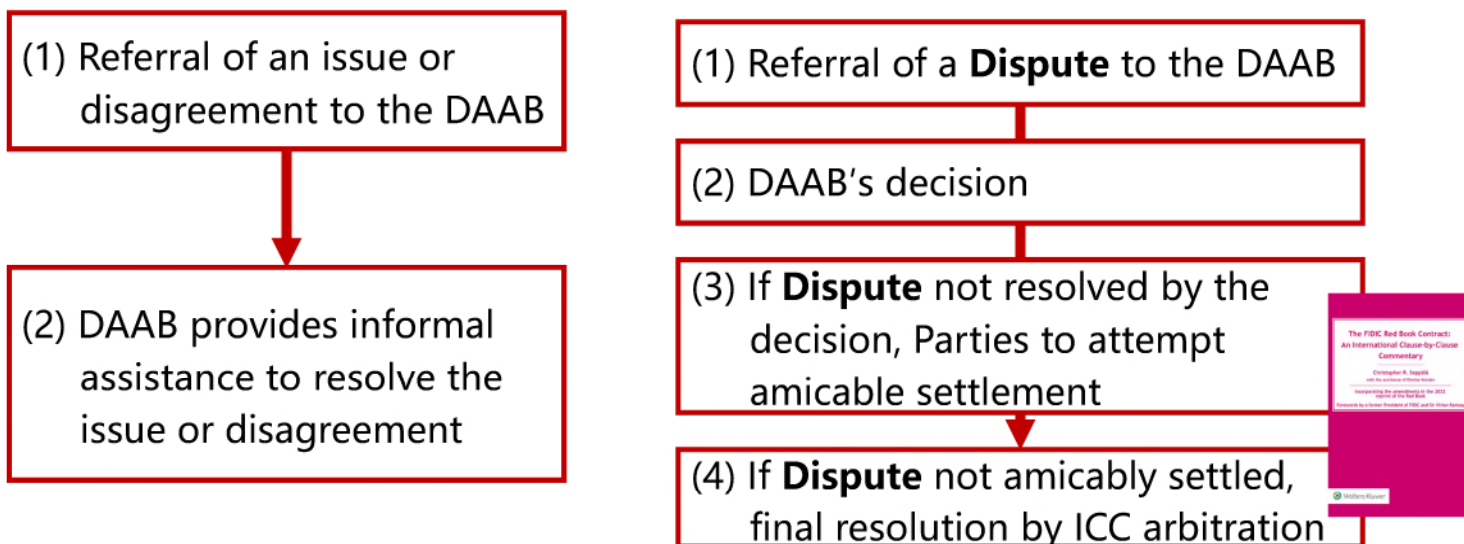
Cumulative n° of days	Procedure
378	11. Both Parties have to attempt amicable settlement for 28 days
378 and thereafter	12. Either Party may refer to the Dispute to arbitration



Figure 14 The DAAB's Two Functions

Clause 21 provides for two functions of the DAAB which, in *simple* terms, are as follows:

1. Dispute Avoidance
(No time limit or special procedure)
- 2. Dispute Resolution
(Strict time limits and strict procedures)



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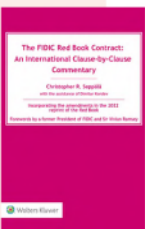
Figure 15 Timeline for Claims for Time and/or Money

N° of days for each step	Procedural Step	Cumulative n° of days from the 'event or circumstance's giving rise to a Claim
0	An 'event or circumstance' giving rise to a Claim occurs (SC 20.2)	0
28	Notice of Claim (SC 20.2)	28
14	Engineer's Notice of objection, if any (SC 20.2.2)	42
84	Submission of a fully detailed Claim (SC 20.2.4)	84

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Figure 15 Timeline for Claims for Time and/or Money

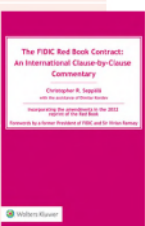
N° of days for each step	Procedural Step	Cumulative n° of days from the 'event or circumstance's giving rise to a Claim
14	Engineer's Notice of objection, if any (SC 20.2.4)	98
84	Engineer's determination (SC 3.7.2)	168
28	NOD with Engineer's determination (SC 3.7.5)	196
42	Referral of Dispute to DAAB (SC 21.4.1)	238 (i.e., around 8 months)



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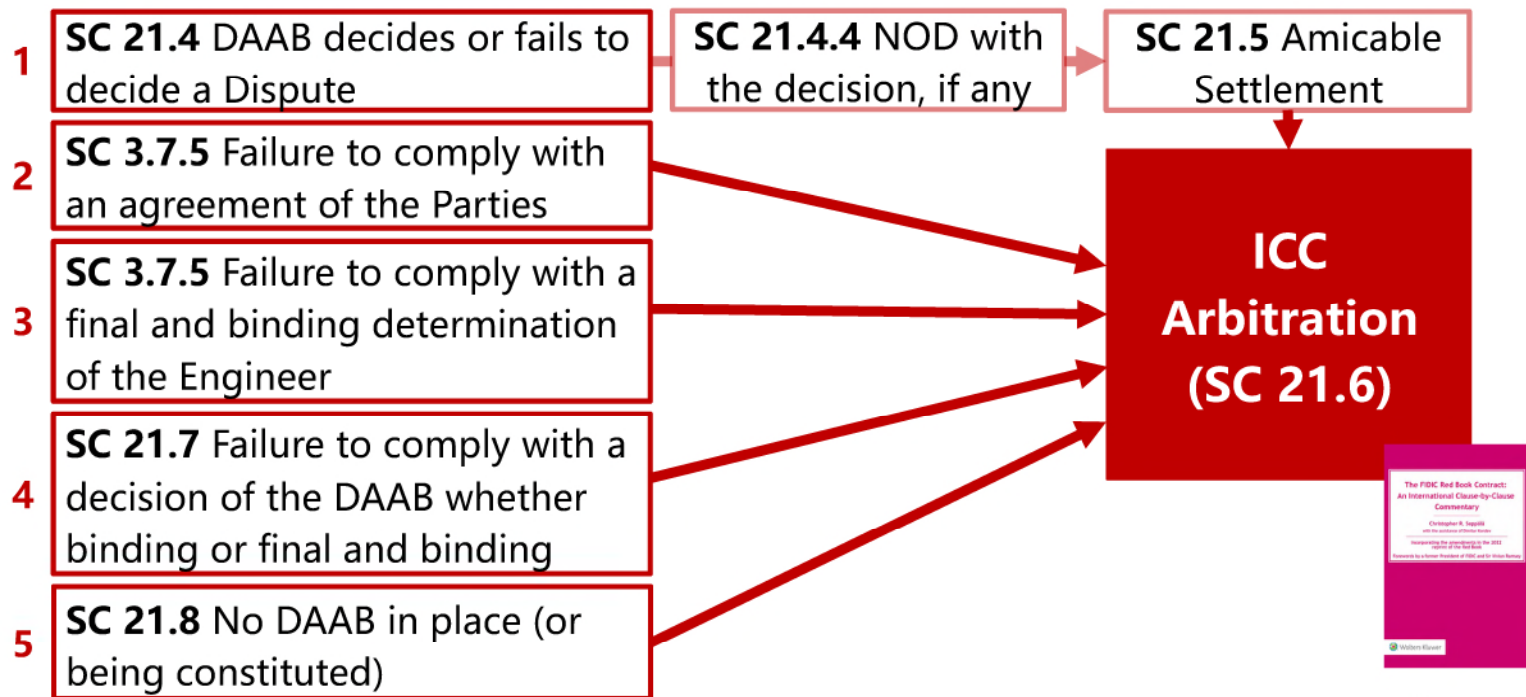
Figure 15 Timeline for Claims for Time and/or Money

N° of days for each step	Procedural Step	Cumulative n° of days from the 'event or circumstance's giving rise to a Claim
84	DAAB decision (SC 21.4.3)	322
28	NOD with DAAB Decision (SC 21.4.4)	350
28	Attempt at amicable settlement (SC 21.5)	378 (i.e., around 12 months)
---	ICC arbitration (SC 21.6)	378 and thereafter



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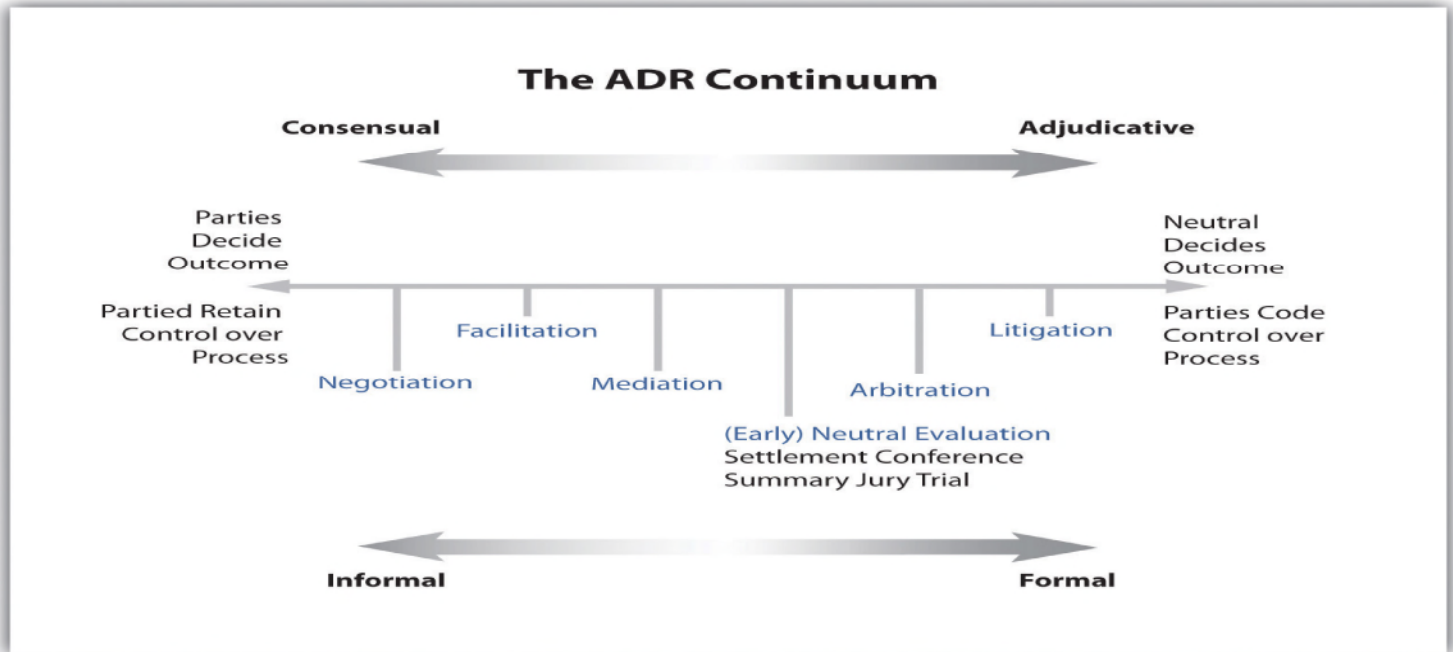
Figure 16 Paths to ICC Arbitration



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II. 國際工程爭端解決方案簡介

各種爭議解決機制的比較



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為何選擇訴訟外爭議解決機制

技術性

當事人可委任具有相關知識、技術背景的調解人、仲裁人處理複雜類型的爭議。

高效性

以法院訴訟解決複雜類型爭議一般需時較長，且費用較高。調解可以較低費用快速解決爭議。

中立&當事人自主

保密性

複雜類型爭議一般涉及高度保密資訊。與法院判決對外公開不同，調解、仲裁程序及其結果是保密的。

靈活性

處理跨境爭議時，雙方進行調解、仲裁比異地進行訴訟程序具有更多的靈活性。

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選擇跨境商事爭議解決機制時的考慮



時間、費用的考慮

- 01 預計多久能終結程序？
- 02 有沒有上訴機制？
- 03 整個程序走下來，預計要花多少錢？
- 04 花費能向對方求償嗎？
- 05 與自身「損害」相比，發動戰爭，是否划算？

41

選擇跨境商事爭議解決機制時的考慮



公平性、信賴性的考慮

- 01 主場優勢？
- 02 輿論影響？
- 03 選擇裁判人選的可能性？
- 04 證據調查方式？
- 05 經自我評估，哪個爭議解決機制對我可能最有利？

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選擇跨境商事爭議解決機制時的考慮



啟動爭議解決機制的目的

- 01 How strong is my case?
- 02 有多少兵馬糧草?
- 03 是不是一定有結果?
- 04 打得贏嗎? 多久能打贏? 打贏能解決問題嗎?

There's always a great plan B stands behind the best plan A.

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選擇跨境商事爭議解決機制時的考慮



程序掌握度和話語權的考慮

- 01 我能挑裁判嗎?
- 02 程序可以客製化嗎?
- 03 誰能出庭幫我講話?
- 04 時間可以配合我的行程嗎?
- 05 尊榮體驗 (誤) ?

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選擇跨境商事爭議解決機制時的考慮



執行可能性

- 01 對方會信守承諾/依調解、裁判或仲裁結果自願履行嗎？
- 02 對方有資產能被執行嗎？
- 03 是否需要境外執行？在哪執行？
- 04 我有資源能做強制執行嗎？
- 05 如果真的走執执行程序，要花多少時間/費用？

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對於爭議雙方
繼續性關係的影響

46

調解相較訴訟、仲裁之優勢

- 當事人自主程度最高
- 程序最具彈性
- 衝突、對抗性較低
- 不受訴訟標的/仲裁標的所拘束



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調解風格與類型

- 評價式調解
(Evaluative Mediation)
- 促進式調解
(Facilitative Mediation)



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調解風格—評價式調解



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調解風格—促進式調解



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促進式調解—促進利益導向的溝通



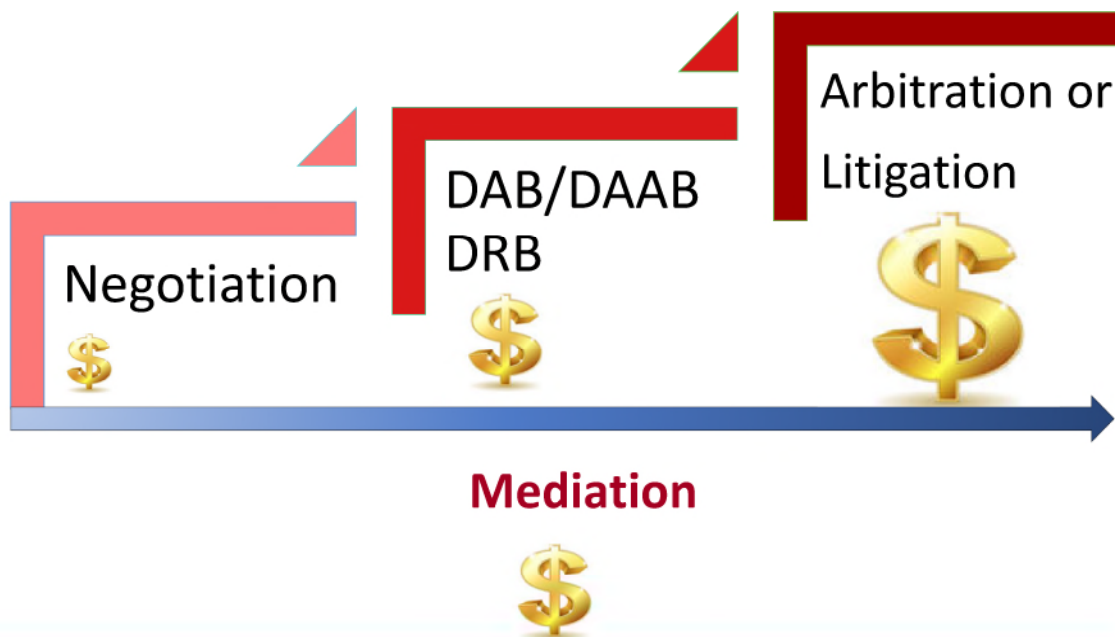
51

仲裁的優勢



- **Neutrality & Party Autonomy**
(中立& 當事人自主)
- **Confidentiality**
(保密性)
- **Finality**
(終局性)
- **Technically**
(技術性)
- **Flexibility**
(靈活性)
- **Enforceability**
(執行性)
- **Efficiency**
(高效性)

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III. 國際工程爭端仲裁程序簡介

仲裁程序鳥瞰



55

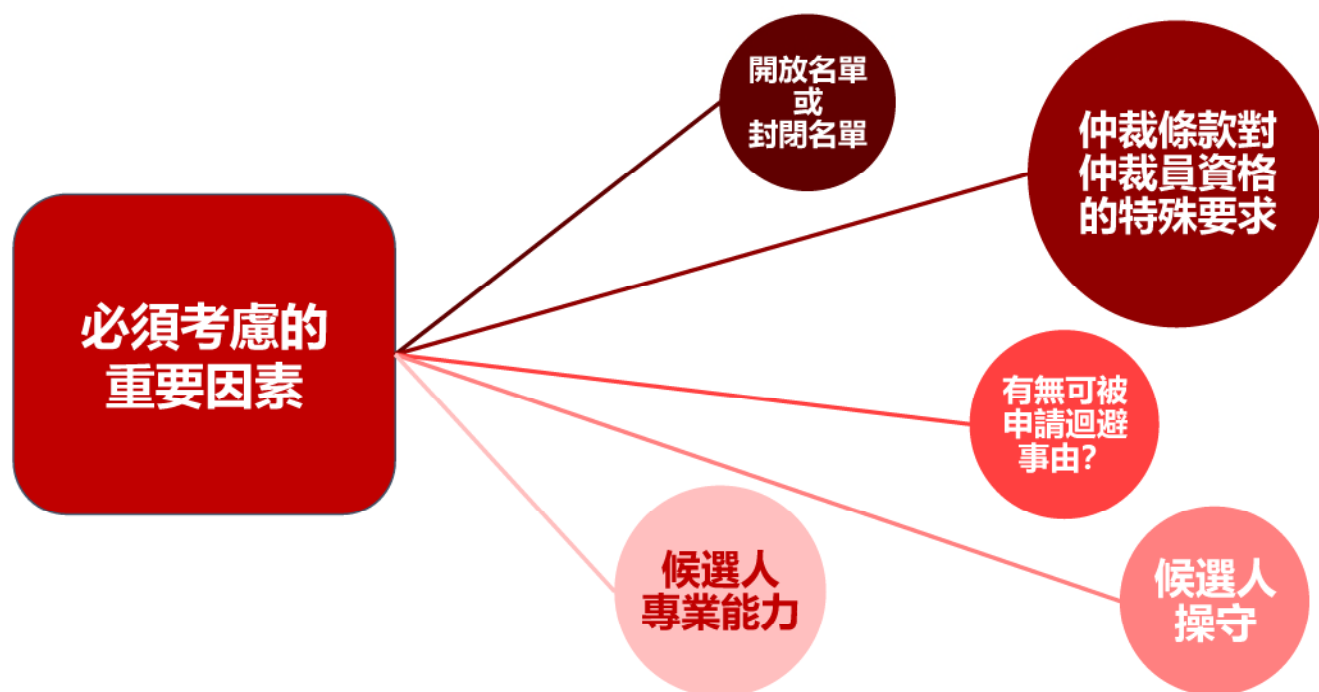
選擇仲裁人的重要性

“Arbitration is only as good as its arbitrators.”

“仲裁的良窳取決于仲裁人”

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選擇仲裁人的考慮因素



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選擇仲裁人的其他考慮因素



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仲裁人的基本義務



- Model Law §12(2) / Model Arbitration Rules §12(1)
“An arbitrator may be **challenged** only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence”
- Model Arbitration Rules §11
“... he or she shall **disclose** any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence”

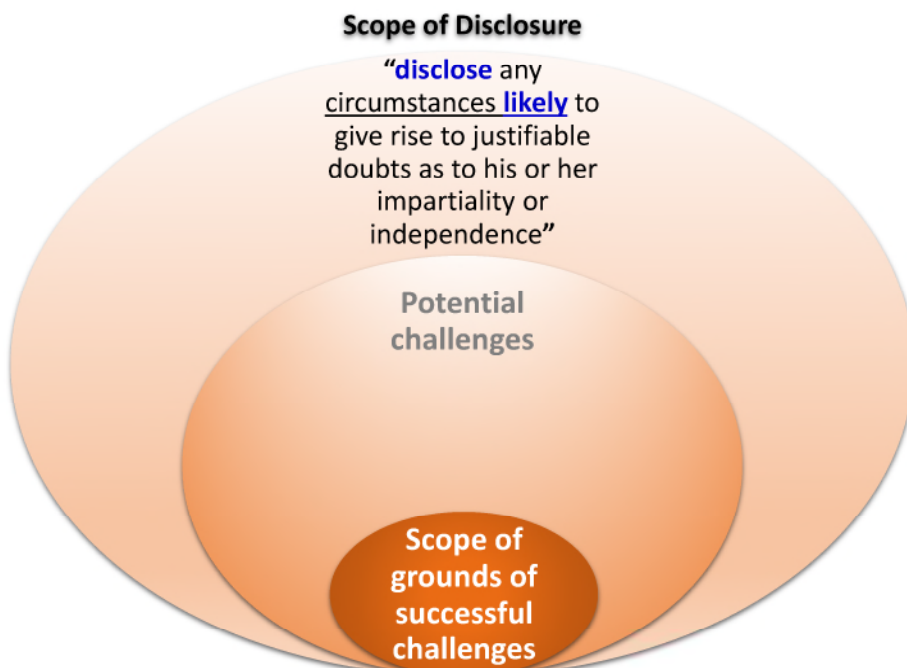
 刑事責任：《刑法》
第122-124條及第317條

 當事人選定之仲裁人，所
負義務與主任仲裁人相同



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仲裁人的告知義務 – 告知 v.s. 迴避？



仲裁人披露函示例：

There is **NO** conflict of interest for me to act as arbitrator if appointed. I would like to draw the parties' attention to the following matters, **which I do NOT consider would give rise to any conflict of interest, but out of an abundance of caution, I thought it best to disclose the same.**

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仲裁人的告知義務- 告知 v.s. 迴避



國際律師協會《國際仲裁利益衝突指引》

- 不可棄權的紅色清單
- 可棄權的紅色清單
- 橙色清單
- 綠色清單



請求仲裁人迴避



- ⊕ 請求迴避對象、事由、時限
- ⊕ 向誰提出迴避請求
- ⊕ 由誰作出決定
- ⊕ 向法院異議



IV. 實務案例介紹

案 例

Fluor Limited

v.

Shanghai Zhenhua Heavy Industry Co, Ltd



<https://www.windpowermonthly.com/article/1182383/ggowl-fluor-settle-greater-gabbard-legal-battle>
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Fluor v. 上海振華重工



業主 Greater Gabbard Offshore Winds Limited 公司 (GGOWL)

Balance of Plant (BOP) 契約

由 Fluor 設計、採購及建造 Greater Gabbard 離岸風場 140 支風機的基礎設施。

FLUOR

Fluor Limited 公司 (Fluor)



https://en.wikipedia.org/wiki/Greater_Gabbard_wind_farm

由振華重工製造 140 支風機的單樁與轉接段。

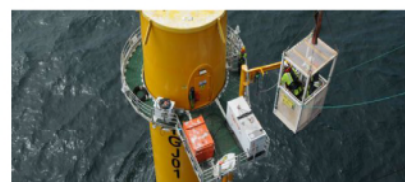


振華重工

上海振華重工 (集團) 股份有限公司



<https://www.jotun.com/us/en/b2b/references/Greater-Gabbard-Offshore-Wind-Farm.aspx>



<https://www.fluor.com/projects/offshore-wind-farm-epc>

重要契約條款

01 Fluor與振華重工間契約約定工作物必須：「適合並足以滿足其依本訂單所約定的預期目的.....」（“fit and sufficient for the purposes for which they are intended as evidenced by this Purchase Order”）；

02 該契約進一步約定：「公司[Fluor]進行的檢驗不能免除供應商[振華重工]遵守所有明示或暗示的規格，也不能免除供應商[振華重工]對材料在規定的條件下性能令人滿意的保證」（“Inspections by COMPANY [Fluor] shall not relieve SUPPLIER [ZPMC] of complying with all expressed or implied specifications nor of SUPPLIER guaranteeing that the materials shall perform satisfactorily under conditions specified”）。



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爭議背景

2009年3月底，業主GGOWL發現振華重工製造的單樁(Monopile)有橫向裂縫

業主GGOWL發函通知後，Fluor在振華重工協助下，對單樁進行大規模重新檢測及修補。

2009年9月底，Fluor決定停止所有重新檢測及修補作業

Fluor與振華重工合意振華重工將其求償權轉讓給Fluor

Fluor與GGOWL達成和解。Fluor向振華重工起訴，請求振華重工賠償其和解金額及額外成本，共計約4億美元。



<https://www.sciencedirect.com/science/article/pii/S1364032120308601>

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Fluor與上海振華重工之協議內容

01

振華重工將其對GGOWL之重新檢測及修補作業相關的費用的求償權轉讓給Fluor，由Fluor一併向業主求償。

02

Fluor拋棄向振華重工求償所有與「不符報告」(non-conformance report) 編號NCR 006、NCR 007及NCR 008相關的權利。

03

振華重工保證所有未經修補作業的第一、二、三批工作物都具有25年的使用壽命。



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法院認定之核心爭點

01

系爭單樁在運抵荷蘭時，是否符合目的 (fit for purpose) ?

02

如不符合目的，是否係因振華重工之違約所致？

03

Fluor是否已拋棄其對振華重工的求償權？



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01 系爭單樁在運抵荷蘭時，是否符合目的 (fit for purpose) ?

◆ Fluor主張

- 一個合理的買方安裝後不需要作進一步的檢測或補救，並在此後的25年內能夠令人滿意地運行。

◆ 振華重工辯稱

- 「符合目的」的標準：作為海上風機的基礎，具有25年的使用壽命。
- Fluor並沒有提出任何積極證據足以證明系爭工作物不具有25年的使用壽命。



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01 系爭單樁在運抵荷蘭時，是否符合目的 (fit for purpose) ?

◆ 法院認為系爭工作物不符合目的：

- 本文中，「符合目的」和「適銷性」應合而為一。
- 加上「在同意購買該產品前先進行必要調查」的條件(調查結果令人滿意的特殊條件)
- 本文中，系爭工作物並沒有處在一個「使理性的買方在不進行任何進一步調查的情況下就將其載上安裝船以安裝在海床上」的狀態。



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法院判決見解

02 如不符合目的，是否係因振華重工之違約所致？

03 Fluor是否已拋棄其對振華重工的求償權？

- 法院認為系爭工作物不符合目的，係因振華重工未依約履行。
- 但Fluor有權請求振華重工賠償的金額則因為雙方先前達成的棄權協議而大幅縮減。



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I am speaking
at #ICCFIDIC
Seoul | 17-18 October 2024



Helena H.C. Chen
Managing Partner
Chen & Chang, Attorneys-at-Law



We are attending ICC-FIDIC 2025

Paris · 15 October 2025

Chen & Chang, Attorneys-at-Law



Helena Chen
C.Arb FCI Arb PhD



Alison Chang
FCI Arb



Session 1:
Offshore Wind Projects/
離岸風電專案

Session 2:
Adverse Climatic
Conditions – A Growing
Challenge for
Construction Projects/
極端氣候-對工程專案的挑戰

Session 3:
DAAB Mock/模擬DAAB

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ADR
CHEN & CHANG

國際仲裁 就找 眾才國際





Thank You

