

# Research on Claim Clause of New FIDIC Contract Condition based on Industry Status

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**Abstract:** The global economy has begun to recover after the coronavirus epidemic has basically ended, and Chinese and international construction projects have gradually resumed work. Due to the impact of the novel coronavirus epidemic, engineering projects in China and internationally have been extremely difficult to carry out in the past few years, and many projects are facing the dilemma of missing deadlines. In this case, the contractor should actively carry out salvage measures such as claim for construction period to ensure the continued implementation of the project, and should take the initiative to submit claims and carry out normal claim procedures according to the contract. By analyzing the claim conditions of the new version of FIDIC contract, this paper analyzes the relevant problems faced by contractors, puts forward corresponding countermeasures, and provides a new idea of FIDIC claim for Chinese contractors going to the world.

**Keywords:** FIDIC Contract Conditions; Engineering Claims; International Engineering.

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## 1. Research Significance and Background

### 1.1. Research Background

With China's development entering a new era, China's economy continues to develop and deepen to the world, and Chinese construction enterprises have gradually gone global and begun to contract some major international projects. However, it must be admitted that in the management process of international engineering projects, Chinese enterprises are facing huge challenges and still lack a lot of practical management experience, which leads to the lack of international competitiveness of Chinese enterprises. The claim management of engineering projects is a key link in the contract management of engineering projects, as well as an important part of its management work, and it is also the content that project managers focus on in their normal work. The claim management of engineering projects has a very high strategic position in the implementation of projects contracted by construction enterprises.

FIDIC contract conditions are widely used in international engineering projects, is a general document of international engineering, it has a high degree of science, justice and rigor, has been unanimously recognized in the international market, and has been widely used. Claims for international engineering projects are also a key issue that many construction companies can realize, but there are often inefficient problems in the claim process. Many companies sometimes simply launch claims, but they are not very clear about the claim procedure and do not pay attention to the study of FIDIC contract terms. In the actual project management process, there are some problems such as lack of claim consciousness, unclear claim procedure and unreasonable claim organization.

In the 2017 edition of FIDIC Construction Contract Conditions, also known as the "Red Book", as an upgraded version of the 1999 edition of the Red Book, it has made a lot of fine tuning in terms of details, and has a special and specific contract basis to deal with claims compared with the 1999 edition. In the new version of FIDIC construction contract

conditions, claims are written as a separate chapter, which also reflects that FIDIC has strengthened its emphasis on contract claims, and has made new detailed provisions on relevant clauses, and put forward more stringent requirements on claim procedures, making contract management of owners and contractors more convenient and efficient. In this case, this paper analyzes and discusses the application of FIDIC contract claims in international project management.

### 1.2. Research Significance

International project claim is an extremely important measure for both parties to the international project contract to protect their rights and interests, and is the core content of international project contract management. It can measure the level of management of a construction enterprise or even a country for the project contract, and more and more attention is paid to and concerned by international project contractors.

The market environment of international contracting is extremely competitive, including political risk, economic risk, contract risk and construction risk. For the projects contracted through bidding mentioned above, the bid price is usually lower than the actual cost price of the project. If the contractor is careless, it is easy to face the situation of loss. Therefore, in order to gain profits in the process of contracting international projects, or to make up for the operating risks brought by the bidding and low-price contracting, we have to pay attention to the operation and management of the whole project; In the whole process of project management, the project claim has highlighted its extremely important value and significance.

It is imperative for the survival and development of construction companies to study and learn from the advanced experience and operation mode of foreign claims management system and construct and improve the claims management system adapted to the international practice in our country.

## 2. New FIDIC Contract Conditions

### 2.1. FIDIC Construction Contract Conditions

#### 2.1.1. Renewal of FIDIC Contract Conditions

Compared with the contract conditions of the 1999 version

of FIDIC, the 2017 version of FIDIC has made some adjustments in the specific terms. In the 1999 version of FIDIC contract conditions, there are 20 general contract terms, while in the 2017 version of FIDIC construction contract conditions, they are divided into 21 general contract terms.

The main changes are in terms of insurance, force majeure (referred to as "abnormal events" in 2017), claims and dispute resolution provisions; Although some adjustments have been made to other provisions, there has not been much change, as shown in Table 1.

**Table 1.** New Red book general terms

Clause number	Clause name	Clause number	Clause name
1	General provision	12	Measurement And Valuation
2	The Employer	13	Variations And Adjustments
3	The Engineer	14	Contract Price And Payment
4	The Contractor	15	Termination By Employer
5	Subcontracting	16	Suspension And Termination By Contractor
6	Staff And Labour	17	Care Of The Works And Indemnities
7	Plant, Materials And Workmanship	18	Exceptional Events
8	Commencement, Delays And Suspension	19	Insurance
9	Tests On Completion	20	Employer's And Contractor's Claims
10	Employer's Taking Over	21	Disputes And Arbitration
11	Defects After Taking Over		

### 2.1.2. Scope of Application of the New Red Book

The new version of the Red Book is mainly applicable to projects or buildings with the following characteristics:

- 1) Large and complex projects;
- 2) The owner or the design engineer is responsible for providing most of the design work;
- 3) The construction project for which the contractor is responsible according to the design provided by the Owner;
- 4) Projects in which the owner and the contractor share the risk;
- 5) Project engineers are responsible for issuing payment certificates and supervising construction projects;
- 6) Projects that mainly use unit price contracts and implement work inspection pricing.

### 2.2. Claim Clause in FIDIC Construction Contract Conditions

Non-static contract management is the basic framework of

the new FIDIC contract conditions. Therefore, when the conditions based on the contractor change, that is, when the conditions are inconsistent with the conditions at the time of bidding, the contractor will face huge construction pressure, and the cost and construction period will be seriously affected. Therefore, the factors causing claims are also numerous and complicated, which makes the phenomenon of project claims occur from time to time. There are many clauses related to claims in the conditions of FIDIC construction contract. As the parties to the contract, the owners and contractors each have specific clauses that they can refer to, so that the owners and contractors can file claims from different angles for their own interests and ensure the benefits during the project.

#### 2.2.1. Claim Clauses to Which the Employer May Refer

Due to the publication of the conditions of the 2017 edition of the FIDIC Construction Contract, the terms have been slightly adjusted, and the relevant claim terms can be cited by the owner are shown in Table 2.

**Table 2.** Claim clauses to which the employer may refer

Number	Clause number	Main contents of the clause	Cost	Profit	Time
1	4.2	Performance guarantee	√	√	
2	4.19	Temporary utility	√	√	
3	5.2.4	Evidence of payment	√	√	
4	7.5	Defects and rejections	√		
5	7.6	Repair work	√		
6	8.7	Project progress	√		
7	8.8	Damages for delay	√		
8	9.2	Delayed test	√		
9	9.4	Failed the completion test	√	√	
10	11.3	Extension of the defect notification period			√
11	11.4	Failure to repair defects	√	√	
12	11.11	Site cleaning	√		
13	13.6	Adjustments due to changes in law	√		
14	15.4	Payment after termination due to contractor default	√	√	
15	17.4	Guaranteed by contractor	√		
16	19.1	General requirement	√		
17	19.2	Insurance provided by the contractor	√		

**2.2.2. Claim Clauses to Which the Contractor May Refer**  
The relevant claim clauses referenced by the relevant

contractor in the 2017 version of the construction Contract conditions are set out in Table 3.

**Table 3.** Claim clauses to which the contractor may refer

Number	Clause number	Main contents of the clause	Cost	Profit	Time
1	1.9	Delayed drawings or instructions	√	√	√
2	2.1	Site access	√	√	√
3	4.7	Paying off	√	√	√
4	4.12	Unforeseen material conditions	√		√
5	4.23	Archaeological and geological discoveries	√		√
6	7.4	Trial by contractor	√	√	√
7	8.5	Delay in completion			√
8	8.6	Delays caused by the department			√
9	8.10	Consequences of employer suspension	√		√
10	9.2	Delayed test	√	√	√
11	10.2	Part of the project received	√	√	
12	10.3	Interference with completion tests	√	√	√
13	11.2	The cost of repairing defects	√	√	
14	11.8	Contractor survey	√	√	
15	12.4	Cut out	√		
16	13.2	Value engineering	√		
17	13.6	Adjustments due to changes in law	√		√
18	15.5	Termination for the employer's convenience	√	√	
19	16.1	Suspended by contractor	√	√	√
20	16.4	Payment after termination by contractor	√	√	
21	17.4	Guaranteed by contractor	√	√	
22	18.4	The consequences of exceptional events	√		√
23	19.1	General requirement	√	√	

**2.3. Claim Procedure**

In the 2017 edition of FIDIC construction contract conditions, the contract item of claim is included as a separate chapter, which enhances the attention of both parties to the contract item or the claim procedure and improves the status of the contract claim. Therefore, both sides of the contract have a deeper understanding of the claim procedure and pay more attention to the standardized and rationalized contract claim process.

**2.3.1. Employer's Claim Procedure**

In the 2017 version of the FIDIC construction contract conditions, the original clause 2.5 "Owner's claims" was cancelled, but the claims of both owners and contractors were placed in clause 20 "Employer's and contractor's claims". As for the owner's claim procedure, FIDIC construction contract conditions regulate it. The following circumstances may give rise to an employer's claim:

(1) If the Employer considers that it is entitled to obtain from the Contractor a reduction in the contract price, any additional payments or an extension of the notice period for defects;

(2) The Employer considers itself entitled to an exemption from another right or liability of the Contractor. Such exemption from entitlement or liability may be of any kind, including in connection with any certificate, determination, direction, notice, opinion or valuation of the Engineer, except for any entitlement referred to in (1).

Due to the adjustment of the conditions of the 2017 FIDIC construction contract, the claim procedure involved by the owner and the claim procedure required by the contractor are

explained in one chapter, and the claim procedure of the contractor is also applicable to the owner.

**2.3.2. Contractor's Claim Procedure**

Claims may arise for contractors in the following cases:

(1) If the Contractor considers that it is entitled to any additional payment from the Employer and/or an extension of the time for completion;

(2) The Contractor considers itself entitled to a waiver of another right or liability of the Owner.

In project contracting, if the contractor wants to file a claim against the employer, he must abide by the very strict claim procedure, which is one of the basic conditions for the establishment of a claim. Article 20 of the construction contract conditions of FIDIC 2017, that is, "claim", has made very detailed and clear provisions on the claim procedure. The claims process can be divided into a number of steps, as shown in the separate figure below.

(1) The Contractor shall, within 28 days after becoming or should have become aware of an event or condition, give notice to the Project Engineer as soon as possible describing any increase in costs, loss, delay or extension of the notice period for defects resulting from such event or condition. If the Contractor does not give notice of the claim within 28 days, the claim for this event or circumstance will not be realized and the claim opportunity will be lost.

(2) 84 days after the Contractor becomes or will become aware of the events or circumstances giving rise to the claim (or such other period proposed by the Contractor and agreed upon by the Engineer), the Contractor shall submit a fully detailed claim to the Engineer.

(3) If the events or circumstances giving rise to a claim

under this clause have a continuing effect, a sufficiently detailed claim submitted by the Contractor shall be deemed to be temporary, and after the first temporary claim is made, the Contractor shall make further temporary claims on a monthly basis, giving the cumulative amount of additional payments claimed and the extension of the time for which the claim is claimed. The Contractor shall submit a final, fully detailed claim within 28 days of the end of the event or circumstance that ultimately affects the contractor.

(4) The Engineer shall, in accordance with the Contract and having due regard to all relevant circumstances, make a fair determination of the claim within 42 days or such other time limit as may be proposed by the Engineer and agreed upon by the parties.

(5) After the Engineer has fully verified the Contractor's claim report, contemporaneous records and other relevant information, the Contractor shall be granted the extension of time or the amount of payment in accordance with the contract and shall be included in the payment certificate. When the evidence provided by the contractor is not sufficient to support all the claims, the contractor can only obtain part of its rights that have been fully proved, and the payment certificate can only include the amounts that have been proved and are due.

### 3. Analysis of Claims Clauses That the Contractor Can Invoke

The claims that the contractor can initiate mainly include: the claims caused by the owner's breach of contract, the reasons caused by the engineer, the claims caused by external circumstances, the claims caused by exceptional events, and the claims caused by other risks of the owner. This article only analyzes the claim clauses caused by engineers.

#### 3.1. Claim Clause Analysis

The contractor's claims caused by the engineer mainly include the following two items. Although the above mentioned 8.10 "Consequences of suspension by the Employer" is also caused by the contractor's execution of the engineer's instructions, in this paper, we have included 8.10 in the analysis of claims caused by the employer's reasons. Because the root cause of paragraph 8.10 is still due to the instructions issued by the employer to the engineer, the engineer only performed the most basic work responsibilities, in the final analysis, it is the employer's reason.

##### (1) Section 1.9 "Delayed Drawings or Instructions"

If the contractor does not receive the necessary drawings or instructions from the engineer within a reasonable time, this paragraph requires the contractor to notify the Engineer at the first time, which is equivalent to giving the engineer an opportunity to make up for the mistake. If the Engineer fails to issue drawings or instructions within the time reasonably specified by the Contractor in the notice, which results in delay in construction or increase in costs to the Contractor, the Contractor may claim for lost construction time and

additional costs by way of Sub-clause 20.2 "Extension of Time for Payment and/or Completion". Receive compensation for extension of completion time or cost plus profit.

##### (2) Section 7.4 "Trial by Contractor"

This subsection may be used as a claim for both the Employer and the Contractor. This subsection is for the Contractor's sake that the Engineer shall take part in the tests entered by the Contractor at the time and place specified in the Contractor's notice given under this subsection, and if the Engineer is not present, the Contractor may carry out the tests himself unless the Engineer directs otherwise. The Contractor shall be entitled to claim for an extension of time or cost plus in accordance with Sub-clause 20.2 if the Contractor suffers a delay or increase in costs as a result of the delay in following any other instructions of the Engineer or due to the Employer.

## 4. Conclusion

This paper analyzes the new FIDIC contract conditions, especially the claims caused by engineers from the perspective of contractors.

This article identifies the following measures that contractors and even employers can take advantage of when dealing with claims:

(1) The contractor or employer shall strengthen the collection of evidence for claims during the project construction phase.

(2) As Chinese contractors step out of the country, they will experience more and more claims. The contractor must pay more attention to the claim work, have a clear understanding of the claim procedure, and can set up a special claim department to organize the claim work reasonably and effectively.

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