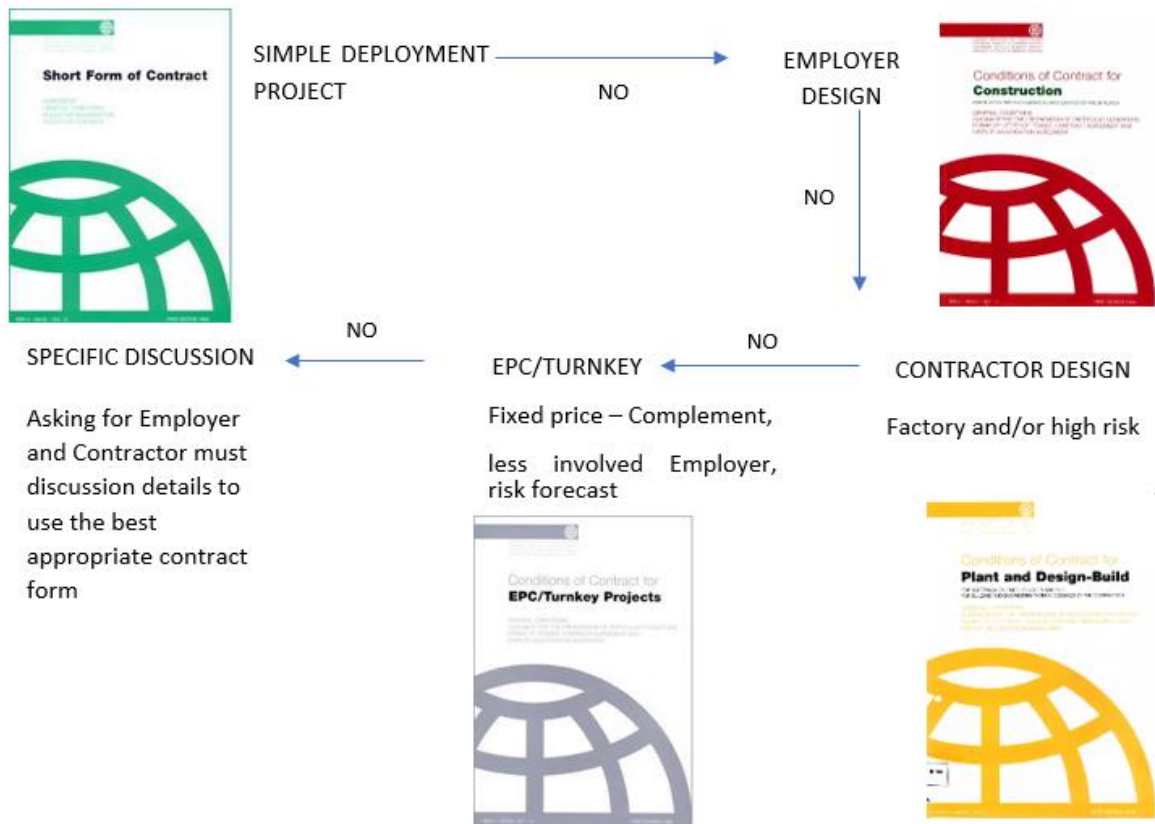


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THE FIDIC 1999 CONDITIONS OF CONTRACT FOR CONSTRUCTION



THE FIDIC 1999 CONDITIONS OF CONTRACT FOR CONSTRUCTION

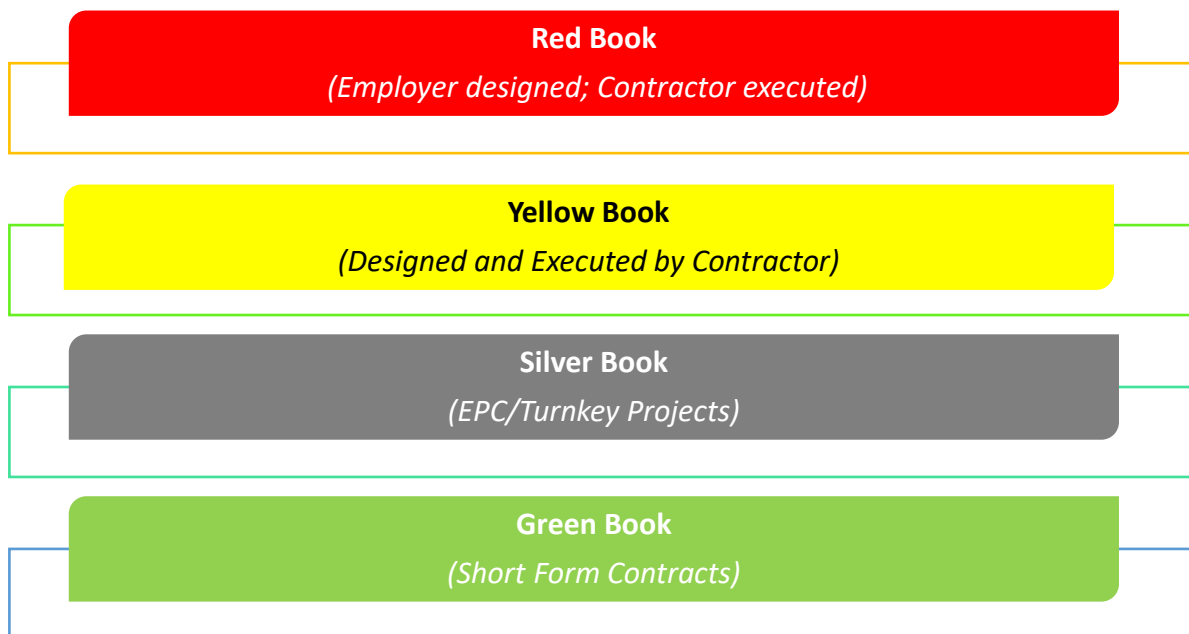
Until recently, the FIDIC Conditions of Contracts for Construction 1999 – first edition (“Conditions of Contract for Construction 1999”) issued by the Fédération Internationale des Ingénieurs-Conseils (FIDIC - International Federation of Consulting Engineers) was introduced 20-years ago and was well received by many countries worldwide. However, Vietnam is still on the path to selectively acquiring the core values of the FIDIC 1999 Contract series.

The release of the FIDIC 1999 Contract series is not simply different from previous construction contract versions, the 1999 version is also the foundation for updates and developments for the second edition issued by FIDIC in 2017.

To appreciate the value, meaning, role, and effects of the FIDIC 1999 Contract series, CNC introduces readers and those applying the FIDIC 1999 Contracts series to the following information.

1. FIDIC 1999 Contract Series

1.1. The books (by color) in the FIDIC 1999 Contract Series



The name of each FIDIC 1999 contract book

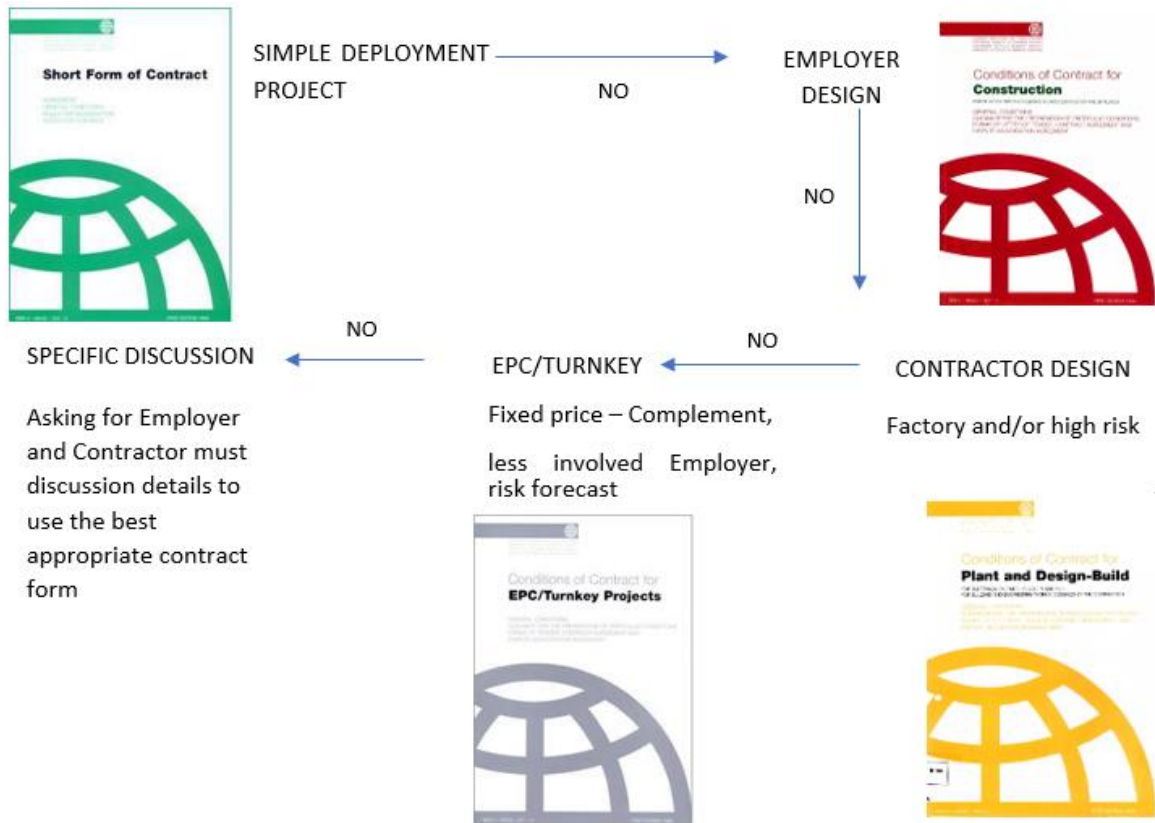
Under the FIDIC 1999 Contract Series, there are 4 Contract Conditions, each named after their colors and defined as follows:

- **FIDIC 1999 Red Book** - Conditions of Contracts for the Construction of Building and Engineering works designed by the Employer and executed (according to design) by the Contractor. The **Red Book** allows for minimal Contractor design.
- **FIDIC 1999 Yellow Book** - Conditions of Contracts for Plant and Design-Build - For electrical and mechanical plant (engineering), and for building works, designed by the Contractor - refers to building and engineering works, designed by the Contractor at the request of the Employer. Similar to the **Red Book**, the **Yellow Book** allows the Employer to perform duties at each design stage that is usually in primitive idea stages.
- The phrase “**FIDIC 1999 Silver Book**” refers to Conditions of EPC/Turnkey Construction Contracts in which the Contractors Design – Provides for and Constructs the works in accordance with a design provided by the Employer so that upon transfer to the Employer it is a completed project/work and ready to operate (EPC/Turnkey). For this Contract, the Employer is not engaged in any of the Contractor's design and construction stage, but only provides the Contractor with detailed Requirements.
- The phrase “**FIDIC 1999 Green Book**” or “**Short Form of FIDIC 1999**” essentially is a shortened, simplified version of **FIDIC Red Book 1999**. FIDIC recommends the use of this contract in very specific situations, for example:
 - (1) limited construction time - less than 6 months (without risk of persistence),
 - (2) low value contracts, for example less than \$500,000.00 USD
 - (3) repetitive or technically simple jobs.

1.2. Scope and Application

The FIDIC 1999 Contract series provides contract parties an opportunity to choose the model of contract appropriate for the particular characteristics of each project and each situation.

In general, the use and application of the FIDIC 1999 Contract series are performed as follows:



How to choose a suitable FIDIC 1999 Contract Form

2. Structure of FIDIC 1999 Contract series

The FIDIC 1999 Contract series consists of 20-Clauses, all arranged in a scientific order, easy to read, to follow, and agree with each other. Specifically:

As outlined and itemized below, there are 20-Clauses of the FIDIC 1999 Contract series, all divided into 7-major issues in chronological order, the order of execution, and the order in which a task is to be performed:

No.	Issues	Clauses
1	General issues	Clause 1. General Provisions
2	Participants <i>(arranged consistently with the parties under a construction contract)</i>	Clause 2. The Employer Clause 3. The Engineer/The Employer's Administration (FIDIC 1999 Silver Book) Clause 4. The Contractor, and

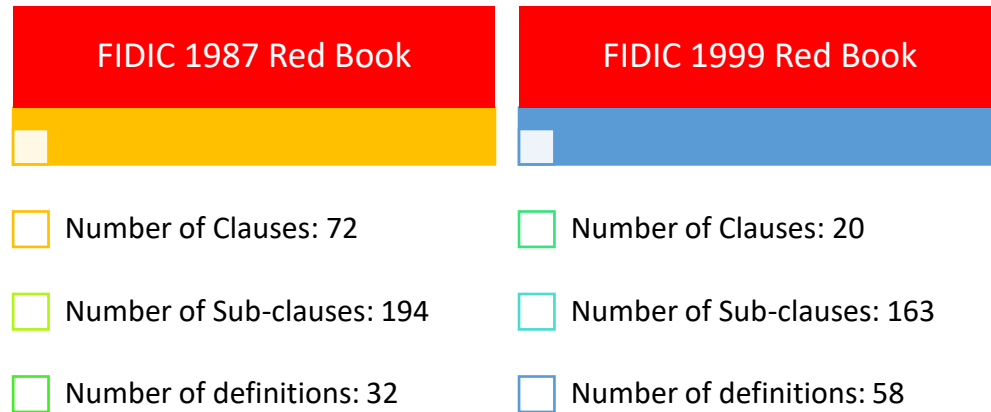
No.	Issues	Clauses
		Clause 5. Nominated Subcontractors
3	Contract implementation process <i>(arranged in the order appropriate to the process of preparation, construction, completion and warranty of construction works)</i>	Clause 5. Design (FIDIC 1999 Yellow Book and FIDIC 1999 Silver Book) Clause 6. Staff and Labor Clause 7. Plant, Materials and Workmanship Clause 8. Commencement, Delays and Suspension Clause 9. Tests on completion Clause 10. Employer's taking over Clause 11. Defects Liability Clause 12. Test after Completion (FIDIC 1999 Yellow Book and FIDIC 1999 Silver Book)
4	Finance(s) <i>(Rights of Contractor – Service provider)</i>	Clause 12. Measurement and Evaluation Clause 13. Variation and Adjustments Clause 14. Contract price and Payment
5	Termination of contract <i>(according to the order)</i>	Clause 15. Termination by Employer Clause 16. Termination by Contractor
6	Risks and risk control <i>(identify risks and divide risks for each party)</i>	Clause 17. Risk and Responsibility Clause 18. Insurance Clause 19. Force Majeure
7	Claims and dispute resolution	Clause 20. Claims, Disputes and Arbitration

3. A few comparisons between **FIDIC 1999 Red Book** and **FIDIC 1987 Red Book**¹

Below is an itemized outline of the developments of **FIDIC 1999 Red Book** and **FIDIC 1987 Red Book**:

¹ This book has been selected for comparison, because it is the first book and the main source to consider to effectively explain the principle of risk sharing for other Contracts issued by FIDIC.

3.1. The number of Clause, Sub-clauses, and Definitions



Number of Clause, Sub-clause of FIDIC 1987 and FIDIC 1999

Compared to the **FIDIC 1987 Red Book**, the quantity of Clauses and sub-clauses has been minimized - most likely due to restructuring of the clauses and sub-clauses as analyzed in Section 2 above.

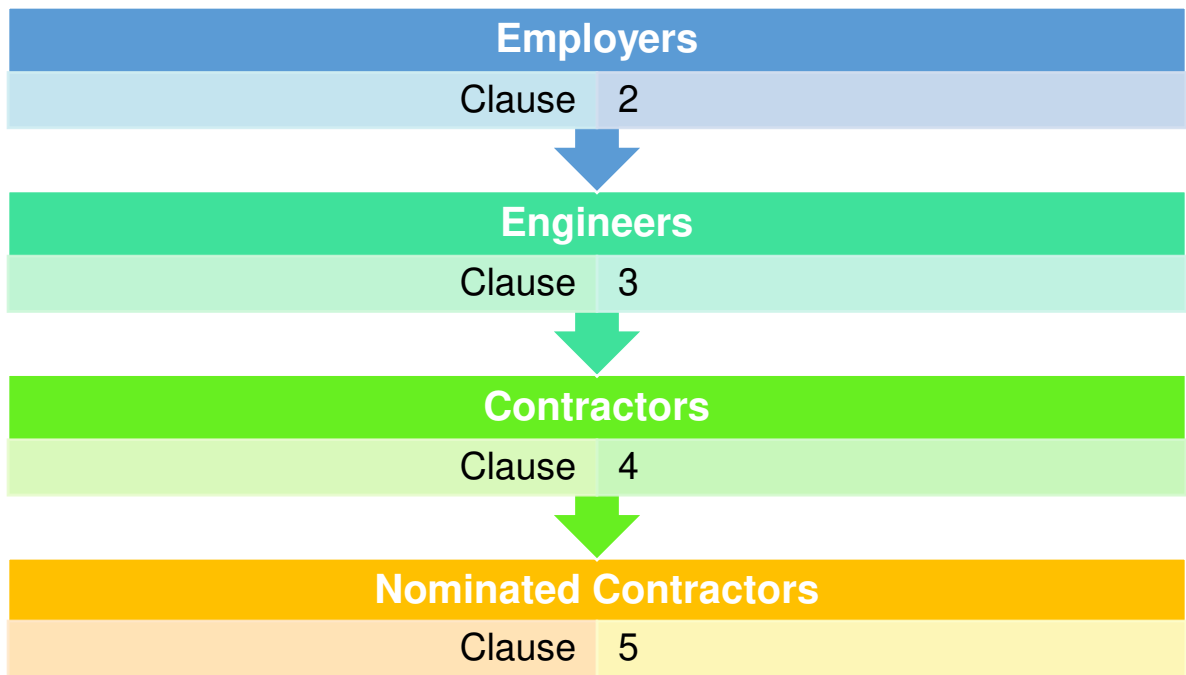
However, FIDIC 1999 contains more definitions than what appears in the **FIDIC 1987 Red Book**. Therefore, more important information appears during formalized contract implementation, thereby providing more meaningful details pertaining to regulations and the avoidance of disputes.

Last, but not least, definitions in **FIDIC 1999 Red Book** are sorted by logical group. Accordingly, the approach to FIDIC 1999 will be:

- **Group 1:** What is a Contract? (Including definitions from subsection 1.1.1.1 to subsection 1.1.1.10);
- **Group 2:** Entities participating in the Contract (Including definitions from subsection 1.1.2.1 to subsection 1.1.2.10);
- **Group 3:** Contract duration (Including definitions from subsection 1.1.3.1 to subsection 1.1.3.9);
- **Group 4:** Contract Value (Including definitions from subsection 1.1.4.1 to subsection 1.1.4.12);
- **Group 5:** Contract for types of construction/work (Including definitions from subsection 1.1.5.1 to subsection 1.1.5.8);
- **Group 6:** Other definitions.

3.2. Entities participating in the Contract

The differences between **FIDIC 1987 Red Book** and **FIDIC 1999 Red Book** is how each edition groups and arranges participating Entities of Contracts, in the following order:



Groups about Entities participating in the FIDIC 1999 Contract

The arrangement of Entities participating in groups under **FIDIC 1999 Red Book** ensure clarity and exhibit alignment of rights and obligations between entities. Accordingly, the rights and obligations under **FIDIC 1987 Red Book** have been rearranged in the **FIDIC 1999 Red Book** as follows:

No.	Issues	FIDIC 1999 Red Book	FIDIC 1987 Red Book
1	Employer		
1.1	Site preparation and grant access to the Site to the Contractor	Sub-clause 2.1	Sub-clause 42.1, Sub-clause 42.2
1.2	Obligation for arrangement of construction licenses and approvals	Sub-clause 2.2, Sub-clause 1.13	Sub-clause 26.1
1.3	Obligation for arranging and managing project personnel	Sub-clause 2.3	Not specified
1.4	Financial obligations ensuring payment responsibility to the Contractor	Sub-clause 2.4	Not specified

No.	Issues	FIDIC 1999 Red Book	FIDIC 1987 Red Book
1.5	Contractor's legal responsibility commence obligations under the Contract	Sub-clause 2.5	Not specified
2	Engineer		
2.1	Engineer Duties and Authority	Sub-clause 3.1	Sub-clause 2.1
2.2	Engineer delegations	Sub-clause 3.2	Sub-clause 2.3
2.3	Engineer instructions	Sub-clause 3.3	Sub-clause 2.5
2.4	Engineer's replacement	Sub-clause 3.4	Not specified
2.5	Engineer determinations	Sub-clause 3.5	Sub-clause 2.6
3	Contractors		
3.1	Work suspension in absence of Engineer issued Interim Payment Certificate	Sub-clause 8.4(b), Sub-clause 16.1	Not specified
3.2	Termination of contract in absence of Engineer issued Interim Payment Certificate	Sub-clause 16.2(b)	Not specified
4	Nominated Contractors		
4.1	Objections to Nomination in absence of the capacity of a Subcontractor guarantee	Sub-clause 5.2(a)	Not specified
4.2	Expressly Stated in any section of the responsibility of the Subcontractor	Not specified	Sub-clause 59.3

3.3. Claims, Disputes, and Arbitration

Claim procedures for the Contractor and resolution of disagreements under the **FIDIC 1999 Red Book** have three differences, when compared to the **FIDIC 1987 Red Book**, as follows:

No.	Issue	FIDIC 1999 Red Book	FIDIC 1987 Red Book
1	Scope and procedure of the application of a claim	General application for any claims related to time and/or incremental costs (Sub-clause 20.1)	Describes only the claims regarding additional costs (Sub-clause 53.1)
2	Consequences of violating claim procedures	Contractors lose their rights and the Employer is released from liability once a Contractor is in non-compliance about the Notification Period (Sub-clause 20.1)	Contractor's rights may be assessed, reviewed either by the Engineer or by a jurisdiction (Sub-clause 53.4)
3	Mechanisms and procedures through which disputes are resolved	Methods include: (1) DAB - <u>D</u> ispute <u>A</u> djudication <u>B</u> oard (Sub-clause 20.2); (2) Representatives of the parties (Sub-clause 20.5); (3) Arbitration (Sub-clause 20.6).	Methods include: (1) Engineer (Sub-clause 67.1); (2) Representatives of the parties (Sub-clause 27.2); (3) Arbitration (Sub-clause 67.3).

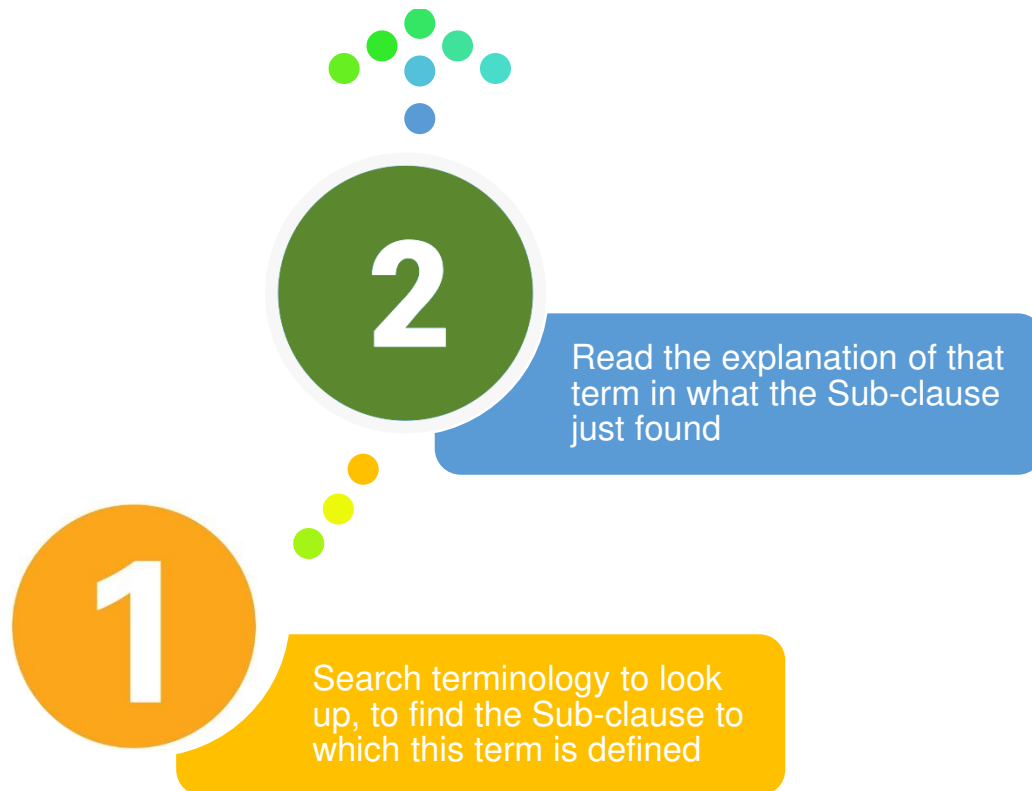
4. Foundation for the development of 2017 FIDIC Suite of Contracts' structure

Structure of the FIDIC 1999 Contracts is the foundation for the development of FIDIC 2017 Suite of Contracts:

4.1. The way to arrange the definitions

In the FIDIC 1999, the definitions are arranged in groups of topics². Therefore, users must follow two steps (outlined below) to investigate the meaning of a term:

² See more at Section 3.1 above.



Steps to search definitions in FIDIC 1999 Contract series

After much discussion and feedback, from FIDIC contract users worldwide, FIDIC 2017 has been defined and arranged in alphabetical order.

This arrangement, with sub-clauses, has certain advantages and disadvantages. The alphabetical order provides for efficient searches for countries using English as an official language. However, the disadvantage of this arrangement is that problems pertaining to the same topic are scattered and thus cumbersome for FIDIC newcomers to comprehend the value of these important definitions.

Obviously, alphabetical arrangement has almost no value for countries in which English is not the official language.

4.2. Differences between Claims and Resolution of Disputes

Compliance of claims and dispute resolutions are specified in Clause 20 [*Claim, Disputes, and Arbitration*] with 2 separate Sub-clauses under the 2017 FIDIC Contract, Clause 20 [*Employer's and Contractor's Claims*] and Clause 21 [*Dispute and Arbitration*].

This change highlights the distinction between making a Claim (1) and making a Dispute (2). Accordingly, a Claim refers to requesting a benefit which is under contract, while making a Dispute refers to *when* a Claim has been denied (in whole or in part) - or is not considered - and the party that filed the Claim was not satisfied with that denial.

4.3. General obligations regarding compliance with Claim procedures

Under the **FIDIC 1999 Red Book**, the obligation to comply with the complaint procedure is almost always exclusively imposed on the Contractor. Contractor's benefits may be denied if the Contractor neglects to comply with procedures for notification of a claim. However, the Employer can make claims at any time. If possible, claims for resolving any deficiencies must be made prior to the expiration of the Defects Notification Period.

This inadequacy has been resolved under the 2017 FIDIC. Accordingly, Employer's and Contractor's claims are to be stated in Clause 20 [*Employer's and Contractor's Claims*].

Furthermore, when Employers or the Contractors fail to comply within the specified time, the rights of the Employer or the Contractor may not be guaranteed³.

For more information about 2017 FIDIC Suite of Contracts, and changes and developments of this version to the FIDIC 1999 Contract Form, CNC would like to refer you to the following article:

<https://cnccounsel.com/insights/official-launch-of-the-2017-fidic-suite-of-contracts>

5. Subcontract 2011 – General edition of **FIDIC 1999 Red Book**

Subcontract 2011 between Contractor(s) and Nominated Subcontractor(s) or between Contractor(s) and Subcontractor(s) was introduced in 2011 (FIDIC 2011) – and is a derivative product recommended to be used with the **FIDIC 1999 Red Book** and **Pink Book** – Edition of MDBs.

Regulations of the FIDIC 2011 are inherited and successive, and refers to the regulations of the **FIDIC 1999 Red Book** and **Pink Book**. Subclause 1.3 FIDIC 2011 is compatible and homogeneous with **FIDIC 1999 Red Book** or **Pink Book**.

To understand more about FIDIC 2011, as well as the changes and development of the 2011 version/edition and comparison with the previous FIDIC Contract Form (1994), CNC invites readers to view the following article (FIDIC 2011).

6. **FIDIC 1999 Contract Series downloads**

pdf of FIDIC 1999 Red Book at <https://hopdongmau.net/san-pham/fidic-red-book-1999/>

pdf of FIDIC 1999 Yellow Book (D&B Contract) at <https://hopdongmau.net/san-pham/yellow-book-1999-fidic-conditions-of-contract-for-plant-design-build/>

pdf FIDIC 1999 Silver Book (EPC/Turnkey): <https://hopdongmau.net/san-pham/epc-turnkey-contract-fidic-silver-book-1999/>

pdf FIDIC 1999 Green Book (Short Form): <https://hopdongmau.net/san-pham/592/>

³ See more at Sub-clause 20.2.1 [Notice of Claim], FIDIC 2017 Contract Form.

7. Information about FIDIC Contract Training

CNC is boutique law firm that actively consults on construction contracts, issued by FIDIC, and regularly organizes and conducts training courses on various topics pertaining to FIDIC Contract Management.

Details of FIDIC contract training courses conducted by CNC can be found at:

<https://cnccounsel.com/service/training-resources>

In addition, CNC is also regularly invited by Employers, Contractors, and Engineers in Vietnam to provide internal training courses on all forms of FIDIC contracts. Below is a brief summary of the organized CNC training courses previously conducted:

<https://cnccounsel.com/tin-tuc/hop-dong-fidic-1999-nhung-gia-tri-con-dong-lai-sau-moi-buoi-thao-luan>

<https://cnccounsel.com/tin-tuc/cnc-to-chuc-buoi-tu-van-quan-ly-hop-dong-fidic-1999-thang-092019>

<https://cnccounsel.com/latest-news/the-1999-fidic-contracts-training-course-in-hanoi-in-jan-2019>

<https://cnccounsel.com/latest-news/training-fidic-1999-contracts-at-eurowindow>

Support:

CNC is pleased to receive and respond to any and all inquiries regarding drafting and reviewing construction contracts effectively and efficiently.

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