Claims and the DAAB in Practice

FIDIC 2017 Clauses 20–21 and the Road to Arbitration

İlteriş Doğan
Founding Partner, Westlex · Construction Lawyer (LL.M.) · Independent Arbitrator · MCIArb · DAAB Member

MGIMO University · Special course “Legal Support for Construction and Infrastructure Projects” · 29 October 2026



İlteriş Doğan

From the site, to the contract, to the tribunal.

Civil Engineer
Construction Lawyer
Arbitrator · Adjudicator · Consultant

Founding Partner, Westlex

On the neutral's chair

- **Numerous DAAB and DAB memberships**
- **Active arbitrator** in the Russian Federation, sitting on current cases
- **RAC** panels: arbitrator and adjudicator
- **AIFC (Astana)**: listed arbitrator and mediator

Westlex advisory today

- **Gulf**: offshore works, for the contractor consortium leader
- **West Kazakhstan**: for an industrial investor
- **Libya**: projects of the national development agency
- **Russian Federation**: a range of projects

On the site

- **Experienced civil engineer**
- **Management roles** on major international projects

In the classroom

Online and in-person courses on **construction law**, **contract management**, **FIDIC** contracts and **claims**

B.Sc. Civil Engineering | **MBA (Stuttgart)** | **PMP (PMI, USA)** | **LL.M. Construction Law (Robert Gordon University, Aberdeen)** | **MCIArb**

Three perspectives, one project

The engineer

“What happened on site?”

- B.Sc. Civil Engineering (METU)
- PMP
- Programmes, records, site reality

The lawyer

“What does the contract give?”

- LL.M. Construction Law (Robert Gordon University)
- MBA
- FIDIC, English and Russian construction law

The neutral

“What can be proven?”

- MCIArb; arbitrator (MKAC; AIFC IAC panel)
- DAAB member and adjudicator (TMMMB)
- What survives scrutiny

Examples from practice are anonymised. No comment on pending matters.

Won or lost in the first 28 days

28

days

Most construction disputes are won or lost **long before the hearing**:

- by a notice that was, or was not, sent in time,
- and by records that were, or were not, kept.



A contractor calls you on **day 29** about a strong, well-documented, fully justified claim. **How much is it worth?**

Who operates the contract on a Russian project?

Who is responsible for making sure **notices go out on time**?

- The lawyer
- The ПТО
- The project manager
- **Nobody**

In practice the function is spread across the **ПТО** (as-built documentation, KS-2/KS-3), the **estimating department**, the **технический заказчик**, and a **lawyer called in late**.

Legal support and contract management are not the same job

	Legal support (правовое сопровождение)	Contract management
Core question	What are our rights and obligations?	Are we preserving those rights right now?
When	Mostly at the two ends: drafting and tender, then the claim or court case	Every day, from the Commencement Date to the Final Certificate
Typical outputs	Drafting, legal opinions, pre-action claims, statements of claim	Notices, registers of records and correspondence, variation and claim files, time-bar calendar, delay analysis
Works with	Management, courts, arbitration	Site, planning, cost, design, the Engineer
Failure mode	A well-drafted contract that nobody operates	Good records but a weak legal basis

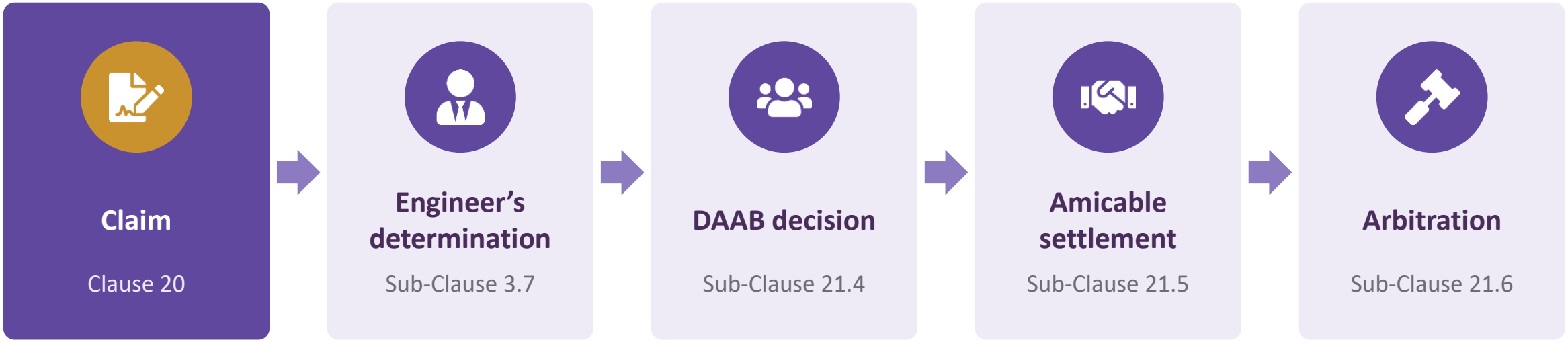


Not the same as the **контрактный управляющий / контрактная служба** under Art. 38 of 44-FZ: that is a public-procurement compliance role.

PART II · REFRESHER

FIDIC 2017 and the Engineer

The road map: from Claim to award



II FIDIC 2017 and the Engineer

III The claims procedure

IV Russian practice vs. FIDIC

V The DAAB

VI Arbitration

End

FIDIC 2017 at a glance

Red Book
Construction: Employer designs

Yellow Book
Plant and Design-Build

Silver Book
EPC / Turnkey

Same Clause 20/21 claims and disputes architecture in all three books.

FIDIC GOLDEN PRINCIPLES (2019)

GP3 Particular Conditions must not change the balance of risk and reward in the General Conditions.

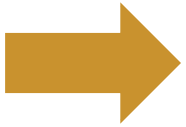
GP4 All time periods must be of reasonable duration.

GP5 Formal disputes go to a DAAB for a provisionally binding decision, as a condition precedent to arbitration.

From one clause to two: Claims and Disputes

FIDIC 1999

- **Clause 20** mixes Contractor claims and disputes
- Employer claims under **2.5**: no time bar
- Ad hoc DAB in Yellow and Silver Books



FIDIC 2017

- **Clause 20: Claims**, one procedure for both parties
- **Time bars apply to the Employer too**
- **Clause 21: Disputes**, with a standing DAAB in all books

A Claim becomes a Dispute **only** when it is rejected (or deemed rejected) and a Notice of Dissatisfaction follows.

The Engineer: one person, two hats

Employer's agent

Sub-Clauses 3.1–3.2: administers the contract, gives instructions on the Employer's behalf.

Neutral determiner

Sub-Clause 3.7: must **act neutrally** when agreeing or determining, and is not deemed to act for the Employer.

CASE LAW

Sutcliffe v Thackrah [1974] AC 727 (HL)

Scheldebouw v St James Homes [2006] EWHC 89 (TCC)



Appointed by the Employer, paid by the Employer. On Monday he must decide the Contractor's claim **neutrally**. Realistic, or a legal fiction?

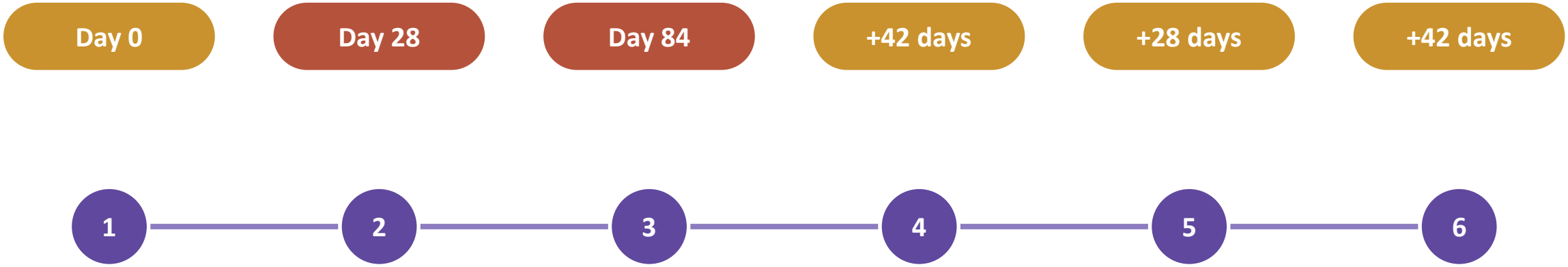
Russian bridge

Технический заказчик and **строительный контроль** (Town Planning Code, Art. 53) represent the employer. Nobody **determines** entitlements.

PART III · CLAUSE 20

The Sub-Clause 20.2 claims procedure

The claims timeline



Both 28 and 84 days run from awareness of the event, not from each other.

Miss day 28: no entitlement, other party discharged. **Miss the legal basis at day 84:** the Notice lapses.

Gate 1: Notice of Claim within 28 days

What the clause requires

- Clock starts when the party **became aware, or should have become aware** (objective test)
- Notice must be **identifiable as a Notice**: a defined term in 2017, in writing (1.3)
- Consequence: claimant **not entitled**, other party **discharged** from liability
- Applies to **both** Contractor and Employer claims

CASE LAW

Obrascon Huarte Lain SA v HM Attorney General for Gibraltar [2014] EWHC 1028 (TCC), affirmed [2015] EWCA Civ 712

Time bar read **reasonably, not narrowly**, because it can extinguish a claim

For delay, time can run from when the delay **actually begins**

The contractor met unexpected rock, yet still lost much of its case, including on its own records

Is the time bar a condition precedent? The global spectrum

Strict enforcement	The middle way	Time bar defeated
• **Bremer v Vanden Avenne** [1978] (HL): the classic test • **CMA Assets v John Holland** [2015] WASC 217 • **City Inn v Shepherd** (Court of Session, 2003) • **Multiplex v Honeywell (No 2)** [2007] EWHC 447 (TCC)	• **Peninsula Balmain v Abigroup** [2002] NSWCA 211 • Superintendent may still extend time without notice, **honestly and fairly**	• **Gaymark v Walter Construction** [1999] NTSC 143 • Prevention principle: time **"at large"** • Much criticised since

And now: **North Midland v Cyden** [2018] EWCA Civ 1744: parties may contract out of the prevention principle. Party autonomy wins.

The dilemma



You act for the **Employer**. The Notice of Claim arrived on **day 31**. The delay was caused by **your own late drawings**. Do you apply the time bar? **Hands up if you would.**



Now you are the **arbitrator**. Does the time bar succeed?

In 2017 the time bar is not self-executing

Engineer's 14-day notice

20.2.2: if the Engineer is silent, the Notice of Claim is **deemed valid**.

The other party may still object

The objection is decided in the **determination** under 3.7.

Late submission review

20.2.5: is lateness justified? **Prejudice** to the other party, and its **prior knowledge** of the event.

Is **28 days** a fair deadline, or a trap?

2008 Gold Book first gave the Dispute Board discretion over late notices. **GP4**: periods must be reasonable.

Gate 2: the fully detailed Claim within 84 days

Description of the event

Contractual and/or legal basis

Contemporary records relied on

Particulars of time and money

Missing legal basis at day 84 → the Notice **lapses**

The engineer's view: records that persuade

Daily reports, labour and plant returns, photographs, programme updates, correspondence. **Made at the time**, not reconstructed later.

CASE LAW

Walter Lilly v Mackay [2012] EWHC 1773 (TCC); **John Doyle v Laing** [2004] ScotCS 141: global claims are not fatal, but cause and effect must be shown.

Which is more dangerous for a claim: **a bad lawyer or a bad site diary?**

After the claim: the second, often forgotten time bar

Monthly

Interim fully detailed Claims while effects continue (20.2.6)

42 days

Engineer agrees or determines (3.7.3). No determination on a Claim = deemed rejected

28 days

Notice of Dissatisfaction (3.7.5), or the determination becomes **final and binding**



Teams celebrate getting the claim in, then miss the **28-day Notice of Dissatisfaction**. The determination then becomes final.

PART IV · RUSSIAN PRACTICE

Where Russian practice and FIDIC part ways

Before we begin



Hands up if you have seen an employer **refuse to sign a supplementary agreement** (доп. соглашение) extending the time for a delay **the employer itself caused**.

Is a FIDIC time bar valid under Russian law?

The objection

- **Art. 198 Civil Code:** limitation periods cannot be changed by agreement
- So a 28-day bar is a **limitation period in disguise**?

The answer

- Limitation protects an **existing** right in court; the Notice decides whether the entitlement **arises or survives**
- **Art. 327.1** (42-FZ, 2015): exercise of contractual rights may be made **conditional**

Open question: no settled case law yet applies Art. 327.1 to construction time bars. **A live thesis topic.**

The idea is already native to Russian law

Art. 716(2)

A contractor that fails to warn of circumstances threatening the result **loses the right to rely on them**.

Art. 743(3)–(4)

No notice of additional works → **no payment**, even if the works appear in acceptance certificates (VAS Information Letter No. 51, point 10).

Art. 709(5)

No timely warning that the approximate price will be significantly exceeded → **perform at the agreed price**.

FIDIC adds only one thing: **a fixed number of days** in place of “promptly”.

Softening the bar, and a common confusion

Civil-law limits on a time bar

- **Arts. 1(3)–(4), 10:** good faith; abuse of right
- **Arts. 404, 406:** mixed fault; creditor's delay (the closest analogue to the prevention principle)
- **Art. 428(3)** and Plenum Resolution No. 16 (2014): terms imposed by one party
- Plenum Resolution No. 49 (2018): interpretation against the drafter

NOT THE SAME THING

FIDIC Notice of Claim

A substantive contractual gate: no Notice, no entitlement.

Претензия (APC Art. 4(5))

A procedural pre-action step before going to court.

One does not replace the other.

Under FIDIC, the contract changes itself

In Russian practice, someone has to sign.

FIDIC 2017	Engineer's **instruction** (13.1, 13.3.1)	**Determination** of time and money (3.7)	**Binding** without any amendment	If disputed: **DAAB → arbitration**
Russian practice	Change request	**Доп. соглашение** (Arts. 450, 452)	Employer **does not sign**	Only route: **court**



Fairness point: a public or state-owned employer often cannot legally sign without a basis (**44-FZ Art. 95**; 223-FZ rules). The refusal is often fear of the auditor, not bad faith. FIDIC's determination mechanism protects **both** sides.

Employer-caused delay and the “фронт работ” argument

Bottleneck in practice	FIDIC 2017	Russian Civil Code
“We gave you a **фронт работ**” (some area, not the planned sequence)	Access to Site **2.1**; Programme **8.3** and critical path	Arts. 747, 718
Late Employer-supplied materials	Employer-Supplied Materials **2.6**	Art. 745
Late drawings, approvals, decisions	Delayed Drawings or Instructions **1.9**	Arts. 718, 719
No coordination; no early warning of events	Co-operation **4.6**; Advance Warning **8.4**	Art. 718
Delay by the Employer’s staff or other contractors	**2.3**; extension of time under **8.5(e)**	Art. 403
Remedy	Extension of time **8.5** and Cost via Clause 20	Arts. 405–406, 719 (suspension)

Three more gaps, and other claim triggers

Concurrent delay

FIDIC: last paragraph of 8.5 → Special Provisions; SCL Protocol; *North Midland v Cyden*

RF: Art. 404, mixed fault

Unreasonably short time bars

FIDIC: GP4; 20.2.2 and 20.2.5 safety valves

RF: Arts. 198 vs. 327.1

Excluding protective Civil Code rules

FIDIC: GP3, do not shift the risk balance

RF: Art. 422; Plenum Res. No. 16 (2014); Art. 428(3)

OTHER CLAIM TRIGGERS

Design comments beyond the Employer's Requirements: 5.2.2 review; notify a Variation under 3.5 · **Descoping:** 13.1 vs. Art. 717 · **Nominated subcontractors:** 5.2, right to object

PART V · CLAUSE 21

The DAAB: avoidance, decisions and enforcement

A standing board, and the “AA” in DAAB

Standing by default

- All three books (1999 Yellow and Silver: ad hoc)
- **One or three** members, appointed at the start
- GCDAA and DAAB Procedural Rules

Dispute avoidance (21.3)

- **Informal assistance** when both parties ask
- Regular **site visits** and meetings
- Issues defused before they become Disputes

A board of experts costs money every month, and **nothing is in dispute**. Why pay them?

From Dispute to Decision

Dispute exists
Defined term

Refer within 42 days
of the NOD (21.4.1)

Decision in 84 days
21.4.3

Binding immediately
Parties must comply

NOD within 28 days
or final and binding (21.4.4)

CASE LAW

AMEC Civil Engineering v Secretary of State for Transport [2005] EWCA Civ 291

When has a “dispute” arisen? A claim followed by **rejection**, or by a **failure to respond within a reasonable time**, is enough. Silence can create a dispute.

Does it have to pay?



The DAAB orders the Employer to pay **€10 million**. The Employer files a **Notice of Dissatisfaction the next day**. Does it have to pay?

Binding is not the same as **final.**

Can a party skip the DAAB?

Swiss Federal Supreme Court
4A_124/2014 (7 July 2014)

The DAB step is **mandatory**, but a party cannot rely on it in bad faith: no DAB for **18 months**.

Swiss Federal Supreme Court
4A_628/2015 (16 March 2016)

Step skipped → arbitration **stayed** until completed, not annulled.

England (TCC)
Peterborough v Enterprise [2014] EWHC 3193

DAB referral a **condition precedent**; court proceedings stayed though no DAB yet appointed.

ICC Case No. 14431
FIDIC 1999 Red Book

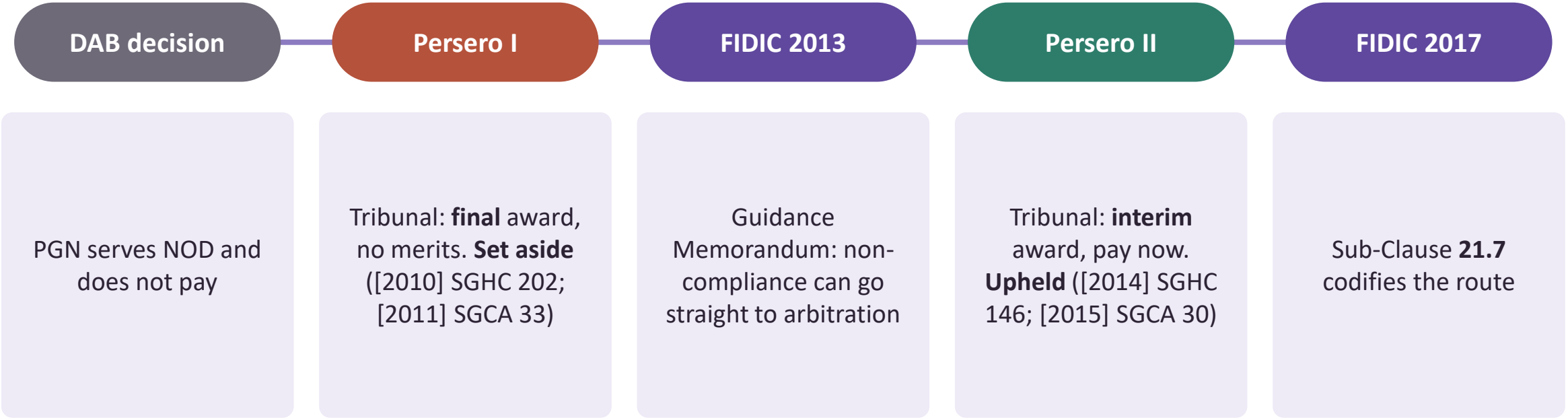
Adjudication treated as **mandatory**; arbitration suspended meanwhile.



The Employer never signs the DAAB agreement. **18 months, no board.** Straight to arbitration?

The Persero saga: enforcing a binding but not final decision

FIDIC 1999 Red Book · Gas pipeline, Indonesia · Indonesian law · ICC, seat Singapore · **PGN** (Employer) v **CRW** (Contractor) · DAB award ≈ **US$17m**



Court of Appeal majority in Persero II; Senior Judge Chan Sek Keong dissenting.

Persero: the lesson

✗ Persero I: wrong route

Ask only for enforcement. Tribunal makes the decision **final** without the merits → **exceeds its mandate**.

✓ Persero II: right route

Refer the **merits and the non-payment**. Interim or partial award: final only on the duty to **pay now**.

Pay now, argue later.

Russian bridge

A DAAB decision is **not an arbitral award**: no direct enforcement in Russia. Route: arbitral award, then recognition.



Would an **MKAC** tribunal issue an interim award on a non-final DAAB decision?

PART VI · ARBITRATION

The last tier, seen from Moscow

Arbitration: the last tier

FIDIC route

- **21.5:** 28 days amicable settlement
- **21.6:** ICC by default; tribunal may **open up and revise**
- **21.7:** non-compliance goes straight to arbitration

Seat and institution

- 2015 reform (**382-FZ**); permanent institutions incl. **MKAC**
- Also used on Eurasian projects: **AIFC (Astana)**, Dubai, Istanbul, Singapore

CASE LAW

Uraltransmash v PESA (RF Supreme Court, 2021)

Sanctioned party **presumed** to lack access to justice abroad (APC 248.1–248.2)

SCC award later **refused recognition** (2024)



You draft the arbitration clause for a FIDIC contract between a **Russian employer** and a **foreign contractor** today. Which seat, and why?

What will you do differently on day one of your next project?

Thank you

İlteriş Doğan
Founding Partner, Westlex · Smart Contract Management
ilteris.dogan@westlex.net · www.westlex.net

Glossary: English–Russian (1/2)

English	Русский
Claim	Требование по Контракту
Notice of Claim	Уведомление о требовании
Fully detailed Claim	Полностью обоснованное требование
Time bar	Пресекательный срок; утрата права за пропуск срока
Condition precedent	Условие возникновения права (ст. 327.1 ГК РФ)
Limitation period	Срок исковой давности (ст. 198 ГК РФ)
Contemporary records	Текущая (синхронная) документация
Engineer	Инженер (консультант Заказчика)

English	Русский
Agreement or determination	Согласование или определение Инженера
Act neutrally	Действовать нейтрально
Notice of Dissatisfaction	Уведомление о несогласии
Dispute	Спор (определённый термин)
DAAB	Совет по предотвращению и разрешению споров
Dispute avoidance	Предотвращение споров
Binding but not final	Обязательное, но не окончательное

Glossary: English–Russian (2/2)

English	Русский
Final and binding	Окончательное и обязательное
Amicable settlement	Мировое урегулирование
Extension of Time	Продление Срока завершения
Liquidated Delay Damages	Заранее оценённые убытки за задержку
Variation	Изменение (вариация)
Prevention principle	Недопустимость выгоды из собственного воспрепятствования (ср. ст. 404, 406)
Concurrent delay	Параллельная (совпадающая) задержка
Global claim	Глобальное (совокупное) требование

English	Русский
Pre-trial claim procedure	Претензионный порядок (ч. 5 ст. 4 АПК РФ)
Anti-arbitration injunction	Запрет на арбитраж (ст. 248.2 АПК РФ)
Contract management	Контрактный менеджмент
Contract administration	Администрирование контракта
Supplementary agreement	Дополнительное соглашение
Work front	Фронт работ
Interim / partial award	Промежуточное / частичное арбитражное решение

Further reading

FIDIC	Golden Principles (2019); FIDIC 2017 Rainbow Suite, 2022 reprint; Guidance Memorandum to Users of the 1999 Conditions (1 April 2013)
Time bars	Obrascon Huarte Lain v AG for Gibraltar [2014] EWHC 1028 (TCC); [2015] EWCA Civ 712
DAAB	PT Perusahaan Gas Negara (Persero) v CRW Joint Operation [2015] SGCA 30; Swiss Federal Supreme Court 4A_124/2014 and 4A_628/2015
Russian law	Civil Code Arts. 198, 327.1, 404, 406, 709, 716, 718, 719, 743; VAS Information Letter No. 51 (24 January 2000); Plenum Resolutions No. 16 (2014) and No. 49 (2018)
Sanctions	Uraltransmash v PESA, RF Supreme Court (2021), case A60-36897/2020; APC Arts. 248.1–248.2