

**ETEK CONFERENCE**  
**“ADR IN FIDIC CONTRACTS AND THE CYPRUS**  
**PERSPECTIVE”**

**Δημοσιογραφική Εστία - Τρίτη 24 Απριλίου 2018**

**Εναρκτήρια Ομιλία-κήρυξη εργασιών**  
**συνεδρίου από τον**  
**Γενικό Εισαγγελέα της Δημοκρατίας**  
**κ. Κώστα Κληρίδη**

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Distinguished guests and speakers,  
dear organizers,  
ladies and gentlemen,

I am honored to address and declare open this highly interesting and useful conference on ADR in FIDIC Contracts and the Cyprus perspective.

Arbitration started as a reasonable, quicker and less costly alternative disputes resolution mechanism, which served to avoid the negative elements of the courts procedures. I do remember from my long experience as a member of the judiciary, the uncomfortable feeling of having to adjudicate upon civil actions involving disputes over building and construction contracts, being

put in a situation of having to decide highly technical matters without the relevant expertise, knowledge and experience. Almost invariably, I would have employed the relevant provisions in our Civil Procedure Rules of Court, which permitted, under certain conditions and limitations, the reference of specific technical issues to be decided by one or more arbitrators who were obliged to report to the Court about their findings. And the question was always there: Why not referring the totality of disputes of that kind to experienced arbitrators from the very beginning, by inserting relevant and binding arbitration clauses in the contracts?

Not surprisingly, therefore, at some stage, arbitration expanded and became an effective method of resolving disputes in both national and international transactions.

Experience shows, however, that extra care and caution should be exercised from the very beginning, so as to ensure that the most suitable terms and clauses are inserted in a contract regarding e.g. the applicable law, the jurisdiction, the agreed venue of the arbitral proceedings etc.

Another cause of concern, which has recently been increasing, is the question of costs and time required for the completion of the arbitral proceedings. The arbitral proceedings should not be allowed to be almost as protracted and prolonged as the judicial proceedings. Whereas on the one hand all the requirements of a fair hearing must of course be kept, on the other hand time and costs consuming arbitration proceedings, should be avoided. If this cannot be achieved, then the whole purpose for which arbitration has emerged as an alternative, will be defeated.

Over the years, the International Federation of Consulting Engineers (FIDIC) has gained international acceptance and recognition in producing standard form contracts for the construction and engineering industry. In addition to providing for steps purporting to resolve disputes by amicable settlement before a professional engineer or a Board, the relevant clauses in FIDIC contracts provide for the referral of unresolved disputes to formal arbitration under applicable rules.

As it appears, the tendency of the last few years, based on experience, is the avoidance not only of the protracted and costly courts' adjudication, but the avoidance of formal arbitration proceedings as well, to the extent that this is feasible. In this

respect, the new FIDIC suite of contracts launched in 2017, have introduced steps which are aiming at not only how to resolve disputes, but mainly aiming at how to avoid disputes over claims based on contractual rights and obligations. The position and the role of the engineer is still a predominant one and he has to act impartially, even though he is hired by one of the contracting parties. Furthermore, in cases where the engineer's decision does not lead to an amicable settlement, recourse is provided to a Dispute Avoidance Adjudication Board (DAAB). Resort to formal arbitration is only permitted in cases where the above mentioned steps fail to lead to an amicable solution. These kind of clauses have produced successful results in the great majority of cases in which they were enforced, thus providing a very speedy and less costly method of settling claims.

In Cyprus, public procurement contracts adopt the FIDIC clauses in most cases and make provisions both for a decision by the engineer and for decisions of a Dispute Adjudication Board, as obligatory steps before resorting to formal arbitration.

In my view all steps intended to avoid courts' adjudication and aiming at achieving an amicable settlement of a contract claim before resorting to formal arbitration, are very welcomed and should be encouraged further.

I have no doubt that the speeches which will follow by the selected distinguished speakers on the matter, will contribute fully to the better understanding of the central theme of this conference.

With these few thoughts in mind, I would like to congratulate the organizers, thank the speakers and wish every success to the Conference, which I now declare open.

24 April 2018.