

SADC-LA

CONSTRUCTION LAW

2023 SYMPOSIUM

11 - 12 May | SOUTHERN SUN
HOTEL LUSAKA,
ZAMBIA
2023

PROGRAMME





Pinsent Masons



SADC-LA REGIONAL CONSTRUCTION LAW SYMPOSIUM PROGRAMME

Southern Sun Ridgeway Hotel Lusaka- Zambia

11th - 12th May 2023

THURSDAY 11 MAY 2023		DAY ONE
09h00 - 09h30	INTRODUCTION TO CONSTRUCTION LAW	
Johan Beyers and James Banda		
This introduction is intended to provide a broad outline of the areas of law intersected by construction law and practice: contract, delict/tort, financing, statutory law, etc		
09h30 - 10h30	CONSTRUCTION TECHNOLOGY AND PRACTICE	
This section is intended to provide legal practitioners with a basic understanding of construction technology and practice: what are the risks in construction, what are the phases in all construction projects, who are the main actors in projects, how are projects priced by the contractor, how is cashflow managed, programmes, compliance of building work with design etc.		
1. Introduction to project procurement strategies:		
a. Traditional, design and build, construction management, management contracting, PPP, EPC and relationship to standard forms		
b. Advantages, disadvantages and risks in relation to procurement strategies, particularly in relation to design and construction		

2. The construction project life cycle:

- a. Inception and viability, conceptual design to detailed design, procurement, construction, use and maintenance, end of life
- b. The role and responsibility of lawyers and construction professionals in each part of the life cycle

3. Introduction to project management:

- a. Managing time, cost and quality
- b. Project management processes
- c. Extent to which project management processes are incorporated as contractual processes and mechanisms
- d. Managing time
- e. Managing cost
- f. Managing quality
- g. Available data and records

4. Introduction to construction programmes:

- a. Milestones and completion dates
- b. Construction activities, durations, dependencies and sequencing
- c. Understanding Gantt charts and programming software
- d. The “critical path”
- e. Delay, critical delay and disruption
- f. Concurrent delay
- g. General principles of assessing change

5. Introduction to the Bill of Quantities:

- a. The structure of a typical bill
- b. Preliminary and general allowances – indirect costs
- c. Direct costs
- d. Provisional items
- e. Prime cost sums
- f. General principles of valuing change

6. The Contractor's approach to contracting

- a. Assessing scope of work
- b. Costing scope of work
- c. Subcontractors
- d. Assessing, evaluating and pricing for risks
- e. Providing for contingencies – time and cost
- f. Managing time, quality and cost

7. Insurable construction risks

10h00 - 11h30

BASIC APPROACHES TO PROCUREMENT OF CONSTRUCTION PROJECTS

This section is intended to address the basic approaches to procurement of projects – traditional procurement, design-build, design-build-operate, cost plus and partnership arrangements – the particular risks that arise from this choice and the relationship between procurement approach and standard form choice.

11h30 - 12h00

GENERAL PRINCIPLES OF CONSTRUCTION LAW

This section is intended to provide the basic common law principles that govern construction contracts and sub-contracts, as well as consultants' appointments. It should address the risk distribution usually imposed by the common law and indicate how and why standard form construction contracts attempt to modify the distribution of specific risks and the occurrence of specific events.

- ii. The parties in a construction project
- iii. The liability network amongst project participants: contract, sub-contract, delict, collateral warranties
- iv. The traditional construction contract – employer design
- v. The design and build construction contract
- vi. Management contracting and construction management
- vii. EPC and Turnkey contracts
- viii. Concluding construction contracts, letters of intent and enrichment
- ix. Interpretation of construction contracts
- x. Risk, indemnity and exclusion clauses
- xi. The right to payment
- xii. Variations
- xiii. Employer's approval and certification
- xiv. Time for completion, penalties, extensions of time and recovery of time-related costs
- xv. Guarantees
- xvi. Insured risks
- xvii. Sub-contracts
- xviii. Architects, engineers, project managers, surveyors
- xix. Defects
- xx. Applicable statutory provisions.

12h00 - 13h00

BASIC STRUCTURE OF ALL STANDARD FORM CONSTRUCTION CONTRACTS

This section is intended to provide an introduction to standard form construction contracts: what basic mechanisms, processes and provisions are common to all standard forms, and why are these necessary.

- ixxi. Introduction to standard forms: purpose and philosophies behind standard forms
- xxii. The advantages and disadvantages of standard forms
- xxiii. Contractual mechanisms and processes common to all standard forms:
 - 1. Mechanisms that allow changes to scope of work - variations
 - 2. Mechanisms that augment or repair inconsistent terms and provisions
 - 3. Mechanisms that manage the time for completion – programmes, extensions of time, penalties, recovery of time-related costs
 - 4. Mechanisms that manage valuation of works, interim and final payment, certification
 - 5. Mechanisms that manage direct, specialist and other subcontractors
 - 6. Mechanisms to ensure construction quality
 - 7. Force majeure and vis major
 - 8. Processes for each of the above mechanisms
 - 9. Claims processes
 - 10. Dispute resolution mechanisms

xxiv. The role and duty of the designer

xxv. The role and duty of the contract administrator as the employer's agent

xxvi. Claims in terms of contract, vs claims for breach, damages, cancellation, forfeiture clauses

xxvii. Construction guarantees

13h00 - 14h00

LUNCH

14h00 - 17h00

INTRODUCTION TO THE FIDIC SUITE

Presenters- Thomas King & Andrew Fawcett

This section is intended to introduce delegates to the FIDIC suite of standard forms. Looking wider into Africa, due to the World Bank's expressed preference and the perceived ability of the FIDIC suite to bridge the common law/civil law gap, the FIDIC form is, by a large margin, the most widely used form in Africa (and elsewhere in the world) for international civil engineering projects.

xxviii. Overview of FIDIC suite:

1. Red Book, Yellow Book Silver Book
2. Specific consideration of distribution of major risks
3. Mechanisms to manage time, cost and quality
4. Claims procedures, notification and time-barring
5. Dispute resolution provisions

In addition to the FIDIC forms, bespoke EPC (Engineer Procure Construct) contracts are also commonly encountered on power projects, which represent more than 30% of the overall construction spend in Africa.

It is likely that the vast majority of AFSA's construction dispute referrals would involve one of the above standard forms.

CONSTRUCTION DISPUTE RESOLUTION**09h00 - 09h30****ZAMBIAN CONTEXT**

Presenter - James Banda

09h30 - 10h30**DISPUTE RESOLUTION OPTIONS IN CONSTRUCTION****James Banda**

This section is intended to provide an overview of the dispute resolution mechanisms generally employed in construction claims and disputes, with specific emphasis on the FIDIC suite. Construction dispute resolution proffers specific challenges, compared to other commercial disputes. It often involves a multi-tiered approach, with a lot of room for jurisdictional complaints and the application of notification and time-barring provisions

xxix. Tiered dispute resolution clauses, jurisdictional elements and time-barring

xxx. Main dispute resolution processes in construction

xxxi. Differences between certification, adjudication, expert determination, arbitration, litigation

10h30 - 11h30**CONSTRUCTION ADJUDICATION****Johan, James, Thomas and Andrew**

Adjudication has become the most prevalent first port of call in construction disputes internationally, as well as in Africa. Delegates are therefore introduced to the manner in which disputes are adjudicated, the object and procedures employed in adjudication, the various types of adjudication that are encountered and the effect of and enforcement of adjudication awards.

11h30 - 12h30**CONSTRUCTION ADJUDICATION**

Final dispute resolution in construction occurs either through arbitration or litigation. The advantages and disadvantages are discussed. As far as arbitration is concerned, this often involves international arbitration, and the principles involved in international arbitration of construction disputes are addressed.

xxxii. Improving arbitral efficiency in construction arbitrations:

1. Setting a hearing date at an early stage
2. Exchange of detailed pleadings, including factual and legal submissions, and all documentation relied upon
3. Limited further disclosure and use of Redfern schedule
4. Detailed factual and expert witness statements
5. Experts' meeting to limit disputes
6. Scott schedule identifying remaining disputes
7. Pre-hearing conference determining limited hearing duration
8. Chess clock hearing of limited duration
9. Etc