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# LEGAL BASIS FOR THE APPLICATION OF EPC CONTRACTS IN THE CONSTRUCTION SECTOR UNDER UZBEKISTAN'S LEGISLATION

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## Abstract

This article examines the legal regulation of construction contracts under the EPC model in international private law. The introduction of international management principles in the construction sector has led to the emergence of several new terms that are difficult to understand without specialized knowledge. One of the new concepts in the construction industry is the EPC contract. Therefore, the purpose of this study is to analyze the EPC contract as a distinct type of contract, taking into account its specific features within the legal system of the Republic of Uzbekistan.

**Keywords** EPC contracts, FIDIC, investments, lex construction, Silver Book.

## INTRODUCTION

Despite the widespread adoption of international construction contracts, there is no unified system for the legal regulation of EPC contracts. Attempts at partial unification have been made through international agreements of the Economic Cooperation Organization, specifically through the "General Conditions for the Supply and Installation of Machinery and Equipment" and the "General Conditions for the Technical Maintenance of Machinery and Equipment." These unified rules define the content of the contract, including the procedure for performing work, the acceptance of the object, the rules for settlement, quality guarantees, warranty periods, and the procedure for dispute resolution. However, these rules are closer to supply contracts rather than construction contracts, although they do include the regulation

of construction relations within the framework of equipment supply. As a method of unification, the development of international codes can be mentioned. In the field of construction, such a code is the International Building Code (IBC), which is applied in the USA, Honduras, Afghanistan, Saudi Arabia, the Caribbean Islands, and other countries. However, it should be noted that this document is not directly devoted to construction contracts but rather regulates technical features and covers only certain terms related to the technical part of the contract.

In our opinion, the lack of a large-scale unified system for the legal regulation of construction contracts is primarily due to the fact that the source of construction law is national regulation. Construction depends on technical standards and

urban planning regulations of the state. This does not allow for the creation of unified international rules that can be applied simultaneously to both developed and developing countries. However, the absence of international regulation is compensated for by alternative methods of regulation, namely, international recommended norms—Lex Constructions. Lex Constructions is a non-state method of regulating international investment and construction activities, where customs and the most common terms are systematized. Lex Constructions can be considered a type of Lex Mercatoria. The object of regulation of Lex Constructions is transnational economic relations, and its method has a dispositive, substantive legal character and is based on the systematization of customs, as well as the unification and harmonization of the legal regulation of international economic activity. Based on Lex Constructions, non-state specialized organizations create standard contract terms. Initially, such terms were developed for the internal market of a specific country, for example, the JCT (Joint Contracts Tribunal) contracts in the United Kingdom. However, with the emergence of foreign participants, these forms gained recognition and were adopted by the international market. Subsequently, direct international organizations, such as FIDIC (Federation Internationale des Ingenieurs-Conseils), the International Federation of Consulting Engineers, began to create international standard forms.

Alongside the aforementioned organizations, ICE (The Institution of Civil Engineers), IMechE (The Institution of Mechanical Engineers), AGCA (Associated General Contractors of America), AIA (American Institute of Architects), FEANI (European Federation of National Engineering Associations), AEA (American Engineering Association), EFCA (European Federation of Engineering Consultancy Associations), FEPAC (Pan American Federation of Consultants), IIE

(Institute of Industrial Engineering), FEISCA (Federation of Engineering Institutions of South and Central Asia), FEIAP (Federation of Engineering Institutions of Asia and the Pacific), Construction Industry Institute CII (Construction Industry Institute) can also be distinguished. It is evident that national, regional, and international organizations can be distinguished. Moreover, the list of organizations involved in creating standard contract forms is not limited to this. The United Nations has also created recommended rules for drafting construction contracts. For example, the United Nations Economic Commission for Europe introduced the world to the "General Conditions for the Export and Installation of Machinery and Equipment" in 1957, the "General Conditions for the Installation of Machinery and Equipment Abroad" in 1963, and the "Guide to Drafting Contracts for the Construction of Industrial Facilities" in 1973. Subsequently, the United Nations Commission on International Trade Law (UNCITRAL) developed the "Guide to Drafting Contracts for Turnkey Projects" in 1979, and the "Legal Guide to Drafting International Contracts for the Construction of Industrial Facilities" in 1987 and 1998. Credit organizations, as the main source of financing construction projects, also created documentation that serves as standard contract forms. For example, the European Development Fund presented the "General Conditions for Contracts and Supplies Financed by the European Development Fund" in 1972, and the World Bank presented the "Principles Governing the Construction of Industrial Facilities" in 1985. These documents are binding on the parties only if explicitly stated in the contract. The primary task of such professional associations is to harmonize the standard conditions of international construction contracts, contract documentation, and identify contradictions and problems. Therefore, many organizations work together, are members of each other, conduct conferences and

training for participants in the construction market, and promote standard forms at the national level. Lex Constructions is considered the most effective source of regulation for international construction contracts and can also be used as customs in dispute resolution. The introduction of standard forms, especially FIDIC forms, is carried out, for example, by the Uzbekistan Association of Consulting Engineers, in Uzbekistan, and the National Association of Consulting Engineers in Construction (NAIKS), the Russian National Association of Engineering Companies (NAIK), and the Russian Association of Consulting Engineers (RAIK) in Russia. These organizations are members of many international associations and also contribute to the development of construction regulation at the global level.

FIDIC is aimed at creating a unified system for the regulation of international construction contracts. As a result of such unification, FIDIC's standard contracts were developed, which are based on the common law system. This form of regulation has gained wide popularity in the construction services market, including in Uzbekistan, due to its high-quality terms, which practically eliminate standard errors in contract drafting and allow for the resolution of most disputes before they reach court.

Currently, the following FIDIC standard forms exist:

- Conditions of Contract for Underground Works (Emerald Book), 2019
- Conditions of Contract for Construction (Red Book), Second Edition, 2017
- Conditions of Contract for Plant & Design-Build (Yellow Book), Second Edition, 2017
- Conditions of Contract for EPC Turnkey Projects (Silver Book), Second Edition, 2017 (hereinafter referred to as the Silver Book).

The indicated standard forms are revised versions of similarly named standard forms from 1995-1999. From the old edition, The Short Form of Contract (Green Book), 1999, the Form of Contract for Dredging and Reclamation Works (Blue-Green Book), Second Edition, 2016, and the Client/Consultant Model Services Agreement (White Book), Fourth Edition, 2006, are still in use.

Within the framework of this study, particular interest is drawn to the Silver Book, which regulates the conditions for concluding EPC contracts. In fact, it is the only widely used form of EPC contracts that is suitable for both Anglo-Saxon and continental legal systems. As noted in previous sections, FIDIC's Silver Book is a recommended set of unified rules for drafting and formalizing turnkey contracts. To understand the possibility of applying these rules to contracts performed in Uzbekistan, their nature must be determined. FIDIC proformas are often compared to other sets of rules, such as INCOTERMS and UNIDROIT Principles. They include both customs and contract terms, and therefore there are debates about their qualification. In this study, we will consider two positions:

- Theoretically, they are regarded as standard terms of the contract in accordance with Article 359 of the Civil Code of Uzbekistan.
- In practice, they are more often considered as customs.

According to Article 359 of the Civil Code of Uzbekistan, standard terms may be referenced in a contract, and specific terms for a particular type of contract can be determined by standard terms developed for such contracts. If the contract does not refer to standard terms, these standard terms may be applied to the relations between the parties as customary business practices. Standard terms can be expressed in the form of a model contract or any other document containing these terms. These standard terms are dispositive, allowing the parties

to make changes to their text, and such changes can be made even after the contract is concluded. The Silver Book of FIDIC meets all the requirements stipulated in the law. However, it is important to emphasize the specific nature of forming model forms of EPC contracts. The Silver Book consists of several parts: general conditions, a guide to preparing special conditions, forms of guarantees, offers, and agreements on dispute resolution. The general conditions are those that apply to all projects and are used as they are, while the special conditions are developed individually for each project and are inextricably linked with the general conditions. According to Article 359 of the Civil Code of Uzbekistan, if a contract does not refer to standard terms, such standard terms apply to the relations between the parties as customs, provided they meet the requirements set forth in Articles 6 and 354 of the Civil Code of Uzbekistan. As S. V. Bakhin points out, standard forms and formularies reflect customs and practices and confirm the existence of a particular custom or practice in a certain area of activity. Thus, it was determined that the Silver Book can be applied within the legal system of Uzbekistan either as model terms of a contract or as customs.

As we have identified, an EPC contract is a complex contract based on a construction contract and consisting of several parts. International construction contract relations, as a type of contract, are primarily regulated by conflict of laws rules and civil law norms, as well as by international agreements and international commercial customs. FIDIC's model contracts, including the Silver Book, are based on the doctrine of common law, which significantly differs from the continental legal system. This raises the question of whether parties can apply terms derived from another legal system. It is important to determine the applicable law when concluding an external trade contract. The parties, under the general rule and according to the principle of *lex voluntatis*, can

choose any applicable law for the contract. This principle recognizes the autonomy of the parties' will, meaning the parties' expressed intention to choose the applicable law. This principle is enshrined in Article 1189 of the Civil Code of Uzbekistan: "The contract, unless otherwise provided by law, is governed by the law of the country chosen by agreement of the parties. The parties to the contract may choose the applicable law either for the contract as a whole or for its individual parts. The applicable law may be chosen by the parties at the time of the conclusion of the contract or at any time thereafter. The parties may also agree to change the applicable law at any time concerning the contract." The autonomy of the parties' will is also limited by norms of direct application according to Article 1158 of the Civil Code of Uzbekistan and by the public order clause according to Article 1163 of the Civil Code of Uzbekistan. If the parties have not determined the applicable law, the principle of *lex loci solutionis* is applied. The essence of this connection is that the law of the country where the obligation is to be performed is applied, and this is often used in connection with the place of actual delivery of goods or the place of payment. This connection is established in Uzbek law by Article 1190 of the Civil Code of Uzbekistan. Additionally, according to this article, for contracts relating to immovable property, the law of the country where the immovable property is located generally applies, and if the immovable property is located in the Republic of Uzbekistan, Uzbek law applies.

An important question arises when analyzing the relationship between these articles and the qualification of these norms: Are they imperative, or do they apply only in the absence of an agreement between the parties? After all, an EPC contract within the territory of the Republic of Uzbekistan is, by its nature, a contract relating to immovable property and land plots located in Uzbekistan, and if only national legislation can

apply to such relations, the application of FIDIC is practically impossible. A systematic analysis of the indicated provisions of the legislation showed that Article 1190 of the Civil Code of Uzbekistan is aimed only at ensuring the interests of the parties and the legal certainty of relations in the event that the applicable law has not been determined by the parties. This issue is also reflected in Russian legislation. Therefore, it can be concluded that the application of FIDIC proformas, in particular the Silver Book proforma, may be possible by agreement of the parties, taking into account compliance with the imperative norms of Uzbek legislation.

An EPC contract includes not only relations under a construction contract but also other elements, thereby functioning as a mixed contract. Thus, according to paragraph 2 of Article 1189 of the Civil Code of Uzbekistan, the parties to a contract may choose the applicable law either for the contract as a whole or for its individual parts. This phenomenon is known as the splitting of the contract statute—depeçage. If the parties have not determined the applicable law, then the law of the state with which the relationship is most closely connected, according to Article 1190 of the Civil Code of Uzbekistan, applies. Similarly, the European Union has detailed the procedure for determining conflict-of-law rules for mixed and unnamed contracts in Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). It is established that if a contract cannot be classified under a specific type of contract or combines several categories, the contract is governed by the law of the country where the decisive performance of the contract occurs. In the case of an EPC contract, such performance undoubtedly relates to construction work, and therefore Articles 1290 of the Civil Code of Uzbekistan should be applied.

In conclusion, the application of such an approach in practice significantly simplifies the work of law enforcement agencies. It should be noted that courts often have to qualify the disputed relations and individual obligations under the contract, but this does not mean that the court must determine the applicable law for each obligation under the contract. Furthermore, the application of FIDIC forms to EPC contracts in the territory of the Republic of Uzbekistan may be carried out based on the autonomy of the parties, taking into account the imperative norms of legislation.

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