

New Challenges for Construction Contracts

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Speakers & Moderators



Nicolai Bakovic
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Michael Lips
Pestalozzi, Zürich



Viktoria Peckett
Clyde & Co, London



Juan Pablo Stitchkin
Carey, Santiago



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Inflation – Speaker Michael Lips

General Situation in Switzerland

- Low inflation until 2020 – game changed 2021
- Contract rules on inflation compensation
- Ongoing fixed-price contracts?

Types of contracts

- Code of Obligations contracts
- SIA 118 contracts
- KBOB contracts

Inflation

Code of Obligations contracts

- Extraordinary and unforeseeable or excluded circumstances
- Very large increase of salary and material costs
- Increase in price or termination of contract

SIA 118 contracts

- Same rule as code of obligations
- Important exceptions for unfavorable weather conditions and general market disruptions
- No right of termination

KBOB contracts

- Extraordinary changes in price of materials
- Different rules for civil works in general, timber construction and building shell
- Threshold 5% of total costs of material (10% for timber construction)

Supply chain difficulties in mining projects – Speaker Nicolai Bakovic

Internationally

- Delayed fabrication of critical equipment (custom made) because of shortage of raw materials (closure of mines/factories).
- Logistics was disrupted because of closure of certain ports/routes.

Locally

- Border closures - lack of specialised foreign personnel to complete the works (technicians).
- Lockdowns delayed the transportation of equipment in-country.
- High levels of absenteeism (over 20%) at the site for either sickness and fear of contracting the virus.

What was done?

- Renegotiated the contracts to allow for increased costs (directly linked to Covid and productivity impacts) and granted extensions of time (EOT).
- Considered alternative methods of transportation (air freight).
- Alternative suppliers.
- Hired personnel with lesser experience.

Questions

- What happened with factory inspections during Covid?
- With these restrictions, was it possible to use alternative suppliers?
- Did you experience companies abandoning the site because of their inability to deal with Covid impacts?

COVID/WAR/FM lessons in residential construction projects

- Speaker Juan Pablo Stitchkin

Effects

- Is it FM? When/Always
- FM cross border definitions vs local
- Contractual usual provisions

How it was dealt with?

- Theory vs real life

The future?

- ¿?

Questions

- How were indirect consequences of Covid treated
- What role theories as “Hardship” or Change in law provisions played

Supply chain difficulties in mining projects

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Other issues facing the construction industry

- Materials scarcity
- Shortage of skilled labour



Impact on contract terms?

- Practical ways of tackling the issues
- More scrutiny of risk allocation

Questions?



THANK YOU!

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