

TOPIC OF THIS ISSUE:



Interview  
Branko Vukmir, Ph.D

A Brief Commentary on the FIDIC  
General Conditions

CREN Patrons:

# TABLE OF CONTENTS

## 1. ANNOUNCEMENT

of The Ninth Annual International Conference on the Real Estate Market in Croatia	3
--	---

## 2. TOPIC OF THIS ISSUE

Interview: Branko Vukmir, Ph.D. A Brief Commentary on the FIDIC General Conditions	4
--	---

## 3. SEMINAR ANNOUNCEMENT

21. Industrial Building Seminar BIM for LCM: Building Information Modelling for Life Cycle Structures	8
--	---

## 4. STATISTICS

4.1. Average Asking Prices of Real Estate Offered for February 2013	9
4.2. Statistical Reports of the Central Bureau of Statistics from the Area of Construction	9
4.2.1. Construction work indices, November 2012	9
4.2.2. Building permits issued, December 2012	10

# 1. ANNOUNCEMENT



## The Ninth Annual International Conference on the Real Estate Market in Croatia

The Esplanade Hotel  
Zag**RE**b, Croatia ● April 9 & 10, 2013

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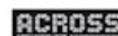
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## 2. TOPIC OF THIS ISSUE



**Branko Vukmir, Ph.D**

# A Brief Commentary on the FIDIC General Conditions

**Dr. Vukmir, we offer our sincere congratulations on the publication of your new book - A Brief Commentary on the FIDIC General Conditions of Contracts for Construction. The publisher of the books is RRiF-plus d.o.o. What were the reasons and motives for writing this book, and what is it about?**

Thank you for your congratulations. This book contains brief commentaries on all six FIDIC General Conditions (GC) relating to construction contracts. My intention was to give our experts in the field of construction a closer insight into the FIDIC general conditions, and to make it easier for them to find their way around these different general conditions. In the book there is a more detailed analysis of the Red Book, the Yellow Book, the Harmonized Conditions and a Short Form Contract. The Silver and Gold Books are also described, although not in so much detail as these.

**FIDIC's general conditions of construction contracts are in many ways the "international law of construction". How strong and significant are they?**

Indeed, many projects on a world level are contracted by applying some of the FIDIC general conditions, and in that sense these conditions may be considered to be extremely

influential in construction practice. All international financial institutions (the World Bank etc.) require projects that are financed through their loans to be executed according to the FIDIC GCs, and many private investors also require the application of these GCs. The fact that these GCs are so widespread is the result of the need for the creation of a model contract form, which may be used in all countries, and where adjustments to the specific requirements of a project are reduced to the least possible extent, and where the rights and obligations of those involved in these works are fairly balanced. The FIDIC GCs are accepted because they have harmonized the conflicting interests of employers and contractors to a satisfactory extent. Moreover, the GC, with their strict deadlines and prescribed procedures, ensure the effective resolution of problems that arise during the execution of construction works.

**To what extent, as far as you know and in your opinion, do Croatian lawyers, construction engineers, bankers, architects and all other professions related to construction contracts know and apply the FIDIC general conditions in their work? How should knowledge and application of the FIDIC general conditions be increased when arranging**

**and implementing construction contracts in Croatia and abroad?**

Although in this country the interest of stakeholders in construction for the FIDIC GCs has significantly increased over the past few years, this is still not sufficient for these conditions to be truly understood and accepted by them as the basis of their contractual arrangements. However, it must also be stated that even with the efforts made by FIDIC to make their GC to be balanced in the distribution of the rights and obligations of the contracting parties, this is no guarantee that a fair balance has always been achieved. From the point of view of the contractors, there are objections to some of the solutions adopted in the FIDIC GC, and I wanted to point out these objections in my book as well. Since the FIDIC GC are only contracts and not regulations, the contracting parties may amend these conditions, but in order to do so, they must be aware of the existence of these disputed issues. Even if there is no effort to change some of the provisions of the FIDIC GC in specific contracts, the participants must be aware that certain risks stem from some of the adopted provisions, and only then they shall be able to properly price their work and their risks.

**It is well-known that for many years you have been an advisor to UNCTAD for foreign investment and that for many years you presented the UNCTAD's World Investment Report in Croatia. Why are foreign investments important for a country? What is the situation regarding foreign investments in certain parts of the world and individual countries? Please give us specific details.**

The current state of foreign investments in Croatia is still unsatisfactory. If we look at total investments in Croatia, which amount to about 26 billion Euros over the last 20 years, almost 70% of that amount are accounted for by investments in the financial sector (particularly in the banking sector), in trade, in real estate and other non-production activities, whilst investment

(US\$ 999 million), Montenegro (US\$ 558 million), Macedonia (US\$ 422 million) and BH (US\$ 435 million). However, the results for 2012 are especially disappointing. According to the CNB figures for the first three quarters of 2012, only € 450 million was invested in Croatia. That is truly very little, bearing in mind that over the past 20 years we have been the leader in this part of Europe in terms of the amount of foreign investment. In the period from 2006-2009, we had 3 and 4 times more investment than others.

**Why is foreign investment necessary for Croatia?**

The fear is often expressed that through foreign investment we are "selling our family silver", but most often our desperate need to modernize our neglected industry is overlooked. Precisely foreign investment is a way to adopt new technology quickly, which will enable us to improve the competitiveness of our out-dated industries and to build the foundations of production for export and further sustainable development. Moreover, foreign investments also contribute to the efficiency of management, they create new jobs and enable the acquisition of new managerial skills. We should see foreign investment as a

**“The new Government is apparently aware of the importance of foreign investments and is undertaking steps to create a more favorable investment environment.”**

As a consultant of a large number of specialized UN agencies, and as senior legal advisor of the UN Center on Transnational Corporations in New York, I have dealt with foreign investments for a significant part of my business career. As the special advisor to UNCTAD for presentation of the annual World Investment Reports, over the past 17 years I have regularly presented the WIR in Croatia. Unfortunately, foreign investments in Croatia until now have been marginalized by all previous Croatian governments. I am afraid that Croatia was dominated by a fundamental incomprehension of the role and importance of foreign investment and previous governments have not made serious efforts to remove that lack of understanding and correct it. Moreover, production or "real" sector, in Croatia has suffered incomprehensible neglect. Currently, certain improvements in the legislative framework are taking place and, although the pace of these changes is still quite slow, the efforts of the current Government are encouraging. The new Government is apparently aware of the importance of foreign investments and is undertaking steps to create a more favorable investment environment.

**What is the current situation regarding foreign investments in Croatia? Who are the biggest foreign investors in Croatia? What kind of investments are these?**

in the production sector is significantly lower, while there have been very few greenfield investment. The largest foreign investors are from Austria, the Netherlands, Germany, Hungary and Luxembourg. However, the USA as the largest global investor are the last of thirty investor countries with only 15 million dollars of total investments over 30 years. Similarly, in 20 years, only 87 million dollars have been invested in computing sector in Croatia from abroad.

**Where is Croatia in relation to the countries in the region?**

**“The fear is often expressed that through foreign investment we are “selling our family silver”, but most often our desperate need to modernize our neglected industry is overlooked.”**

According to figures from the Croatian National Bank, in 2010 total foreign investments amounted to only € 297 million, which is less than in the first post-war years (1996 and 1997). According to UNCTAD's figures, in our region (together with Albania and Slovenia), Croatia in 2011 was still in the second place behind Serbia (US\$ 2.709 billion), but still ahead of Albania (US\$ 1.032 billion), Slovenia

seed bed of new technology and new business experience. In Croatia there is a prevailing psychosis of mistrust towards foreign investment, and we often lose sight of the fact that the development of trades and industry in the 19th and the first half of the 20th century in Croatia was mostly the result of imported capital and technology from abroad. If we were to look at the history of many major Croatian companies, we

would see that their beginnings were in imported foreign technology and foreign capital. In addition, the entire world today is intermingled with foreign investments, from the smallest to the largest countries. Not to try to fit into

Act on Strategic Investments. The first agency for promotion of investment in Croatia tried fifteen years ago to simplify the process of obtaining a work permit and residence permits for foreigners, but still today every foreigner who is a member of a supervisory board in

**construction contracts, international negotiations and financial arrangements? What would you advise young lawyers who have the ambition to develop their careers in these areas?**

For many years I have been teaching at the postgraduate and doctoral courses at the Faculty of Law in Zagreb, and every year I ask my students, who are all experienced and clearly ambitious lawyers, if they have negotiated or concluded contracts on licensing or on transfer of technology, or joint venture contracts or contracts on financing construction or similar contracts with foreign partners in Croatia or abroad. The percentage of positive replies is negligible. This shows how isolated Croatian industry is from international economic trends, while without practice those lawyers will never become skilled negotiators.

**International transactions begin with complicated and sometimes long negotiations. How should negotiations be conducted to result in concluding clear, transparent, lawful, balanced and secure contracts, which make it possible to do business successfully? Is enough attention and expertise paid to negotiations, in**

## “Investment by Croatian companies abroad is almost equally important as foreign investment in Croatia, since that investment shows the integration of the Croatian economy in world trends.”

this process is a huge mistake and will necessarily result in our lagging behind in a technical, technological and, therefore, economic sense.

**Why are there not more foreign investments? What, in your opinion, should be done and who should do it, for foreign investment to become long-term, more significant and an integral part of the Croatian economy?**

It has already become boring constantly to repeat the same reasons why there is no foreign investment - the unnecessarily complicated regulations, the insufficiently capable and insufficiently effective state administration, the ineffective public sector, the lack of a strategy to attract foreign investment, slow and inefficient court system, but also the generally skeptical approach of the public regarding the desirability of foreign investment – all these are the reasons that hinder foreign investments. In Croatia there is an inexplicable opposition to all changes and the result is that it is impossible to reach agreement, not only on important projects, but also on how to cut the red tape. There are plenty of examples of stalled investments: development of Brijuni project, sale of land on Mljet, construction of golf courses in general, golf on Srđ, Haludovo resort, investments in agriculture, and the latest example is the famous debate over the proposal of a new draft of the

Croatia needs to have a permit for that work, even if they spend only a few days in Croatia.

**What about investments by Croatian companies abroad? Are they significant, important and satisfactory? If necessary, how can they be increased?**

Investment by Croatian companies abroad is almost equally important as foreign investment in Croatia, since that investment shows the integration of

## “For Croatian companies it is very important to agree, whenever possible, to the applicability of Croatian substantive law for resolving disputes, not only for construction contracts, but also for all other types of contract.”

the Croatian economy in world trends. Croatia is lagging behind in this respect too. Whilst in 2008 and 2009 Croatian companies suddenly increased their investments abroad to more than US\$ one billion a year, in 2012 they have fallen back to only US\$ 44 million.

**The world is globalized. This year we are entering the EU. In these circumstances, what should Croatian lawyers know and how should they be continuously educated for dealing with foreign investment,**

**your opinion? How can knowledge of conducting negotiations be improved and how can that knowledge be applied to specific and real negotiations?**

The best school for negotiations is practice, especially if they are conducted wisely and under the supervision of experienced negotiators. I believe that for negotiators, the knowledge and understanding of the essence of each type of contract is most important. That knowledge must not

only be limited to knowing the content of some types of contracts, but must also cover those questions which make those contracts risky. If the dangers and risks in relation to a specific type of contract are not recognized, damage and losses may occur. The educational programme could also be improved in order to give young lawyers a better and faster start.

*Gazette* provides all regulations at your fingertips, and international institutions and states publish many of their international contracts and other documents. Only a short time ago, all these facilities were not available and any form of training required a great deal more effort and hard work.

**International disputes, in principle, are resolved in court or before international**

a specially appointed bodies (such as the Dispute Adjudication Boards), which try to resolve disputes during the performance of contracts, even before arbitration proceedings are instituted. If they do not succeed, arbitration is still the most common form of dispute resolution.

**The jurisdiction of which law would you recommend in international construction contracts and why?**

For Croatian companies it is very important to agree, whenever possible, to the applicability of Croatian substantive law for resolving disputes, not only for construction contracts, but also for all other types of contract. This is especially important if the contract is being executed in Croatia, because then there is really no justification to agree to some foreign law. The application of foreign law necessarily means using foreign attorneys, and that not only makes conducting proceedings more expensive, but also deprives our parties of the knowledge they have of Croatian law.

**In your exceptionally rich legal, business, arbitration, advisory, academic, professional and scientific work, you have gained an enormous wealth of knowledge and experience. You have been active in business in more than one hundred countries, on all continents. What principles have you followed through your life and work?**

On the one hand, I have had the good fortune to be given work and tasks which have required special knowledge; while on the other hand, I have never deserted science. This has meant that I was constantly gaining new insights, which again enabled me to successfully perform my duties and entrusted tasks. I would recommend to the young people to constantly undergo training in their profession, because sooner or later their knowledge will enable them to apply it. And in so doing, they should guard their integrity and only do what their conscience allows them to do.

**“I would recommend to the young people to constantly undergo training in their profession, because sooner or later their knowledge will enable them to apply it. And in so doing, they should guard their integrity and only do what their conscience allows them to do.”**

**In international business, disputes sometimes arise. What should be done in the negotiation phase of a specific contract, and later while it is being executed, to significantly reduce the possibility of the occurrence of a dispute, or for the Croatian side to the dispute to have a good legal position?**

Disputes over contracts are unavoidable since it cannot be avoided that one side believes that it has some right from a contract which the other side disputes. However, the possibility of disputes occurring can be reduced if contracts are clearly worded and made in accordance with the rules of the profession. In order to achieve this, it is necessary to undergo continuous training. The best results will be achieved by those negotiators who are constantly increasing their knowledge through literature. Today it is much simpler to attain knowledge, because so many subjects are available through Google and other search engines. For example, *Google Scholar* gives an insight into the latest literature in an instant, while the *Official*

**arbitrators. However, lately mediation and other alternative forms are becoming more and more important form of dispute resolution. In principle, what do you think about each of these methods of resolving disputes, what are their advantages and disadvantages? What would you recommend in principle to be agreed in individual contracts between Croatian and foreign contracting parties? Why?**

Arbitration disputes, which is the most common form of dispute resolution in international trade relations, have become very expensive, mainly as the result of the high tariffs of the institutions under whose auspices these disputes are conducted, and especially due to the high fees of arbitrators and attorneys, and other necessary legal and other advisors. At the same time, they are not as fast as expected. In major arbitrations, the costs alone may run into millions of dollars. Moreover, those disputes can last a long time due to the complex procedural rules. For these reasons, practice is increasingly turning to alternative forms of dispute resolution, such as mediation or through

## 3. SEMINAR ANNOUNCEMENT

# LCM Bau

Innovative Trends im Life Cycle Management  
Lebenszykluskosten – Integriertes Projekt- und Prozesmanagement – 5D-BIM  
Symposium 12.06.2013

# BIM for LCS

Building Information Modelling for Life Cycle Structures  
21. INDUSTRIEBAUSEMINAR  
13.-14.06.2013

## 21. Industrial Building Seminar BIM for LCM

Building Information Modelling for Life Cycle Structures

[www.industrieauseminar.at](http://www.industrieauseminar.at)

In cooperation with LCM  
(Life Cycle Management) Symposium

The planning decisions respective input of economic, ecologic and social resources for production of buildings have immense consequences on the whole life cycle. Building Information Modelling (BIM) Systems offer for the first time the opportunity to meet well-grounded planning decisions in the early design phases. BIM in this context bears large potential to fundamentally change the current planning process, towards integrative practice. The new planning challenge represents the balancing of the conflict area: technology – process – people.

Architects and engineers, researchers and practitioners from broad range of disciplines will spend two days discussing the current and future issues of the BIM phenomenon. The Department of Interdisciplinary Planning and Industrial Building of Vienna University of Technology invites for the 21st time to top quality lectures with presentations and exchange of ideas in international surrounding. The 21st Industrial Building Seminar will be held this year in cooperation with “LCM-Building Symposium – Innovative Trends in Life Cycle Management”.

### VERANSTALTUNGSORT / VENUE - IBAUSE

Registrierung mit Empfang / Registration and Welcome 12.6., 19:00  
Festvortrag / Key-note lecture 20:00

Vorträge / Lectures 13.6. - 14.6.  
Technische Universität Wien / Vienna University of Technology  
Festsaal / Karlsplatz 13, 1040 Wien

### TAGUNGSGEBÜHR / CONFERENCE FEE

Gesamte Veranstaltung / Complete event	€ 380
Donnerstag / Fee for single day - Thursday	€ 260
Freitag / Fee for single day - Friday	€ 140

TU-Angehörige gesamte Veranstaltung / TU-Members complete event	€ 120
TU-Angehörige Donnerstag / TU-Members Thursday	€ 90
TU-Angehörige Freitag / TU-Members Friday	€ 50

Sponsoren / Sponsors	gratis / free
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Vortragende / Lecturer	gratis / free
Studenten / Students	gratis / free

(Nach Maßgabe freier Plätze / As long as places are free)

Stornierung: bis 15.5.2013 kostenfrei, bis 31.5.2013 50% der Teilnahmegebühr, ab 1.6.2013 wird die ganze Gebühr verrechnet.

Cancellation charges: until 15th May 2013, no charge; until 31st May 2013, 50% of the conference fee; from 1st June 2013, no refund.

### INFORMATION UND ANMELDUNG / REGISTRATION

[www.industrieauseminar.at](http://www.industrieauseminar.at)



### VERANSTALTUNGSORT / VENUE - LCM Wien Techgate, 12.6., 09 - 17:00

Das 21. Industrieauseminar wird heuer in Kooperation mit dem „LCM-Bau Symposium - Innovative Trends im Life Cycle Management“ angeboten.

The 21st Industrial Building Seminar will be held this year in cooperation with “LCM-Building Symposium – Innovative Trends in Life Cycle Management”. Beim Besuch beider Veranstaltungen (LCM-Bau Symp., 12.6., 09:00 - 17:00 & 21. Industrieauseminar TU Wien, 12.6., 19:00 - 14.6.) gibt es **vergünstigte Kombi-Pakete**:

For joint registration of both events (12.6. 09:00 - 17:00 LCM-Building Symposium + 12.6., 7 pm - 14.6. Industrial Building Seminar) we offer **special price**:

Kombi-TN-Gebühr / Combi-Fee	€ 490 (statt / instead of € 670)
Ermäßigte TN-Gebühr / Member-Fee	€ 420

(TU-Angehörige, Netzwerk Bau, ÖIAT, Bundesanfang Bau, Fachverband Bauindustrie/VIBÖ)

## 4. STATISTICS

### 4.1. Average Asking Prices of Real Estate Offered for February 2013

	average price EUR/m <sup>2</sup>	price range EUR/m <sup>2</sup>
<b>ZAGREB</b>		
<b>Housing</b>		
Apartments	1.757	778 – 6.667
Houses	1.811	341 – 9.167
<b>Commercial space</b>		
Offices	1.825	700 – 4.865
Business premises	2.177	722 – 7.500
Office blocks	1.828	132 – 3.793
<b>COAST</b>		
<b>Housing</b>		
Apartments	2.171	316 - 8.196
Houses	1.846	64 – 18.269
<b>Commercial space</b>	1.964	80 - 4.338
<b>Tourist facilities</b>	2.110	292 – 15.748

Average is calculated on the basis of the currently quoted prices on the Burza nekretnina d.o.o. (Real Estate Stock Market Ltd.), which is available online: [www.burza-nekretnina.com](http://www.burza-nekretnina.com).

### 4.2. Statistical Reports of the Central Bureau of Statistics from the Area of Construction

#### 4.2.1. Construction work indices, November 2012

According to basic indices, in November 2012, as compared to November 2011, construction works decreased by 11.6%. According to working-day adjusted indices, in November 2012, as compared to November 2011, construction works decreased by 12.0%. According to seasonally adjusted

indices, in November 2012, as compared to October 2012, construction works decreased by 2.3%.

**Advice:** *Construction work indices, November 2012, Central bureau of statistics, Zagreb, 2013*

## 4.2.2. Building permits issued, December 2012

In December 2012, there were 701 building permits issued, which was by 18.7% less than in December 2011. The total number of building permits issued in the period from January to December 2012 was by 13.2% less than in the same period of 2011. In December 2012:

- by types of constructions, 75.9% out of the total number of permits were issued on buildings and 24.1% on civil engineering works
- by types of construction works, 78.9% of permits were issued on new constructions and 21.1% on reconstructions.

According to permits issued in December 2012, it was expected for 627 dwellings with the average floor area of 99.8 m<sup>2</sup> to be built.

**Advice:** *Building permits issued, December 2012, Central bureau of statistics, Zagreb, 2013*

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It is our wish that the Croatian Real Estate Newsletter / CREN be a source of speedy and quality information for all who are active in the real estate sector – developers, planners, contractors, mediation agencies etc.

Please send your comments, proposals and opinions to [cren@filipovic-advisory.com](mailto:cren@filipovic-advisory.com) to help us improve CREN and make it the leading medium on the Croatian real estate market.

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