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## Issues identified during IPF3 – a personal view

# Introduction

## Three Key Issues or “My Three Bêtes Noires”

1. ToR preparation
2. Use of FIDIC Conditions of Contract
3. PIU “support”

# 1. ToR preparation

- Perceptions or Misconceptions?
  - The current process is “fit for purpose”
  - ToR take considerable time to develop and approve because it’s a complex process
  - The approved ToR provide a smooth transition into implementation
- Reality
  - Average time for receipt of ToR by IPF3 – 9 months from SC approval to formal assignment to IPF. Recent ToR preparation assignments by IPF3
    - Durres Port 4.5 months (24 October ‘17 – 13 March ‘18)
    - Lezhe Bypass 5.5 months (24 October ‘17 – 12 April ‘18)
    - Regional voltage study 6 months (24 October ‘17 – 20 April ‘18 - required 6 TSO approvals plus IFI)
  - Changes to scope and/or budget are often required during Inception Stage as ToR have not fully captured the requirements and/or Beneficiary and/or IFI request changes.

# 1. ToR preparation

- Questions ?
  - Is the approach to ToR appropriate ?
    - Needs a focused approach, assignment of an international/national team including Country Managers, building momentum in the ToR process and engaging full and timely support of the IFI and Beneficiaries.
  - How to close the gaps pre- and post- ToR preparation and approval?
  - Is the current process adding value or a dis-benefit to implementation?

## 2. Use of FIDIC Conditions of Contract

- Perceptions or Misconceptions?
  - Use of FIDIC assures contract works execution in accordance with international best practice
  - Beneficiaries understand and are familiar with the use of FIDIC conditions of contract
- Reality
  - WBIF Vademecum p.44:

*“Once the procurement is finalised, for works contracts, the Beneficiary will use the FIDIC (Fédération Internationale des Ingénieurs-Conseils) type of contracts”.*
  - HOWEVER - Adjustments through the use of “Special Conditions” turns FIDIC contracts into “local” contracts, often with provisions that conflict or compromise the role of the FIDIC Engineer
  - PIU ability to administer FIDIC contracts is patchy across the region

## 2. Use of FIDIC Conditions of Contract

### 1.1 What is the Issue?

- **FORWARD:**
- “In the preparation of these Conditions of Contract for Construction, it was recognised that, while there are many sub-clauses which will be generally applicable, there are some sub-clauses which must necessarily vary to take account of the circumstances relevant to the particular contract.”
- “It will be necessary to prepare the Particular Conditions for each individual contract .....

• FIDIC now experiences applications of “FIDIC Contracts”, where **significant** changes to the General Conditions [GC] of the forms are being introduced, by means of replacing or changing wording of the GC through the Particular Conditions [PC].

GC and PC



## 2. Use of FIDIC Conditions of Contract

### 1.2 The Issue is ...

The replacements and changes introduced have lately been found to be substantial and of such extent, that the final contract or agreement no longer represents the FIDIC principles, and thus are jeopardising the “FIDIC brand”.

FIDIC is concerned that such modified contracts which purport to be “FIDIC Contracts” are damaging FIDIC’s reputation for fair and balanced contracts, and misleading tenderers and the public.

**THIS IS NOT  
ACCEPTABLE  
BY FIDIC**



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Chair of FIDIC TG15, FIDIC Accredited Trainer  
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## 2. Use of FIDIC Conditions of Contract

- Questions ?
  - Why are IPFs being asked to prepare/endorse non-standard FIDIC contracts?
  - Why is “no-objection” being given to draft contract documents that are clearly deficient and non-compliant with FIDIC conditions?

### 3. PIU support

- Perceptions or Misconceptions?
  - PIUs are fully equipped to manage and administer complex construction projects – sufficient support has been provided already
  - WBIF support to PIUs would not be in line with the “Paris Convention” (The Paris Declaration on Aid Effectiveness was adopted in 2005 and reaffirmed in Accra in 2008 at ministerial-level forums convened by the OECD)
- Reality
  - PIUs are generally not equipped to manage and administer complex construction projects, especially where FIDIC conditions of contract are used for the works contracts
  - PIU personnel change frequently, with inexperienced staff often being assigned
  - IMF Report “Public Infrastructure in the Western Balkans – Opportunities and Challenges”(Feb 2018)

“Concerted efforts are needed to strengthen public investment management frameworks to improve planning, allocation, and implementation capacities and therefore ultimately reduce waste and improve efficiency of investments”. (Chapter 8 p.47)

### 3. PIU support

- Reality

- EU position

“The European Commission's commitment to improving aid and development effectiveness through development cooperation is reflected in its endorsement of key international agreements. These include the 2005 Paris Declaration, the 2008 Accra Agenda for Action , the 2011 Busan Outcome Document and the 2014 Mexico Communique” (source: [https://ec.europa.eu/europeaid/policies/eu-approach-aid-effectiveness\\_en](https://ec.europa.eu/europeaid/policies/eu-approach-aid-effectiveness_en)).

- The Paris Convention provision (Indicator 6) :

Donors commit to ...

Avoid, to the maximum extent possible, creating dedicated structures for day-to day management and implementation of aid-financed projects and programmes

This is intended to “strengthen capacity by avoiding parallel implementation structures” and the target is to reduce by two thirds the stock of parallel project implementation units.

# 3. PIU support

- Questions ?
  - Which PIUs established in the Beneficiary countries lie outside of the recognised Government institutions and can be deemed to be “parallel implementation structures”?
  - How can effective and sustained support best be provided to PIUs to assist in more rapid project and programme implementation?



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## WBIF-IPF 3 Consortium



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