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**Insights**

# FIDIC CLIMATE CHANGE CHARTER: WHAT DOES IT ALL MEAN?

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An estimated 70% of global carbon emissions come from the building and operation of infrastructure with a staggering seven percent of global carbon emissions coming from concrete alone. If we are to come anywhere close to achieving *net zero by 2050*, the construction and engineering community must play a crucial and immediate role.

*FIDIC*, the International Federation of Consulting Engineers, representing over 40,000 companies and more than one million professional engineers, is taking a welcome lead in galvanising the industry to take action to reduce carbon emissions and tackle the climate crisis.

On 11 November 2021, FIDIC published its first *Climate Change Charter*: a call to action for the construction and engineering community to take immediate steps to meet the *United Nation's Sustainable Development Goals* and to support the transition to net zero.

This blog takes a closer look at the Climate Change Charter and considers what it may mean for FIDIC users.

## THE CLIMATE CHANGE CHARTER IN A NUTSHELL

The Climate Change Charter sets out, in basic terms, how the construction and engineering community should address climate mitigation and engineer the resilience of the built environment in the decades to come:

> "*FIDIC wants to align the global FIDIC community around a number of concise, ambitious aspirations and commitments to mitigate climate change and put consulting engineering at the forefront of global innovation in technical and behaviour solutions*."

The Climate Change Charter's goals are to:

- Reduce emissions related to member operations across the industry.
- Reduce embedded and operational carbon emissions in the building and infrastructure projects on which engineers consult, design and deliver.

- Support climate change adaptation through mitigation and design of disaster or event resilient infrastructure.

The Climate Change Charter is structured to provide guidance on commitments to all participants in the engineering community including individual professional engineers, project teams and schemes, companies and institutions, including FIDIC itself. It recognises that all participants in the industry have different roles to play and includes the following actions:

- **FIDIC member associations**, which operate in over 100 countries, are to promote FIDIC climate action resources and develop country-relevant guidance on climate-relevant engineering, taking account of national energy mix, country-specific vulnerabilities, regional/local cultural and economic circumstances and infrastructure demand.

- **Project teams and schemes** are to collaborate to develop their commitment to climate action taking into consideration geographical location, business environment, scale and available resources. In particular, project teams are to advise clients on carbon reduction objectives and the risks their project poses to the environment and also establish appropriate metrics to monitor and report on embedded carbon emissions through design, construction and operation of infrastructure.

- **Companies** are to develop and promulgate policies and corporate objectives promoting a climate responsible approach to business and projects and develop a team of "climate change champions" to act as resources to promote and implement the company's climate strategy. FIDIC encourages companies to take a science-based approach to decarbonising their operations and supply chain.

- **Individual professional engineers** are to become experts on climate science and innovative engineering solutions and know the total carbon load of every design they create, or project they work on, and to strive to lower that figure every year.

## WHAT MAY THIS MEAN FOR FIDIC USERS?

FIDIC promises to

> *"provide best practice templates and clauses that can be incorporated at the scheme, project, and programme level…"*

and will develop "guides, briefings and tools that also need to be developed" to achieve carbon reduction. It's therefore a safe assumption that FIDIC users can expect to see, at some point, publication of further guidance on environmental provisions – perhaps just as a briefing, perhaps as a set of amendments to the *current standard forms* or perhaps by way of inclusion in new standard forms. We don't yet know.

## UPDATES TO SUB-CLAUSE 4.18 OR SOMETHING MORE?

FIDIC users will already be familiar with the environmental provisions offered by the current standard form contracts:

- Sub-clause 4.18 of the 1999 Red Book provides that:

"The *Contractor shall take all reasonable steps to protect the environment (both on and off the Site)*…"

- The Contractor's obligation to protect the environment under the 2017 suite of contracts is strengthened from "reasonable" to "necessary".
- Under sub-clause 2.3 of both the 1999 and 2017 suites, the employer is responsible for ensuring that its personnel and other contractors take "similar" (1999) or "the same" (2017) actions as the contractor under sub-clause 4.18.

Amendments to sub-clause 4.18 would be welcome because these provisions are problematic for a couple of reasons:

- The main issue is that 4.18 is vague: there is no definition of "environment" and it is not clear what "reasonable" or "necessary" steps might be for the contractor and/or employer's personnel.

Perhaps FIDIC will strengthen these provisions by including, say, additional obligations relating to meeting certain sustainability ratings, the adoption of sustainable materials and/or construction methodologies or an express obligation to take all steps to reduce the carbon footprint of the project.

- The other problem with 4.18 is what action an employer might take if the obligation is breached but the employer suffers no economic loss.

This issue is not peculiar to FIDIC and is a common question with these *types of clauses*. Additional drafting or even guidance to clarify this, would be welcome.

## CONTRACT AMENDMENTS, PLAYBOOK OR SOMETHING ELSE?

The problem with drafting environmental provisions is that they are very much dependent on the project, the parties' aspirations and national and local laws and regulations. This is why national standard forms (such as JCT) tend to align with FIDIC's current approach: short obligations in the main body of the contract and then the detail sitting in the technical documents (for further discussion of this see our *blog on NABERS UK*). It is also why organisations such as *The Chancery Lane Project* produce playbooks for such obligations as opposed to a "one size fits all" provision.

In producing such *template provisions*, FIDIC faces an even greater challenge than the national standard form providers because it is global in scope. The scenarios in which these provisions may be used are endless. The danger is that any template provisions if simply drafted as a "one size fits all" would be so generic as to be meaningless. What would be more useful is the playbook approach – a set of sample obligations that could be adapted for use depending on the project specifics. Very tricky and time consuming to pull together but I suspect the output would be welcome.

## FINAL THOUGHTS

FIDIC, as usual, is well ahead of the game. Its commitment to tackling the climate crisis is timely and laudable. Guidance and briefings are always useful but I think that what may **actively** help standardise market approach are template carbon reduction provisions as part of a playbook.

What would be really ground breaking is if the playbook included worked scenarios (similar to the excellent *FIDIC Covid guidance)* not only looking at how such provisions would work in practice but also providing guidance on how to adapt FIDIC contracts to work with the most globally recognised sustainability rating obligations – not only those that end at completion of the Works but also those that go beyond (such as NABERS). And I don't think that FIDIC users alone would be interested in this – this would probably be of great value to everyone else. After all, we are all in this together…

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