

## Contractual Easter Eggs

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Monday was a public holiday in China, to celebrate Qing Ming, the Chinese tomb-sweeping festival which also happily coincided with Easter. I spent some time explaining to my Chinese friends the Easter story, and how in recent times there have been other interpretations involving bunnies and chocolate eggs. China has been busy hatching some of its own contractual eggs by taking FIDIC standard forms traditionally used by International Contractors in their overseas projects, and adapted to reflect local conditions and times.

The FIDIC Silver Book has been considered by the the Ministry of Housing and Urban-Rural Development ("MOHURD") to promote the EPC contracting model in China. A draft MOHURD standard form was prepared with reference to FIDIC Silver Book and international engineering contracting practices, and released for public comments at the end of 2009. This adaptation by MOHURD appears to have been partly influenced by the GF-1999-0201, a standard form widely used in China, mostly for government financed projects using procurement methods such as competitive bidding.

The resulting risk allocations have turned out quite different from the original "turnkey" nature of the FIDIC Silver Book that may come as a bit of a surprise to those used to EPC contracts. Owners and developers may not get quite the turnkey solution they were expecting in relation to matters such as responsibility for information as to underground conditions and site obstructions, the obligation to obtain approvals, permits and licenses and especially in relation to site safety. It will be of great interest for the construction sector to see how the Chinese EPC form of contract, when finally issued, in fact addresses these matters.

Similarly the Regulation on Construction Market Administration which is likely to be promulgated by the State Council later this year appears influenced by the FIDIC Yellow Book and is likely to provide a clearer legal basis for adopting some of the forms of contracting widely used in the international market, especially in respect of Design and Build contracts.

This Easter also coincides with the anniversary of the Independent Mediation Rules 2008 introduced by the Beijing Arbitration Commission (BAC) on 1 April 2008. These rules were implemented after the participation of over 120 arbitrators and construction engineering experts, including very well known experts. I know this, because my colleague Hew Kian Heong and I were also asked for my own humble contributions to this effort. I therefore know that these Mediation Rules were also drafted so that they could be used to support a multi-tiered dispute resolution process as envisaged by standard form contracts such as ICE and FIDIC.

One of the key attractions of the FIDIC suite of contracts is flexibility, which allow their renewed use in many new markets by taking into account local laws and regulation, and I have no doubt my Chinese friends will capitalize on this advantage its fullest.