



ADB

FIDIC Contract Management

Price Adjustments

Islamabad Day 5 (Part I) – 1 September 2023

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Price Adjustment/ Changes in Cost

- The clause is **Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB)** The key points are:

PB

If a 'table of adjustment data' is not included in the Contract, this Sub-Clause shall not apply

2017 RB

If **Schedule(s) of indexation** are not included in the Contract, this Sub-Clause shall not apply

PB

If full compensation is not covered by the provisions of this Sub-Clause the accepted contract amount is deemed to have included the risk of other rises and falls in costs

2017 RB

Same

Price Adjustment/ Changes in Cost

- The clause is Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB) The key points are:

PB

No adjustment shall be applied to work valued on the basis of Cost or current prices

2017 RB

Same

PB

If the Works continue after the Time for Completion the indexation is frozen at the rate 49 days before prior to expiry, or

Current index, in case of deflation

2017 RB

Same

Price Adjustment/ Changes in Cost

- The clause is Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB) The key points are:

PB

Provisional indices used for IPCs until current indices available

A current index is 49 prior the last date of the period of the IPC

2017 RB

Same

The GC does not refer to 49 days, but mentioned in the example of a Schedule of cost indexation in the Guidance section.

Note: the Guidance section is not contractual unless added as a Particular Condition Part B – Special Provisions

Price Adjustment/ Changes in Cost

- The clause is **Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB)** are:

PB

If the source of the indices is in doubt, it shall be determined by the Engineer.

2017 RB

The GC is silent

Price Adjustment/ Changes in Cost

- The clause is **Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB)** The key points are:

PB

If the “currency of index” is not the same as the currency of payment, then convert at the selling rate (central bank of currency) on date index is to be applied

PB

Can only adjust factor weightings if rendered unreasonable, unbalanced or inapplicable due to the volume of Variations

2017 RB

The GC is silent

2017 RB

The GC is silent, but mentioned in the example of a Schedule of cost indexation in the Guidance section.

Note: the Guidance section is not contractual unless added as a Particular Condition Part B – Special Provisions

Price Adjustment/ Changes in Cost

- The clause is Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB) The key points are:

PB

The formula shall be the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + \dots$$

2017 RB

No formula given in the GC, but shown as an example in the Guidance section

Note: the Guidance section is not contractual unless added as a Particular Condition Part B – Special Provisions

Price Adjustment/ Changes in Cost

- The clause is Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB):

“Where the Contract does not provide for compensation for full inflation Cost, or does not do so at all (in case the optional price adjustment provisions have not been selected under the Contract), remedies may exist at law. This is the case in some civil law countries, such as France where the so called “hardship theory” may provide for specific remedies in such a situation. Parties should therefore seek legal advice in order to explore the remedies that may be provided by applicable law.”

Price Adjustment/ Changes in Cost

- The clause is Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB):

Sub-Clause 19.1 [Definition of Force Majeure]

“Force Majeure” means an exceptional event or circumstances :

- (a) which is beyond a Party’s control
- (b) which such Party could not reasonably have provided against before entering into the Contract
- (c) Which having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party,

Price Adjustment/ Changes in Cost

- The clause is Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB):

Sub-Clause 19.4 [Consequences of Force Majeure]

“If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure...”

- Even if inflation were to satisfy the test on the previous slide, inflation does not prevent the Contractor from performing, it just renders performance more onerous
- Even if inflation prevented the Contractor from performing, it would only cover an extension to the Time for Completion. However the Contractor cannot unilaterally suspend performance due to inflation so it seems that time would not even be allowed as a claim

Therefore inflation spikes are not Force Majeure and the Force Majeure clause would not provide relief in any event

Price Adjustment/ Changes in Cost

- The clause is Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB):

Legal principle of frustration in Pakistan

Section 56 of the Contract Act, 1872, which states:

“A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promissor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”

In order to claim frustration of the contract, the party is required to establish that the intervening act caused a physical impossibility and not a commercial impossibility [Quinn Corporation v Cotton Export Corporation 2004 CLD 1040].

Price Adjustment/ Changes in Cost

- The clause is **Sub-Clause 13.8 Pink Book (PB)/ Sub-Clause 13.7 2017 Red Book (RB)**:



(https://www.fidic.org/sites/default/files/Guidance%20Memo%20-%20War%20memorandum_170323_fin al.pdf)

FIDIC Contracts guidance on the effects of inflation and unavailability of goods and labour following the global COVID-19 pandemic and the war in Ukraine

FIDIC Guidance Memorandum

March 2023



Price Adjustment/ Changes in Legislation

- The clause is Sub-Clause 13.7 Pink Book (PB)/ Sub-Clause 13.6 2017 Red Book (RB) The key points are:

The definition of Laws:

PB All national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority

2017 RB All national (or state or provincial) legislation, statutes, acts, decrees, rules ordinances, orders, treaties, international law and other laws, and regulations and by-laws of any legally constituted public authority

Price Adjustment/ Changes in Legislation

- The clause is Sub-Clause 13.7 Pink Book (PB)/ Sub-Clause 13.6 2017 Red Book (RB) The key points are:

PB

2017 RB

The change of Law must be in the Country where the Site is located

PB

2017 RB

Changes made after Base Date
(28 days prior to last Tender submission)

Price Adjustment/ Changes in Legislation

- The clause is Sub-Clause 13.7 Pink Book (PB)/ Sub-Clause 13.6 2017 Red Book (RB) The key points are:

PB

No profit mark up allowed

2017 RB

Same

PB

Double dipping with price adjustment for inflation specially mentioned as not to be permitted

2017 RB

Not specifically mentioned but explicit

Price Adjustment/ Changes in Legislation

- The clause is Sub-Clause 13.7 Pink Book (PB)/ Sub-Clause 13.6 2017 Red Book (RB) The key points are:

PB

This is a Contractor's claim and requires notice under Sub-Clause 20.1

Not clear if this claim can succeed as an Employer's claim under Sub-Clause 2.5

PB

Double dipping with price adjustment for inflation specially mentioned as not to be permitted

2017 RB

Same

It is now clear that the Employer is entitled to claim for a decrease

2017 RB

Not specifically mentioned but implicit

Price Adjustment/ Changes in Legislation

- The clause is Sub-Clause 13.7 Pink Book (PB)/ Sub-Clause 13.6 2017 Red Book (RB) The key points are:

Covid-19 restrictions – changes in law?

Restrictions in China blocking equipment exports – Not in Country of the Site

Not a change in law but an extension of pre-existing pandemic legislation? Not likely given the broad definition of changes in laws

Covid-19 is a Force Majeure and only a Force Majeure? Not likely as different countries applied different policies from very strict to no restrictions and this was manifest through the legal mechanisms of state

Advance Payment

- The clause is Sub-Clause 14.2 Pink Book (PB)/ Sub-Clause 14.2 2017 Red Book (RB) The key points are:

No differences of note between the PB and the 2017 RB

Advance Payment

- The advance payment (AP) is repaid to the Employer by incremental deductions applied in the IPC's once the value of work executed reaches 30%.
- The deductions are made at the percentage stated in the Contract Data.
- The AP must be fully repaid before 90% of the Accepted Contract Amount less any Provisional Sums has been certified for payment.
- As the AP is repaid, the amount of the AP Security should be reduced accordingly.

Advance Payment

- The advance payment (AP) is intended to be an interest free loan for mobilisation and cash flow support
- If not provided, it would likely be necessary to build in the finance charges on a credit line to cover the upfront costs of a construction project
- Consider audit provisions on expenditures or even a dedicated account. Possibly include ability to call the guarantee in the event of discovery on non-project use

Thank You!