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ASIAN DEVELOPMENT BANK BUSINESS OPPORTUNITIES FAIR 2026

21-24 SEPTEMBER 2026 | ADB HEADQUARTERS, MANILA

VALUE FOR MONEY: DRIVING QUALITY INFRASTRUCTURE

Raising Standards in Project Delivery Contracts

Workshop on Conditions of Contracts

Prasath Sanjeewa, Satomi Sakaguchi



Agenda

01 Introduction, Contract Structure and Key Parties

02 Risk Allocation and Exceptional Events

03 Payments, Securities and Contractor Performance

04 Variations and Price Adjustments

05 Claims Management, Time for Completion & Extension of Time

06 Dispute Avoidance and Resolution



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ADB Standard Bidding Documents

<https://www.adb.org/business/how-to/where-can-i-find-adbs-standard-bidding-documents>





ADB SBDs

Goods

Off-the-shelf or custom-designed goods and related services.

Small Works

Non-FIDIC.
General Conditions —
simpler, shorter
contracts.

Large Works — Red Book

FIDIC 2017
Conditions of Contract
for Construction
(Employer-designed).

Large Works — Yellow Book

FIDIC 2017
Conditions for Plant &
Design-Build
(Contractor-designed).





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ADB SBDs

Plant, Supply, Design and Installation

Model Form of
International Contract
for Process Plant
Construction published
by the Engineering
Advancement
Association of Japan
(ENAA)

IT Product and Services

For the use of
information technology
products and services
(hardware, software etc)

Design Build Operate:

Water & Wastewater
Greenfield Infrastructure
project
FDIC Gold Book 2008



Collaborative OM

Built-in controls on the
quality of O&M, with robust
key performance indicators
(KPIs) on the basis of the
FIDIC Green Book, 2021





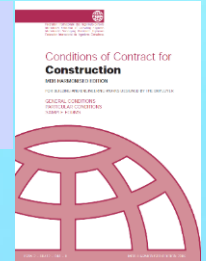
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- ❖ Conditions of Contract for Construction, Building and Engineering works designed by the Employer (**Red Book**) - 1999, 2017, 2022
- ❖ Conditions of Contract for Plant and Design-Build (**Yellow Book**) - 1999, 2017, 2022
- ❖ Conditions of Contract for EPC/Turnkey Projects (**Silver Book**) - 1999, 2017, 2022

- ❖ Harmonized Construction Contract - Multilateral Development Bank (**Pink Book**) - 2005, 2010



1999

2017 Reprinted 2022



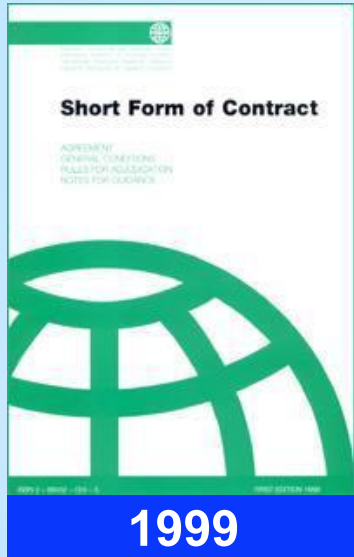


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❖ Short Form of Contract (Green Book) – 1999, 2021



- Suitable for < \$ 500,000 (higher values possible)
- Simple, Repetitive works, short duration
- Design and Build type
- No impartial Engineer...
- Rules of Adjudication



- Suitable for < \$ 10 Million (higher values possible)
- Alternate to 2017 editions, where the perceived level of risk is low.
- Design and Build type
- does not require significant contract administration & management resources.
- Engineer added
- 6 payment options



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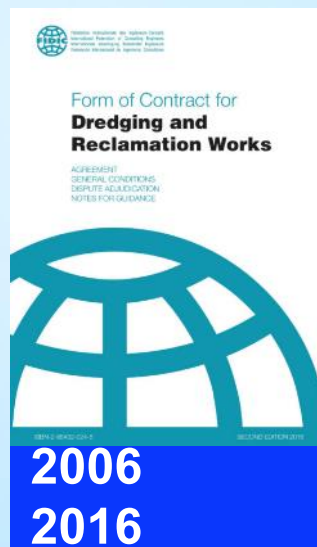
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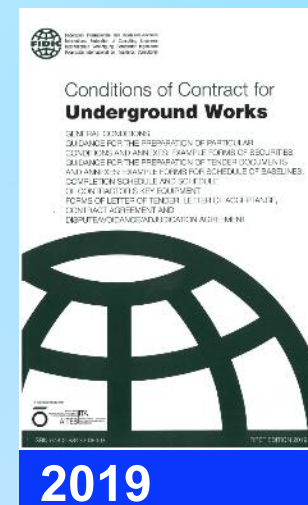
- ❖ Design, Build and Operate (**Gold Book**) - 2008
- ❖ Dredgers and Reclamation Contract (**Blue Book**) - 2006, 2016
- ❖ Conditions of Contract for Underground Works (**Emerald book**) – 2019



- Design-build obligation with a long-term operation
- green-field Design-Build-Operate scenario, with a 20-year operation
- No contractor financing.
- Traditional DBO (not designed for brownfield, 20+ years)



- All types of dredging and reclamation work and ancillary construction
- Designed by the Employer (but can also be used for D&B)
- Choice of valuation methods



- Tunnelling and underground works
- New concepts relevant to underground risks
- Geotechnical baseline report: single contractual source of risk allocation
- Excavation/lining works – Remeasurable, other works Lump Sum
- Guide - 2023 first edition



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FIDIC Underground
Works Contract
(Emerald Book)
Guide (First Edition
2023)



FIDIC Contracts Guide (2nd
Edition 2022)

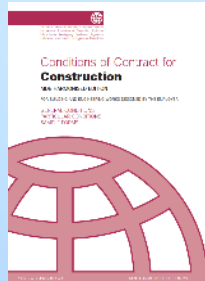
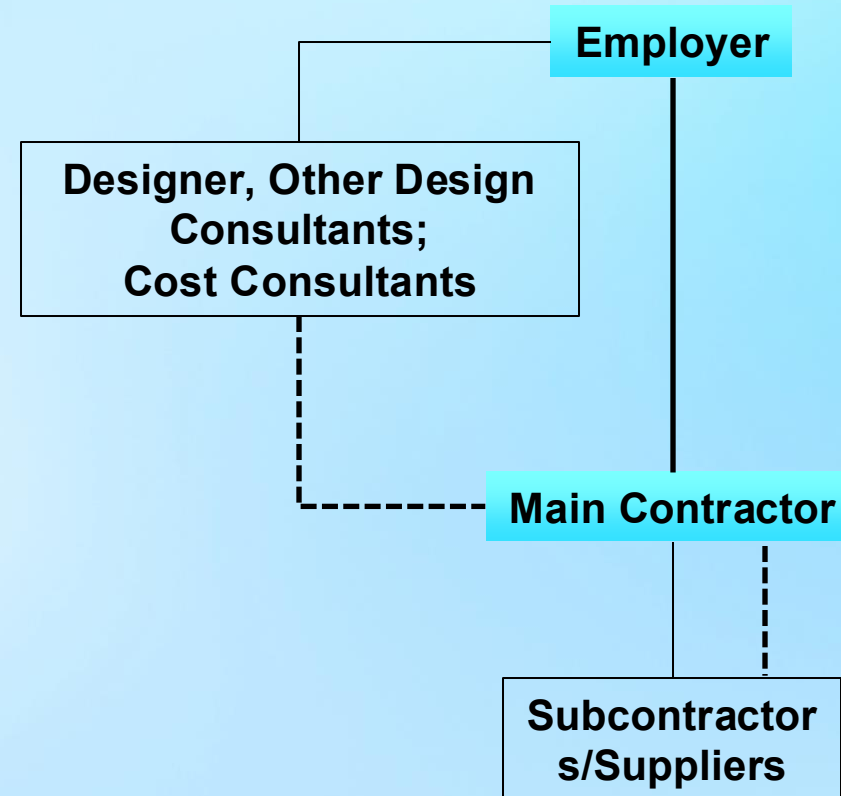
Other commentaries related to contracts – some in different languages



FIDIC Procurement Procedures Guide



Design-Bid-Build

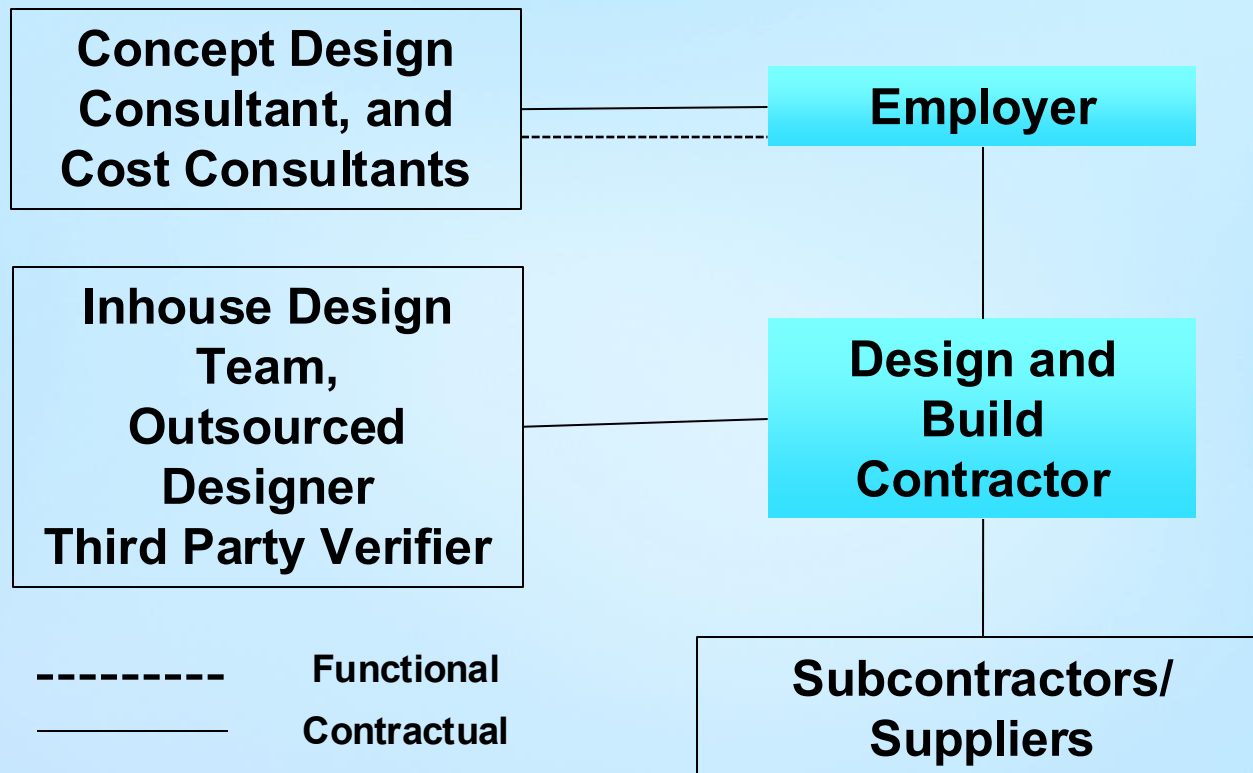


----- Functional
----- Contractual



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Design and Build



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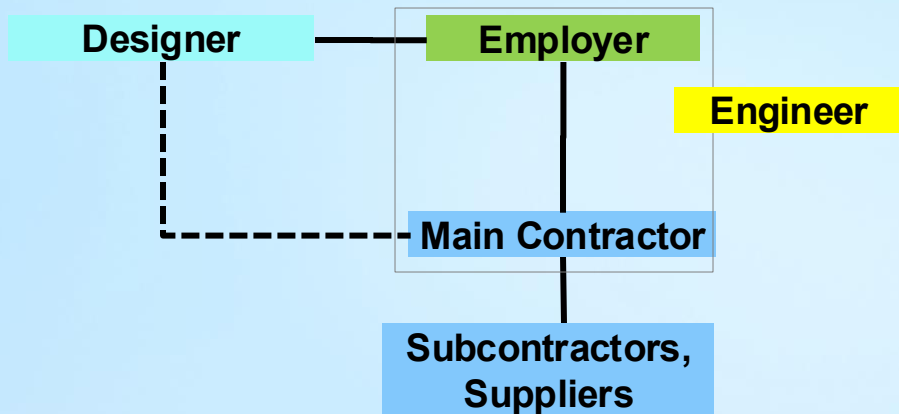


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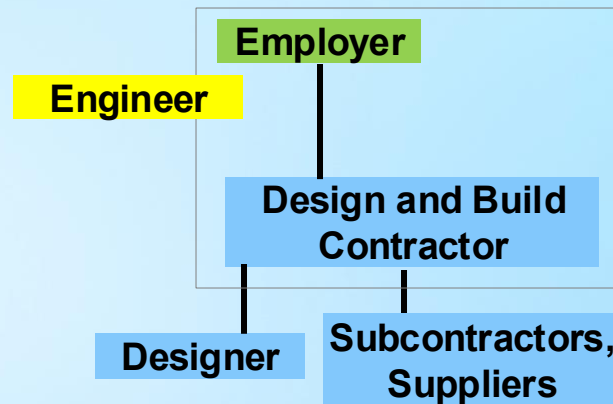
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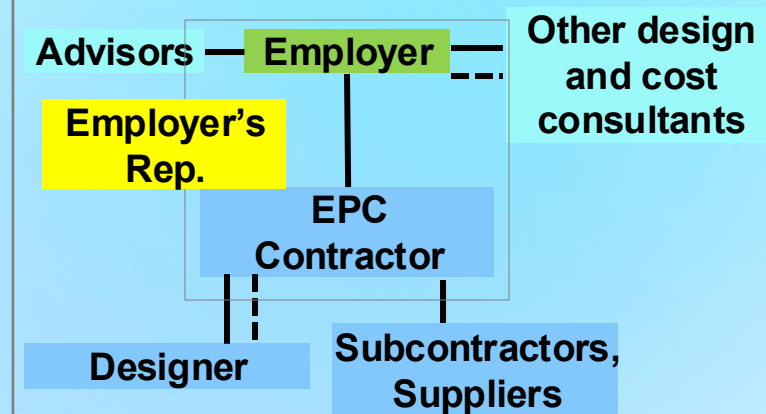
Red Book



Yellow Book



Silver Book



Risk

Impact on Risk Profiles

Yellow and Silver Books assign design duties to contractors, increasing their risk and role in project execution. Risk allocation varies depending on who holds design responsibility, influencing project risk management strategies.



-
- a) the Contract Agreement;
 - b) the Letter of Acceptance;
 - c) the Letter of Tender;
 - d) the Particular Conditions Part A – Contract Data;
 - e) the Particular Conditions Part B – Special Provisions;
 - f) General Conditions;
 - g) the Specification/Drawings (or Employer's Requirements);
 - h) the Schedules;
 - i) the JV Undertaking (if the Contractor is a JV); and
 - j) any other documents forming part of the Contract.
-



2017



**FIDIC
Conditions**



Contract Structure and Key Parties

Who holds authority, how documents rank, and how instructions become binding.

Documents hierarchy

Order of precedence between Conditions, Specification, Drawings and Schedules.

Roles and authority

Employer, Engineer and Contractor duties, delegated powers and their limits.

Communications

Formal routes, named contacts, written form and record of instructions.



Duties, Delegated Powers

Employer

- Site access, permits and evidence of financial arrangements
- Appoints the Engineer
- Acts through the Engineer - no direct instructions to the Contractor
- Cannot unilaterally vary the Contract terms

Engineer

- Acts for the Employer, but has no authority to amend the Contract
- Issues instructions, approvals, tests and Variations
- Must consult, then fairly determine Claims and disputes
- Cannot relieve either Party of any obligation or liability

Contractor

- Executes the Works with due care, skill and proper resources
- Delivers programme, quality management, security and any design
- Must comply with instructions, giving notice if one is a Variation
- Contractor's Representative may delegate but stays responsible



Notices and Communications

Form and delivery

- Notices must be in writing, identified as a Notice and cite the clause
- Sent to the address stated in the Contract Data or as notified
- Electronic transmission permitted where the Contract allows it
- Copy the Engineer on Party-to-Party communications

Timing and effect

- Deemed received when delivered, or at the agreed address
- Time bars run from receipt - late Notices can lose entitlement
- Approvals, consents and certificates must not be unreasonably delayed
- Silence is not consent unless the Contract says so

Language and records

- Ruling language governs where versions differ
- Day-to-day communications in the language for communications
- Keep a Notice register with dates, references and responses
- Site instructions and minutes are not a substitute for a Notice



Questions for Discussion

01

If the Specification says one thing and the Drawings say another, which document prevails?

EXAMPLE

Drawings show a 250mm slab, Specification says 200mm.



1.5 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is any conflict, ambiguity or discrepancy in the documents, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement;
- (b) the Letter of Acceptance;
- (c) the Letter of Tender;
- (d) the Particular Conditions Part A – Contract Data;
- (e) the Particular Conditions Part B – Special Provisions;
- (f) these General Conditions;
- (g) the Specification;
- (h) the Drawings;
- (i) the Schedules;
- (j) the JV Undertaking (if the Contractor is a JV); and
- (k) any other documents forming part of the Contract.

If a Party finds a conflict, ambiguity or discrepancy in the documents, that Party shall promptly give a Notice to the Engineer, describing the conflict, ambiguity or discrepancy.....



Questions for Discussion

02 Can the Engineer instruct work that increases cost without Employer approval?

EXAMPLE

Engineer orders extra piling after soft ground is found.



3.5 Engineer's Instructions

.....If an instruction states that it constitutes a Variation, Sub-Clause 13.3.1 [**Variation by Instruction**] shall apply.

If not so stated, and the Contractor considers that the instruction:

- (a) constitutes a Variation (or involves work that is already part of an existing Variation); or
- (b) does not comply with applicable Laws or will reduce the safety of the Works or is technically impossible,

the Contractor shall immediately, and before commencing any work related to the instruction, give a Notice to the Engineer with reasons. If the Engineer does not respond within 7 days after receiving this Notice, by giving a Notice confirming, reversing or varying the instruction, the Engineer shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Engineer's response.....



Questions for Discussion

03 What happens if the Employer's representative gives verbal instructions on site?

EXAMPLE

A verbal order to move a manhole, later denied in writing.



3.5

Engineer's Instructions

The Engineer may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from the Engineer's Representative (if appointed) or an assistant to whom the appropriate authority to give instruction has been delegated under Sub-Clause 3.4 [*Delegation by the Engineer*].



Questions for Discussion

04

Who bears the risk when communications are sent to the wrong contractual contact?

EXAMPLE

Delay notice emailed to a site engineer, not the Engineer.



1.3 Notices and Other Communications

....

(d) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. However, if the recipient gives a Notice of another address, all Notices and other communications shall be delivered accordingly after the sender receives such Notice.



Questions for Discussion

05

Can the Contractor rely on information provided by stakeholders not named in the Contract?

EXAMPLE

Utility company's cable drawings turn out to be wrong.

For operational purposes, yes. For contractual entitlement, generally no.



AGENDA ITEM 02

Risk Allocation and Exceptional Events

Placing each risk with the party best able to foresee, control and absorb it.

Allocation principle

Why blanket transfer of risk to the Contractor raises price and disputes.

Unforeseeable conditions

Physical conditions, site data and the test of an experienced contractor.

Exceptional events

Force majeure (former), change in law and the remedies each triggers.



Questions for Discussion

02 What is the principle of risk allocation?

EXAMPLE

Design risk sits with the designer, ground risk with the Employer.

The core principles behind **FIDIC Red Book 2017** is that risks should be allocated to the party **best able to control, manage, or absorb them**, rather than automatically transferred to the Contractor



Questions for Discussion

01 Shouldn't the Employer pass all risks to the Contractor, since the Employer pays?

EXAMPLE

Bidders price a heavy risk transfer, and tenders come in 20% higher due to Employer's requirements stated that utility relocation is Contractor's responsibility.



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Risk Area	Primary Risk Holder	Key FIDIC Red 2017 Clause
Accuracy of Contractor's methods, plant, workmanship	Contractor	Clause 4.1
Site execution and subcontractors	Contractor	Clauses 4.1, 4.4
Errors in Contractor's documents	Contractor	Clause 5
Access to and possession of Site	Employer	Clause 2.1
Delayed drawings/instructions from Engineer	Employer (subject to notice requirements)	Clause 1.9
Variations instructed by Engineer	Employer	Clause 13
Employer-caused delay or interference	Employer	Clauses 2.1, 8.5
Unforeseeable physical conditions	Shared risk, with compensation mechanism	Clause 4.12
Exceptional Events (formerly Force Majeure)	Shared risk	Clause 18
Employer's Risks to the Works	Employer	Clause 17
Contractor's care of the Works	Contractor	Clause 17
Design by Contractor (where applicable)	Contractor	Clause 5
Changes in Laws	Generally Employer risk through adjustment mechanisms	Clause 13.6
Payment delays by Employer	Employer	Clause 14
Health, safety and environmental compliance	Contractor	Clauses 4.8, 6.7, 6.9
Accuracy of Employer-provided data expressly relied upon	Often Employer, depending on the specific provision and data supplied	Clauses 2 and 4 interaction
Communications and notices sent incorrectly	Sender bears the risk	Clause 1.3



Questions for Discussion

03 Covid-19 - was it an exceptional event?

EXAMPLE

A lockdown halts the site for three months; who carries the cost?



18.1 Exceptional Events

"Exceptional Event" means an exceptional event or circumstance which:

- (i) is beyond a Party's control;
- (ii) the Party could not reasonably have provided against before entering into the Contract;
- (iii) having arisen, such Party could not reasonably have avoided or overcome; and
- (iv) is not substantially attributable to the other Party.....



Questions for Discussion

04 Who should bear the risk of inaccurate geotechnical or site investigation data?

EXAMPLE

Boreholes show rock at 5m; the Contractor hits it at 10m.

Sub-Clause 4.10 – Site Data

While the Employer supplies available sub-surface and hydrological data, the Contractor is deemed to have inspected the Site. Contractor to interpret

Sub-Clause 4.12 – Unforeseeable Physical Conditions

If the Contractor encounters physical conditions that:

- were not reasonably foreseeable by an experienced contractor at the Base Date, and
- cause delay and/or Cost,



Questions for Discussion

08

Is a sudden change in law, sanctions or import restrictions a Contractor or Employer risk?

EXAMPLE

New import duty on steel raises the material cost overnight.



13.6 Adjustments for Changes in Laws

Subject to the following provisions of this Sub-Clause, the Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in:

- (a) the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws);
- (b) the judicial or official governmental interpretation or implementation of the Laws referred to in sub-paragraph (a) above;
- (c) any permit, permission, licence or approval obtained by the Employer or the Contractor under sub-paragraph (a) or (b), respectively, of Sub-Clause 1.13 **[Compliance with Laws]**; or
- (d) the requirements for any permit, permission, licence and/or approval to be obtained by the Contractor under sub-paragraph (b) of Sub-Clause 1.13 **[Compliance with Laws]**, made and/or officially published after the Base Date,



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Thank you

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