



**PRESCRIPTIA DREPTULUI  
MATERIAL LA ACTIUNE AL  
ANTREPRENORULUI IN  
CONTRACTELE FIDIC ROSU**

**THE APPLICATION OF THE  
STATUTE OF LIMITATION TO THE  
CONTRACTOR'S RIGHT OF ACTION  
IN FIDIC RED BOOK CONTRACTS**

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Prezentul articol isi propune sa raspunda urmatoarelor intrebari:

- + Care este termenul de prescriptie a dreptului material la actiune al Antreprenorului aplicabil unui Contract FIDIC 1999 Cartea Rosie?
- + De cand incepe sa curga acest termen de prescriptie a dreptului material la actiune?
- + CAD este de natura sa suspende sau sa intrerupa termenul de prescriptie a dreptului material la actiune?
- + Ce trebuie sa stie Antreprenorul?

**Baza legala**

Potrivit **Sub-clauzei 20.1** din Conditile Generale de Contract pentru Constructii (CGC) pentru cladiri si lucrari ingineresti proiectate de catre Beneficiar FIDIC 1999 Cartea Rosie - **Reclamatii/Revendicarile Antreprenorului:**

*“Daca Antreprenorul se considera indreptatit la orice prelungire a Duratei de Executie si/sau la orice plata suplimentara, potrivit prevederilor oricarei Clauze ale prezentelor Conditii sau altfel in legatura cu Contractul, Antreprenorul va transmite Inginerului o instiintare in care sa descrie evenimentul sau circumstanta care a generat reclamatia. Instiintarea va fi transmisa fara intarziere, in termen de 28 de zile de la data la care Antreprenorul a luat cunostinta sau ar fi trebuit sa ia*

This article aims at answering to the following questions:

- + What is the limitation period applicable to the Contractor in FIDIC 1999 Red Book General Conditions of the Contract?
- + When does the limitation period in such Contracts start to run?
- + Are the DAB proceedings likely to suspend or to interrupt the limitation period?
- + What is it that the Contractor must know?

**Legal basis**

Under the provisions of **Sub-Clause 20.1** of the General Conditions of Contract for Construction (GCC) for buildings and engineering works designed by the Employer - FIDIC 1999 Red Book – **Contractor's Claims:**

*"If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware or should have*



*cunostinta de acest eveniment sau aceasta circumstanta.*

*Daca Antreprenorul nu reuseste sa transmita o instiintare de reclamatie in acest termen de 28 de zile, Durata de Executie nu va fi extinsa, Antreprenorul nu va fi indreptatit la plata suplimentara, iar Beneficiarul va fi eliberat de orice responsabilitate in legatura cu reclamatia. In celelalte cazuri, urmatoarele prevederile ale prezentei Sub-Clauze se vor aplica.*

*Antreprenorul va transmite, de asemenea, orice alte notificari solicitate prin Contract si documente justificative ale reclamatiei, toate in functie de relevanta cu evenimentul sau circumstanta.*

*Antreprenorul va pastra, fie pe Santier, fie in alt loc acceptat de catre Inginer, toate inregistrarile curente pe perioada Contractului care pot fi necesare pentru a fundamenta orice reclamatie. Fara sa recunoasca responsabilitatea Beneficiarului, Inginerul poate, dupa primirea unei instiintari potrivit prevederilor prezentei Sub-Clauze, monitoriza pastrarea acestor inregistrari si / sau dispune ca Antreprenorul sa pastreze si inregistrari curente suplimentare. Antreprenorul va permite Inginerului sa verifice toate aceste inregistrari si (daca se dispune) va transmite Inginerului copii ale acestora.*

*In termen de 42 de zile de la data la care Antreprenorul a luat cunostinta (sau ar fi trebuit sa ia cunostinta) de acest eveniment sau aceasta circumstanta care a generat reclamatia, sau in alt termen propus de catre Antreprenor si aprobat de Inginer, Antreprenorul va trimite Inginerului o reclamatie pe deplin detaliata care va include toate detaliile justificative referitoare la motivul reclamatiei si la prelungirea perioadei de executie si / sau si*

*become aware of the event or circumstance.*

*If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.*

*The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.*

*The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.*

*Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed.*

*If the event or circumstance giving rise to the claim has a continuing effect: (a) this fully detailed claim shall be considered as interim; (b) the Contractor shall send further interim claims at monthly intervals,*



*/ sau platile suplimentare reclamate.*

*Daca evenimentul sau circumstanta care au generat reclamatia au un efect continuu, atunci: (a) aceasta reclamatie pe deplin detaliata va fi considerata interimara; (b) Antreprenorul va trimite in continuare, lunar, reclamatii interimare, care sa prezinte intarzierile cumulate si / sau valorile reclamate, impreuna cu detaliile pe care Inginerul le poate solicita in mod rezonabil; si (c) Antreprenorul va trimite o reclamatie finala in termen de 28 de zile de la sfarsitul producerii efectelor generate de acest eveniment sau circumstanta, sau in alt termen propus de catre Antreprenor si aprobat de Inginer.*

*In termen de 42 de zile de la primirea unei reclamatii sau a oricaror detalii suplimentare de justificare a unei reclamatii anterioare, sau in alt termen propus de catre Inginer si aprobat de Antreprenor, Inginerul va raspunde printr-o aprobare, sau printr-o respingere cu comentarii detaliate. De asemenea, el poate solicita orice detalii suplimentar necesar, dar, in acest termen, va transmite oricum raspunsul sau referitor la principiile care au fundamentat reclamatia.*

*Fiecare Certificat de Plata va include acele sume aferente oricarei reclamatii care, in mod rezonabil, sunt confirmate ca fiind datorate potrivit prevederilor relevante din Contract. Pana cand detaliile furnizate sunt suficiente pentru a confirma, in cazul in care confirma, intreaga reclamatie, Antreprenorul nu va fi indreptatit decat la plata acelei parti a reclamatiei pe care a reusit sa o fundamenteze.*

*Inginerul va actiona in conformitate cu prevederile Sub-Clauzei 3.5 [Hotarari]*

*pentru a conveni sau a hotari asupra (i) unei prelungiri (daca este cazul) a Duratei de Executie (inainte sau dupa expirarea*

*giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.*

*Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.*

*Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.*

*The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.*

*The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any*



acesteia), potrivit Sub-Clauzei 8.4 [Prelungirea Duratei de Executie], si / sau (ii) unor plati suplimentare (daca este cazul) la care Antreprenorul este indreptatit potrivit prevederilor Contractului.

*Cerintele prezentei Sub-Clauze se adauga la cerintele altor Subclauze care se pot aplica unei reclamatii. Daca Antreprenorul nu reuseste sa respecte prevederile prezentei Sub-Clauze sau ale altei Sub-Clauze in legatura cu o reclamatie, orice prelungire de timp si / sau plata suplimentara va tine cont (daca este cazul) de masura in care procesul de investigare adecvata a reclamatiei a fost impiedicat sau prejudiciat de acest esec al Antreprenorului, cu exceptia cazului in care reclamatia este respinsa potrivit prevederilor celui de-al doilea paragraf al prezentei Sub-Clauze.”*

Doctrina si practica judiciara au stabilit ca principiile dreptului civil sunt aplicabile Contractului incheiat intre Beneficiar si Antreprenor.

Astfel, unui contract FIDIC Rosu incheiat in Romania i se vor aplica dispozitiile legale privitoare la prescriptia dreptului material la actiune (**Decretul-Lege 167/1958** privind prescriptia extinctiva si ale **Codului Civil din 1864** sau ale **Noului Cod Civil**).

Atat potrivit vechii, cat si potrivit noii reglementari, termenul de prescriptie a dreptului material la actiune al Antreprenorului este de **3 ani**. Noul Cod Civil prevede insa si faptul ca partile pot stabili un alt termen de prescriptie.

Nasterea dreptului la actiune potrivit Sub-clauzei 20.1 FIDIC CGC:

Opinam ca termenul de prescriptie incepe sa curga in momentul in care Antreprenorul transmite Inginerului instiintarea in care descrie evenimentul sau circumstanta care a

*claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.*

Doctrine and judicial practice have established that civil law principles are applicable to the contract concluded between the Employer and the Contractor.

Thus, a contract concluded in Romania based on FIDIC Red Book is also governed by legal provisions regarding the statute of limitations (**Decree-Law 167/1958** regarding the statute of limitations and the **1864 Civil Code** or the **New Civil Code**).

According to both the old and the new regulation, the limitation period is **3 years**. The New Civil Code mentions, however, that the parties may establish another limitation period.

According to Sub-clause 20.1 of the GCC Red FIDIC, we conclude that the Contractor’s right to act starts as follows:

The statute of limitations starts to run when the Contractor submits to the Engineer its notification of intention to claim describing the event or circumstance giving rise to the claim.

The suspension or interruption of the statute of limitations cases are clearly and limitative established by the law. The DAB proceedings are not provided by the same as being able to suspend or interrupt the statute of limitations period. Our conclusion is, hence, that the DAB proceedings are not likely to suspend or discontinue any limitation period, the latter being interrupted only by submitting a request for arbitration.



generat reclamatia.

Cazurile de suspendare si de intrerupere a cursului termenului prescriptiei sunt clar si limitativ prevazute de lege. Procedura in fata CAD nu este prevazuta ca fiind un caz de suspendare sau intrerupere a cursului prescriptiei extinctive. Concluzionam, asadar, ca procedura in fata CAD nu este de natura nici sa suspende si nici sa intrerupa termenul prescriptiei extinctive, aceasta din urma fiind intrerupta doar prin introducerea unei cereri de arbitraj.

Astfel, Antreprenorul trebuie sa depuna cererea de arbitraj in decursul a 3 ani din momentul transmiterii revendicarii sale. In sens contrar, revendicarea si costurile aferente acesteia pot fi respinse de catre Tribunalul Arbitral ca fiind prescrise.

Therefore, the Contractor must submit its request for arbitration within three years since it submitted the notification of intention to claim. If the Contractor fails to do so, its claim and/or any additional payment can be dismissed subsequently to the fact that the Statute of limitations occurred.