

# FIDIC Latin America Contract Users' Conference



**Panama City, 2-3 October 2018**

## Enhanced Claim's Provisions in the Updated Contracts

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**International Federation of Consulting Engineers**  
The Global Voice of Consulting Engineers





## Enhanced Claim's Provisions in the Updated Contracts

- FIDIC Contract Tools
- Typical Project Risks
- Trying to Prevent Claims from Becoming Disputes



## Enhanced Engineer's Role

- Engineer must be impartial
- Not deemed to act as an employee
- Collaborative with all parties

## Dispute Avoidance Adjudication Board (DAAB)

- Proactive



## Early Warning

“New” sub-clause 8.4:

*“Each Party shall advise the other and the Engineer, and the Engineer shall advise the Parties, in advance of any known or probable future events or circumstances which may: (a) adversely affect the work of the Contractor’s Personnel; (b) adversely affect the performance of the Works when completed; (c) increase the Contract Price; and/or (d) delay the execution of the Works or a Section (if any).”*

*The Engineer may request the Contractor to submit a proposal under Sub-Clause 13.3.2 [Variation by Request for Proposal] to avoid or minimise the effects of such event(s) or circumstance(s).”*



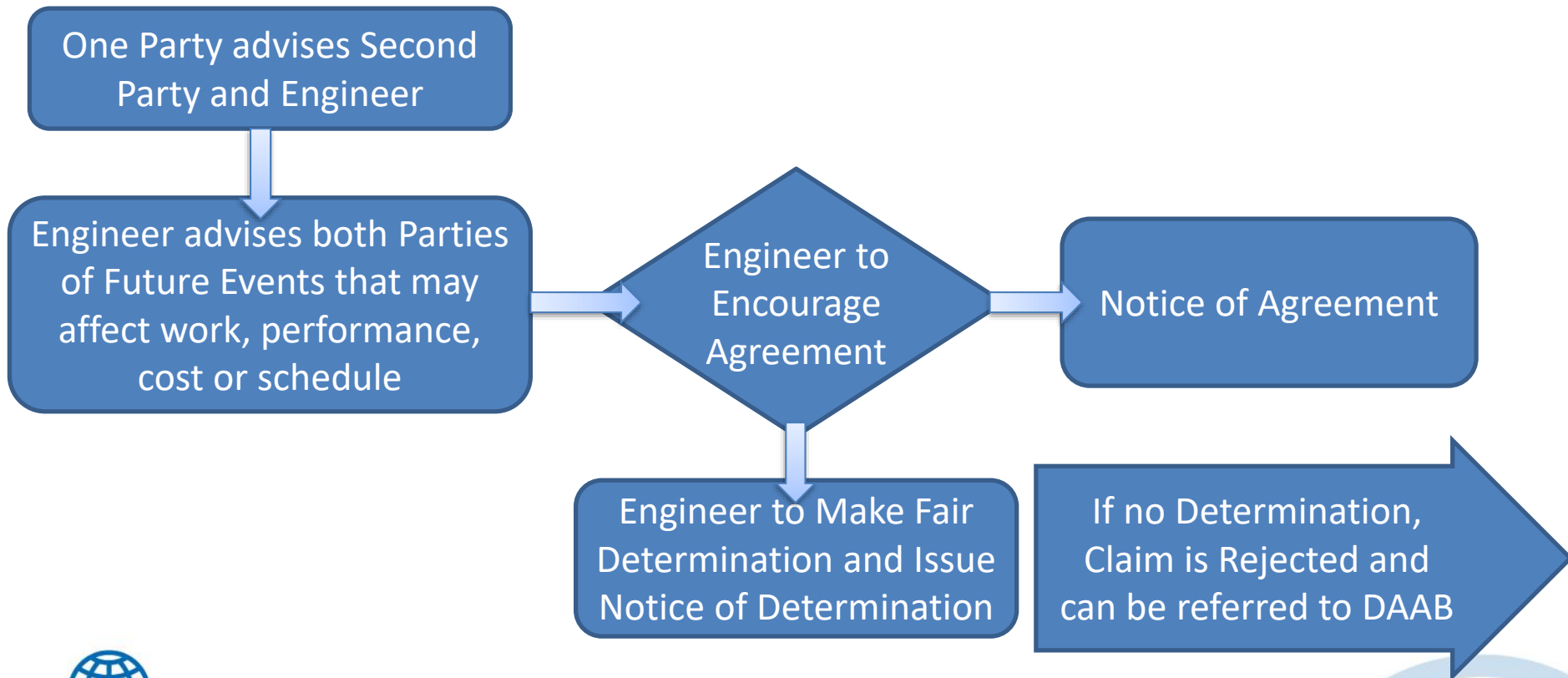
## Enhanced Claims procedure

- Equality of treatment between parties
- Procedure highly time related - *strict* limits of time for participants to act/react
- Specific sanctions for non-observance of the procedure / time limits and content



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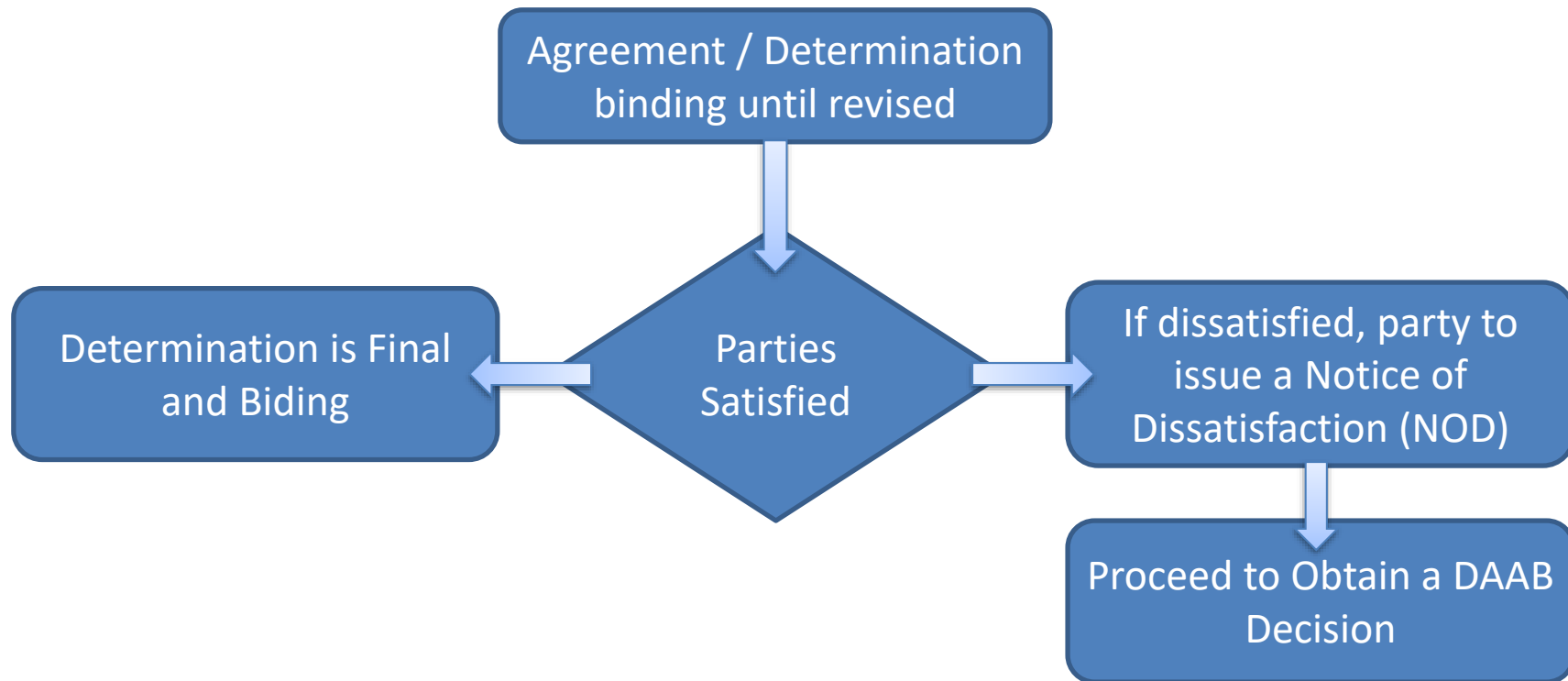






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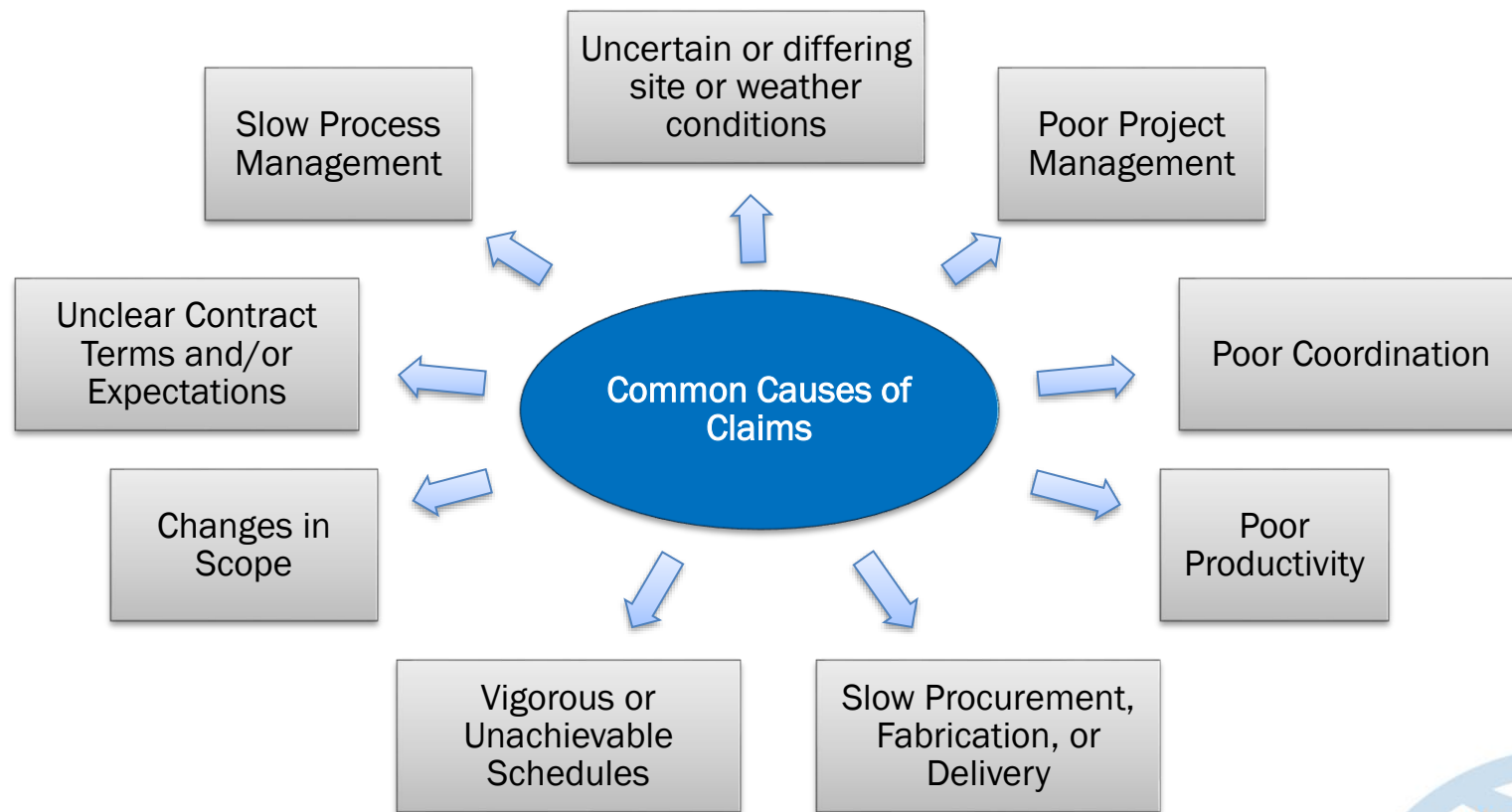
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## How to avoid (claims and) disputes:

- Know the Contract;
- Know the applicable legislation;
- Communicate;
- Have good management of the Contract and Project;
- Address immediately the changes/problems;
- Respect the terms and conditions for Notices, Claims etc;
- Use **DAAB**;
- KEEP THE RECORDS!!



## Importance of records

“New” sub-clause 20.2.3 - “*contemporary records*”:

*“records that are prepared or generated at the same time, or immediately after, the event or circumstances giving rise to the Claim.”;*

The Contractor’s records may be monitored by the Engineer who can instruct the Contractor to keep additional contemporary records.

## Documents v Memory or Witness Statements



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- Prepare and agree to a Baseline “Critical Path Method” (CPM) schedule
- Require monthly updates of CPM schedule
- Analyze CPM schedule updates for accuracy and modifications in real time:
  - Discuss and agree to changes in logic, durations and added/deleted tasks
  - Verify start and completions dates for accuracy
  - Verify percent completes of ongoing tasks
- Quantify total delay during each update period, assess responsibility, and organize contemporaneous documentation to defend position
- Work with contractor or owner to prepare mitigation strategy and document decisions
- Record daily progress information in order forecast task durations using as-built productivity data for each trade





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## Project Cases

