***Speech delivered on 3rd November 2017 at the ESCL Conference, University of Fribourg, Switzerland, based on the subject of my dissertation submitted at the King's College of London:***
***Contract Conditions for Ground Risk under FIDIC 1999 Suite of Contracts***

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I am honoured to be here in this moment, and wish to explain the concept of my dissertation in a few words.

In many years of work as international project manager and as a site man with the '*rubber boots*', I have seen that the risk of adverse ground conditions is a constant factor of uncertainty, often bringing changes that impact the economy of the contract. This is one of the reasons why the ground risk under FIDIC contracts has become the subject of my dissertation, with the debate on the responsibility for carrying out site investigations and for the information made available by the employer. Regarding site investigations, my experience is that '*A perfect and complete knowledge of the ground may be impossible to achieve*'[1]. For this reason, site investigations should be carried out to the extent that a reasonably competent designer would require, considering the constraints of time and money. The contract allocates the ground risk to the parties and establishes limitations, such as *Force Majeure*, while the law has relevance in extreme cases under most jurisdictions, with principles such as impossibility, frustration, or the doctrine of *imprévision* under French law. Since *pacta sunt servanda*, what is foreseen in the contract is the core issue in the allocation of ground risk and, with the exception of the EPC/Turnkey Silver Book where the contractor undertakes the total

1 *Ove Arup v Mirant Asia-Pacific Construction Ltd* [2005] ABC. L.R. 12/21

responsibility for physical condition, the question is how the contract defines what is deemed to be foreseeable, and what ground information is considered to be part of the contract.

In *Bottoms v York*[2] an English case where the employer provided the design but did not disclose his data on ground conditions, the court held that, without express guarantees by the employer, the contractor was responsible for actual conditions. In the *Obrascon v The Attorney General of Gibraltar3*, a case under the FIDIC Yellow book, the employer gave an insufficient estimate of contaminated ground. However, the court affirmed that the contractor had to find out the actual conditions by himself and '*make provisions for a possible worst case scenario'*. By contrast, in *Bacal Construction v Northampton Developments*[4,] since the contract incorporated a report on the foundations the court held that the employer had given his undertaking on those ground conditions. Where there are no express provisions under the contract and there is no employer's warranty as to the accuracy of data on ground conditions, the risk is allocated to the contractor to extent permitted by the law governing the contract. Finally I have indicated that mechanisms ground baseline reports are a way of defining what may be considered to be foreseeable and included in the contract price. The value of making such definition clear in the contract is that of mitigating uncertainty, avoiding disputes, of giving a common field to bidders and reducing the contract price by eliminating, unnecessary contingencies. The study of any such contractual provisions is my subject

[2] *Bottoms v York Corporation* (1892), HBC 4th Ed, ii, 208

[3] *Obrascon Huarte Lain v HM Attorney General of Gibraltar* [2015] EWCA Civ 712

[4] *Bacal Construction (Midlands) Ltd v Northampton Development Corp*. (1975) 8, BLR 88

of further research.  I take this special opportunity to express my gratitude to the King’s College of London, to my professors and my Supervisor that, by dedicating their time and urging me to give the best, led me to this achievement.