

Foundations are vital when working with UAE Civil Code

As a push for lengthier pieces of construction-related legislation becomes increasingly felt, **Antonios Dimitracopoulos**, Partner, Bin Shabib & Associates (BSA) LLP, makes a motion for the adequacy of the current laws and the inadequacy of guides as to what these laws actually mean

Many have expressed a concern over the inadequacy of the 25 articles of the Civil Code that govern contracts of “muqawala” i.e. contracts to make a thing or perform a task – the nearest generic concept to construction.

Stemming from both a Civil Law system (Greece) and a Common Law one (UK) I can understand the frustration that many lawyers originating from common law jurisdictions may experience: very few provisions in codified law and – due to arbitration being the preferred mode of dispute resolution in the construction sector – very few cases to be guided by on the interpretation of those Civil Law articles. Not to mention the non-binding nature in the UAE of such cases, should one wish to rely on any one of them as a precedent.

However, the fact is that the Civil Codes of most countries are generally minimalistic when it comes to the legislator setting the rules that govern parties’ rights and obligations.

Expanding civil codes into greater detail on the intricacies of specific aspects of, say a construction contract or consultancy agreement, would be deemed as interventionist in most civil law-based jurisdictions. The fundamental principle of most Civil Codes is freedom

of contract. Additional detailed provisions in the law could have been added but, for them not to become too intrusive, they would have to constitute non-mandatory law (i.e. they would have to be accompanied by the words “unless the parties otherwise agree”). The problem then would be that there would be little point in legislating so extensively over issues that can be contracted out of and that are, more often than not, best provided for in the context of contracts rather than law.

So the general purpose of a civil code legislator is to set the limits and the ground foundations upon which the parties can then build their intricate agreements on who does what. With this in mind, the legislators of most civil codes will cover almost every aspect of general commercial practice but will only delve into each individual sector in as much as is necessary to ensure that fundamental issues of public policy are observed.

A case in point is the UAE Civil Code mandatory provision on termination of a “muqawala” contract being possible only through completion of the works, agreement between the parties or Court order. The rationale of the legislator is simple and fundamental: if the line that distinguishes which contractor built what, half



is because arbitral awards are private and confidential and not subject to public access.

One step in the right direction would be for the arbitral bodies in the UAE to compile authoritative, regular and distinctive reports that set out the basic facts and reasoning behind each award, whilst maintaining the privacy of the parties’ names and that of the project in general, similar to those published by the International Chamber of Commerce.

This would shed the light that the legal profession needs when raising an argument, interpreting a Civil Code article or a contractual provision. If compiled regularly enough such a body of authoritative lines of thought could actually result in many arbitration proceedings being avoided altogether.

It may become apparent that the relevant contractual provisions are interpreted by UAE Law experts in such a way so that, for example, the onus of proof when liquidated damages for delay are applied is always upon the contractor to evidence that the employer has not incurred a loss, rather than on the employer that it has.

Focus on arbitration as a dispute resolution mode is increasing in the UAE, with Dubai being at the forefront, so some sort of guide on the way Civil Law provisions are or should be interpreted may become a reality soon. In the meantime, for anyone preparing a contract, it pays to see this exactly like building a structure: lay the foundation first and factor in UAE Civil Code provisions and then fit the parties’ intentions on top rather than around or beyond it.

way through a contract, is erased or even distorted, then this could expose both contractors (the terminated one and the replacing one) to risks of liability (over a part they did not actually build) and/or payment (over a part they did build but did not get paid for).

The same applies to issues of liability for major defects affecting stability and safety. If parties were allowed to compromise issues relating to how stable or safe a building would be, that would obviously affect the rights and possibly the lives of third parties.

So it is not so much a case of there being a major construction boom justifying the drafting of a proportionately bulky construction law. The UAE Civil Code contains more or less as many provisions as it should without becoming over-intrusive in the way private parties wish to distribute their tasks.

What is missing in the local legal scene, admittedly, is a glimpse into the way arbitrators think and apply local law to specific facts, particularly on construction matters. This