



**“IT IS HARD TO SEE WHAT BENEFITS CONTRACTORS WOULD HAVE IN INCREASING THEIR EXPOSURE AND PROLONGING THE COMMENCEMENT OF WHAT WILL BE A LABORIOUS AND COSTLY RECOVERY PROCESS.”**

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## **Dithering trends**

ANTONIOS DIMITRACOPOULOS, PARTNER, BIN SHABIB & ASSOCIATES, WARNS OF THE DANGERS IN DELAYED REACTIONS BY CONTRACTORS TO CANCELLED OR POSTPONED PROJECTS

**As a result of the** termination or indefinite suspension of projects en masse, over the last two to three months, irate contractors were seeking urgent advice from their lawyers on their legal position, as well as on the process and cost of dispute resolution options.

There has now been a widely acknowledged pause of this trend. One can't help but wonder what has caused this dithering on the part of so many terminated or suspended contractors. Don't they want their money?

While reaching for a lawyer's phone number is an impulsive reaction when the news of collective project terminations is first announced, it is clear that going beyond that does not always generate such a spontaneous reaction. There are exceptions of course like the Meydan racecourse arbitration but these tend to confirm rather than overturn the rule.

The fact is that contractors in the UAE do not switch to suing mode at the press of a button. In their vast majority they are strangers in a foreign land. A land they had come to in order to prosper and reap the benefits offered by its hosts in the form of what was an unprecedented construction boom. As a result, one trend that is deeply engrained in the practice of most UAE based contractors is settling for a small part of a claim in exchange for the award of another project, or at least the hope of such an award.

While we all know by now that this type of compensatory leverage is no longer available, there is still a drift towards prolonged negotiations rather than swiftly materialised threats. Some contractors also tread very carefully between those developers that can still provide them with a glimpse of hope for future work and those that are in serious financial difficulty and are just buying time.

In principle, this is all well and good. In most instances, negotiations in all their formalised versions (mediation, conciliation,

DABs etc) are widely acknowledged as a positive way of resolving disputes.

However, current times do not lend themselves to this type of optimistic approach. The disputes at hand are not contained between occasional contractors and their employers. They are worldwide and manifest themselves more strongly in jurisdictions where properties have been heavily invested upon.

Property values have plummeted in a short period of time and the long term prospects do not look particularly optimistic. This means that the source of income for most developers is in a general state of decline. In practical terms, this means that every day that passes when a contractor negotiates with a developer and does not get paid, is a day that the future chances of this happening diminishes.

A more unswerving approach is observed on the part of subcontractors. For them, different forces apply: they do not see the foreign contractors as their hosts, nor do they see them as a reliable future source of income, particularly so if they were nominated subcontractors. Therefore, the first disputes to hit the desks of judges and arbitrators seem to be those between contractors and subcontractors. The inevitable effect of this is that contractors will feel an upward pressure compounding that arising from the absence of new work and of payments due.

So when all hopes for amicable settlements have gone, most contractors will be ultimately faced with two options: option A, commence recovery process, or option B, write off and seek greener pastures.

It is hard to see what benefits contractors would have in increasing their exposure and prolonging the commencement of what will be a laborious and costly recovery process. There is no easy way out of what is an inevitable impasse, and the sooner hard decisions are made the less critical the consequences of delaying making them will be.