

United Arab Emirates

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1 Joint ventures

Must foreign designers or contractors enter into a joint venture with a local contractor to design, build and be paid for their work? Does the law require that the local contractor control the joint venture?

There is no federal requirement stipulating that foreign designers or contractors must enter into a joint venture with a local contractor; they are free to conduct business in the UAE independently. However, Federal Law No. 8 of 1984 (as amended by Law No. 13 of 1988), known simply as the Companies Law, states that foreign contractors (in addition to local companies) must have a trading entity set up in the UAE in order to operate.

Joint ventures are therefore best described as an option, not a mandatory requirement, and are an alternative which can prove to be well suited to the objectives of many contractors. This is because the foreign contractor is able to utilise the local partner's established presence in the UAE, its trade licence and links with specialist recruitment consultants in the industry. Article 56 of the Companies Law describes a joint venture as: 'an association between two or more partners to share the profits or losses of a commercial business or businesses carried out in the private name of one of the partners. Evidence of the association can be substantiated by any manner of attestation'.

2 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

The foreign designer or contractor's first major task will be to decide upon an appropriate form of corporate entity for the purposes of setting up.

Broadly speaking, there are three different frameworks that are available: limited liability company (LLC), branch office and free zone incorporation.

LLCs (being an option for contractors, but not architects) are local companies whereby the liability of the shareholders is restricted to the share capital of the company; 51 per cent of which should be owned by a UAE national.

Branch offices (available to both architects and contractors) are a popular option for foreign companies wishing to have a presence in the UAE, while retaining 100 per cent ownership of its shares. The branch office therefore has the same legal entity as the parent company.

Free zones also allow 100 per cent foreign ownership and are generally easy to set up. However, the commercial activities of the entity are restricted to the geographical area covered by the free zone (whereas branch offices can operate within the entire Emirate in question).

Aside from joint-venture agreements (which do not need to be registered or incorporated in any way) it will be necessary to apply to the municipality or economic department in the relevant Emirate for a trade licence. This includes, but is by no means limited to, registering the business name and any trademarks, finding suitable commercial premises and arranging the necessary connections (ie,

telephone, fax and internet, etc). The accommodation is perhaps the most problematic, particularly if the designer or contractor is coordinating the application from overseas.

Early thought should also be targeted to the identity of the personnel to be operating out of the UAE as all the necessary work permits must be submitted prior to the application for the trade licence being made.

3 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Yes, foreign designers and contractors must be licensed locally before they can undertake their business activities. Such licences are issued by the municipality or economic department in the Emirate in which it has established its office, and will only permit the applicant to establish a place of business in that particular Emirate, and not in any of the other Emirates within the UAE.

Furthermore, all businesses in the UAE are registered with the Chamber of Commerce and Industry in the Emirate in which they obtain their licence.

There are several kinds of construction licence relating to different fields of construction activity. A general construction licence, which authorises the licensee to carry out all types of construction, including civil, mechanical, electrical, petroleum and other related activity, is also available. It should, however, be pointed out that it is not a foregone conclusion that a licence will automatically be given, as evidence of experience in the relevant sector over a substantial period of time (usually up to approximately 15 years) must be provided at the time of the application, and that the rules in this regard are subject to frequent change.

Failure to hold a valid licence is taken very seriously, and can result in not only a fine, but immediate closure of the business entity. There is also a multitude of fines that apply to other breaches with the amount depending upon the severity of the violation.

4 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

The employment of labour within the UAE is governed by UAE Federal Law No. 8 of 1980 as amended by UAE Federal Law No. 12 of 1986 (the Labour Law), although there is no reference to any obligation to employ local labour, whether in a construction project or otherwise.

The Ministry of Labour will only issue a non-national with a work permit if it considers that the applicant has suitable vocational and educational qualifications, the UAE is in need of such persons and there are no other UAE citizens who would otherwise be able to fulfil the role. Bearing in mind the ratios between UAE nationals and expatriates, these conditions are usually very easy to satisfy.

The Ministry of Labour has also introduced an 'emiratisation policy' which is a proactive policy in support of its drive to employ UAE nationals and generally reduce the dependence upon foreign workers. The policy is sector based and provides that certain roles must be filled by UAE nationals, such as human resource managers and secretarial staff, as well as limiting the percentage of foreign workers that can be recruited from any one country. The policy does not have any specific rules or guidance targeted to the construction industry although this position may invariably change as the policy matures.

For the time being, the fact still remains that in practice a very high percentage of construction workers are from foreign countries, particularly India, Pakistan and Bangladesh. This is also reflected in the qualified staff in construction projects who continue to hail from western countries such as the United Kingdom and the United States of America.

5 Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

Under article 132 of the Labour Law, workers who have completed one or more years continuous service are entitled to severance pay on the termination of their employment. This equates to 21 days' remuneration for each year of the first five years of service, and 30 days' remuneration for each additional year of service up to a maximum of two years' remuneration.

Additionally, article 131 of the Labour Law obliges the employer to pay the cost of repatriating the employee (or to any other place agreed upon between the parties). However, where the reason for the termination of the contract is attributable to the employee (ie, pursuant to the grounds for termination as set out in article 120 of the Labour Law), such travel shall be at the employee's own expense.

Finally, so far as protection for the employer is concerned, it is worth mentioning article 127 of the Labour Law, which stipulates that where the work assigned to the employee allows him or her to become acquainted with the employer's clients or to become familiar with the secrets of the business, the employer may require the employee to refrain, after the termination of the contract, from competing with the employer or participating in any enterprise competing with the employer.

It should however be noted here that different rules will apply to certain free zones that have their own jurisdiction and labour laws, such as the Dubai International Finance Centre (DIFC).

6 Health and safety regulation

Are there any specific health and safety rules regulating the construction industry?

Some aspects of the Labour Law are applicable to the health and safety of workers. In particular this law regulates:

- the employees' hours of work and leave (Part IV, articles 65 to 90);
- industrial safety, preventive measures, health and social care for workers (Part V, articles 91 to 101); and
- compensation in respect of employment accidents and occupational diseases (Part VIII, articles 142 to 153 and Table at Schedule 1).

Federal Ministerial Orders have also been issued to amplify on various aspects of the Labour Law and the most relevant ones are as follows:

- Ministerial Order No. 6(1) of 1981 specifying operations for which it is unlawful to employ women, such as handling certain chemicals, etc; and
- Ministerial Order No. 32 of 1982 specifying measures to be taken for the protection of workers from work related risks. In

particular article 19 of this Ministerial Order contains protective measures applicable to digging, demolition and construction works.

Throughout the months of July and August working hours are reduced in the Emirate of Dubai to allow for a break at midday for up to three hours due to the high temperatures. Such regulations are released around May or June of the particular year to which the regulations apply.

In addition to the above, measures relating to fire prevention standards and general fire related safety of buildings are overseen by the Department of Civil Defence or the relevant free zone authority, such as Jebel Ali Free Zone Authority (JAFZA).

The UAE Ministry of Labour is in the process of forming an independent agency for the sole purpose of inspecting health and safety standards on construction sites. The Institute of Occupational Safety and Health (IOSH) has also been working closely with the Ministry of Labour to revise the health and safety laws, which will extend to labour accommodation standards, with tougher penalties for violations.

7 Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

Closure of operations would need to be formally carried out with the authority overseeing the particular entity, and the procedure would vary between the Emirates and the various free zones.

In Dubai, deregistration of an entity would not be possible unless the contractor can evidence to the Dubai Economic Department that it has fulfilled all of its contractual obligations and liabilities towards third parties. To achieve this, the contractor would need to sanction the appointment of an auditor (who will also act as the liquidator) and publicise the intended closure of the entity in two Arabic newspapers, leaving the interested parties a grace period of 45 days in which to object.

The contractor would also need to cancel the employment visas for all its personnel with the Ministry of Labour and comply with all Dubai Economic Department's licence cancellation formalities. Failure to comply with the deregistration requirements would attract penalties on the part of the contractor and could result in a calling of the bond that was deposited with the authorities upon setting up the entity.

8 Standard forms of construction contracts

What standard-contract forms are used for construction and design?

FIDIC-based contracts (International Federation of Consulting Engineers), or at least derivatives of them, are still widely used in the UAE region. However, one will tend to find that the contracts have invariably been substantially modified to bring them into line with local practice.

The Abu Dhabi government must however use the '2007 Abu Dhabi Government Conditions of Contracts' for construction projects being undertaken in the Emirate on behalf of public entities. This position is set forth in Abu Dhabi Laws No. 21 of 2006 and No. 1 of 2007. These contracts, in general terms, maintain the principle features of the FIDIC 1999 forms of contract although they are more onerous for the contractor shifting the balance of power in favour of the employer.

9 Price escalations

In typical construction contracts, who assumes the risk of material price escalation and shortages?

Ordinarily in the UAE, it is the contractors who face the risk burden of any material price escalation or shortages by offering a fixed-price

contract in an effort to clinch the bid for a new project. This trend was especially prevalent during the UAE's boom period, which effectively came to an end at the expiry of the third quarter of 2008.

Otherwise, article 249 of Law No. 2 of 1987 (otherwise known as the Civil Code) provides that if exceptional circumstances of a public nature arise, that could not have been foreseen, and result in the performance of the contractual obligation becoming so oppressive as to threaten grave loss, it shall be permissible for a judge to reduce the oppressive obligation to a reasonable level if justice so requires.

The circumstances giving rise to the loss must have been of a public nature, exceptional and unforeseeable. The law would not afford relief simply because a party has entered into a bad bargain, particularly if it was apparent that the costs of the raw materials were increasing substantially at the time the contract was entered into.

Above all, in considering whether to vary the contractual rates, the court or arbitral tribunal would be asked to depart from what the parties have expressly agreed to in the contracts, and therefore the evidential burden would rest firmly upon the affected party to convince such court or tribunal to exercise its discretion in their favour.

Cost caps for essential commodities such as cement and steel are also frequently reviewed by the Ministry of Economy to prevent exploitation in the UAE by monopolies and cartels within the industry.

10 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

No, the local laws do not provide any official advantage to domestic contractors. Therefore, provided that the foreign contractors are locally registered with a valid trade licence, they are able to tender for local projects in the same fashion as domestic contractors.

That being said, one of the most difficult experiences newly established foreign contractors will inevitably face (unless they enter into a joint venture agreement with a local contractor) is sourcing reliable skilled labour. This is less of a problem for local contractors who are already well established in the region and are able to boast direct links to recruitment agencies with pools of international labourers, or employ their own. This in itself is therefore a significant factor for foreign contractors when considering whether to enter into a joint venture agreement or go it alone.

11 PPP and PFI

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

There is no current formal statutory or regulatory framework for PPP or PFI contracts, although with the local construction industry entering a period of regrowth it is anticipated that this position will invariably change in the near future.

12 Payment of fees

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

Yes, this is indeed an effective weapon available to a contractor under the UAE Civil Transactions Law.

It is important, however, to observe the contractual dispute resolution procedures (if any) before embarking upon the above course of action, especially if the employer perceives there to be a valid reason as to why it has withheld the funds, as this could inadvertently result in more drastic action being taken such as the employer's application for the removal of the contractor from the site combined with the unilateral calling of its bonds.

Another effective weapon, especially when wrongfully terminated by the owner, is for the contractor to simply use its continued occupation on site as leverage to secure payment of its outstanding dues. This is because the UAE law recognises only three ways of

validly terminating a construction contract, which are set out in article 892 of the Civil Transaction Code, Law No. 5 of 1985 (as amended). These are as follows:

- upon completion of all of the works contracted for;
- by way of mutual agreement between the parties; or
- pursuant to an order of the competent court.

The above provision cannot be contracted out of; therefore any unilateral termination of a construction contract is wrongful, and moreover, invalid as a matter of UAE law.

It therefore follows that the contractor should ensure that it does not formally acknowledge the termination, or indeed carry out any act or omission which could be deemed to be consistent with the termination provisions under the contract.

If the parties remain unable to agree upon a final amount for payment, they should then consider the appointment of an independent engineer or surveyor to determine the extent and value of the works already completed.

The contractor's entitlement to payment in such circumstances is reflected in article 879 of the Civil Code, which provides as follows:

If the work of the contractor produced (a beneficial) effect on the property in question, he may retain it until the consideration due is paid, and if it is lost in his hands prior to payment of the consideration, he shall not be liable to the loss, nor shall he be entitled to the consideration.

13 Tort claims and indemnity

Do local laws permit a general contractor to be indemnified against all acts, errors and omissions arising from the work of a subcontractor, even when the general contractor is negligent?

No, there is no automatic protection under the UAE federal law. A contractor must therefore have an express contractual indemnity in order to benefit from such protection.

It should also be noted that under the UAE Civil Transactions Law, a subcontractor shall have no claim against the employer for anything due from the main contractor unless an assignment has been made to it against the employer.

14 Liability to third parties

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

Yes, in the absence of any contractual privity, the aggrieved third party may pursue a claim against the negligent contractor in tort.

Article 282 of the Civil Code stipulates that 'any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm.'

Therefore if the above provision applies, the contractor (ie, the tortfeasor) will be the party responsible for compensating the injured third party by paying damages, whether for personal injury or damage to property. In the event that the negligent act or omission causes death, blood money will also be payable to the heirs of the deceased (provided that the party responsible is found guilty).

However, if it can be established that the harm in question arose out of a force majeure event (such as fire or floods etc), the contractor will not be held liable. This is reflected in article 287 of the Civil Code, which states as follows:

If a person proves that the loss arose out of an extraneous cause in which he played no part such as natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering loss, he shall not be bound to make it good in the absence of a legal provision or agreement to the contrary.

Clearly, where the construction of the building in question was carried out by a number of subcontractors, it is necessary to firstly deter-

mine which party was actually responsible for the negligent act or omission. Likewise, the issue of contributory negligence must also be carefully considered. With regard to the latter, article 240 of the Civil Code empowers the judge to reduce the level by which an act has to be made good, or to order that it need not be made good if the person suffering harm participated by his or her own act in bringing about the damage.

In essence, a contractor cannot be held liable in tort for works that it did not itself perform; therefore the court may ultimately order a number of contractors to pay damages on a joint and several basis. It should also be noted that any claim in tort will be time barred three years from the date that the person who suffered the loss became aware of the act or omission and the party responsible for it.

Alternatively, where the claim relates to structural parts within a joint ownership building, the third party may elect to pursue the developer pursuant to article 26 of Law No. 27 of 2007 (also known as the Strata Law). This article states that the liability of the developer for repairing or correcting any defects for the structural parts of the joint property shall remain for 10 years commencing from the date the completion certificate was issued.

Likewise, the developer shall also be liable to the third-party occupier for a period of one year for repairing or replacing any defective installations, which includes mechanical and electrical works, health fixations and sewerage fixations.

Finally, in all cases, reference should also be made to the relevant contract in question to ascertain whether it contains any collateral warranties that serve to create a bridge in contractual liability terms between the third party occupier and the contractor or subcontractors.

15 Insurance

To what extent may a contractor obtain insurance to cover its contractual risks?

Other than the recent developments regarding compulsory health insurance, there is no provision under UAE law rendering it compulsory for parties to take out insurance cover for construction projects in the UAE; however, it will almost certainly feature as a contractual requirement. Typical policies taken out in most construction projects are as follows:

- contractor's all risks;
- professional indemnity insurance;
- legal costs insurance (all the more crucial when considering that the UAE does not generally allow the recovery of costs between one party and the other in court). In the event that a dispute arises and legal costs insurance is not in place, after-the-event insurance is generally available;
- environmental liability insurance;
- insurance for health and safety liability; and
- public liability.

When considering the value of most of the projects in the UAE, particularly in Abu Dhabi and Dubai, it is not surprising that the premiums can be high; however they are of course factored into the overall contract price.

16 Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

As mentioned in question 12, provided that the work of the unpaid contractor has produced a beneficial effect, it may exercise a lien over their work until payment is made.

Indeed, this particular scenario has recently become more prevalent in the UAE's construction industry due to the decline in the region's real estate market and general lack of liquidity. In practice,

what this effectively means is that where construction projects have been temporarily suspended, or in some cases abandoned altogether, the above remedy becomes of limited threat to the employer.

In such circumstances, the aggrieved contractor might therefore seek to renegotiate the terms of payment in a bid to salvage at least some level of income.

If however this approach proves to be unsuccessful, a claim for the outstanding amounts should be referred to the appropriate dispute resolution authority. Pending judgment the contractor might also consider applying to the court for a precautionary attachment preventing the developer from transferring or otherwise disposing of the project.

17 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

No, government agencies within the UAE do not benefit from any sovereign immunity.

However, before any court action is taken specifically against Dubai government departments, whether in the form of a court action or enforcement of an arbitral award, the consent of the Dubai Ruler's Court must first be obtained. Such consent, although usually forthcoming, can take up to three months to be issued. In the event that this preliminary step is not taken, it is likely that the claim will be struck out.

18 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable?

There are numerous laws applicable to bribery at both federal and regional level, which carry severe penalties targeted to the offender.

In practical terms, construction contracts will invariably contain a warranty that each party has not secured the contract through bribery. If such a warranty is breached, provisions within the UAE Civil Transactions Law allow an employer to terminate the contract. The contractor will then be liable for any loss or damage that the employer has suffered.

19 Arbitration

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

While not always the case, arbitration effectively remains the preferred mode of dispute resolution for construction disputes within the UAE.

This is perhaps attributable to a number of reasons, the most important being that arbitration proceedings are conducted in private (in contrast with court proceedings, which are public), the inherent technical nature of the majority of construction disputes, (which are arguably better suited to an experienced arbitral panel), and finally, the adversarial style of advocacy, which is closely associated with local arbitration proceedings.

Various UAE public sector bodies have also indicated their preference for arbitration provided that it dictates the seat of the arbitration, the governing law and the arbitration rules.

For example, the Dubai Municipality and Roads and Transport Authority (RTA) has its own standard terms of contract, which includes its own arbitration rules.

Furthermore, the 2007 Abu Dhabi Government Conditions of Contracts also contain an arbitration clause (in the event that the dispute cannot be resolved by the appointed dispute adjudication board), again evidencing the UAE government agencies' open willingness to arbitrate.

That being said, arbitration in the UAE cannot necessarily be said to be a quicker or more cost-effective means of resolving a construc-

tion dispute, especially when factoring in the necessary procedure for ratification of the arbitral award before the UAE courts, which is often subject to extensive procrastination.

20 Foreign corruption

Does local legislation prohibit corrupt practices carried out abroad by persons domiciled in your jurisdiction?

The UAE is a signatory to the UN Convention against Corruption, and ratified it on 22 February 2006. The UAE is also a member of the International Monetary Fund (IMF), which plays an important role in the fight against money laundering and terrorism. There are no further local laws that expressly deal with illegal actions in foreign jurisdictions.

21 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Generally speaking, yes, as article 273 of the Civil Code provides as follows:

- (1) *In contracts binding on both parties, if force majeure supervenes which makes the performance of the contract impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.*
- (2) *In the case of partial impossibility, that part of the contract which is impossible shall be extinguished, and the same shall apply to temporary impossibility in continuing contracts, and in those two cases it shall be permissible for the obligor to cancel the contract provided that the obligee is so aware.*

The first condition arising out of the above, therefore, is that the performance of the contract must be made impossible. The burden of proof in this regard rests firmly upon the person seeking the relief. This is position is set forth in article 287 of the Civil Code, as set out in question 14.

Secondly, the cause of the loss must be extraneous and therefore unforeseeable and unavoidable. In the UAE, significant debate has recently taken place as to whether the economic downturn can reasonably be held to amount to an extraneous cause. This will obviously depend on a number of additional factors such as the time and location the contract was entered into, as well as the identity of the contracting parties. That being said, it is generally regarded that economic downturn is unlikely to constitute sufficient grounds in which to satisfy the defence for force majeure for the simple reason that the contracting parties ought to factor in the risk of shifting economic conditions prior to formation of the contract.

Finally, as an alternative to article 273, which if successfully applied automatically cancels the contract (or where applicable, the relevant part of it) article 249 of the Civil Code (also referred to previously in question 9) empowers a judge to adjust the terms of the contract to reduce the oppressive obligation to a reasonable level:

If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with grave loss, it shall be permissible for the judge, in accordance with the circumstances and after weighing up the interests of each party, to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.

22 Dispute resolution mechanisms

What dispute resolution procedures are successfully used to solve construction disputes?

As mentioned in question 19, the favoured mode of dispute resolution in the construction industry remains to be arbitration, and seems to be continuing that way as the pool of arbitrators within the UAE becomes more experienced and specialised.

However, a UAE arbitral award must be authenticated before the UAE courts, which involves potentially having to proceed through the Court of First Instance, Court of Appeal, and Cassation Court before the award can be enforced.

On 17 February 2008 the Dubai International Finance Centre (DIFC) with the support of the London Court of International Arbitration (LCIA) opened the DIFC/LCIA Arbitration Centre in the DIFC. Any awards issued by the DIFC/LCIA Centre are fully enforceable anywhere in the UAE and benefit from a much faster authentication process via the existing DIFC Court, which sits directly opposite. The DIFC Arbitration Law No. 1 of 2008 also allows non-DIFC entities to elect the DIFC/LCIA Centre as their seat of arbitration.

Aside from arbitration, other forms of alternative dispute resolution (such as mediation, negotiation, expert determination, and conciliation) are still recognised and adopted in the UAE, as well as the conventional litigation route.

23 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

Construction disputes continue to fall under the general jurisdiction of the UAE courts pursuant to articles 20 to 23 of UAE Federal Law No. 11 of 1992 (the Law on Civil Procedure).

However, a specialised chamber now exists within the Dubai courts to deal specifically with property-related disputes, (aside from landlord and tenant disputes, which Dubai's Rent Committee retains jurisdiction over).

24 Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

While the 1999 standard FIDIC forms of contract incorporate DRBs as the first step in the contractual framework for the resolution of disputes between the employer and the contractor, the short answer is 'no', or at least 'not yet'.

However, the government of Abu Dhabi has elected to use the ad hoc type of DRB in its new contract conditions of 2007.

The common role for DRBs is to assist the parties at an early stage by making recommendations as to how the dispute might be resolved; therefore their decisions are predominantly advisory in nature. This is further supported by the fact that referral to DRBs is seldom the final stage of the contractual pyramid for the resolution of ongoing disputes, and as such, it is invariably followed by a referral to either arbitration or court proceedings resulting in a binding decision.

25 Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from?

Although mediation appears to be slowly gaining popularity within the UAE, the fact still remains that it is still a relatively unpopular mode of dispute resolution in comparison to the more established routes such as arbitration and litigation.

The reason for this is perhaps twofold. Firstly, parties tend to favour the certainty of working towards a binding decision, particularly in an industry that is predominantly constituted by foreign participants that come and go. Secondly, it is often perceived that the goal of mediation is to 'resolve' the dispute in question on a purely commercial basis (ie, to somehow make it disappear). This is in direct contrast to arbitration and litigation where the disputes are not resolved as such, but rather decided upon in a final indisputable and enforceable manner.

That being said, in a market where cash is king, and with the pool of new construction projects being less vast than it once was,

it remains to be seen how intent parties will be upon the pursuit of justice when faced with an opportunity for cash settlement.

It is also worth noting that the DIFC/LCIA Arbitration Centre offers a mediation service and has published its own mediation rules which will apply to all mediations conducted under its administration. These can be viewed at www.difcarbitration.com/arbitration/mediation_rules/.

26 Confidentiality in mediation

Are statements made in mediation confidential?

Whereas mediation in most jurisdictions is by default conducted on a 'without prejudice' basis, there is no such automatic protection in the UAE.

The parties are of course able to agree that the mediation should be held on a confidential basis, in which case such agreement should be confirmed in writing before the commencement of the mediation to ensure its validity in the event that the dispute proceeds to arbitration or litigation.

27 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

The UAE acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 on 19 November 2006.

Prior to this, with the exception of bilateral treaties, the UAE would not normally recognise any foreign arbitral awards. However, it remains to be seen how forthcoming the UAE courts will be to the enforcement of arbitral awards arising from the other 130 plus member states.

28 Governing law and arbitration provider

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

Since the UAE's accession to the New York Convention in November 2006, the significance of the arbitration venue for UAE-based projects has decreased significantly.

Construction arbitrations conducted in London, Paris or New York (pursuant to the Rules of ICC, UNCITRAL, AAA, etc) would be suitable alternatives to local dispute resolution. Despite that, a strong preference remains in the construction industry to conduct arbitrations locally in the UAE pursuant to the Rules of the DIAC (2007), the DIFC/LCIA Arbitration Centre, Dubai Municipality and the Roads and Transport Authority.

Certain UAE aspects will invariably apply to the contract simply by virtue of the project being located in the UAE irrespective of any agreement between the parties to the contrary. These include matters such as the contractor's decennial liability relating to the safety and stability of the structures, building regulations, and fire safety requirements. As a result of this position, it is therefore preferable that contracts pertaining to UAE-based construction projects are governed by UAE law to ensure uniformity of application.

29 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

No, the UAE is not yet a party to the Stockholm Declaration of 1972.

However, the UAE created a federal agency in 1993 to manage the environment of the Emirates and to implement national environ-

Update and trends

In an attempt to restore investor confidence following the reputed cancellation of a number of the region's real estate projects, Dubai's Real Estate Regulatory Agency (RERA) has established a new department to oversee the collection of payments to developers that are tied to construction progress. This followed an earlier announcement by RERA that it would not permit developers to collect more than 20 per cent of the cost of the property before the construction begins. The effect of this rule is that many smaller real estate developers are finding it increasingly difficult to enter the market, particularly with the limited financing now available.

RERA and Dubai Land Department (DLD), in a joint initiative, have also set up a committee to cancel construction projects in the Emirate which are no longer feasible.

Last year, the UAE Ministry of Economy completed the long-awaited draft federal arbitration law, although this has yet to be ratified and issued. The draft law is based upon the United Nations Commission on International Trade Laws' Model Law on International Commercial Arbitration adopted on 21 June 1985, as well as the latest developments and standards in international arbitration.

Following postponement of Dubai Municipality's new green regulations due to concerns regarding the cost of compliance, it is anticipated that the regulations will finally come into force later this year once the economy revives.

mental laws. Subsequent to that, the Environmental Research and Wildlife Development Agency (ERWDA) was created in 1996 (Law No. 4). ERWDA was established to protect the natural wealth of the Emirate of Abu Dhabi, and to promote sustainable development. Law No. 16 of 2005 called for the restructuring of ERWDA giving it more authority on all environmental efforts.

In addition to the above, there is one other relevant local law: No. 21 of 2005 concerning waste management in the Emirate of Abu Dhabi.

The UAE is also subject to the following regional conventions:

- Kuwait Regional Convention for Cooperation on the Protection of the Marine Environments from Pollution (Ratified in 1979);
- Protocol Concerning Marine Pollution Resulting from Exploration and Exploitation of the Continental Shelf (Ratified in 1990);
- Convention on Conservation of Wildlife and its Natural Habitats in the GCC Countries (Ratified in 2003); and
- Protocol on the Control of Marine Transboundary Movements and Disposal of Hazardous Wastes and Other Wastes (Ratified in 2005).

30 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

As mentioned in question 2, if a foreign contractor wishes to set up a LLC, 51 per cent of the share capital must be handed over to a UAE national. This in itself is sometimes regarded as an obstacle to contractors who seek the protection of a LLC while remaining independent.

So far as branch offices are concerned, it will be necessary to appoint an agent who carries a local presence and deals with all procedural requirements. Difficulties can arise if and when the branch office is to be deregistered, as before being able to do this the Ministry of Economy must firstly be satisfied that all of the agent's fees and entitlements have been received (the agent must evidence this by way of a letter).

As agents are often paid a percentage of the profits or contract value of the deals the branch is involved with, and as many businesses in the region continue to grow despite the recent economic downturn, there is a tendency for disputes to arise over payment in this context. That being said, foreign contractors will strive to avoid any formal

disputes in this regard where possible so as to maintain an untarnished reputation within the regional market. Pending the closure of a branch, it is unlikely that it would be possible to set up a LLC.

31 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

The UAE has entered into 32 bilateral investment treaties pursuant to which investments made by the nationals of the contracting countries would be provided with certain protection within the territory of UAE including investments made by the nationals of the UK, France, China, Italy and Malaysia. Pursuant to such treaties the aggrieved individuals and entities would be entitled to refer disputes arising out of measures taken by the government of the UAE directly to arbitration constituted under ICSID Convention or to ad hoc arbitral tribunals created pursuant to a particular treaty.

There is no model bilateral investment agreement developed by the UAE. However, the bilateral investment treaties that the UAE has already entered into generally define the 'investment' in very broad terms to include any kind of asset legally invested in any form within the territory of the UAE including moveable, immoveable and intellectual property, shares, debentures and pledges.

32 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

The UAE has so far entered into avoidance of double taxation agreements with 44 countries. These agreements vary in scope and may apply to taxation of an entities' income alone (eg, pursuant to agreements with Austria, Netherlands, Lebanon), to the entities' income and capital (eg, India, Spain, Morocco) or just inheritance tax (eg France). More limited international agreements are also in existence with some counties providing relief from double taxation on trade related activities conducted by air and sea freight (eg, Switzerland, Sri Lanka).

The UAE is also part of OECD's drive to strengthen tax cooperation and improve exchange of information with countries in the Middle East and north-African region, as well as other OECD countries.

33 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

There are no legislative currency controls on exchange of currencies in the UAE either in terms of the type of the currency or the amount that may be exchanged, save that the exchange rates between the US dollar and the UAE dirham are fixed at 3.669 UAE dirhams for one US dollar.

There is one exception to this, however, as it would not be possible to exchange currencies to and from Israeli shekels or have any dealings in this currency in the territory of UAE pursuant to the Arab boycott of Israel.

Finally, in 2001, six members of the GCC agreed to set up a monetary union similar to the EU, which is set to launch within the next few years. However, while the UAE was initially a participant in the project, it has since withdrawn its interest.

34 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

There are no controls or laws restricting the removal of profits and investments from the UAE.

35 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

The most common practice remains for the developers to engage architectural firms to provide the architectural concepts and designs, pursuant to which the construction contracts are then awarded to the contractors on a build-only basis. Project managers are usually appointed by the developer to oversee the execution of the project but they do not have a direct contractual relationship with the contractor and derive authority solely from their contract with the developer.

Exceptions to this practice can sometimes be found whereby a construction manager is appointed by the developer to contractually engage different contractors for the design and construction of the projects. In such a case collateral warranties are executed by the individual consultants and contractors in favour of the developer to address the liability issues.

Design-and-build and turnkey contracts are also gaining popularity in UAE, but these are mostly limited to technically complex projects such as power plants and oil installations.



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