

# UAE Law for Architects

What's it all about in a nutshell

by ANTONIOS DIMITRACOPOULOS

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In the United Arab Emirates (UAE) contracts of '*muqawala*' (contracts to make a thing or perform a task), the nearest generic concept to construction, and which includes provision of architectural services, are governed by the UAE Civil Code comprising 25 articles. While this may seem inadequate for what is effectively the largest construction site in the world, the fact is that the civil codes of most countries are generally brief when it comes to the legislator setting the rules that govern parties' rights and obligations. 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.

## **FIDIC-like contracts**

Far too many consultants sign off on deadly clauses or proceed with the works for months with no contract signed at all. For example, very few contractors are aware of a 10-year-long liability clause for any defects including minor ones, used in certain contracts issued by Dubai Government departments. If signed, this amounts effectively to a 10-year-long maintenance guarantee.

## **Architectural liability**

Major defects that affect the stability and safety of a structure attract a 10-year-long and unlimited liability under UAE Law. This applies jointly and severally for both architects and contractors. Architects not involved in supervision are of course subject only to a 10-year-long unlimited liability for any purely design (and not supervisory) errors affecting stability and safety of a structure. Decennial liability is actually a 13-year-long liability. If a major defect arises on the eve of the expiry of the decennial liability period, the client has a further 3 years to launch a legal action against the consultant or architect.

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## PI cover

Unlimited liability for 10 years under UAE Law can act like a Damocles' sword over consultants, making it all the more vital for any consultant to have relevant PI cover. And as the UAE focuses on 'greener' projects, obtaining environmental insurance becomes more topical. UAE environmental laws usually impose strict liability on polluters and so the premium payable for this type of insurance may vary substantially on each project depending on the likelihood of a polluting event occurring.

## Sub-consulting

Sub-consultants hardly ever do, or indeed can, argue directly with the client on any payment issues; the main contractor acts as a buffer for the sub-consultant. This is so both by way of UAE Law and by way of contractual agreement. UAE Law specifically precludes sub-consultants from filing their claims directly with the client for any amounts that are normally addressed against the main consultant, unless there is an assignment of the obligation in place.

## Delay

There is no doubt that any delay charge imposed on a consultant is subject to proof of actual loss under UAE Law. This is in contrast with the concept of a genuine pre-estimate of loss in common law systems. The question is who has the burden of proof? The client that it has incurred the loss, or the consultant that the client has not? One should also be conscious of the fact that a consultant's, just like a contractor's, delay liability limit can be broken under UAE Law. The message to be borne in mind is that the maximum exposure that consultants initially factored in could, under UAE Law, be exceeded if the delay is substantial and if it resulted in losses well in excess of what was originally envisaged. For clients, a liquidated damages clause in the UAE is not a path to a discount on the cost of their project: any alleged loss may ultimately be proven as nonexistent.

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## Consultants' escalating staff costs

Staff market rates for resident engineers in particular have increased in the UAE exponentially over the last 5 years. For consultants, this means that their rates must forecast the future and not rely on the present. For clients, this means that the wording of consultancy contracts should ensure that there are no loopholes for future adjustments to actual costs incurred.

## Termination of architectural services

Termination of a construction contract is only legally allowed in the UAE through completion of the project, amicable agreement or on the basis of a court order. In theory, the idea is that this also applies to architectural contracts, although in practice it is more likely to relate to instances where supervisory services are also provided (i.e. the architect is acting as the 'engineer') since those are more inextricably linked to the project progress. The idea behind this concept is that if clients could terminate for convenience, the fine line that separates what was designed and supervised by the terminated consultant and what is built by the new one would be erased or at least severely distorted. In practice, however many consultants in the UAE tend to leave the site more or less whenever they are requested to, regardless of any disputes on liability, outstanding payments or of a court order resolving these.

Juggling legal concepts and avoiding pitfalls is never easy for the uninitiated. However, elementary forethought, common sense and a detachment from one's home habits and practices may demystify any daunting "legalese" aspects of an architect's day-to-day work. The UAE is a burgeoning jurisdiction and, as everywhere else in the world, laws follow social and business patterns – they never precede or create them. With the unprecedented focus on construction, the UAE is now, more

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than ever, a fertile ground for a unique combination of practices to gain a strong foothold and become a future model to follow. *Text: Antonios Dimitracopoulos. Edited: Architecture+*