

InfoPAK<sup>SM</sup>

## Construction and Projects Guide: United Arab Emirates

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# Construction and Projects Guide: United Arab Emirates

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This InfoPAK<sup>SM</sup> provides a Q&A that gives a high level overview of the main trends and significant deals; procurement arrangements; transaction structures and corporate vehicles; financing projects; security and contractual protections that funders require; standard forms of contracts; risk allocation; excluding liability, including caps and force majeure; contractual provisions covering material delays and variations; appointing and paying contractors; subcontractors; licences and consents; projects insurance; employment laws; health and safety; environmental issues; corrupt business practices and bribery; bankruptcy/insolvency; public private partnerships (PPPs); dispute resolution; tax and mitigating tax liability; the main construction organisations; and proposals for reform.

To compare answers across multiple jurisdictions, visit the construction and projects Country Q&A tool at <http://uk.practicallaw.com/4-502-1260>.

This Q&A is part of the global guide to construction and projects law. For a full list of jurisdictional Q&As visit [www.practicallaw.com/construction-guide](http://www.practicallaw.com/construction-guide).

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# I. Overview of the Construction and Projects Sector

## A. What Are the Main Trends in the Local Construction and Projects Market? What Are the Most Significant Deals?

### I. Main Trends

Since the economic crisis, the construction sector in the UAE has not only stabilised, but has been steadily returning to growth. Many projects that were halted as a result of the economic downturn have started again, and several new projects in various industries are currently under development.

With Dubai winning the bid to host the World Expo 2020 last year (2014), investment in infrastructure has dramatically increased within the Emirate. With 25 million attendees expected over the course of the event, it is estimated that an investment of approximately US\$8.8 billion will be required to prepare both the site and the city across all business sectors, including construction, hospitality, aviation and retail.

2015 has also seen an increase in the development of power projects in the UAE, including solar, clean coal and nuclear technologies, as the country seeks to diversify its power supply in the long term.

## 2. Major Projects

Below is a non-exhaustive list of some of the major projects in the UAE:

- **Dubai Metro (Route 2020).** The extension of the Dubai Metro is due to start in the first quarter of 2016. The extension is to include an additional seven stations and stretch 15km, taking the current line directly to the Expo 2020 site.
- **Etihad railway network.** In the context of the overall plan to link the six Gulf Cooperation Council countries by rail, the operation of phase one (a 266km route for carrying sulphur from Shah and Habshan to Ruwais) is due to become operational in 2015. The contracts for phase two (passenger line), linking the border of Saudi Arabia to the border of Oman, is to be awarded soon.
- **Dubai and Abu Dhabi airports expansions.** Dubai Airport has announced a US\$7.8 billion airport expansion programme that aims to increase passengers to 90 million per year. The AED10.8 billion Midfield terminal building (the expansion of Abu Dhabi International Airport) is scheduled to be completed by July 2017.

## II. Procurement Arrangements

### A. Which Are the Most Common Procurement Arrangements If the Main Parties Are Local? Are These Arrangements Different If Some or All of the Main Parties Are International Contractors or Consultants?

In both public and private large scale projects, in particular those involving international contractors, the employer can appoint one contractor to carry out both the design and build of the project. However, "split" procurement is more typical, whereby the employer will enter into an agreement with design and project management consultants, and then appoint a separate contractor to execute the project in accordance with such design.

Federal public procurement in the UAE is governed by the Federal Regulation of Conditions of Purchases, Tenders and Contracts, Financial Order No. 16 of 1975 (Public Tenders Law). Open public tenders are required for most tenders with a contract value over AED700,000, with notable exceptions in the defence sector.

International contractors and consultants are bound by the Public Tenders Law, which provides that foreign entities must meet one of the following conditions:

- Have a UAE national representative (either a registered commercial agent or a national agent for a branch or representative office).
- Set up an entity that is majority-owned by UAE nationals.
- Work through a joint participation venture with a locally licensed entity.

The Public Tenders Law applies to federal but not state government projects. Individual emirates have their own methods of public procurement, although these usually follow those established in the federal law.



### III. Transaction Structures

#### A. What Transaction Structures and Corporate Vehicles Are Most Commonly Used in Both Local and International Projects?

##### 1. Local Projects

Smaller local projects are typically undertaken directly by the consultant or contractor acting independently. Contractors and consultants use a variety of different corporate structures in the UAE. The most common structure is the limited liability company.

##### 2. International Projects

Larger local projects or international projects usually involve joint ventures between two or more different project participants. These typically take the form of unincorporated contractual joint ventures. However, incorporated joint venture entities can also be used. In the context of a project financed transaction, project sponsors will typically establish a special purpose vehicle (SPV) to facilitate the delivery of the project. Depending on the nature of the project, the procuring entity can also take an equity interest in the SPV. For example, most national oil companies retain a majority interest in their project companies in the UAE oil and gas sector.

### IV. Finance

#### A. How Are Projects Financed? How Do Arrangements Differ for Major International Projects?

Smaller public sector projects are usually funded by government funds without the need for debt finance.

Smaller projects in the private sector tend to be financed by lenders on a corporate or full recourse basis.

Major international projects can be financed on a project finance basis. This involves the raising of finance on a limited recourse basis for the purposes of developing a large capital intensive project, where the borrower is a special purpose vehicle. Repayment will be dependent on the internally-generated cash flow of the project. Such large-scale financings are typically based on the Loan Market Association standard finance documents, and often involve a syndicate of local and international lenders. They can also incorporate elements of Islamic financing.

## V. Security and Contractual Protections

### A. What Forms of Security and Contractual Protections Do Funders Typically Require to Protect Their Investments?

#### 1. Security

The following types of security are generally available in the UAE:

- Pledge over movable property.
- Commercial mortgage.
- Mortgage over immovable property.
- Pledge over shares.
- Pledge over bank accounts.
- Assignment of receivables.
- Guarantees.

Funders of large scale projects typically require some or all of the above as part of their security package. The concept of floating charge is not recognised under UAE law.

#### 2. Contractual

The funder also usually requires rights to step-in to the place of the borrower so that the funder can complete the project in the event of, for example, insolvency of the borrower.

## VI. Standard Forms of Contracts

### A. What Standard Forms of Contracts Are Used for Both Local and International Projects? Which Organisations Publish Them?

#### 1. Local Projects

Locally, FIDIC forms of contract are commonly used. Published by the *Fédération Internationale des Ingénieurs Conseils*, the 1999 update has been used in the region for decades, in particular the:

- Conditions of Contract for Construction (Red Book).
- Conditions of Contract for Plant and Build Design (Yellow Book).
- Conditions of Contract for EPC/Turnkey Projects (Silver Book).

In 2007, the Government of Abu Dhabi introduced both construction and design and build contracts for use by government departments on all projects. These are based on the FIDIC Red and Yellow books respectively, but amended in favour of the employer. There are currently no standardised contracts used by the governments of the other emirates. However, government entities in the other emirates, particularly Dubai, have in-house bespoke forms that they rely on. These are usually amended versions of the FIDIC standard forms.

#### 2. International Projects

International projects commonly use the FIDIC forms of contract, although bespoke contracts introduced by international developers are becoming increasingly common in the region. These are often heavily amended versions of the FIDIC standard forms.

## VII. Contractual Issues

### A. Contractors' Risks

#### I. What Risks Are Typically Allocated to the Contractor? How Are These Risks Offset or Managed?

Risk allocation in construction contracts in the UAE is approached in the same way as it is internationally. Risks involving labour, inflation and the cost of materials are commonly adopted by the contractor, while the employer assumes the risk relating to ground conditions, design and political force majeure-type issues (such as war, hostilities, riots and rebellion).

These risks are generally managed in the same way as in many international projects, through insurance, due diligence and conditions precedent.

## VIII. Excluding Liability

### A. How Can Liability Be Excluded or Restricted under Local Law?

Generally, parties in the UAE are free to agree the terms that govern their contractual relationship, and local courts will generally uphold and enforce such contractual terms. Therefore, limitations of liability for consequential losses are generally enforceable.

However, certain mandatory provisions set out in the Law of Civil Transactions of the State of the United Arab Emirates, Federal Law No. 5 of 1985 (UAE Civil Code) take precedence over contractual terms, such as the prohibition on the limitation of liability for "harmful acts" (that is, tort liability) (*Article 296, UAE Civil Code*).

In addition, the UAE Civil Code provides for a strict decennial liability in construction projects, which ensures that the contractor and architect remain jointly liable for the total or partial destruction that threatens the safety and stability of the building which occurs within ten years of the delivery of the works (*Articles 880 to 883, UAE Civil Code*). Decennial liability cannot be excluded or restricted.

## IX. Caps on Liability

### A. Do the Parties Usually Agree a Cap on Liability? If Yes, How Is This Usually Fixed? What Liabilities, If Any, Are Typically Not Capped?

Caps on liability are commonly agreed in the UAE, both for overall contractual liability and individual sub-caps, such as delay and performance-related liquidated damages. The overall cap of liability on construction projects in the UAE is typically about 10% of the contract price.

However, while it is common practice to include liability caps, the UAE courts do retain the discretion to vary any such limitation of liability to make the compensation equal to the actual harm caused. Any agreement that seeks to remove the courts' ability to exercise its discretion and vary the pre-determined amount of compensation will be considered void (*Article 390(2), Law of Civil Transactions of the State of the United Arab Emirates, Federal Law No. 5 of 1985*).

## X. Force Majeure

### A. Are Force Majeure Exclusions Available and Enforceable?

Force majeure clauses are available and enforceable in the UAE. This is supported by Article 287 of the Law of Civil Transactions of the State of the United Arab Emirates, Federal Law No. 5 of 1985, which provides that a person does not have to remedy the harm if it demonstrates that such harm arose from an extraneous cause such as a "natural disaster, sudden incident, force majeure, act of a third party, or act of the person suffering harm", subject to any further statutory or contractual agreement.

Like in many jurisdictions, careful consideration must be given to what is included in the contractual definition of force majeure (for example, whether it includes the adoption of a royal decree).

## XI. Material Delays

### A. What Contractual Provisions Are Typically Negotiated to Cover Material Delays to the Project?

Contractual provisions covering material delays vary depending on the contract and the negotiation position of the parties. Typically, in the UAE, the starting point will be a FIDIC form contract, followed by the negotiation and amendment of various individual clauses. A clause that is often subject to negotiation is the provision of delay damages payable by the contractor to the employer. This is usually a capped amount of about 10% of the contract price. Whether exceeding such a cap will result in termination of the contract is also subject to much negotiation.

In cases where the delay was attributable to the employer or unforeseeable, the contractor will often be entitled to an extension of time and/or costs.

## XII. Material Variations

### A. What Contractual Provisions Are Typically Negotiated to Cover Variations to the Works?

Standard FIDIC terms are often used to cover variations to the works. In such cases, the employer (or engineer) can initiate an instruction to vary the works at any time before the issuance of the taking-over certificate, and the contractor must comply with such instruction. The contractor will be entitled to an extension of time resulting from the variation and the necessary impact on costs will often be determined by the engineer or, if applicable, based on bill rates listed in the bill of quantities.

In addition, value engineering clauses are also typically included, allowing the contractor to submit a written proposal which, if adopted, will provide a benefit to the employer (for example, the reduction in cost or completion time, or improvement in efficiency). If the proposal is adopted and the result is that the reduction in value of the works (taking into account the new lifespan and quality of the works) is less than the reduction of the contract value, the contractor will often be entitled to 50% of the difference between such values.

## XIII. Other Negotiated Provisions

### A. What Other Contractual Provisions Are Usually Heavily Negotiated by the Parties?

The following provisions are commonly subject to heavy negotiations:

- Valuation of variations.
- Site conditions.
- Extension of time.
- Security.
- Payment.
- Termination.
- Subcontracting.
- Back-to-back provisions.
- Design scope.

## XIV. Architects, Engineers and Construction Professionals

### A. How Are Construction Professionals Usually Selected? Following Selection, How Are They Then Formally Appointed?

Construction professionals are often selected through a tender process in the UAE. The employer will usually issue a request for proposals, following which pitches will be submitted, with price and experience often being prevailing considerations. Depending on the project, there will typically be a pre-qualification process to eliminate those without the requisite experience. Following selection, construction professionals are generally appointed under conventional professional services contracts.

## **B. What Provisions of Construction Professionals' Appointments Are Most Heavily Negotiated? Are Liabilities Routinely Limited or Capped in Construction Professionals' Appointments?**

### **I. Negotiated Provisions**

It is common for professional services contracts used in the region to impose standards of "reasonable professional skill and care".

In addition, the following are generally subject to negotiation:

- Exclusion of liability (for indirect and consequential losses).
- Payment structures.
- Intellectual property.
- Confidentiality.

The increase in international projects means that the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act (among others) are being considered more frequently in the region, with anti-bribery and corruption provisions becoming increasingly common.

## **XV.Payment for Construction Work**

### **A. What Are the Usual Methods of Payment for Construction Work? Are There Ways for the Contractor and Consultants to Secure Payment or Mitigate Risks of Non-Payment under Local Law?**

#### **I. Methods of Payment**

It is customary to issue advance payments, either in the form of a bank guarantee or bond. Payment for construction work is then usually made periodically, whether against monthly invoices or linked to the achievement of milestones on the project. Before payment, the completed works will have been certified by the engineer or employer's representative, as applicable.



## 2. Securing Payment

Security mechanisms such as parent company guarantees are not commonly adopted in the region. Instead, contractors generally rely on contractual bonds and guarantees.

Where subcontracts are used, pay-when-paid clauses are generally adopted and enforceable under UAE law. Pay-if-paid provisions are not normally enforceable.

# XVI. Subcontractors

## A. How Do the Parties Typically Manage Their Relationships with Subcontractors?

Pay-when-paid provisions are commonly included in subcontracts to alleviate the risk of non-payment.

Contractors will also seek to incorporate provisions from the main contract into the subcontract, to ensure that any risks and liabilities that are relevant to the subcontract are back-to-back.

Employers will include provisions in the main contract requiring approval of the subcontractor before the contractor can enter into any subcontract. It is becoming increasingly common in limited recourse financed projects to include provisions into the main contract which make such approval conditional on the subcontractor entering into a collateral warranty, allowing the employer a direct recourse against the subcontractor.

## **XVII. Licensing**

### **A. What Licences and Other Consents Must Contractors and Construction Professionals Have to Carry out Local Construction Work? Are There Any Specific Licensing Requirements for International Contractors and Construction Professionals?**

To commence work in the UAE, contractors and construction professionals must establish a local onshore entity, taking the form of either a:

- Branch office.
- Local limited liability company.

See also Section XXVII.

Once established, the company can apply for a trade licence. Each emirate has its own authority responsible for issuing trade licences, which generally take the form of departments of economic development. The trade licence designates the business activities of the company and can come in three forms:

- Commercial licence, which is required if the company intends to conduct construction-related activities.
- Professional licence, which is required if the company intends to conduct activities that include project management.
- Industrial licence, which is required if the company intends to conduct industrial or manufacturing activities.

### **B. What Licences and Other Consents Must a Project Obtain?**

#### **I. Before**

Before the commencement of a construction project, parties must first obtain a building permit and the relevant non-objection certificates from the government bodies in the emirate in which the project is planned. These non-objection certificates include permissions regarding road access, electrical wiring, water and sewage connections and permissions from the Civil Defence Authority.

## 2. During

During the project, various staged inspections are carried out, including inspections of the foundations, concrete work, structure and septic tanks.

## 3. On Completion

On completion, final inspections must be carried out by the relevant authorities that completed the staged inspections, and by the Civil Defence Authority. Building occupancy permits must also be obtained, where applicable.

# XVIII. Projects Insurance

## A. What Types of Insurance Must Be Maintained by law? Are Other Non-Compulsory Types of Insurance Maintained under Contract?

### 1. Compulsory Insurance

The UAE Federal Law does not require any specific construction-related insurance to be taken out in respect of projects. However, the UAE Labour Law includes comprehensive indemnity and gratuity provisions in the event of an employee's labour accident, occupational disease or death. As such, employers generally take out workers' compensation insurances to cover these requirements.

The UAE Federal Health Insurance Law, introduced in 2014, currently requires that companies with more than 100 employees provide all employees with health insurance. This requirement is expected to be extended to companies with less than 100 employees in 2016.

### 2. Non-Compulsory Insurance

Contractors generally maintain all-risks insurance.

## XIX. Employment Laws

### A. What are the Main Requirements for Hiring Local and Foreign Workers?

The Federal law No. (8) of 1980 (as amended) (UAE Labour Law) governs all onshore employee-related matters and is applicable to both public and private employees, whether UAE nationals or expatriate workers. The Labour Law does not apply to Federal Government employees, members of the armed forces, police or security, domestic servants working in private residences, and workers employed in agriculture or pastures.

In addition, there are specific labour-related regulations applicable in some of the free zones. For example, the Dubai International Financial Centre (DIFC) is an "offshore" free zone with its own legal system, where employees are subject to the DIFC Law No. 4 of 2005.

#### I. Local Workers

The UAE Labour Law provides for two types of standard form employment contract:

- Fixed-term employment contract.
- Unlimited employment contract.

A fixed-term contract has a commencement and completion date, is terminated on the end of the specified term (unless extended by mutual consent), and cannot have a term of more than four years.

An unlimited employment contract has a commencement date but no completion date. Such contract can be terminated subject to a 30-day notice period, which is commonly extended by the parties.

#### 2. Foreign Workers

To hire an expatriate employee, an application must be made to the Labour Department, following which a work permit will be issued. The criteria for approving a work permit are set out by the Ministry of Labour and Social Affairs, and provide that the employee must:

- Possess educational qualifications demonstrating the professional competence required.
- Have entered the UAE lawfully.
- Comply with the UAE residence regulations.

Foreign workers must be hired under the same employment contracts as local workers (*see Section XIX.A.1*).

## B. Which Employment Laws Are Relevant to Projects?

All regulations under the Federal law No. (8) of 1980 (UAE Labour Law) apply to all construction employees, including the following rules:

- **Emiratisation.** The Emiratization policy in place in the UAE encourages the employment of UAE national workers. The UAE Labour Law provides that, in the event of non-availability of national workers, preference must first be given to workers who are nationals of an Arab country, followed by workers of other nationalities.
- **Working hours.** Under the UAE Labour Law, employees are not permitted to work more than eight hours a day and 48 hours a week. However, this does not apply to persons holding management or supervisory positions. Employees of hotels, restaurants and commercial establishments are subject to a nine-hour daily limit. Working hours during the holy month of Ramadan are reduced by two hours per day.
- **Overtime.** Overtime under the UAE Labour law is also regulated and must not exceed two hours per day (unless necessary to prevent substantial loss or serious accident). Employees are entitled to an additional 25% of their usual remuneration, increasing to 50% between the hours of 9pm and 4am.

## C. Must an Employer Pay Statutory Redundancy or Other Payments at the End of a Project? Are All Employees Eligible?

Under the Federal law No. (8) of 1980 (UAE Labour Law), an employee who completes one year or more of continuous service is entitled to an end of service gratuity (ESG). ESG is calculated on an annual basis, with 21 days of salary being paid for every year for the first five years, and 30 days of salary for every additional year thereafter. In addition, a worker who voluntarily resigns from his position after one to three years of service is entitled to one third of the ESG (*Article 137, UAE Labour Law*). Where voluntary resignation occurs after three to five years, two thirds of the ESG are payable. Full severance must be paid following the completion of five years of continuous service. Additional payments for unused leave and repatriation expenses must also be made.

Employers of Gulf Cooperation Council (GCC) or UAE nationals must enrol their employees in a federal pension scheme. Once registered, these employees will not be entitled to receive both a benefit under the pension scheme and ESG, but can generally elect to receive whichever will be more beneficial to them.

## XX. Health and Safety

### A. Which Health and Safety Laws Apply to Projects?

There are several laws setting out health and safety requirements, both at the federal and individual emirates levels.

At the federal level, laws such as the Federal law No. (8) of 1980, the Penal Code and various other ministerial regulations contain provisions that must be complied with to ensure employees' safety. These include:

- Providing employees with suitable protection from injury and fire hazards.
- Making available first aid kits.
- Providing a clean and hygienic working environment.
- Providing specific day-time rest periods for outside workers during the height of summer.

Individual emirates also set out additional health and safety requirements in respect of construction projects. For example, both Abu Dhabi and Dubai issue guidelines to improve safety standards in the construction sector.

## XXI. Environmental Issues

### A. Which Local Laws Regulate Projects' Effects on the Environment?

#### I. Air

Federal Law No. (24) of 1999 for the protection and development of the environment (Environmental Law) provides for the protection of air from pollution. This Law sets out permissible limits in respect of exhaust gases, the emission of air pollutants, chimney gas and smoke, and regulates the burning of waste and the use of pesticides. Among other protections, the Environmental Law regulates drilling and construction, and requires that necessary precautions are taken when storing and transporting waste and dust.

## 2. Water

The Environmental Law criminalises the introduction of any substance into the water environment which:

- Has an adverse effect on living or non-living resources.
- Endangers human health.
- Impedes water activities and tourism.
- Impairs the quality of the water.

## 3. Waste

The Environmental Law sets out protections regarding the handling of hazardous substances and waste. The Law requires that all facilities established for the treatment of such waste be licensed and strictly regulates the importation of hazardous waste.

## 4. Environmental Impact Assessments

Under the Environmental Law, all projects and establishments must, before the commencement of the intended activity, carry out a study and an analysis of the:

- Environmental feasibility of the activity.
- Establishment and practices that may affect environmental safety.

## 5. Sustainable Development

Various green regulations have been introduced in both Abu Dhabi and Dubai.

The Abu Dhabi Department of Municipal Affairs has introduced the Abu Dhabi Building Codes, which is a set of construction standards designed to address safety, fire protection and energy conservation, among other issues. These Codes are applicable to all projects in Abu Dhabi, both private and commercial.

Dubai has also recently introduced its own set of regulations. The Green Building Regulations and Specifications sets out specific green building specifications applicable to all buildings within Dubai, with the aim of reducing the consumption of energy, water and materials in the emirate.

## B. Do New Buildings Need to Meet Carbon Emissions or Climate Change Targets?

The UAE is estimated to have one of the largest carbon footprints in the world. While the country is currently under no legal obligation to reduce its footprint, it is actively participating in the United Nations Framework Convention on Climate Change conferences and establishes its own initiatives and sustainability targets to reduce its yearly omissions.

For many years, momentum has been building for a "greener" UAE, but it is in recent years that the country has seen the most developments in this area. In addition to the implementation of the Abu Dhabi Building Codes and the Green Building Regulations and Specifications (*see Section XXI.A.5*), the effort is furthered by the Dubai Strategic Plan 2015, which sets out ambitious targets to be met by 2021 regarding the use of sustainable resources and renewable energy sources.

# XXII. Prohibiting Corrupt Practices

## A. Are There Any Rules Prohibiting Corrupt Business Practices and Bribery (Particularly Any Rules Targeting the Projects Sector)? What Are the Applicable Civil or Criminal Penalties?

### I. Rules

Although not specifically targeting the projects sector, laws regulating corruption in the UAE are contained in the UAE Federal Penal Code (Penal Code). The Penal Code regulates anti-bribery practices in the UAE, both at government level and in the private sector, criminalising bribery, or attempted bribery, of both private and public sector employees. Some emirates also have their own specific regulations (for example, the Dubai Human Recourses Law also regulates the acceptance of gifts).

More recent developments in the UAE include the creation in 2015 of an Anti-Corruption Unit by General Sheikh Mohamed bin Zayed Al Nahyan, Crown Prince of Abu Dhabi and Deputy Supreme Commander of the UAE Armed Forces, which will be tasked with identifying gaps in legislation and investigating irregularities and accusations of corruption.



## 2. Penalties

The Penal Code sets out separate penalties for the public and private sector.

In the public sector, both those offering and accepting bribes are subject to penalties. Persons offering bribes are subject to a fine equivalent to the benefit offered, return of the benefit offered and up to five years' imprisonment. Public officers accepting bribes will be subject to a fine equivalent to the benefit accepted, reimbursement of the benefit accepted and, in certain circumstances, five to ten years' imprisonment.

By contrast, in the private sector, only persons who accept bribes are subject to penalties, with the offender being subject to the same penalties as persons offering bribes in the public sector (*see above*).

## XXIII. Bankruptcy/Insolvency

### A. What Rights Do the Client and Funder Have on the Contractor's Bankruptcy or Insolvency?

A valid contract cannot be terminated unless by mutual consent or court order (*Article 267, UAE Civil Transactions Law*). Therefore, it is common for the client and funders to insist on the inclusion of additional termination provisions in the contract in contemplation of bankruptcy or insolvency.

## XXIV. PPPs

### A. Are Public Private Partnerships (PPPs) Common in Local Construction Projects? If So, Which Sectors Commonly Use PPPs?

To date, PPPs have been uncommon in the UAE, and are mostly limited to government procurement programmes for water and power projects.

However, Law No. 22 of 2015 (PPP Law), introduced in August 2015, aims to encourage PPPs in the hope that more private businesses will invest in local development projects, which may lead to an increased use of PPPs in the UAE.

### B. What Local Laws Apply to PPPs?

The Law No. 22 of 2015 (PPP Law) requires PPP projects to be socially, economically, financially and technologically feasible. The Law sets out approval criteria based on the total cost that will be incurred by the partnership:

- If the total cost does not exceed AED200 million, a government authority's director general can grant approval.
- If the total cost is between AED200 million and AED500 million, the Department of Finance can grant approval.
- If the total cost of the project exceeds AED500 million, the Supreme Financial Policy Committee will be responsible for approving the project.

### C. What Is the Typical Procurement/Tender Process in a PPP Transaction? Does the Government or Another Body Publish Standard Forms of PPP Project Agreement and Related Contracts?

To date, long term concession agreements have been used in the few PPP transactions undertaken in the UAE, following a conventional tender process. There are currently no standard forms of PPP contracts used across all government bodies, although individual government entities generally use their own bespoke templates.

However, if the introduction of the Law No. 22 of 2015 has the desired effect and increases the number of PPPs in the country, the emirates may take a more uniform approach in the future.

## XXV. Dispute Resolution

### A. Which Are the Most Common Formal Dispute Resolution Methods Used? Which Courts and Arbitration Organisations Deal with Construction Disputes?

#### 1. Formal Dispute Resolution Methods

Construction contracts in the UAE generally contain either a litigation or, more commonly, an arbitration clause

#### 2. Courts and Arbitration Organisations

There are several arbitration organisations in the UAE that are commonly used in project and construction matters, namely the:

- Dubai International Arbitration Centre ([www.diac.ae/ideas](http://www.diac.ae/ideas)).
- Dubai International Financial Centre-London Court of International Arbitration ([www.difc-lcia.org](http://www.difc-lcia.org)).
- Abu Dhabi Commercial Conciliation & Arbitration Centre ([www.abudhabichamber.ae/English/Pages/Default.aspx](http://www.abudhabichamber.ae/English/Pages/Default.aspx)).

Each organisation has its own set of procedural rules for arbitration.

However, for large scale international projects, the use of international arbitral centres is still common, including the:

- International Chamber of Commerce ([www.iccwbo.org](http://www.iccwbo.org)).
- London Court of International Arbitration ([www.lcia.org](http://www.lcia.org)).
- United Nations Commission on International Trade Law ([www.uncitral.org](http://www.uncitral.org)).

Parties can choose for disputes to be resolved by the UAE courts. Based on a civil law system, local court proceedings in the UAE are conducted entirely in Arabic and the parties bear their own legal costs. Parties have the additional option to agree that the Dubai International Financial Centre (DIFC) court will be competent to resolve their disputes. The DIFC is subject to its own laws based on the English common law system.

## B. What Are the Most Commonly Used Alternative Dispute Resolution (ADR) Methods?

Apart from arbitration, the use of ADR methods is relatively limited in the UAE. The introduction and general acceptance of the FIDIC 1999 suite of contracts has started to raise awareness on the use of dispute adjudication boards (DABs), with the Government of Abu Dhabi adopting an ad hoc DAB as the first tier of its dispute resolution process in its Condition of Contract (Law No 1. of 2007). However, these provisions did not gain the widespread support they have had internationally and are seldom used, being sometimes removed entirely from FIDIC contracts.

Mediation is mandatory in Dubai and Abu Dhabi for claims brought in the local courts, but its outcome is binding. Failure to take part in mediation results in the action proceeding to the courts.

# XXVI. Tax

## A. What Are the Main Tax Issues Arising on Projects?

There are currently no specific construction-related taxation laws in the UAE. A customs duty of 5% is levied on imported goods, but to date, the UAE does not levy any withholding, capital, income or other personal taxes. However, the UAE Ministry of Finance has recently confirmed that studies have been conducted on the potential implementation of a draft value added tax (VAT) law and the effects that the introduction of a corporate tax may have.

The draft VAT law has been the subject of speculation for some time, with a reported agreement concluded between the UAE and the other states of the Gulf Cooperation Council (GCC) to all impose a VAT law simultaneously. The Ministry of Finance further confirmed that, in addition to the draft law for VAT, draft laws on the creation of a federal tax authority and tax procedures are being prepared and studied to ensure alignment with the country's objectives and procedures. Once finalised and approved, it is expected that the entities to which the laws will be applicable will have around 18 months to implement and fulfil their new taxation obligations.

## B. Are Any Methods Commonly Used to Mitigate Tax Liability on Projects? Are There Any Tax Incentives to Carry out Regeneration Projects?

Due to the lack of taxation in the UAE (*see Section XXVI.A*), there is no mitigation method used nor tax incentives applicable in the UAE. However, the potential introduction of VAT and corporate tax laws could lead the project sector to explore taxation and mitigation methods.

# XXVII. Other Requirements for International Contractors

## A. Are There Any Specific Requirements That International Contractors or Construction Professionals Must Comply with?

As detailed in Section II, after being awarded a project following a public sector tender, a foreign contractor or relevant construction professional must either:

- Enter into a formal contract with a local agent or partner.
- Establish a local onshore company.

More generally, to undertake construction works outside of a public sector tender, the contractor or relevant construction professional is also required to establish a local onshore entity. This legal entity typically takes the form of a branch office, or the contractor can choose to establish a local limited liability company (LLC) in the UAE.

With a branch office, the parent company retains 100% ownership and is responsible for all the branch's liabilities. An LLC has a separate legal identity from its parent company. UAE nationals must hold a 51% ownership in the LLC and there must be between two and 50 shareholders. Both branch offices and LLCs must be registered in the relevant emirate's commercial register (*Federal Law No. 8 of 1984 concerning Commercial Companies (as amended)*).

## XXVIII. Reform and Trends

### A. Are There Any Proposals to Reform Construction and Projects Law? Are There Any New Legal or Regulatory Trends Affecting Projects?

#### 1. Reform Proposals

The introduction of the Law No. 22 of 2015 (PPP Law) (*see Section XXIV*) and the impending VAT and corporate tax laws (*see Section XXVI*) will have an effect on the construction and project sector.

#### 2. Trends

With the World Expo 2020 only five years away, and the effect that the current price of oil is having on the oil-dependent Middle Eastern states, current trends are clearly geared towards encouraging private and international investment in the UAE. The introduction of the PPP law is a large step in this direction. However, it is not currently possible to predict further developments in this field.

## XXIX. Main Construction Organisations

### A. Society of Construction Law (Gulf)

**Main activities.** The Society of Construction Law (Gulf) promotes the study and understanding of construction law among all those involved in the construction industry in the UAE and Gulf region.

W [www.scl-gulf.org](http://www.scl-gulf.org)

### B. Chartered Institute of Arbitrators (CI Arb) (UAE Branch)

**Main activities.** The CI Arb is a leading professional membership organisation representing the interests of alternative dispute practitioners worldwide.

W [www.ciarb.org/branches/middle-east-and-indian-subcontinent/united-arab-emirates/about-us](http://www.ciarb.org/branches/middle-east-and-indian-subcontinent/united-arab-emirates/about-us)

## XXX. Online Resources

### A. World Expo 2020 Dubai

W <http://expo2020dubai.ae/en/>

**Description.** Official website of the World Expo 2020.

### B. Abu Dhabi Building Codes

W [www.abudhabi.ae/portal/public/en/business/business\\_startup\\_and\\_operationalisation/business\\_premises/gen\\_info73?docName=ADEGP\\_DF\\_285650\\_EN&\\_adf.ctrl-state=5z8vf0vba\\_4&\\_afrLoop=6004198519101260](http://www.abudhabi.ae/portal/public/en/business/business_startup_and_operationalisation/business_premises/gen_info73?docName=ADEGP_DF_285650_EN&_adf.ctrl-state=5z8vf0vba_4&_afrLoop=6004198519101260)

**Description.** Information on the Abu Dhabi Building Codes.

### C. Green Building Regulations and Specifications

W [www.dewa.gov.ae/images/greenbuilding\\_eng.pdf](http://www.dewa.gov.ae/images/greenbuilding_eng.pdf)

**Description.** Access to the Green Building Regulations and Specifications (=in English).

### D. PPL Law

W [www.arabianbusiness.com/uae-issues-new-law-encourage-public-private-partnerships-603205.html](http://www.arabianbusiness.com/uae-issues-new-law-encourage-public-private-partnerships-603205.html)

**Description.** Information on the PPL Law introduced in August 2015.

### E. Abu Dhabi Chamber of Commerce and Industry

W [www.abudhabichamber.ae/English/AboutUs/Sectors/CCAC/Pages/Default.aspx](http://www.abudhabichamber.ae/English/AboutUs/Sectors/CCAC/Pages/Default.aspx)

**Description.** Official website of the Abu Dhabi Chamber of Commerce and Industry.

## F. UAE Ministry of Finance

W [www.mof.gov.ae/En/AboutMinistry/News/Pages/1882015.aspx](http://www.mof.gov.ae/En/AboutMinistry/News/Pages/1882015.aspx)

**Description.** Official website of the UAE Ministry of Finance, providing updates on the latest developments regarding VAT and corporate tax in the UAE.

# XXXI. About the Authors

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**Professional qualifications.** England and Wales, Qualified Lawyers Transfer Test; BPP Higher Rights of Audience England and Wales (Solicitor Advocate), BPP

**Areas of practice.** Construction; insurance; dispute resolution.

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### Recent transactions

- Acting for a London based insurer and a New York based insured in respect of a major professional negligence claim in the UAE in connection with a large national infrastructure project valued at US\$3 billion.
- Acting for an unincorporated joint venture in a DIAC Arbitration concerning a major infrastructure project with a claim value of over US\$1 billion.
- Representing a major real estate developer in various actions before the DIFC courts.
- Acting for a large Middle East cladding contractor in an ICC arbitration concerning a major UAE airport.

**Languages.** English

### Professional associations/memberships



- Law Society of England & Wales.
- Law Society of Scotland.
- Registered Practitioner of the Dubai International Financial Centre Courts.
- Member of the Honourable Society of Lincolns Inn.
- The Bar Council (England & Wales).
- Society of Construction Law (Middle East).

## **Publications**

- Iran's \$400bn economy: opening again for business (16 July 2015) – Elexica.
- New UAE Insurance Regulations: a seismic event in the making (27 March 2015) – MENA Insurance Review.
- DIFC Courts' landmark decision reaches beyond formal legal structures (26 November 2014) – Elexica.
- Dubai re-aligns with the New York Convention (27 January 2014) – Elexica.

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## **Recent transactions**

- Advising a Middle Eastern state-owned international energy company in relation to the development of a large-scale modular design gas to liquids project.
- Advising a Northern Emirate on a 25-year oil concession agreement with an international company.
- Advising Abu Dhabi National Oil Company (ADNOC) in connection with the development of the Habshan-Fujairah oil pipeline, including advising in relation to the installation of pipeline infrastructure at Fujairah port terminal.
- Advising a US oil major on a process licence technology agreement with a high-profile Middle East state owned refining company.

- Advising a European oil major on the development of a US\$10 billion gas project in Abu Dhabi.
- Advising a Saudi based conglomerate on the prospective re-financing of two 100 MW power projects in Iraq.
- Advising the international lenders on a proposed secured loan of up to US\$ 250 million in relation to the construction and operation of an industrial petrochemical processing complex located at the El Amereya district in Alexandria, Egypt.

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### Recent transactions

- Acting for a global architect in respect of a construction dispute under the DIAC rules of arbitration.
- Advising an international joint venture contractor on issues related to a FIDIC based contract.
- Acting for a real estate developer on various ADCCAC based arbitration.

**Languages.** English.

### Professional associations/memberships

- Admitted to the New York State Bar.
- Society of Construction Law (Middle East).

**Publications.** FIDIC's dispute adjudication boards: a guide to their use in the UAE – (23 April 2015) Elexica.