



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **Saudi Arabia CONSTRUCTION**

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This country-specific Q&A provides an overview of construction laws and regulations applicable in Saudi Arabia.

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## SAUDI ARABIA CONSTRUCTION



### 1. Is your jurisdiction a common law or civil law jurisdiction?

The Kingdom of Saudi Arabia (**KSA** or the **Kingdom**) is a unique jurisdiction. The legal system is based on Shari'ah (Islamic Law) principles. Shari'ah is derived mainly from primary sources such as the Holy Qur'an (the holy book) and the Sunnah (teachings of Prophet Muhammad (Peace Be Upon Him)). It is also derived from secondary sources such as Ijma (scholarly consensus) and Qiyas (analogy). However, the legal system also contains a hybrid of civil law as many areas are governed by codified laws, and the common law, through the published legal principles based on judicial precedents. These civil law and common law aspects exist only if they are not in contravention of the basic principles of the Shari'ah. Codified laws are mainly commercial in nature, such as the Companies Law, the Bankruptcy Law and laws related to intellectual property. Laws related to inheritance, criminal law and family law, for example, are largely governed by the Shari'ah.

### 2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

There are no specific construction laws or engineering laws in KSA. Instead, a range of laws within the Kingdom are used to govern the area.

For public works, construction and engineering projects are subject to the KSA Government Tenders and Procurement Law (**GTPL**), which was approved by the Saudi Arabian Council of Ministers on 16 July 2019 and came into force on 1 December 2019. The GTPL replaces the previous Government Tenders and Procurement Law issued in 2006. It applies to all projects by KSA government authorities, ministries, departments, public institutions and public bodies with independent corporate personality. It was initiated as part of the KSA's Vision 2030, to increase the attractiveness of the Kingdom to international consultants and contractors, for the purposes of infrastructure development in KSA.

For private works, there are a number of standard form contracts available for international and local contractors. FIDIC contracts are also widely used throughout KSA, albeit in a modified form.

Contracts, whether for public works or private works, are required to be bilingual, in the English and Arabic languages. Whilst private sector entities may draft their contracts in the English language, a certified Arabic translation needs to be provided any submission to government entities. As with all contracts in KSA, if a dispute arises, the Arabic language version of the contract will prevail as the primary version.

Construction and engineering projects must also comply with the Saudi Building Code (**SBC**), which sets out the technical, legal and administrative regulations governing the minimum construction standards that apply to any project.

As the Shari'ah underpins all contracts, there are certain common principles in all contracts. For example, there is great importance on principles such as the duty of good faith, and a prohibition on principles such as Riba (interest or unjust enrichment) and Gharar (speculation or uncertainty). Therefore, contractual remedies are restricted to actual and direct damages suffered; indirect or consequential losses, anticipated or speculative business losses, financial losses from chances, and other speculative or uncertain losses are not admissible. Injunctive relief and specific performance are also typically unavailable.

Some of these Shari'ah principles are codified such as in Article No. 98/3 from the Executive Regulation of GTPL, which states that both parties shall execute their contracts in accordance with their terms, in good faith, and as required for the sound functioning and best interest of the public facility.

### 3. Are there any specific requirements that parties should be aware of in relation to:

**(a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.**

Employers have the duty to protect employees against injuries, so should (among other things) provide employees with:

- suitable means of protection against injuries and dangers, such as fire from use of machinery, work equipment and against occupational diseases that may be contracted during work. The employer shall provide lighting, supply potable and washing water, and comply with other rules, measures and standards of occupational protection, health and safety in accordance with the Minister's decision. The employer may not charge the workers or deduct from their wages any amounts for the provision of such protection;
- a full-time paramedic and a first aid room for more than 50 workers and, for more than 500 workers where the worksite is located at least 10 kilometres away from the nearest medical unit, an ambulance for transporting injured workers;
- social insurance through the General Organisation for Social Insurance ('GOSI') which regulates insurance rights, obligations and compensation in case of injuries resulting from work. It is also applied to all workers in the private or government sectors which are covered by the Labour law that aims to provide these sectors with a financial source upon the end of their services;
- health and safety training and guidelines; a safe, appropriate working environment; and appropriate protective clothing. The employer shall post in a prominent place in the firm the instructions related to work and worker safety in Arabic and, when necessary, in any other language that the workers understand.

There are a body of environmental laws in KSA which underpin this sector. One of the specifications from these laws for the construction sector are Environmental Impact Assessments (EIA). They examine and evaluate a proposed project or development's possible and probable environmental impacts, considering beneficial and adversative inter-related socio-economic, cultural and human health impacts.

They provide a framework that allows predicting environmental impacts at an initial stage in project planning and design, assessing alternatives within and to the project, obtaining extensive baseline data,

systematically identifying and evaluating effects from construction, operation and closure, finding approaches to reduce adverse impacts and shaping projects to create the local built environment. Contractors seeking to carry out projects must submit an EIA and receive environmental accreditation for a project.

Permits are required for any sort of construction work on site. Employers will need to ensure all permits have been obtained before beginning work on site (see Question 4 below).

- No person/company may implement construction works that permanently or temporarily change any land or property, wholly or in part, without obtaining the relevant permit.
- Construction works must be implemented as per approved plans and drawings.

The Saudi Labour Law governs the employer/employee relationship as per Royal Decree No. M/51 corresponding to 27 September 2005, which entered into force on 26 April 2006, superseding the Labour and Workmen Regulation, Royal Decree No. M/21 corresponding to 15 November 1969. It has been regularly updated since entering into force. From a construction and engineering perspective, some of the key employer obligations and liabilities are outlined below.

#### *Safety*

The key health and safety requirements are set out in response to Question 3(a) above.

A periodic evaluation of the work conditions must be processed by the employer to ensure compliance with the applicable rules and with the guidance issued by the Ministry of Human Resources and Social Development (**MHRSD**).

MHRSD supervises the employer's conduct and will run inspections to ensure the adherence to the applicable rules and guidance.

#### *Work-related injuries*

The employer is liable for the medical costs and expenses associated with a work-related injury, or a work disease, until the worker's recovery or until their disability is confirmed.

Whenever the worker is unable to report to work due a work-related injury or disease, the worker is entitled to a daily allowance for each day of their disability by 100% of the daily wage of the injured. It is reduced to 75% if the injured is under treatment at the expense of GOSI.

The allowance is paid in the case of in-patient or sick leave.

If the injury leads to a total permanent disability of the KSA contributor, they are entitled to a monthly benefit of 100% of the average wage during the last three months of the month when the injury occurred.

The contributor receiving a total disability benefit is periodically examined by the competent medical board for a period of five years after the date of payment of benefit. The benefit is reconsidered on the basis of the degree of disability which is determined.

If a competent medical board decides that there is a need for the injured contributor to have the Assistant of Others allowance, they also receive it at a rate of 50% of the value of benefit, provided that it does not exceed more than SAR3,500. The contributor will be periodically examined for a period of 10 years to assess the continuing need for such an allowance. After that, it becomes permanent.

#### *Other obligations and liabilities*

The employer is responsible for the statutory employment entitlements including but not limited to timely payment of salaries via the Wage Protection System ('WPS'), accommodation as per MHRSD's rules, leave, notice period, repatriation ticket, recruitment costs, any other contractual benefits and medical insurance.

From an immigration perspective, the employer must not employ any worker without having the proper work permit and visa in place, as well as follow the Saudisation rules for the sector.

Anti-bribery and anti-corruption laws within KSA place a strong emphasis on "public servants" and specific private sector jobs that "must be treated as public servants". Individuals working on government-related projects, such as consultants to government projects, including temporary contractors, experts appointed by the government or judiciary, and even employees of private companies contracted to provide public services, are included in this. This also includes the staff of joint stock companies, along with their board members and directors.

#### **4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-**

#### **compliance?**

Categories of permitted construction-related activities and their corresponding licensing requirements depend on the type of project, the height of the building and any internal directives that may be applied by the Ministry of Municipal and Rural and Housing (**MOMRAH**).

##### *Before starting work*

Foreign entities seeking to work on construction projects in KSA must have a foreign investment licence from the KSA Ministry of Investment (**MISA**) and a commercial presence in KSA. All consultants and contractors must also obtain a classification/licence from the MOMRAH to allow them to carry out contracting work or engineering.

##### *Before or during the works*

Various permits are required to carry out the works, including permits for civil works, an environmental permit, a permit regarding roads and transport ways, an approval of the plan for disposal of hazardous waste, and permits from the relevant government entities for utilities (including water, electricity and sewage, and telecommunications).

During the works, various inspections will need to be carried out and signed off by the MOMRAH.

##### *On completion*

The contractor requests and receives final inspection from a range of local authorities within the governorate of the building. Once all local authorities have provided sign-off, the building is permitted to be utilised.

#### **5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?**

There is an absence of a statutory tort law in KSA. Shari'ah principles take the place of the statutes. Consequently, when deciding tort cases, judges need to consider tort principles by interpreting them and then applying them to each case individually. (See Question 18 below).

#### **6. Who are the typical parties to a construction and engineering project?**

Developers may be one of the following:

- Commercial and leisure real estate developers (many of which are wholly or partly government-owned).

- Entities such as MOMRAH and the Public Investment Fund ('PIF').
- Project companies set-up by sponsors to develop a specific project financed by limited-recourse financing. Where projects are developed on a PPP model, government entities are increasingly seeking a minority stake in the project company.
- Oil and gas companies (including state-owned organisations such as Saudi Aramco).

Consultants are typically engaged to provide a variety of services including the following:

- Architecture and engineering.
- Project supervision.
- Project management.
- Cost Consultancy / Quantity Surveying.

Main Contractors:

- Main contractors in the KSA are often joint ventures, particularly in the case of "mega" projects where it is almost impossible or impracticable for a single contracting entity to carry out the whole project. Recognising the importance of local and international experience, it is common for local and international contractors and consultants to form a consortium to bid and undertake projects together.
- It is also common for special purpose vehicles (SPVs) to be set up for large-scale projects in the KSA to ensure effective risk management. These SPVs generally take the form of a limited liability company specifically created for the project between a local contractor, an international contractor and, for example, a facilities management contractor.
- Smaller projects can be undertaken by a single contractor, which may be a local contractor or a locally established entity of an international contractor. Any international contractor that is engaged to undertake a project in the KSA must establish a local presence or branch office.

Subcontractors:

- The main contractor will often subcontract parts of the works to specialist subcontractors and, in many cases, will be required to accept subcontractors that have been nominated by the employer (see Question 11 below).

Engineer/Architects:

- Engineers play a key role on most projects but standard form contracts tend to be amended so that the Engineer requires the employer's approval for many important decisions.
- Architects of Record are often appointed to take ultimate responsibility for the project and deal with (and be named on) the licences and permits.

## 7. What are the most popular methods of procurement?

Under the most commonly used procurement and contractual arrangements (involving both local and international parties), the employer engages its own design, supervision and project management consultants and separately procures a contractor to construct the project according to that design. This procurement model is typically known as the traditional model or general contracting and is the prevalent model used in KSA.

Alternatively, particularly large-scale projects are often procured on a design and build basis, so that the contractor is also responsible for design of some or all of the works to meet requirements specified by the employer; or on an EPC/turnkey basis, so that the contractor is responsible for the engineering, procurement and construction of a ready-to-use asset capable of achieving specified outputs and performance criteria. In each of these cases, the contractor may carry out the design and engineering in-house or by engaging external consultants.

## 8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

The most common construction contracts used in KSA are the FIDIC suite of contracts.

The FIDIC Red Book is the most common form of FIDIC used in KSA. Many large developers and owners have their own forms of contract, but these often are amended to varying degrees. The 1999 FIDIC suite of contract remains the most popular base for procuring new projects. The 2017 FIDIC suite has not achieved widespread adoption. NEC 3/NEC 4 is not used in KSA despite gaining popularity by public sector clients in the United Kingdom and other countries.

It is common in the KSA for FIDIC contracts to be amended to be much more heavily in favour of the employer. Such re-allocations of risk can be extensive. The role of the Engineer under the FIDIC Red Book form



is often circumscribed, requiring the Engineer to seek the employer's approval for many important decisions that the Engineer makes under the contract.

Contracts based on the FIDIC Yellow Book are also used for design and build projects and those based on the FIDIC Silver Book are used for EPC contracts, while the other FIDIC forms are also used in relevant circumstances.

Bespoke contracts are increasingly common for mega projects and have always been popular for EPC contracts, particularly utility and industrial projects, or those involving project finance.

### 9. Are there any restrictions or legislative regimes affecting procurement?

Construction contracts are not subject to specific requirements. Rather, in KSA, parties are free to agree the terms of a contract, provided those terms comply with the principles of Shari'ah. Some key principles require the contract to be free from deception, uncertainty and speculation. Therefore, any obligations under a construction contract must be clearly defined.

A "letter of intent" from an employer to a contractor will only be given contractual effect if it meets these requirements. Generally, Shari'ah law does not permit contracts for which the subject matter are assets that are not yet in existence. However, construction contracts come under an exception known as "istisna'a", which permits parties to agree the construction of a future building or asset for a fixed price and a future delivery date. Traditionally, the istisna'a contracts are relied upon for the financing of construction projects.

There is a critical difference between government contracts and other contracts. A specific fundamental difference is directly affecting the parties to government contracts. The government has dual powers once it enters into contracts i.e. sovereign power and a party to a contract. This authority is delegated to the government from the laws and regulations.

GTPL is administered by the Ministry of Finance. The Unified Procurement Agency ('UPA'), a government organisation, is in charge of the nation's unified strategic procurement, according to the public procurement system. An agreement between government agencies, or between government agencies and commercial vendors, is known as a government contract. GTPL is facilitated by an electronic auction system that allows offering bids and selecting the lowest bid.

### 10. Do parties typically engage consultants? What forms are used?

Consultants and construction professionals are typically engaged by the employer, particularly on larger projects. They are generally selected through a competitive tender process. On smaller local projects, employers may appoint construction professionals from a pre-qualified list or those with which they have an existing relationship.

Construction professionals are usually appointed under conventional professional services contracts. The FIDIC White Book (Client/Consultant Model Services Agreement) is widely, but not invariably, used as the platform document, often with supplementary additional conditions.

It is common for construction professionals' contracts to include:

- Provisions imposing the familiar standard of "reasonable professional skill and care".
- Requirements to maintain Professional Indemnity Insurance (with limits on liability usually reflecting the insurance coverage).

### 11. Is subcontracting permitted?

Subcontracting is permitted, provided it is allowed for in the main contract. Given the scale of the projects and the specialist works required, subcontracting is very common, particularly in relation to specialist fields such as design/engineering, enabling and foundation works, mechanical, electrical and plumbing works, façade works and any specialist systems required for the project.

"Nominated subcontractors" are common in the KSA, where the employer selects the subcontractor and requires the main contractor to appoint that particular subcontractor for the specified work. Moreover, it is allowed to conclude subcontracts to execute works and procurements that exceed 30% of the contract amount and less than 50% of the contract amount, subject to the prior consent of the CSE and the government authority, and provided that such works and procurements are assigned to more than one subcontractor.

### 12. How are projects typically financed?

Historically, government projects in the KSA have been self-financed, and recent budget announcements confirm a continued investment in infrastructure and construction projects.

PIF has a world-class investment portfolio with a focus on sustainable investments, both domestically and internationally. With effective, long-term investments, PIF endeavours to be a leading investor while sparking an impact felt beyond KSA borders. PIF maintains a leading and impactful investment strategy in line with Vision 2030, to drive KSA's economic transformation through active, long-term investments and high standards of governance and transparency.

Privately funded projects (other than PPP-style projects) most commonly involve real estate or tourism development projects, which are financed by lenders on a corporate or full recourse basis. In some cases, Islamic finance structures are established which provide further alternative financing options.

### **13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?**

Where the contracting entity is a subsidiary or special purpose vehicle, the employer will often require a parent company guarantee from the ultimate parent entity (or entities) to secure the performance of the contractor's obligations and protect the employer against the consequences of insolvency of the subsidiary company.

The following types of bonds are common in the KSA:

- Bid bond – Tenderers are required to submit a bid bond of between 1% and 2% of the value of the bid. Bids submitted without a bid bond shall be rejected. However, the New GTPL excludes the requirement for a bid bond for direct purchases, competitions, contracts concluded between government entities, contracts concluded with a civil institution, association or non-profit entity, and contracts concluded with local SMEs.
- Performance bond – This is generally held from the commencement of the contract until taking over or the end of the Defects Liability Period. Unconditional on-demand bonds are almost always used which means that the employer can liquidate the bond "on demand", rather than needing to demonstrate any failure in performance by the contractor. However, GTPL will not be required for direct purchases, government-to-government contracts, not-for-profit contracts or SME contracts. In addition, performance bonds will not be required for works valued at under

SAR100,000.

- Retention or retention bonds – Typically, employers tend to retain a percentage of each progress payment as "retention" (see Question 16 below). Sometimes the employer will agree to an on-demand retention bond in lieu of a retention.
- Advance payment bond – It is common for employers to make an advance payment to help finance the works, in exchange for an on-demand bond. The advance payment will then typically be deducted through the monthly certified payments, with the bond being correspondingly reduced in value. Advance payments can be made as long as a performance bond is lodged. There is now no limit on such advance payments, whereas in the old GTPL this is limited to 5% of the contract value (or SAR50 million (approximately US\$13 million), whichever is lower), although the Implementing Regulations may set out some limits.

### **14. Is there any specific legislation relating to payment in the industry?**

The general presumption that payment is due upon completion of the relevant works. The GTPL and associated laws set out default payment obligations applicable to lump sum and measurable contracts, where the parties have failed to specify the basis of remuneration in the contract. However, these provisions are rarely referred to because the parties are free to, and almost invariably do, agree specific payment terms in their contracts which will generally be enforced in accordance with their terms and will take precedence over the default provisions in GTPL.

### **15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?**

There is nothing in KSA law that prohibits or restricts the use of pay-if/when-paid clauses. The use of pay-if/when-paid clauses is very common as main contractors seek to pass certification and payment risks down to subcontractors. This is seen as an important protection for main contractors, particularly where they are being required to subcontract to nominated subcontractors that have been selected by the employer and with whom they may not be familiar or comfortable. Subcontractors will often seek to include similar provisions with their

own subcontractors and suppliers depending on the bargaining positions of those involved.

KSA courts will generally uphold conditional payment terms if they are clearly drafted in the contract, and do not offend Shari'ah principles, such as good faith or manifestly unfair terms.

## **16. Do your contracts contain retention provisions and, if so, how do they operate?**

It is common practice in the region for construction contracts to contain retention provisions. These will typically involve a percentage of each progress payment being retained by the employer, which is then commonly released in two tranches with the first tranche released upon completion of the works and the second released following issuance of the defects liability certificate.

A total retention of 10% of the contract price is common. However, this may vary (occasionally significantly) depending on the nature of the project and respective bargaining power of the parties. In particular, highly technical projects such as energy or rail frequently provide for a higher sum to be retained in relation to the functional performance of the works (for example, in relation to Key Performance Indicators or performance-related damages). In order to facilitate cash flow, the employer will often agree, either at the outset or during the course of a project, to allow the contractor to provide an on-demand retention bond in lieu of withholding a retention.

## **17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?**

Liquidated damages clauses are generally enforceable under Saudi law to the extent they reflect actual loss. They are standard in construction contracts. Any pre-determined compensation remains subject to adjustment by the courts and being measurable, without any uncertainty or unjust enrichment as per the principles of Shari'ah. Any damages provisions for government contracts are determined by the GTPL and are underpinned by the Shari'ah.

Shari'ah rules require that each party should honour their contract *"you who have believed, fulfil [your] obligations"* (يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ) and courts will honour the contract in case of claim for compensation based on a liquidated damages clause within the contract.

With respect to civil liability, the KSA courts have broadly adopted the three-part test: fault, harm and causation.

In KSA, unlike other jurisdictions, compensation clauses highlight specific types of breach and the damages that can be recovered for that breach. They are especially useful when ascertaining the value of damages is difficult. Other forms of damages, such as loss of profit, economic loss, consequential loss, moral prejudice or punitive damages, are only recognised in KSA if they reflect a tangible loss that can be valued in precise terms. For example, the Board of Grievances (the equivalent of administrative courts in KSA) has held that "it is the established jurisprudence of the Board of Grievances not to award compensation for merely possible harm, since compensation must be for an actual damage certain to have occurred".

## **18. Are the parties able to exclude or limit liability?**

Under Shari'ah principles, if an event prevents or delays a party from performing or fulfilling its obligations under a contract, the party may be excused from liability, provided that: (i) the event is unforeseeable at the time of contracting; (ii) the event impacted a party in a manner that it was unable to control; and (iii) some external force (such as a natural disaster or "Act of Allah" type event) has been brought to bear to the detriment of the impacted party seeking relief. The doctrine not only applies where an obligation is physically impossible to achieve, but also to circumstances in which performance has become substantially different to what initially was agreed.

While provisions in a contract that limit or exclude liability will generally be recognised in KSA, the enforceability of such provisions remains uncertain. However, Saudi courts will not uphold an exclusion of liability in cases of fraud, wilful misconduct, recklessness or gross negligence.

## **19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?**

Termination of a construction contract under KSA law involves nuanced issues that need to be considered carefully on a case-by-case basis in light of the specific contractual terms and the factual circumstances involved.

KSA courts recognise that the contract can obtain suspension of performance for the duration of the force majeure event or terminate when performance becomes



impossible without exposing the terminating party to an award of damages. This principle finds its source in Shari'ah principles and therefore applies even if it was not expressly incorporated into the contract.

In the case of public works contracts, Article No. 144 of the Executive Regulation of GTPL permits a contracting party to a government contract to seek to delay their performance under the contract for a period that is proportionate to the period of delay caused by the force majeure event. The contractor will also need to prove that the delay has been caused by the "emergency circumstances" or "reasons beyond his control", as a matter of fact.

A party affected by force majeure events may obtain, with the intervention of the courts, either a suspension of performance for the duration of the force majeure event, or termination of the contract.

## **20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?**

Security typically taken by lenders in the KSA does not differ significantly from the norm in other local jurisdictions. It is likely to include one or more of the following:

- Security over assets of the project company, including plant and machinery, bank accounts and contractual rights. This has become easier with the KSA commercial pledge law, which allows for greater flexibility over the assets that can be secured, including future assets.
- A legal mortgage over the land or site, whereby the title to the property would remain with the mortgagor and the mortgagee would obtain a registered mortgage. The mortgagor and mortgagee may agree in the mortgage agreement that the receivables from the mortgage property will be used to pay in accordance with the amortisation schedule of the debt and to service any other fees, charges and profits. A lease of more than five years will not be enforceable if the property has been mortgaged. Moreover, a property may have more than one mortgagee, allowing for the creation of a succession of mortgages (e.g. first mortgage, second mortgage, and so on).

In more complex projects, there are collateral warranties. They create a direct contractual relationship

between a contractor and a funding institution, whereby the contractor undertakes to the funder to comply with the construction contract.

## **21. Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?**

It is common for construction contracts in the KSA to include notice requirements which purport to operate as a condition precedent to an entitlement to an extension of time, or for an amendment to the contract price, or additional payment.

As a general principle, parties are free to agree any terms in a commercial agreement provided they do not contravene a mandatory provision of Shari'ah or law. Accordingly, the starting point is that clauses containing conditions precedent to additional time or payment should, in principle, be upheld as a condition precedent if the clause sets out sufficiently clearly the specific timing and requirements in respect of the delivery of notice and specifies that the associated rights will be lost in the event that the required notice is not given.

However, parties seeking to avoid the strict application of a condition precedent provision will often raise a number of issues under KSA law, including as to the proper interpretation and application of the notice provisions, whether there has been a waiver (either express or implied) of the condition precedent, whether the party relying on the condition precedent has failed to perform its obligations in good faith in accordance with the requirements of Article 98/3 from the Executive Regulation of GTPL, and whether reliance on the notice clause would amount to an unlawful exercise of that right based on holistic maxims: *la dharara walla dhiraar* "لا ضرر ولا ضرار" no harm and no counter harm.

## **22. What insurances are the parties required to hold? And how long for?**

The contractors will generally be required, as a minimum, to maintain Employer's Liability Insurance, Public Liability Insurance and Health Insurance for employees.

Contractors are generally required to maintain insurance for all construction risks, employer's liability insurance and third party liability insurance while operating in KSA. This area is updated regularly and the stakeholders will

be informed.

### **23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?**

**Arbitration** – The Arbitration Law is largely based on the UNCITRAL Model Law, and governs arbitral procedures held in KSA. Parties are generally permitted to choose the governing law of contracts (certain limitations or prior approvals would, however, apply to contracts with KSA government bodies).<sup>2</sup> The Saudi Centre for Commercial Arbitration (SCCA) has well established institutional rules for resolution of disputes.

**Committee of Bidder/Contractor Dispute** – Based on Article No. 86 of GTPL, the bidder is to first raise a grievance with the government entity during the suspension period if the grievance relates to the selection, or within five days from the decision which is the subject of the complaint. The government entity must reach a decision on the grievance within 15 days.

**Committee for Contractor Violations** – Based on Article No. 88 of GTPL, the Committee for Contractor Violations hears complaints against bidders or contractors relating to contractual violations or breaches of the law. It may prohibit dealing with government entities for up to five years or impose a financial penalty of up to 10% value of the contract/proposal, and/or reduction in contractor status. The bidder/contractor may appeal against Article No. 88 GTPL decisions at the Administrative Courts.

### **24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?**

In relation to domestic awards, under the Enforcement Law of 2013, an arbitral award, to which an enforcement order is appended, is considered a writ of enforcement, allowing the award creditor to seek compulsory enforcement proceedings. Furthermore, in relation to foreign awards, KSA is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. KSA courts are therefore required to give effect to private arbitration agreements and the recognition and enforcement of arbitral awards made in other contracting states.

### **25. Are there any limitation periods for commencing disputes in your jurisdiction?**

The KSA legal system adopts the Shari'ah principle that a just claim never lapses. Notwithstanding, KSA legislation provides that, whilst the underlying claim may subsist indefinitely, a party's right to pursue that claim is subject to certain limitation periods. The Commercial Court Law provides that no claim shall be heard after the lapse of five years from the date at which the claimed rights/entitlements arise, unless the defendant admits the right, or the claimant provides an acceptable excuse for the delay in filing the claim.

### **26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a "fair and reasonable" proportion of the innocent party's losses), and are these commonly used?**

Given the complexity and number of parties involved in some of the large construction projects in the KSA, it is common for disputes to arise that involve multiple parties. Many of the institutional arbitration rules allow for the consolidation of disputes under different contracts between the same parties where certain conditions are met. Occasionally, the underlying arbitration agreements also allow the consolidation of disputes between different parties (for example, where a main contractor is in dispute with two or more subcontractors in relation to similar issues). However, frequently a party may find itself involved in multiple arbitrations (either sequentially or concurrently) in relation to the same project. For example, main contractors may be involved in separate arbitrations against the employer and subcontractors involving similar issues.

### **27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?**

Saudi Arabia's Crown Prince Mohammed bin Salman al-Saud unveiled Vision 2030, a national agenda for economic and social reform aimed at launching a new era of investment in the KSA that would accelerate diversification, plug the housing shortage, open up tourism and expand the KSA's manufacturing base.

For real estate developers and construction companies,

many of these opportunities are emerging on the Vision's real estate giga projects such as Neom future city, Qiddiya entertainment city, Diriyah Gate, Amaala and the Red Sea Project. While significant project contracts are already being awarded, multiple project packages of high value are in the pipeline, which will drive ahead project spending and business opportunities for many years in KSA. There will be challenges for construction materials to enter the country, leading to an increase in material prices. There will also be high demand to recruit the right people with significant experience in project management and other skill sets to help deliver these time-critical projects.

## **28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?**

Under Vision 2030, KSA has emerged as an attractive destination for investors. KSA holds exciting potential and opportunity for investors. KSA Crown Prince Mohammed bin Salman announced KSA would invest more than SAR500 billion in infrastructure, including airports and seaports, by the end of the decade in a bid to become a transport and logistics hub under an economic diversification plan.

As part of Vision 2030, a wide range of economic reforms has succeeded in creating new business opportunities, leveraging KSA's key strategic assets and driving economic growth, diversification and supporting the Kingdom's economic transformation efforts. KSA announced the Giga Projects Programme e.g. NEOM, Diriyah, Qiddiya, Roshon, New Murabba etc. which consider the core component of Vision 2030.

The Giga Projects themselves are split between being directly owned and financed by Public Investment Fund from its own US\$500 billion worth of assets, and those owned and funded by the government through public entities.

## **29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?**

In order to improve efficiency across all project-related activities, from planning to delivery, both developers and contractors are increasingly looking for methods to benefit from digitisation.

Digital transformation refers to the full spectrum of technologies companies employ to improve processes and deliver better customer outcomes, including AI, ML, IoT and cloud computing.

We expect to see a significant increase in the use of Building Information Modelling ('BIM'), coupled with the use of augmented reality technology applications to assist in translating and utilising BIM models on the ground on construction sites.

Digitalisation refers to embedding digital technologies to improve business processes. For example, in the construction industry, IoT can simplify the procurement, distribution and tracking of goods and services.

The intelligent solutions will improve efficiency in construction, ensuring time savings and cost reductions.

KSA's strategy is going digital and encompasses deploying connected construction technologies across the value chain. This includes integrating assets, people and processes into a single intelligent and secure platform to improve operational efficiencies and transparency.

## **30. What do you anticipate to be the impact from the COVID-19 pandemic over the coming year?**

We expect projects to face continued challenges arising from escalation, supply chain disruption, liquidity issues and constraints in accessing sufficient plant and manpower which have arisen from or been exacerbated by the COVID-19 pandemic.

In addition, given the strong economic recovery, many developers will be looking to recover delays on existing projects or expedite projects that may have been suspended or rescheduled as a result of uncertainty surrounding the COVID-19 pandemic. Contractors are also likely to be considering their options in terms of recovering losses incurred as a result of project delays and resulting cost escalation.

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