

Construction and projects in United Arab Emirates: overview

Michael Kerr, Dean Ryburn, Beau McLaren and Zehra Or
Dentons

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OVERVIEW OF THE CONSTRUCTION AND PROJECTS SECTOR

1. What are the main trends in the local construction and projects market? What are the most significant deals?

Main trends

Early in 2013, the Abu Dhabi Government committed to fund a further AED330 billion for major developments over the next five years, focusing on social development, particularly healthcare, education, housing and selected strategic transport projects.

In Dubai, expansion of existing conurbation continues and construction activity remains steady through the various projects taking place, including the completion of the Downtown Dubai and Business Bay projects. Further work is intended in and around Dubai's second major airport, Maktoum International, and there has also been the recent announcement of the construction of Mohammed bin Rashid City. This will be a large mixed-use development, housing retail outlets, art facilities and the "Mall of the World", which is planned to be the world's largest shopping mall.

Major projects

Abu Dhabi has seen progress in two key healthcare projects, the Cleveland Clinic and Al Mafraq New Hospital, which will together provide over 1000 new beds for the capital.

In relation to transport, the development of the UAE's federal rail system (Etihad Rail), tendered in 2012, has proceeded to its first stage (Shah to Habshan) in 2013. The plan is to link Abu Dhabi with Dubai by 2016, with pan-Gulf extensions into Oman and Saudi Arabia to follow later. Provisional plans have also been announced to expand Dubai's Metro system to connect with the federal rail network.

In Dubai, the construction of Mohammed bin Rashid City (*see above*) is a key development project. The future of construction in Dubai will also be affected by the imminent decision on whether Dubai is to be awarded Expo 2020. If so, it is expected that Dubai's construction industry will return to the peak levels seen before the global financial crisis.

PROCUREMENT ARRANGEMENTS

2. 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?

Main players

The main players in construction projects in the UAE are, as in other jurisdictions:

- The project developer, generally referred to as the employer.
- The contractor.

Employers tend to fall into one of the following categories:

- Commercial and leisure real estate developers (often wholly or partly government-owned).
- Public works authorities and public utilities (again usually government-owned, although there are examples in the UAE of power, water and infrastructure facilities being procured through public private partnerships (PPP) structures with the government party participating in the project company (*see Question 29*)).
- Oil and gas companies (including state-owned organisations such as Abu Dhabi National Oil Company).

Most common procurement and contractual arrangements

Consultants are typically engaged to provide the following services:

- Architecture.
- Civil and structural engineering.
- Mechanical and electrical engineering.
- Project supervision.
- Project management.

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.

Alternatively, and as is often seen on large-scale projects, procurement is on a design/build basis (that is, the contractor is responsible for design as well as construction) or an EPC/turnkey basis (that is, 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 two cases the contractor may carry out the design and engineering in-house or by engaging external consultants (see *Question 17*).

International contractors

Any international contractor that is engaged to undertake a project in the UAE must establish a local presence. By recognising the importance of local and international experience, it is now common for local and international contractors and consultants to form a consortium to bid and undertake projects together.

TRANSACTION STRUCTURES

3. What transaction structures and corporate vehicles are most commonly used in both local and international projects?

International projects

Projects in which international companies are involved usually utilise the following corporate structures:

- **Joint ventures.** Joint ventures are often entered into by a local contractor and a much larger international contractor, particularly in the case of “mega” projects where it is impossible for a single contracting entity to carry out the whole project. Joint ventures can be contractual or based on more complex partnership arrangements. The contractual joint venture is by far the most common.
- **Special purpose vehicles (SPVs).** SPVs are commonly used in large-scale projects in the UAE. Typically a local contractor, an international contractor and, for instance, a facilities management contractor will form a company to deliver the project. This ensures effective risk management. SPVs generally take the form of a limited liability company (LLC) specifically created for the project. The percentage equity participation in the LLC by the international company will depend on whether the LLC is incorporated onshore or offshore (which in turn will depend on the location of the project).

Local projects

Smaller projects can be undertaken by the single locally established entity of the local contractor or consultant.

FINANCE

4. How are projects financed? How do arrangements differ for major international projects?

For the large PPP-style projects typically seen in the power and water sectors, limited recourse financing is usually obtained. This is where the security is principally over the project assets and not the assets of the sponsors or investors. Such financing arrangements are mainly based on the precedents of the Loan Market Association and will involve a syndicate of lenders, likely to include international financial institutions.

In the UAE, some local banks are taking an active role in the financing of landmark projects. In some cases, Islamic finance structures have been incorporated, which provide another alternative to conventional financing.

Local, government and public authority projects are usually self-financed. However there are indications that projects which have traditionally been entirely government-financed (for example, road construction) may be procured using private investment or financing in the future.

Privately funded projects (other than PPP-style projects) mainly consist of smaller real estate or tourism development projects which are financed by lenders on a corporate or full recourse basis.

SECURITY AND CONTRACTUAL PROTECTIONS

5. What forms of security and contractual protections do funders typically require to protect their investments?

Security

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

- A commercial mortgage over company assets and plant and machinery. UAE law does not recognise the concept of a floating charge.
- A legal mortgage over the land or site, which may take the form of a sub-usufruct. A usufruct is the right to use, enjoy and occupy land or property, belonging to another person for a fixed term. For example, a usufruct can be granted to a free-trade zone entity of government land where the construction project will take place (the UAE has a number of free-trade zones intended to promote domestic and foreign investment). The free-trade zone entity will then grant the borrower a sub-usufruct, over which the lenders will take a legal mortgage.

Employers will generally require contractors to provide either or both of the following:

- **Performance bonds.** These are where the issuer undertakes to pay if the contractor fails to meet its obligations. They will be issued by a local insurance company or bank and can be in unconditional or on demand form.
- **Parent company guarantees.** These are to secure the performance of the contractor’s obligations.

Contractual

Appropriate risk transfer to the contractor in the construction documentation is a key factor in the funder’s assessment of the strength of the security package available. Due diligence is carried out on the construction documentation to ensure there is an effective risk transfer.

In more complex projects, in particular those involving limited recourse financing, a funding institution will generally require either:

- **Direct agreements.** These agreements give the funder “breathing space” when a contractor’s termination right has become exercisable. The contractor allows the funder an opportunity to replace the project sponsor, complete construction and recover its debt.

- **Collateral warranties.** These agreements create a direct contractual relationship between a contractor and a funding institution. The contractor simply undertakes to the funder to comply with the construction contract.

The approach does not differ significantly between local and international contracts.

STANDARD FORMS OF CONTRACTS

6. What standard forms of contracts are used for both local and international projects? Which organisations publish them?

Local projects

Construction contracts for substantial projects are commonly based on one of the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*) (FIDIC) forms of contract. The three main ones are:

- The Conditions of Contract for Construction (Red Book) for projects where the employer is providing the design.
- The Conditions of Contract for Plant and Design Build (Yellow Book).
- The Conditions of Contract for EPC/Turnkey Projects (Silver Book).

There is an increasing use and acceptance of the 1999 editions of these FIDIC forms, although it is still common to encounter the original or derivative editions from 1987.

Subject to limited exceptions, Abu Dhabi Government departments that procure construction projects in the Emirate must use the Abu Dhabi Government Conditions of Contract for construction or design and build contracts, which were introduced in 2007. These are based on the 1999 FIDIC Red and Yellow books respectively, but have been amended to shift significant additional risk onto the contractor.

There are no conditions of contract prescribed for use by all Dubai Government departments. However, many government departments, including the Roads and Transport Authority (RTA) and the Dubai Municipality (DM), have their own conditions of contract. The RTA and DM conditions of contract are both based on the 1987 FIDIC Red Book with amendments to impose additional risks and obligations on the Contractor.

International projects

International projects (projects carried out within the UAE involving a foreign investor, developer or contractor) also commonly use contracts based on FIDIC. However, for major projects (including PPPs) it is common for employers to use bespoke contracts with specific terms.

CONTRACTUAL ISSUES

Contractors' risks

7. What risks are typically allocated to the contractor? How are these risks offset or managed?

The considerations which determine the choice of risk allocation in the UAE are no different from elsewhere in global construction markets.

The starting point for risk allocation is often set out in the FIDIC forms. For traditional construction-only contracts, this means:

- The employer typically bears the risks of costs due to changes in the law or "special risks" such as war, rebellion and riots.
- The contractor typically bears the risks of costs relating to inflation in materials, labour or consumables.

However, the terms of the contract used by major employers (including Abu Dhabi and Dubai Government departments) often include amendments from the standard FIDIC position to shift additional risk onto the contractor. For example, it is common for a contractor to have:

- More onerous claim notification provisions.
- More restrictive suspension and termination rights.
- Entitlement to certain time-related costs removed.
- A greater risk of unforeseeable site conditions and errors in design document.

It is also common for the engineer for the project to be required to obtain the employer's approval before issuing instructions or making determinations that may have cost or time consequences.

For engineering, procurement and construction (EPC) or turnkey contracts, the contractor will generally be responsible for ensuring that the completed facility can achieve the specified outputs and performance criteria and is fit for its specified purpose.

Construction risks are offset and managed in the same manner as in most other jurisdictions, including through the use of pre-contract due diligence, sub-contracting and insurance.

Excluding liability

8. How can liability be excluded or restricted under local law?

Clauses that limit, cap or exclude liability for consequential losses, loss of production, and loss of revenue are generally enforceable under UAE law. It is preferable to be as specific as possible as to the exact consequential losses to be excluded in order to avoid disputes.

However, contracts governed by UAE law are subject to certain statutory terms which cannot be excluded. For example:

- Any provision which entirely exempts a guilty party from liability will be void (*Article 296, Civil Code*).
- A limitation of liability cannot be relied upon where the defendant has committed a "serious fault". This depends on several factors, including the severity of the breach (including whether it was deliberate), the skill of the defendant, and the harm caused.
- Contractors, architects and other designers are bound by strict decennial liability (that is, liability for ten years following completion and handover of the construction works) for dangerous or structural defects in, or total or partial collapses of, buildings or other structures (*Articles 880 to 883, Civil Code*).
- A court (or arbitral tribunal) can, regardless of any agreement to the contrary, override a contractually agreed compensation arrangement and adjust the specified compensation to make it equal to the actual loss suffered (*Article 390, Civil Code*). This is particularly important in the context of construction contracts, which routinely include provisions imposing liability to pay liquidated damages for culpable delay.

- In exceptional circumstances a court or arbitrator can reduce an oppressive obligation to a reasonable level (*see Question 10*).

Caps on liability

9. Do the parties usually agree a cap on liability? If yes, how is this usually fixed? What liabilities, if any, are typically not capped?

Contractual liability is typically capped. The cap will depend on the nature of the works. It will often be at or near to the contract price, and will usually automatically adjust to reflect changes in the contract price. Liability under indemnities relating to intellectual property rights, death, personal injury, and property damage will often be negotiated as exclusions from the overall cap.

It is also common to see sub-caps for delay and performance penalties or liquidated damages. Such caps will be expressed as a percentage of the total contract price (typically between 5% and 20% of the final contract price).

Liability caps are often negotiated, and are subject to the statutory terms set out in *Question 8*.

Force majeure

10. Are force majeure exclusions available and enforceable?

Contractual force majeure provisions are common, and can be expected to be enforceable as written. Typically, the force majeure event:

- Excuses non-performance of an obligation (other than a payment obligation).
- Does not entitle the affected party to compensation from the other party.

In some cases a party is able to terminate if the other party has been excused from performance for a defined period as a result of a force majeure event.

In addition to contractual force majeure provisions, UAE law allows a court or arbitrator, after weighing up the interests of each party, to reduce a contractual obligation to a "reasonable level", if all of the following apply (*Article 249, Civil Code*):

- There are "exceptional circumstances" of a public nature.
- As a result of the exceptional circumstances, the obligation is "oppressive" (although not necessarily impossible to perform).
- The person with the obligation is threatened with "grave loss".

There is considerable uncertainty surrounding the circumstances in which Article 249 can be successfully invoked, but any attempts to exclude it will be void.

Material delays

11. What contractual provisions are typically negotiated to cover material delays to the project?

On major projects the contractor will almost always be required to complete the works (and possibly each defined section) by a set completion date. For each day or week that it is late in achieving this date, the contractor will usually be liable to pay liquidated damages or

penalties. However, the contractor will be protected by an entitlement to have the required completion date extended in certain circumstances. These will typically include:

- Employer-generated changes in scope (*see Question 12*).
- Employer acts of prevention, for example, delayed site access, or late instructions, drawings or approvals.
- Force majeure events (*see Question 10*).

It is common for employers to amend standard FIDIC provisions by removing the contractor's entitlement to costs associated with extensions of time in some (if not all) circumstances.

Contractors will typically risk losing their entitlement to an extension of time or additional payment if they fail to comply with strict (and sometimes onerous) provisions relating to notification and particulars of claims. Where a contractor has failed to comply with a strict condition precedent, it may be offered some relief if it can establish that their employer has acted in breach of its statutory requirement to exercise its contractual rights in good faith.

Material variations

12. How are material variations to the works usually dealt with in the contract?

Typically, the starting point will be a FIDIC-based variation clause entitling the engineer to direct the contractor to vary any of the quantity, form, or quality of the work.

The contract may also provide for the contractor, either at its own initiative or at the discretion of the employer, to provide an estimated cost and time for implementing a proposed variation before the engineer directs it.

If the parties cannot agree on the time and cost consequences of a variation, the engineer will be asked to make an assessment based on the contractual bill of rates/quantities (if any), or on reasonable rates or the reasonable cost of carrying out the varied work.

The contractor may also be entitled to an extension of time if the varied work causes a critical delay to its programme (*see Question 11*).

Contractors will typically risk losing their entitlement to an extension of time (or additional payment) if they fail to notify or particularise their claim on time (*see Question 11*).

If the contractor or the employer is dissatisfied with the engineer's ultimate determination, they can escalate the determination through the dispute resolution procedures specified in the contract (*see Questions 32 and 33*).

Other negotiated provisions

13. What other contractual provisions are usually heavily negotiated by the parties?

The following issues are typically heavily negotiated:

- Performance securities.
- Exclusions of liability (*see Question 8*).
- Caps on liability and any exclusion to these caps (*see Question 9*).

- Ground conditions.
- Completion obligation risk and penalties.
- Payment terms and contractor suspension rights.

In international contracts the force majeure provisions (see *Question 10*) and responsibility for government consents and authorisations are often also carefully negotiated.

ARCHITECTS, ENGINEERS AND CONSTRUCTION PROFESSIONALS

14. How are construction professionals usually selected? Following selection, how are they then formally appointed?

Construction professionals 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.

15. What provisions of construction professionals' appointments are most heavily negotiated? Are liabilities routinely limited or capped in construction professionals' appointments?

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".
- Exclusions of liability (for example, for indirect and consequential losses).

However, these provisions are subject to mandatory statutory terms such as decennial liability (see *Question 8*).

Construction professionals may wish to negotiate a payment structure. Payment can take the form of a fixed fee paid in instalments or it may be cost-reimbursable. Caps on liability are often included. However the exposure of a consultant carrying out pure project management consultant activities is likely to be more limited than a consultant responsible for producing designs.

PAYMENT FOR CONSTRUCTION WORK

16. 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?

Methods of payment

Advance payments, secured by bank guarantees or bonds are customary.

Subsequent payments are generally made in arrears based on certification by the engineer for the project (or, where there is no

engineer, by the employer's representative) of measured quantities of work completed or by milestones achieved. A percentage may be deducted from each payment and withheld until the expiry of the defects notification period.

Securing payment

Employers rarely grant instruments such as payment bonds and parent company guarantees as security for payments due.

While UAE law does provide for a mechanism equivalent to a lien, it remains largely untested and is unlikely to offer an effective mechanism for contractors to secure payment.

In local subcontracts, pay-when-paid and pay-if-paid clauses are common.

SUBCONTRACTORS

17. How do the parties typically manage their relationships with subcontractors?

Employers often seek to insert provisions in the main contract which enable them to pay subcontractors directly if the contractor fails to pay the subcontractors.

Contractors typically seek to ensure that the main contract is "back-to-back" with those of their subcontractors (that is, full pass-down of risk, obligation and liability for the relevant work to the subcontractor). This extends to payment provisions which are often on a pay-when-paid or pay-if-paid basis (see *Question 16*).

Often the subcontractor must comply with the terms of the main contract to the extent that it relates to the subcontract works and may be required to indemnify the contractor for damages (including liquidated damages) payable under the main contract to the extent they are caused by a default on the part of the subcontractor.

Employers sometimes seek to incorporate provisions in the main contract that make approval of a subcontractor conditional on the subcontractor signing a collateral warranty. This gives the employer direct rights against the subcontractor (see *Question 5*). Subcontractors are rarely willing to sign these warranties.

LICENSING

18. 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?

Each Emirate's department of economic development (DED) issues trade licences to conduct specific activities, following approval from the relevant municipality. The DEDs distinguish between:

- "Commercial" activities, which include construction-related activities.
- "Professional" activities, which include design, engineering and project management.

Each contracting party in a project, whether local or international, must be licensed to carry out its activities in the relevant Emirate.

This includes the contractor, the subcontractors, the architects, the civil engineers, the project manager and the engineering consultants. Generally, a licence cannot include both commercial and professional activities. Therefore, contractors wishing to undertake design/build contracts have faced difficulties, although these can usually be surmounted by establishing two entities, one undertaking commercial activities and the other professional activities. In addition, the DED does not allow any foreign contractors or engineering consultants without a local legal entity based and registered in Dubai to promote or market their services and activities (whether construction works or construction engineering services). This requirement is based on the assumption that such works or services will be performed or provided by their foreign parent companies based outside of the UAE. In order to promote or market construction or engineering services, a licence is required that will allow the company to both market and conduct those activities in Dubai.

The categories of permitted construction-related activities vary from Emirate to Emirate but typically include:

- Building contracting.
- Steel construction contracting.
- Sewage and drainage contracting.
- Water pipelines and stations contracting.
- Electric power station contracting.
- Tunnel contracting.
- Bridge and dam contracting.
- Land digging, filling and levelling.
- Road contracting.
- Port and marine construction contracting.

Licensing requirements vary according to the activity and may cover:

- Experience (for example, type and length of experience).
- Approval from the relevant authorities.
- Capital requirements.

Requirements (particularly documentation requirements) differ depending on whether the entity is a branch office or a stand-alone limited liability company (LLC). In the case of registering a branch office to a foreign company to carry out construction or engineering services, the authorities usually require the foreign parent company establishing the branch to be owned by at least two shareholders.

Additional requirements apply in the following cases:

- **Projects with an environmental impact.** Any entity seeking to undertake a project in the UAE which may have an impact on the environment must apply for a licence (see *Question 25*).
- **Abu Dhabi government projects.** In Abu Dhabi, contractors must obtain appropriate classification if they wish to carry out government projects (applications should be made to the planning section of the Abu Dhabi DED). Classification depends primarily on the value of the project. Conditions attach to each classification, for example, the:
 - capital required;
 - number of engineers on the ground;

- engineers' experience; and
- company's (or its shareholders') experience.

- **Dubai skyscrapers.** The Dubai Municipality (DM) issues "building contracting" licences, but these do not necessarily allow the construction of high-rise buildings. To construct high-rise buildings, a contractor must apply to the DM to amend its "building contracting" activity to a higher level (for example, G+20, G+30, G+40 and so on). The DM carries out an assessment process before allowing this change. The procedure and time frame of the assessment varies. The municipality can request:
 - technical reports;
 - certified experience statements (showing experience of constructing buildings of similar heights); and
 - evidence of qualified and adequately experienced staff.

19. What licences and other consents must a project obtain?

Categories of permitted construction-related activities and their corresponding licensing requirements vary among the Emirates, depending on the type of project, height of the building and any internal directives that may be applied by the municipality of such Emirate. In addition, different authorities with distinct requirements govern different locations within the Emirates themselves (such as the Dubai Municipality (DM), JAFZA and TECOM, among others, in Dubai).

The following generally applies to projects in the UAE.

Before

The contractor obtains no-objection certificates (NOCs) from relevant government departments (such as for roads, electricity, water, drainage and sewage, telephone or civil defence). Once NOCs are obtained, the employer applies for a building permit.

During

The contractor requests and receives various inspections, such as for the foundations, the first floor slab and the frame.

On completion

The contractor requests and receives final inspection from the relevant authority and from civil defence. The employer then applies for a building completion certificate.

PROJECTS INSURANCE

20. What types of insurance must be maintained by law? Are other non-compulsory types of insurance maintained under contract?

Compulsory insurance

While there is no UAE federal law requirement to take out workers' compensation insurance, the UAE Labour Law gives employees, or their families, compensation rights in the event of work-related death or disability. Accordingly, it is generally considered essential for contractors to take out workers' compensation insurance.

In addition, various free zones have their own regulations governing workers' compensation insurance requirements. For example, the Dubai

World Central Regulations 2010, which regulate activities within the Dubai World Central Free Zone, require all free zone enterprises to hold and maintain a valid workers' compensation insurance policy.

Non-compulsory insurance

Responsibility for the insurance programme is predominantly a matter for pre-contract negotiation. Typically, in the UAE, as elsewhere, contractors take out and maintain all risks insurance.

LABOUR LAWS

21. Are there any labour law requirements for hiring (local and foreign) workers?

Federal Labour Law No. 8 of 1980 concerning labour relations (as amended) (Labour Law) governs all employment-related matters. The Federal Ministry of Labour enforces the Labour Law, which applies to both national and foreign workers in the private sector.

Local workers

The Labour Law provides a standard specimen employment contract for UAE nationals. Any contract governing employment in the UAE must comply with this contract.

Foreign workers

There are certain obstacles to employing foreign workers.

Emiratisation policy. An "Emiratisation" policy is in place. This means that certain companies (primarily government departments and companies operating in the banking and insurance sector) are encouraged, or in some cases required, to employ UAE nationals. Preference is to be given to UAE nationals, and then Arab nationals, over foreign workers. This policy is set out in the Labour Law. In practice, it is encouraged rather than enforced, although in some situations companies have been required to employ UAE nationals as a condition to employing new non-UAE nationals. The Ministry of Labour regularly issues circulars on this policy, so the situation changes from time to time.

There have also been moves to reserve some employment categories for UAE nationals, including:

- Public relations officers.
- Recruitment officers.

Work permits and visa. Foreign nationals can only be employed in the UAE after having obtained:

- A work permit from the Ministry of Labour.
- A residence visa from the Department of Immigration and Naturalisation in the relevant Emirate.

22. Which labour laws are relevant to projects?

There is currently no statutory minimum wage in the UAE. Although the Labour Law states that there is a minimum wage which is fixed by ministerial decision, there does not appear to have been a ministerial decision issued in this respect.

The maximum number of working hours is:

- Eight hours per day.
- 48 hours per week.

These maximum working hours do not apply to:

- Specific categories of work to which a Ministry of Labour resolution has attributed higher or lower maximum working hours (for example, hospitality workers and security workers can work nine hours per day).
- Persons holding senior executive, managerial or supervisory positions, if these positions grant those persons the powers of an employer over workers.

In addition, working hours vary:

- During the holy month of Ramadan.
- According to various resolutions and directives issued by the Ministry of Labour. For example, Resolution No. 467 requires workers working outdoors to be allowed to rest between 12:30 pm and 4:30 pm during July and August.

The UAE Government also administers the payment of workers' salaries through its Wage Protection Scheme.

23. Must an employer pay statutory redundancy or other payments at the end of a project? Are all employees eligible?

Employers must pay a lump-sum end-of-service gratuity to a worker on termination of his employment in the UAE, provided the employee:

- Has completed at least one year of continuous service.
- Is not dismissed for gross misconduct.
- Is not taking part in a UAE pension plan. If an employer has a pension plan for its workers (which is compulsory for UAE nationals), a worker can elect to receive either:
 - the benefits under the pension plan; or
 - the end of service gratuity.

This is generally on the condition that the amount received under the pension plan is equal to or higher than the gratuity.

This payment is in addition to any other amounts that are payable, for example, for:

- Unused leave.
- Repatriation expenses.
- Any contractual termination benefits.

HEALTH AND SAFETY

24. Which health and safety laws apply to projects?

Health and safety laws, rules and regulations are contained in a variety of sources. Health and safety legislation does exist at federal level in the UAE. The main legislative provisions are included in the UAE

Labour Law and a number of ministerial decisions, but also extend to potential criminal offences under the UAE Penal Code.

Companies are required, among other things, to ensure employees are provided with all of the following:

- Adequate protective equipment in case of an accident.
- Detailed instructions showing the measures to take to prevent fire and protect against other hazards.
- First aid boxes.
- Adequate lighting, drinking water and toilet facilities.
- Information highlighting the dangers associated with the work and any protective measures that should be taken. This should be given at the time of recruitment.

Additionally, where an employee suffers injury in the course of employment or occupational diseases (such as loss of limbs or poisoning), the employer must report these to the police and labour department for further investigation. Certain ministerial decrees also deal with practices concerning the protection of employees against hazardous work and risks in the workplace. In particular, companies must notify the labour department of any accidents resulting in the death of an employee or where an employee is unable to work for three or more consecutive days. Reports must be made to the labour department on a quarterly basis containing both an account of injuries and occupational diseases at work.

Failure to comply with statutory requirements can result in a wide range of penalties for the employer and its officers. The employer may also be liable to pay compensation to the injured employee.

In Dubai, employers must comply with the Code of Construction Safety Practice (Guidelines for the Construction Industry in the Emirate of Dubai). Workers are required to obey safety instructions and use the safety equipment provided.

ENVIRONMENTAL ISSUES

25. Which local laws regulate projects' effects on the environment?

Environmental legislation

Environmental legislation exists both at the federal level and within each Emirate.

The relevant authority and regulations will generally depend on the location of the project but the federal environmental law regime will always be applicable.

Federal laws. The key federal environmental law is Federal Law No. 24 of 1999 for the protection and development of the Environment (Environment Law).

Other federal laws include:

- Federal Law No. 23 of 1999 Concerning Exploitation, Conservation, and Development of Living Aquatic Resources in the United Arab Emirates and its Executive Order issued by Ministerial Decree No (302) of 2001.
- Federal Law No. 1 of 2002 Concerning Regulation and Control of the Use of Radioactive Sources and Protection against its Hazards.

The relevant authority, the Ministry of Environment and Water (MEW), has published a number of resolutions and regulations that have effect across the UAE.

The Environment Law and its accompanying regulations address the following key areas:

- Environmental impact assessments (*Chapter 1, Section 1*) (see below, *Environmental impact assessments (EIAs)*).
- Protection of the marine environment (*Chapter 2*) (see below, *Water*).
- Pollution from land sources (*Chapter 2, Section 2, Part II*).
- Soil protection (*Chapter 3*).
- Protection of air from pollution (*Chapter 4*) (see below, *Air*).
- Handling of hazardous substances and wastes (*Chapter 5*) (see below, *Waste*).

Any entity seeking to undertake a project in the UAE which may have an impact on the environment must apply to the MEW or the relevant local authority for a licence.

Local law and regulations. Within each Emirate, local agencies supplement the federal laws at a local level, by passing binding regulations and orders. For example, the following agencies are responsible for environmental matters:

- The Environment Agency in Abu Dhabi.
- The Dubai Municipality (Environment Department) in Dubai. This agency has issued Local Order No. 61 of 1991, which governs environmental law at a local level.

Local laws and regulations are not always available in English. Sometimes they can only be obtained on request from the relevant authority.

Federal laws should prevail in the case of any inconsistency with local laws or regulations, although in practice, local authorities can and often do enforce the more onerous local regulations.

Municipalities and town planning departments also regulate certain areas, including:

- Waste management (see below, *Waste*).
- Building regulation.
- Pollution control.
- Water treatment (see below, *Water*).

Local guidelines. Regulators issue technical guidelines and codes of practice. For example, the DM has published technical guidelines and codes of practice which cover matters such as hazardous waste disposal approval requirements. It is not always clear whether these guidelines are binding.

Industrial company regulations. Some large industrial companies have a semi-regulatory function in relation to environmental issues. For example:

- The Abu Dhabi National Oil Company group has its own guidelines with which any parties engaging with it must comply. These guidelines deal with environmental issues such as the:
 - elimination of hydrocarbon flaring;
 - abolition of continuous venting of hydrocarbon disposal;
 - optimisation of land use and energy resources;

- re-injection of produced water and other effluents;
- minimisation of the use of oil-based muds; and
- disposal of drilling muds and cuttings.
- In Dubai, the Environment, Health and Safety Department of the Trakhees-Ports, Customs & Free Zone Corporation controls, regulates and enforces environment, health, safety and fire protection rules. It has jurisdiction over all Dubai World Business Units including:
 - DMCC;
 - DMC;
 - Limitless;
 - DP World;
 - JAFZA; and
 - Istithmar.

Air

Air standards are regulated by the Environment Law (*see above*).

Water

Water pollution is regulated by the Environment Law (*see above*).

Waste

UAE environmental legislation regulates the handling of waste and hazardous substances, including its:

- Transportation.
- Treatment.
- Disposal.

Environmental impact assessments (EIAs)

Projects that may have an impact on the environment can be subject to environmental study requirements such as environmental impact assessments and/or various environmental feasibility studies, depending on the specific project and the requirements of the relevant authorities in this respect.

Sustainable development

Both Abu Dhabi and Dubai have introduced various green building regulations and requirements in recent years, implementing both local requirements and requiring developments to meet accepted international standards for green and sustainable construction.

In Abu Dhabi, there are requirements for both residential and commercial projects. In Dubai, there are mandatory “green” requirements for all government buildings. In addition, the Dubai Government has recently released new “Green Building Regulations and Specifications”, which will apply to all new buildings and which are expected to be implemented in 2014. Importantly, these requirements may also apply to some existing buildings, extensions or additions requiring building permits and to existing buildings where approval is sought for a change in its use.

26. Do new buildings need to meet carbon emissions or climate change targets?

There is no legally binding cap on carbon emissions in the UAE, but momentum is building in the UAE in relation to developing green building codes, regulations and guidelines.

The Emirates Green Building Council (Emirates GBC) was formed in 2006. Its goal was to advance green building principles to protect

the environment and ensure sustainability in the UAE. Emirates GBC instigates various initiatives and organises events and conferences which tackle green building issues. It proposed the creation of an innovative financing scheme to promote the green retrofitting of existing buildings to make them more energy efficient. It also held a conference to discuss the efficiency of green buildings and to explore the feasibility of a common industry, government and stakeholder hub for green buildings. This included a presentation on the Estidama sustainability programme which highlighted empirical analysis of Estidama buildings during operation.

Estidama is a sustainability programme launched in 2008 by the Abu Dhabi Urban Planning Council and includes a green build rating system known as the Estidama Pearls Design System. The initiative is part of the Abu Dhabi 2030 urban master plan which incorporates sustainability as a core principle.

The Abu Dhabi Department of Municipal Affairs (DMA) has also launched the Abu Dhabi Building Codes. This is a complete set of comprehensive and coordinated building codes aimed at improving the construction standards for buildings in Abu Dhabi. The unified building codes introduce a common set of regulations to govern all construction industry activities throughout Abu Dhabi and are adopted from the International Codes published by the International Codes Council. The codes are applicable to all projects in Abu Dhabi, including all private and commercial projects.

In Dubai, a set of Green Building Regulations and Specifications have been drawn up. Their purpose is to improve the performance of buildings in Dubai by reducing the consumption of energy, water and materials through enhanced planning, design, construction and operation of buildings. Compliance with these rules for all new buildings is set to become mandatory in 2014.

CORRUPT PRACTICES

27. 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?

Rules

Anti-bribery and corruption (ABC) provisions in the UAE are contained in the Federal and Emirate-specific penal codes and human resources management laws.

The Federal Penal Code criminalises the act of offering, accepting or facilitating a bribe for a public official to commit or omit any of their duties (regardless of intention) or to commit or omit an act which is not part of the official’s duties.

The Federal Human Resources Law prohibits public employees from accepting any gifts that are not promotional or branded in nature. Such gifts may only be distributed to employees by a specific unit within the department responsible for that role. The law also prohibits public employees from accepting or facilitating bribes to commit or omit any of their duties.

ABC provisions that apply to Emirate-specific public officials include the Federal Penal Code (it applies to both) and the following local laws:

- The Dubai Penal Code criminalises the act of offering or accepting a bribe for a public official to commit or omit any of their duties. It also prohibits offering or accepting a benefit without compensation where the official is or may be involved in procedures or work with the person offering the benefit.

- The Dubai Government Human Resources Management Law prohibits the offering or accepting of bribes for a public official to commit or omit any of their duties. It also prohibits accepting any gifts that are not promotional or branded in nature. Such gifts may only be distributed to employees by a specific unit within the department responsible for that role.
- The Abu Dhabi Penal Code criminalises the act of offering or accepting a bribe to or by a public official. It also prohibits a public official abusing their position or trying to get any material benefit for themselves, a member of their family or person in their custody.
- The Sharjah Civil Service Law prohibits public employees from accepting a bribe for performing their duties.

Some Emirates have civil service laws that impose general moral obligations on public employees and require compliance with all applicable state laws.

In the private sector, the Federal Penal Code prohibits directors, managers or employees from demanding or accepting a bribe to commit or omit any of their duties (regardless of intention).

There are no ABC laws that are specific to construction. However, employees of state- or semi-state-owned construction companies would come within the scope of the Federal and relevant Emirate-specific ABC provisions.

Penalties

There are various penalties for corrupt business practices and bribery, which include:

- Under the Federal Penal Code, imprisonment of up to ten years and/or fines of up to the value of the bribe or AED10,000.
- Under the Emirate-specific Penal Codes, imprisonment of up to three years and/or a fine.
- Under civil service laws, referral to the authorities for prosecution under penal laws and disciplinary action.

The Dubai Procedures for Recovering Public Funds (*Law No. 37 of 2009*) introduced new sanctions for unlawfully acquired funds (as a result of a crime punishable by law) and for persons who fail to repay public funds. The penalties vary depending on the amount involved. They include imprisonment of up to 20 years (separate from penal penalties) unless the amount involved is repaid or a settlement agreed. If the infringing party is a private-sector company, individuals can bear the responsibility for the actions of the company.

Bankruptcy/insolvency

28. What rights do the client and funder have on the contractor's bankruptcy or insolvency?

Under the UAE Civil Transactions Law, a construction project can only be terminated early by way of agreement or court order. As such, clients and funders will typically insist on the inclusion of a clause in the construction contract allowing them to terminate the contract if the contractor files for insolvency or is deemed to be insolvent. On termination of the contract, the client would be free to engage a new contractor to complete the project. Both the client and the funder would also be permitted to prove in the contractor's insolvency in accordance with the provisions of UAE law. However the UAE insolvency regime is largely untested.

PPPs

29. Are public private partnerships (PPPs) common in local construction projects? If so, which sectors commonly use PPPs?

PPPs remain relatively uncommon in the UAE. However, examples of infrastructure being procured and maintained under long-term concession contracts do exist, particularly in Abu Dhabi. The Abu Dhabi Water and Electricity Authority (ADWEA) maintains a programme of procurement of power and water facilities under PPP structures and there are similar initiatives in transport and other infrastructure sectors across the UAE. A number of government authorities have expressed intentions to investigate the use of PPPs in the procurement of future projects and services, such as healthcare and education.

30. What local laws apply to PPPs?

There is no federal legislation which applies specifically to PPPs. However, several of the Emirates have specific legislation relating to the procurement of works and projects by Government entities, the requirements of which vary between the Emirates. In addition, in Dubai, certain laws expressly empower specific Government departments, such as the Dubai Electricity and Water Authority (DEWA) and Roads and Transportation Authority (RTA), to enter into PPP-type arrangements with private companies.

31. 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?

Typically, government departments and authorities have awarded long-term concession contracts on a conventional competitive tender basis.

There is no UAE-standard PPP project agreement. However, for projects in certain sectors (such as water and electricity) in Abu Dhabi, the Government of Abu Dhabi has precedent documents, developed over a series of PPP-type projects, that it prefers to use.

In terms of related documents, Abu Dhabi has adopted standard-form construction contracts based largely on FIDIC model agreements (see *Question 6*).

DISPUTE RESOLUTION

32. Which are the most common formal dispute resolution methods used? Which courts and arbitration organisations deal with construction disputes?

Formal dispute resolution methods

Litigation and arbitration remain the most common methods of resolving disputes in the UAE. The majority of construction disputes are resolved through arbitration before an arbitral institution.

Courts and arbitration organisations

There are no specialised construction courts in the UAE. Construction disputes (if litigated) are likely to be resolved by the civil courts. The court will generally appoint an expert (from an internal panel) to examine the factual and technical issues.

In Dubai, parties may agree to submit to the jurisdiction of the courts of the Dubai International Financial Centre (DIFC). However, the DIFC courts are primarily commercial courts and it is therefore currently unclear how the courts will address disputes of a specialist or technical nature (such as those in complex construction projects) or whether the construction sector will choose the DIFC courts over the more traditional option of arbitration.

The leading national institutions for construction arbitration in the UAE are:

- Dubai International Arbitration Centre (www.diac.ae).
- Abu Dhabi Chamber of Commerce (www.abudhabichamber.ae).
- DIFC-LCIA (Dubai International Financial Centre/London Court of International Arbitration) Arbitration Centre (www.difc.ae).

However, many construction contracts provide for arbitration under the arbitration rules of the International Chamber of Commerce (ICC).

A number of government departments (for example, DM and Dubai Roads and Transport Authority (RTA)) have their own arbitration rules which they expect to be incorporated into their agreements.

33. What are the most commonly used alternative dispute resolution (ADR) methods?

Alternative forms of dispute resolution are still relatively uncommon in the UAE. However, there is a developing trend in construction projects to provide for adjudication, or establishment of a dispute review board, as a mechanism for quick resolution of disputes while the project is ongoing.

Forms of expert determination may be adopted, but are usually reserved for minor or discrete issues and generally do not replace arbitration or litigation as the ultimate means of dispute resolution.

TAX

34. What are the main tax issues arising on projects?

Contractors operating in the UAE are not subject to specific construction-related taxes.

There are no income, personal, withholding, capital or payroll taxes levied in the UAE (with the exception of pension contribution obligations for employed UAE nationals).

There are no consumption taxes currently levied in the UAE, although there has been press speculation that VAT or a similar consumption tax regime will be introduced.

Customs duty in the UAE is levied at 5% of the value of the goods or services (including insurance and freight).

Following completion, developments in certain areas, particularly in Dubai, may be subject to service charges relating to the upkeep of infrastructure and related services.

ONLINE RESOURCES

Official website for legal information

W www.elaws.gov.ae

Description. The official e-portal of the UAE Ministry of Justice, containing links to Federal laws (in both Arabic and English translations), UAE High Court case decisions (both civil and criminal), consultations and treaties to which the UAE is a party. This website is updated periodically. English translations are generally for guidance only.

Some Emirate-specific laws are available on the government e-portals and department of justice websites for the relevant Emirates. These offer a variety of laws in Arabic and English, although not all laws are available and some are available only in Arabic. It is possible to request copies of the Official Gazettes in which laws are published.

Other resources include websites for specific free zones, which include links to relevant legislation applicable therein.

35. Are any methods commonly used to mitigate tax liability on projects? Are there any tax incentives to carry out regeneration projects?

For the reasons set out in *Question 34*, there are few tax mitigation methods or tax incentives commonly adopted for construction projects in the UAE.

OTHER REQUIREMENTS FOR INTERNATIONAL CONTRACTORS

36. Are there any specific requirements that international contractors or construction professionals must comply with?

To carry out construction work in the UAE, a contractor must satisfy the following requirements:

- Establish a legal entity in the relevant Emirate. Typically, contractors set up either:
 - a limited liability company (LLC). Foreign ownership of an LLC is limited to 49% of the share capital. A UAE national or an entity wholly owned by UAE nationals must hold the remaining 51%; or
 - a branch office. A branch office, unlike an LLC, is merely an extension of the foreign entity and therefore the parent bears the branch office's liabilities.
- Register the legal entity in the relevant Emirate's commercial register (*Federal Law No. 8 of 1984 concerning Commercial Companies (as amended)*).

In addition, a contractor for a public sector tender must be either:

- A UAE citizen (individual or company) and registered with one of the UAE Chambers of Commerce and Industry.
- A foreign national or entity with a local partner or agent under a formal contract (*Article 8, Federal Regulation of Conditions of Purchases, Tenders and Contracts, Financial Order No. 16 of 1973 (as amended)*).

There may also be restrictions on employing non-UAE nationals.

Foreign contractors should also be aware that licences are required, and that additional obligations may apply, for example, in relation to government projects and skyscrapers.

REFORM AND TRENDS

37. Are there any proposals to reform construction and projects law? Are there any new legal or regulatory trends affecting projects?

Reform proposals

There are no reform proposals specifically related to construction law, although there is some speculation that a dedicated PPP law may be introduced in the UAE in the near future in anticipation of the procurement of new PPP projects (see *Question 29*). Various green building codes are also currently being promoted or developed throughout the UAE (see *Question 25*).

MAIN CONSTRUCTION ORGANISATION

Society of Construction Law (Gulf) (SCLG)

Main activities. The SCLG promotes the study and understanding of construction law among members of the construction industry. It promotes individual business interests and acts as a forum for the better understanding of construction law and its practical application in the industry in the Gulf region.

The SCLG is affiliated with the Society of Construction Law (UK). It is open to everyone with an interest in construction law and how it affects their work. The SCLG is strictly independent of commercial interests.

W www.scl-gulf.org

While not specifically related to construction or projects, there has been a recent extension of the jurisdiction of the Dubai International Financial Centre (DIFC) courts (see *Question 32*), increasing the forums available to contractors seeking to resolve disputes. A further development in this area is a proposed federal arbitration law governing arbitration onshore in the UAE. The law is currently in draft form but is expected to be brought in to force in the near future.

Trends

See *Question 1*.

Practical Law Contributor Profiles



Michael Kerr, Dentons Middle East Managing Partner

Dentons
T +971 4 405 4337
F +971 4 331 0201
E michael.kerr@dentons.com
W dentons.com

Professional qualifications. England and Wales, Solicitor, 1990

Areas of practice. Dispute resolution including arbitration; construction and projects; finance.



Dean Ryburn, Senior Associate

Dentons
T +971 4 405 204
F +971 4 331 0201
E dean.ryburn@dentons.com
W dentons.com

Professional qualifications. New Zealand, Solicitor, 2006

Areas of practice. Construction and projects; dispute resolution.



Beau McLaren, Senior Associate

Dentons
T +971 4 405 4170
F +971 4 331 0201
E beau.mclaren@dentons.com
W dentons.com

Professional qualifications. England and Wales, Solicitor, 2007

Areas of practice. General dispute resolution and arbitration with a focus on construction.



Zehra Or, Associate

Dentons
T +971 4 405 4334
F +971 4 331 0201
E zehra.or@dentons.com
W dentons.com

Professional qualifications. England and Wales, Solicitor, 2009

Areas of practice. Construction and Projects, particularly in the energy sector.