

Legal issues relating to construction contracts in the United Arab Emirates

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INTRODUCTION

The construction industry in the United Arab Emirates (UAE) adopts and follows international best practices for construction contracts governed by UAE law or implemented in the UAE. These contracts are heavily modelled after International Federation of Consulting Engineer (*Fédération Internationale Des Ingénieurs-Conseils*) (FIDIC) forms of contracts.

However, domestic law considerations should not be ignored. It is true that in principle, the UAE courts recognise FIDIC contracts. However, there are several UAE law principles that have a direct impact on the parties' contractual terms and prevail over such terms in some cases.

As the UAE is a civil law jurisdiction, UAE law principles are mainly codified in the Civil Transaction Law No. 5 of 1985, as amended by Federal Law No. 1 of 1987 (Civil Code) and in the Commercial Transactions Law No. 13 of 1993 (Commercial Code). More specifically, construction contracts are regulated by Articles 872 to 896 of the Civil Code dealing with "muqawala contracts" (that is, contracts to build), and other general principles of UAE law codified in the Civil and Commercial Code. Some of these provisions are imperative, which means that they are default provisions and that parties must explicitly contract out of them. Other provisions are rules of public order, which means that parties cannot contract out of these rules when they seek enforcement in the UAE, even where a foreign law is applicable to their contract and/or a foreign court or arbitration tribunal is competent to rule on a dispute arising from the contract. Therefore, opting for the application of a foreign law to a construction contract, or for the submission of disputes to a foreign court or to an arbitration tribunal, does not make the construction contract immune from being subject to certain rules of UAE law.

Understanding the legal framework applicable to construction contracts in the UAE requires shedding light on what the parties can and cannot agree in their contract. To this end, this article outlines:

- The extent to which a foreign law can govern a construction contract performed in the UAE.
- The choice of dispute resolution mechanisms in construction contracts.
- The possibility of enforcing foreign judgments and arbitral awards relating to construction contracts.
- Key concepts of UAE construction laws that can assist employers, engineers, contractors and subcontractors in setting out their respective rights and obligations, at the stages of negotiation, implementation or dispute resolution.
- Practical steps that parties should take before entering into a construction contract.

CHOICE OF FOREIGN LAW

The UAE, and in particular Dubai, has emerged as one of the leading regional commercial hubs, attracting foreign investors from all over the world. Therefore, it is understandable that parties to a contract based in the UAE commonly elect a foreign law as the law applicable to their contractual relationship, even where contracts are executed or performed in the UAE. However, it is crucial to understand the consequences of choosing a foreign law.

In principle, electing a foreign governing law is permissible in construction contracts (*Article 19(1), Civil Code*), except for:

- Contracts relating to right *in rem* (that is, pertaining to property located in the UAE).
- Contracts entered into with a governmental or quasi-governmental body of the UAE.

UAE law applies to procurement contracts with governmental and quasi-governmental entities, and parties cannot agree to a different choice of law. At the federal level, Ministerial Decision No. 20 of 2000 concerning the government procurement rules (Federal Procurement Regulations) and Cabinet Resolution No. 32 of 2014 set out requirements for contracts concluded with the UAE federal government, ministries and federal agencies.

At the local level, Abu Dhabi, Dubai and Sharjah have enacted stand-alone procurement laws applicable to tenders issued by local public authorities. Generally, local procurement laws are substantially similar to the Federal Procurement Regulations, although some matters may be addressed differently in each jurisdiction.

In addition, certain specific laws apply to the procurement and tendering activities of certain public authorities. For example, the Dubai Procurement Law does not recognise FIDIC contracts, and imposes its own laws and regulations. Most public authorities have a set of standard procurement contracts and documentation for the provision of contracting work, services and supplies, among others.

Before opting for a foreign governing law, parties must avoid some legal pitfalls and consider certain matters.

If the party that invokes a contractual choice of foreign law before a UAE court fails to prove it and to determine its effects, UAE law will apply regardless of the parties' agreement. In practice, the UAE courts have held in several instances that UAE law will apply instead of a choice of foreign law clause where the parties either:

- Fail to present satisfactory and tangible evidence as to the existence of the contractually agreed foreign law.
- Fail to determine its effects.

This issue does not arise if the dispute is referred to international arbitration, as local courts looking at enforcing the international award in the UAE will most likely apply the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

(New York Convention), which only provides for very limited grounds for refusing the enforcement of an international arbitral award (for example, where the foreign award violates a rule of public order in the country in which enforcement is sought).

In addition, a contractual choice of foreign law only applies to the extent that it does not contravene Islamic Sharia, or the public order or morals of the UAE (*Article 27, Civil Code*) (this provision must be interpreted in accordance with the definitive provisions and fundamental principles of Islamic Sharia under Article 3 of the Civil Code).

In this context, domestic public order, as interpreted in the UAE, includes, among other things, matters of personal status, freedom of trade, circulation of wealth and rules of individual ownership, to the extent that these matters do not contravene the imperative provisions and the essential principles of Islamic Sharia from which UAE laws are inspired.

The concept of domestic public order is very broad and creates a certain degree of uncertainty and risk as to what may be deemed of a public order nature in the UAE.

This issue is not only raised where a matter is entertained by a UAE court, but may also come into play where foreign judgments or arbitral awards are being enforced in the UAE (*see below, Enforcement of foreign judgments and arbitral awards*).

CHOICE OF DISPUTE RESOLUTION MECHANISMS

In principle, parties to a construction contract performed in the UAE can agree to refer their disputes to the UAE courts, to a foreign court or to arbitration (either domestic or international).

Interestingly, and regardless of the parties' express agreement to refer a dispute to international arbitration or to a foreign court, both the courts of the Dubai International Financial Centre (DIFC) and the UAE courts will accept jurisdiction to hear the dispute if the dispute falls within the UAE courts' jurisdiction and there is a legal nexus with the UAE, on the basis that rules relating to the jurisdiction of the UAE courts are of a public order nature (*Articles 31 to 41, Civil Procedure Code*). Where the parties have agreed to refer a dispute to arbitration in the UAE, a UAE court will equally override the parties' agreement and will accept jurisdiction over the matter if the defendant fails to object to the competence of the UAE court and fails to raise the existence of the arbitration agreement in the first court hearing in which the defendant is duly represented.

Disputes arising from procurement contracts with governmental and/or quasi-governmental entities are generally referred to the UAE courts. Additionally, these disputes can now be referred to the DIFC courts, which form part of the Dubai judicial system. These entities can also agree to resort to domestic arbitration in their respective emirates.

The DIFC courts have recently established a Technology and Construction Division (TCD) for the purposes of dealing with technically complex cases in the technology and construction fields. The TCD is composed of specialist judges and applies a new set of industry-specific rules to fast track dispute resolution. A claim can only be brought as a TCD claim if it involves issues or questions that are technically complex. Part 56 of the DIFC Court Rules provides a non-exhaustive list of the types of disputes that can be brought as TCD claims, which include:

- Building and other construction disputes.
- Engineering disputes.
- Claims by and against engineers, architects, surveyors, accountants and other specialised advisers relating to the services they provide.

ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

Enforcement of judgments

A final and binding judgment issued by a domestic court in the UAE is not subject to any further judicial consideration or supervision. Execution proceedings can be initiated by the judgment creditor as soon as the judgment becomes final and binding. In practice, Court of Appeal judgments are generally subject to execution regardless of whether a further appeal is pending before the Court of Cassation.

The enforcement of foreign court judgments is governed by Article 235 of the Civil Procedure Code, which applies in the absence of a bilateral or multilateral treaty/convention.

Judgments issued by a foreign court can be executed in the UAE under the same conditions provided in the law of the foreign state (*Article 235(1), Civil Procedure Code*). This general provision applies subject to certain qualifications, including that a petition for an execution order must be filed before the competent court of first instance in the UAE, and provided that the following conditions are met:

- The UAE courts have no jurisdiction over the dispute and the foreign courts have jurisdiction. The rules on the competence of UAE courts are set out in Articles 31 to 41 of the Civil Procedure Code.
- The judgment or order was passed by the competent court according to the law of the respective foreign country.
- Parties to the dispute on which the foreign judgment was issued were summoned and duly represented.
- The judgment or order is final and binding under the law of the issuing foreign country.
- The judgment or order does not conflict with or contradict a judgment or order previously passed by another court in the UAE.
- The judgment does not violate the concepts of public morals or UAE public order.

The UAE is a party to few international conventions/treaties for the enforcement of foreign judgments. The UAE is a party to reciprocal enforcement agreements with other members of the Gulf Cooperation Council, as well as bilateral treaties with Saudi Arabia and France.

The DIFC courts have executed a number of agreements with other jurisdictions in the form of memorandums of understanding and memorandums of guidance. The purpose of these agreements is to help facilitate closer co-operation, specifically in relation to judicial co-operation and the recognition of judicial awards and judgments.

Enforcement of arbitral awards

The enforcement of arbitral awards differs depending on whether the award is a domestic or an international award.

Domestic arbitral awards. The enforcement of domestic arbitral awards differs depending on whether the award is rendered in the DIFC or elsewhere in the UAE. Domestic awards issued in the UAE outside the DIFC will in practice be subject to judicial scrutiny in the UAE. This judicial scrutiny is limited to form and there is no review of the substance of the award. Domestic arbitral awards cannot be enforced unless ratified by the competent UAE court (*Article 215, Civil Procedure Code*). In addition, the domestic courts are entitled to refer to the arbitrator(s) any issues that, in the court's opinion, have been omitted (*Article 214, Civil Procedure Code*).

To ratify a domestic arbitral award issued outside the DIFC, the court must review the award and ensure that the following requirements are met:

- The award does not contravene public order (*see above, Choice of foreign law*).

- There is a written and signed arbitration agreement.
- The signatories of the arbitration agreement have the capacity to enter into such agreement.
- The terms of reference or any other document setting out the powers of the arbitrator have been signed by parties entitled to do so.
- The award was issued within the six-month time frame prescribed in the Civil Procedures Code (in the absence of any valid extension agreement).
- Each page of the award, and in particular the pages containing the decision of the arbitral tribunal, has been properly initialled by all the arbitrators.
- The arbitrator has not ruled *extra petita* (that is, beyond the scope of the matters put before the arbitrator) or *infra petita* (that is, failing to consider some or all of the matters put to arbitration).

Domestic arbitral awards are final and binding and not subject to appeal; the court does not review the merits of the case. However, if the court deems that the award is null and void for any of the reasons stated above, the court will deal with the dispute/merits of the case on the basis that the arbitration agreement has been exhausted.

The requirements for ratification of domestic arbitral awards issued outside the DIFC, which are set out in the Civil Procedure Code, are mostly formal requirements but are rather cumbersome. In some cases, the application of these requirements has proven to delay and complicate the ratification and enforcement of domestic arbitral awards, especially when counsel representing the parties in arbitration are not familiar with these requirements. However, in a number of recent judgments, the courts have adopted a relatively liberal approach in the application and interpretation of those requirements.

For example, in the context of construction contracts, and in particular FIDIC contracts, the UAE courts have recently considered that the intention of the parties to refer the dispute to arbitration can be implied when there is a clear reference to apply the FIDIC General Conditions in any correspondence between the parties to the dispute.

Along similar lines, the Dubai Court of Cassation has adopted the view that an arbitration agreement was valid despite the fact that the agreement was not signed by one of the contracting parties, on the basis that the tender documents, which included an arbitration clause, had been accepted by the defendant and the defendant had effectively performed the contract, and therefore should be bound by the arbitration agreement.

A new draft arbitration law, modelled on the UNCITRAL Model Law on International Commercial Arbitration 1985, is in circulation and is expected to enter into force in early 2018. It is expected that the new arbitration law will override the chapter on arbitration in the Civil Procedure Code and will render the process of ratification of domestic arbitration awards much faster, efficient and less formalistic.

In contrast to the UAE system, the grounds on which the DIFC courts can refuse to recognise a domestic award are limited, and largely follow those provided by the New York Convention. However, parties should be mindful of possible conflicts of jurisdiction.

Conflicts of jurisdiction between the DIFC and the Dubai courts often arise in cases dealing with the ratification of domestic and foreign arbitral awards. In a number of cases, the DIFC courts have confirmed that DIFC law allows the DIFC courts to be used as a "conduit jurisdiction", that is, parties can seek to ratify non-DIFC seated arbitral awards in the DIFC even if the award debtor's assets are located outside the DIFC. Parties have sought to use the DIFC courts in this manner to avoid the Dubai courts' sometimes erratic

ratification process. Simply put, a successful party that obtains an arbitration award in a Dubai (non-DIFC) seated arbitration may wish to avoid the ratification procedure applicable in the Dubai courts and instead opt to have the award ratified through the relatively more straightforward ratification procedure used in the DIFC courts. Once the DIFC courts ratify an arbitration award, the award has the same status as a DIFC court order and can be sent for execution within the UAE. The popularity of using the DIFC courts as a conduit jurisdiction in this manner has created instances of conflicts of jurisdiction and conflicts of judgments between the DIFC courts and the Dubai courts. This has led the Ruler of Dubai to establish a Judicial Tribunal for the Dubai courts and the DIFC courts (JT) to resolve this type of conflicts. The JT has issued a number of recent decisions that have cast some doubt on whether the DIFC courts can be used as a conduit jurisdiction as described above. The common thread running through the JT's decisions is that a conflict of jurisdiction between the Dubai courts and DIFC courts will be found to exist where an award creditor brings a claim in the DIFC courts seeking recognition of a domestic arbitral award and the award debtor brings parallel annulment proceedings before the Dubai courts. In these circumstances, the JT has recently determined that:

- The Dubai courts are competent to entertain the case.
- The case should be remitted for trial to the Dubai courts.
- The DIFC courts should cease from entertaining the case.

In an attempt to circumvent the formalistic archaic conditions for the enforcement of domestic awards set out in the Civil Procedure Code, the Dubai International Arbitration Centre (DIAC), whose awards are deemed domestic UAE/ Dubai awards, has recently:

- Opened a representative office in the DIFC.
- Signed with the Dispute Resolution Authority in the DIFC a co-operation agreement that paves the way for faster enforcement of DIAC arbitral awards before the DIFC courts.

Accordingly, parties to arbitration disputes governed by the DIAC Rules will have the option of resorting to the DIFC courts to seek recognition and enforcement of their awards, therefore bypassing the formalistic requirements of the Civil Procedure Code. The DIAC is also in the process of amending its arbitration rules, and sources confirm that the DIFC will be the default seat of any DIAC arbitration.

Foreign arbitral awards. The UAE is a party to the New York Convention and applies its rules, regardless of the conditions listed in the Civil Procedure Code. The requirements of the New York Convention are less stringent than those in the Civil Procedure Code. Therefore, the enforcement of foreign arbitral awards has proven more effective to a certain extent. However, the enforcement of foreign arbitral awards under the New York Convention remains subject to rules of public order (*see above, Choice of foreign law*).

Enforcement of foreign awards and judgments can equally be sought before the DIFC courts regardless of whether there is a nexus with the DIFC (*Article 43, DIFC Arbitration Law; Article 24, DIFC Court Law*). DIFC law adopts a much less formalistic approach to enforcement. The grounds for refusing recognition or enforcement of an arbitration award are set out in Article 44 of the DIFC Arbitration Law. Once an award or a judgment is enforced by the DIFC courts, it can easily be enforced in Dubai through the application of the Dubai Law 12 of 2014 (Judicial Authority Law) and the Protocol of Enforcement between the Dubai courts and the DIFC courts. There are a number of cases where the Dubai courts have enforced DIFC court orders, decisions and judgments, including interim orders (such as freezing orders). It remains to be seen whether a DIFC judgment ratifying an award that has no nexus to the DIFC will enjoy similar deference before the courts in other emirates. As a matter of principle and law, this should be the case.

Ras Al Khaimah has followed the path of Dubai and has signed a co-operation agreement allowing for judgments issued by the DIFC courts to be directly enforced by the courts of Ras Al Khaimah, provided that the parties explicitly opt in to the DIFC jurisdiction under a written contract.

KEY CONCEPTS OF CONSTRUCTION CONTRACTS

In light of the uncertainties relating to the notion of public order, the following key concepts of UAE construction law must be addressed to point out the imperative rules and rules of public order (or those that may be deemed as such by a UAE court) that must be respected by the parties.

Variation in price

Similar to English law, extra costs cannot be recovered for the execution of a design that has been agreed upon. In principle, under a lump sum contract, any request for additional costs or remuneration for the execution of the originally agreed design is prohibited (*Article 887, Civil Code*).

In a re-measurement contract, the contractor must immediately notify the employer of any significant increase in the price for the implementation of the agreed design, failing which the contractor loses its right to claim extra costs for the implementation of the design (*Article 886, Civil Code*).

There are exceptions to the "no extra costs" rule in cases of unforeseen circumstances (*Article 249, Civil Code*) or events of force majeure, including circumstances arising out of the acts of a third party or the employer in connection with the construction contract (*Articles 287, 273 and 472, Civil Code*). However, the UAE courts have been conservative in applying these provisions.

Additional costs or remuneration can be demanded as a result of variations or additional works to the initial works or design. The reasoning is that a variation to the agreed design may be deemed to have created a new agreement between the parties. The contractor may therefore be entitled to a fair remuneration, in addition to the value of the materials provided. Contractors mistakenly plead unjust enrichment to claim additional costs and/or remuneration in performing variations or additional works. Unjust enrichment can only be claimed outside the context of contractual liability, and it is not possible to combine tort claims and contractual claims.

Most construction contracts contain express provisions for the ordering and valuation of variations, which must be followed. Where the construction contract is silent as to remuneration, the contractor will be entitled to a fair remuneration in addition to the value of the materials provided (*Articles 887(2), 888 and 889, Civil Code*).

The principles above apply when the contract is governed by UAE law, but do not constitute public order rules (that is, parties can contract out of those provisions). Therefore, if the parties' agreement is not in line with the provisions of the UAE Civil Code outlined above, the terms must be clearly phrased to avoid the application of the general principles.

Liquidated damages clauses

In principle, liquidated damages clauses are valid and enforceable (*Article 390(1), Civil Code*). However, the courts have the power to reassess such clauses, provided that an application in that respect is made by a party, and regardless of any agreement to the contrary (*Article 390(2), Civil Code*). The burden of proof is on the party requesting reassessment. As it is considered a matter of public order, any agreement or limitation clause that purports to exclude or limit a party's right to request the court to reassess the damages will be deemed null. Therefore, a party can request a judge or an arbitrator to reassess contractually-agreed damages regardless of any agreement to the contrary. The explanatory note of Article 390 of the Civil Code expressly provides that the judge will have the discretion to increase or decrease the contractually-agreed compensation to make it equal to the damages incurred.

UAE law recognises compensation for actual damages, and these can be recovered provided that such damages are:

- The direct and only result of the acts of the other party.
- Certain and foreseeable at the time of contracting.
- Quantifiable.

Compensation for future damages can also be recovered, provided that the above criteria are met, in addition to the criterion of certainty to occur in the future. However, compensation for indirect and hypothetical damages are very unlikely to be recovered under UAE law (*Articles 292 and 293, Civil Code*).

A contractual penalty for delay in handing over the works can be triggered and ordered by the court if the contractor has performed all its contractual obligations, save for the timely delivery of the works/project.

Warranties

Under the Civil Code, the contractor and the designer/engineer who prepared the design and supervised the contractor's works are automatically, jointly and severally liable towards the employer for both:

- Any total or partial collapse of the building or other fixed structures occurring within ten years from the handover date.
- Any defect that threatens the safety and stability of the building occurring within ten years from the handover date.

This applies even when the defect or the collapse arises out of a defect in the land on which the building is erected, and even when the employer consents to the construction of the defective building.

This liability is a matter of public order (*Articles 880 and 882, Civil Code*). The presumption of liability can only be rebutted by proving either:

- An event of force majeure (*Article 878, Civil Code*).
- An event that was not foreseeable by an ordinary man at the time of contracting and could not have been prevented (*Article 878, Civil Code*).

Any agreement or limitation clause that purports to exclude or limit the liability of the contractor or designer must be considered null (*Article 882, Civil Code*). The limitation period for any claims arising under a warranty for defects is three years from the collapse or the discovery of the defect (*Article 883, Civil Code*).

In a relatively recent case, the UAE courts established that this type of liability does not extend to the subcontractor that delivered the works to the contractor, who was in a position to examine such works.

Regarding other types of defect, where a structure/building in which there is an apparent defect is handed over without any reservation, acceptance amounts to a waiver of the right to claim compensation under the warranty. For latent defects, a statutory warranty period of at least six months applies from the handover date (although this can be extended by agreement between the parties) (*Article 111, Commercial Code*).

Termination

The UAE Civil Code recognises (*Articles 268 to 271, Civil Code*):

- Judicial termination.
- Termination by mutual consent of the parties.

The UAE courts will recognise out-of-court termination by mutual consent of the parties if the contractual provisions governing termination mechanisms are clear, express and detailed. More specifically, the agreement must expressly provide that any party has the right to terminate the agreement without the need for a court order. Parties must give notice of termination, unless they expressly contract out of this requirement (*Article 271, Civil Code*).

The effect of termination is relatively unique to the UAE. Parties are restored to their original position before entering into the contract, therefore undoing the contract. Once the contract is terminated by court order or by mutual consent, the terms and conditions of the cancelled/terminated contract will no longer govern the relationship of the parties post termination. For example, an exclusion of liability for consequential loss is unlikely to survive the termination of the contract and to be enforceable before the UAE courts.

If restoration of the parties to their original position is legally or practically impossible, restoration will be monetary in nature. This is unusual both from a common law perspective and by reference to other civil law systems. However, this rule is clearly provided under Article 274 of the UAE Civil Code and the Explanatory Note of the UAE Civil Code on the articles of termination of contracts (Articles 267 to 275). Additionally, the UAE jurisprudence is constant in this respect.

Where one party disputes the other party's right to terminate, the contract remains in force until the court decides whether termination was lawful or not. Therefore, contractual provisions remain applicable between the parties.

Subcontracting

Subcontracting is permitted under UAE law, unless the contract between the employer and the contractor expressly prohibits subcontracting (Article 890, Civil Code). The contractual relationship between the contractor and subcontractor is limited to these two parties and does not extend to the employer. The contractor remains responsible to the employer for the works performed by the subcontractor. "Pay when paid" or "back-to-back" clauses are valid under UAE law and can be used in favour of the contractor, when the contractor has not been paid by the employer. If a main contractor fails to exercise its rights against the employer to seek payment of money due under the main contract, UAE law gives the subcontractor the power to initiate court proceedings against the employer in the name of the main contractor (indirect claim) (Articles 392 and 393, Civil Code). The subcontractor can request payment from the employer directly if the contractor has assigned its right to do so (Article 891, Civil Code).

Subcontractors can lawfully claim damages for actual losses and loss of profits against the contractor if the main contract between the employer and contractor is terminated unilaterally.

OTHER RELEVANT GENERAL CONCEPTS OF UAE LAW

Agency

An agent-principal relationship is established by law between the engineer and the employer. The employer is bound by the acts/decisions of the engineer, unless it is proven that the engineer exceeded its mandate or committed a fraud. The concept of apparent agency is favourable to the contractor.

Good faith

UAE law attributes great importance to the concept of good faith and the obligation of the parties to perform their contractual obligations in good faith (Article 246, Civil Code).

Silence

UAE law provides that silence must not generally be deemed to constitute acceptance, although silence in a situation where a statement is clearly called for must be regarded as acceptance (Article 135, Civil Code).

Right to withhold performance

UAE law recognises the legal right of a party to refrain from performing its contractual obligations if the mutual obligations of

the other party should have been performed, but were not (Article 247, Civil Code).

Estoppel

Any request made by a person to set aside or revoke what has conclusively been performed by him/her must be rejected (Article 70, Civil Code). This reflects the principle of estoppel that is known in English law.

Agreements must be kept (pacta sunt servanda)

In commercial transactions, the contract is the primary source of obligation, provided that it does not contravene UAE imperative laws. Parties must therefore respect the terms of their contract and perform their contractual obligations, or will otherwise be held liable for breach of contract. A person who seeks performance or a right prematurely will be penalised by being deprived of such performance or right (Article 69, Civil Code). This is relevant in construction contracts when, for example, parties do not respect the notice requirements. In addition, UAE law applies where an agreement is silent. If the law is silent, local custom will apply. If these are silent, international customs must be considered, provided that they do not contravene public order and public morals (Article 2, Commercial Code; Articles 50 and 51, Civil Code). FIDIC contracts are recognised under UAE law and by the UAE courts as custom.

Evidence

A party to a commercial transaction can prove its case by all means of evidence (Article 94, Commercial Code). The burden of proof lies with the claimant (Article 113, Civil Code).

PRACTICAL STEPS

It is crucial to seek legal advice before entering into a construction contract. It is particularly recommended to seek advice from local counsel on UAE imperative laws and laws of public order applicable to construction contracts, even where the contract is governed by a foreign law.

In addition, it is recommended that parties:

- Investigate the place and means for achieving successful enforcement of the contract when agreeing on applicable law and dispute resolution clauses.
- Conduct commercial and technical due diligence before pricing and committing to a delivery date.
- Keep a complete record of the facts that can have an impact on their legal and contractual rights.
- Comply with the contractual provisions and time limits.

It may be possible to secure the appointment of experts via the courts in certain circumstances, to issue reports in support of a claim, even where no proceedings (whether domestic or foreign) have been commenced. Parties should consider with local counsel other local interim measures in support of their case, even if proceedings are conducted abroad. These can include:

- Provisional attachment orders.
- Expert appointments.
- Hearing of witnesses.
- Production of documents orders.
- Provision of official classified data.

It is also often worth investigating the possibility of stopping the calling of a performance bond.

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Non-professional qualifications. BA in Lebanese and Comparative Law, Saint Joseph University, Lebanon, 2004

Recent transactions

- Advised on a multimillion AED commercial construction dispute (DIAC Rules) between a Fortune 100 contractor and an employer concerning work on an eminent project in Dubai.
- Advised on a multibillion AED construction dispute (DIAC Rules) between a contractor and a semi-governmental entity responsible for the development of a land in Dubai.
- Advised on a multimillion AED commercial construction dispute (ICC Rules) between a contractor and a subcontractor over the execution of construction works in a renowned Dubai project.
- Advised on a multimillion AED commercial construction dispute (ICC Rules) between a contractor and a subcontractor, over the execution of construction works in a renowned oil field project in Abu Dhabi.
- Advised on a multimillion AED shareholding dispute (DIAC Rules) between shareholders of a construction company.
- Advised on a multimillion AED commercial dispute (DIAC Rules) between shareholders of a UAE investment company over investments in the Abu Dhabi healthcare sector and involving the stock exchange.
- Advised on a multibillion AED corporate and commercial dispute between the heirs of shareholders in a UAE-based group of medical and pharmaceutical companies. Arbitration was conducted in Arabic, through a court-appointed panel, following ADCCAC Rules.
- Advised on a multimillion AED commercial dispute between an agent and a principal.
- Advised on a multimillion AED commercial real estate dispute (DIAC Rules) between the owner of a hotel and the hotel operator.
- Advised on a number of commercial real estate disputes (DIAC Rules) between real estate developers and purchasers of real estate properties.
- Advised on a multimillion AED commercial banking and finance dispute between a UAE investment company and a Saudi stock market investor. Arbitration was conducted in Arabic and under DIAC Rules.
- Advised on a multimillion AED commercial dispute (DIAC Rules) between an energy drink manufacturer and a franchisee following termination of a franchise and distribution agreement.
- Advised on a multimillion AED commercial dispute (DIAC Rules) between buyers of a company and sellers following the acquisition of a company.

Languages. English, Arabic, French

Professional associations/memberships. UAE International Chamber of Commerce; ICC Arab Arbitration Group; Arbitral Women; DIAC 40.

Publications

- Co-author, "Comparison of UAE and DIFC-seated Arbitrations," *Practical Law Arbitration Global Guide 2017*, 31 July 2017.
- Co-author, "Comparison of UAE and DIFC-seated Arbitrations," *Practical Law Arbitration Global Guide 2016*, October 2016.
- Co-author, "Comparison of UAE and DIFC-seated Arbitrations," *Practical Law Arbitration Global Guide 2016*, October 2016.
- Co-author, "Legal issues relating to construction contracts in the UAE", *Practical Law, Thomson Reuters' Construction and Projects Global Guide*, October 2015.
- Author, "UAE Construction Sector: Know the Legal Do's And Don'ts," *Gulf Business*, May 2015.
- Co-author, "Arbitration in Dubai: A Basic Primer," *The Austrian Yearbook on International Arbitration*, February 2011.
- Co-author, "Damages and Contracts in the UAE," *The In-House Lawyer*, March 2010.
- Co-author, "The legal framework in the real estate sector in the Emirate of Dubai," *Arab Centre for the Development of the Rule of Law and Integrity (ACRLI)*, September 2009.



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Non-professional qualifications. Diploma in Commercial Litigation, Law Society of Ireland, 2009; Bachelor of Civil Law, University College Dublin Ireland, 2001

Recent transactions

- Acting for a major government entity in connection with a high-value complex joint venture dispute with LCIA proceedings seated in London and associated proceedings in Cyprus and Russia.
- Acted for a major Canadian corporation in respect of a dispute with claim value in excess of US\$5 million with a Dubai based property developer in relation to the purchase of eight office units in Dubai.
- Acting in defence of one of Dubai's major property developers in a dispute before the DIFC courts in both the substantive claim and on appeal in respect of a multi-party contractual dispute relating to the ownership of Sky Gardens Tower in the DIFC, with a claim value (and counterclaims) in excess of US\$70 million.
- Advised on a multimillion AED dispute between an employer and contractor in relation to a dispute arising out of a construction contract over the execution of works in a project in Dubai under the DIAC Rules.
- Advised on several commercial real estate disputes under the DIAC Rules in relation to dispute between a major real estate developer and a group of investors.
- Advised a Kuwaiti property developer in a multimillion dollar dispute relating to the termination of a management, assistance and leasing services agreement with a management consultancy firm in respect of one of Abu Dhabi's largest mall development projects.
- Advised on matters of UAE law in relation to the enforcement of domestic and foreign arbitration awards under UAE law, the New York Convention and the DIFC Rules.
- Advised on matters of UAE law in relation to the enforcement of foreign judgments in the UAE under the leading international and bilateral treaties.

Languages. English

Professional associations/memberships. Member of the Law Society of Ireland.

Publications

- Co-author, "Comparison of UAE and DIFC-seated Arbitrations," *Practical Law Arbitration Global Guide 2017*, 31 July 2017.
- Contributor-UAE Section, "International Arbitration Roundtable 2014," *Financier Worldwide*.
- Co-author-UAE Chapter, "World Arbitration Reporter," March 2014.
- Co-author-UAE Chapter, "Dispute Resolution: Volume 2, Arbitration 2013/2014," *Practical Law Multi-Jurisdictional Guide*.