

Construction Law UAE

Despite the recent economic difficulties, the UAE has recently seen a number of key deals announced, including the government of Saudi Arabia having signed a hefty contract with a Saudi-Spanish consortium to develop phase II of the Haramain High Speed Rail project in Saudi Arabia. To find out more about the construction industry in the UAE and the legal issues that surround it, *Lawyer Monthly* speaks to Shahram Safai, partner and head of the real estate department at Dubai-based law firm, Afridi & Angell.

Q Can you briefly introduce yourself and your firm?

I have extensive experience advising on joint ventures, shareholder transactions, purchase and sale transactions, hotel management structuring and transactions, leasing, jointly owned property strategies and documentation, and related court cases and arbitrations. I regularly represent master developers, sub-developers, property owners, architects, engineers, contractors and government entities in all stages of the real estate and construction processes.

Afridi & Angell is one of the most established law firms in the UAE, having been in the region for 35 years. Afridi & Angell's offices are in Dubai, Abu Dhabi and Sharjah in the UAE. The firm conducts a general corporate, commercial and financial legal practice and international practice specializing in the Middle East, North Africa and South Asia.

Our clients include multinational corporations, businesses, entrepreneurs,

financial institutions and governments who seek advice in respect to their domestic and international affairs, including cross-border transactions and inward and outward investment activities.

Q Please give me an overview of construction law in your jurisdiction currently.

Following the global financial crisis, the extent of construction in Dubai (and in the UAE generally) has been curtailed. Whilst some building work is taking place, this tends to be the completion of projects already started, as opposed to the launch of brand new developments. The majority of construction law work is therefore contentious, and focused on resolving disputes about the delays and cancellations of projects.

Q What are the main challenges you face?

Under Dubai's Law 27 of 2006 (Law 27)

and the Directions issued pursuant to Law 27, a mechanism for the charging and recovery of service charge for the management and maintenance of common areas by Owners Associations was introduced. The concept that, even after the entire purchase price has been paid for a property, the Unit Owner would be required to make ongoing payments to be made is quite alien to many Arab countries.

Perhaps in part due to this cultural issue, the recovery rates for service charge have been comparatively low. Of course this impacts on the standard to which buildings are maintained. The elements in Dubai (be it the extreme heat or the sand blasting in from the desert) age buildings more rapidly than in cooler countries. These two issues combine such that any defects in construction that might exist are more likely to become evident earlier into the building's lifespan.

In short, the topic of claims for construction defects is likely to be a major talking point in Dubai in the coming years. The claims will, broadly speaking

either be claims by the Unit Owners and Owners Associations or claims by the Developer.

(A) Claims by the Unit Owners/ Owners Associations

Article 26 of Law 27 states that the Developer remains liable for 10 years from the date of a Project's completion certificate to repair and cure any defects in the structural elements of the Project notified to the Developer by the Owners Association or a Unit Owner.

Article 26 also explains that the Developer remains liable for 1 year from the date of the Project's completion certificate to repair or replace defective installations in the Project. Article 26 expressly states that this includes mechanical and electrical works and sanitary and plumbing installations.

If the sale/purchase agreement between the Unit Owner and the Developer sought to reduce those time periods, Law 27 supersedes the agreement.

Further, under the UAE Civil Code, the combination of Articles 254 and 544 allows the Owners Association and the Unit Owners to argue that they are entitled to take action against the contractor for breaches of the contractor's obligations under the contract between the Developer and the contractor (even though the Owners Association/Unit Owners are not a party to that contract).

As mentioned above, though, given the comparatively low recovery rates of service charge, the Owners Association may not have funds to pursue a claim. Flexible fee structures may be required in order to assist the Owners Association in enforcing its rights.

(B) Claims by the Developer

Under the UAE Civil Code, the Developer has a claim against the contractor and the supervising architect for ten years from the date of delivery of

the work if either (i) the building suffers total or partial collapse or (ii) there is a defect that threatens the stability or safety of the building. The contractor/supervising architect cannot contract out of this liability.

The developer's remedy is compensation – and crucially the obligation to compensate applies even if (a) the building collapse/defect arises from a defect in the land or (b) the developer consented to the construction of the defective building.

This concept of strict liability is also very important when we consider the projects that were started, but then moth-balled as the financial crisis really bit. Some of those projects are now being re-started. The years of exposure to the elements may have degraded the construction to an extent that remedial works are required even before the "construction proper" can be restarted.

Q What legislative changes do you feel there is a need for?

Whilst the UAE has one of the highest carbon footprints per head of population in the world, it is seeking to be a world leader in solar energy and other renewable energy resources. (This is perhaps most notable in the Masdar City project in Abu Dhabi.) As part of this drive to make the UAE greener, we may see the introduction of more comprehensive legislation reducing carbon emissions. This would in turn impact on the construction industry, potentially in relation to requirements for carbon neutral buildings.

In November 2011 the jurisdiction of the courts in the Dubai International Financial Centre (the DIFC) (one of Dubai's free zones) was significantly expanded. Broadly speaking, the jurisdiction of the DIFC Courts had previously been limited to civil disputes involving or connected with the DIFC. The change in the law amends these

jurisdictional limitations by allowing parties to agree expressly in writing to have their dispute determined by the DIFC Courts (so long as no final judgment has been issued by another Court). The legal system of the DIFC Courts is based on the English system, with proceedings taking place in English. Proceedings in the Dubai Courts are in Arabic, and largely through the submission of a series of written documents. Accordingly, it is anticipated that the DIFC Courts will become an increasingly popular forum for dispute resolution, notably for foreign companies trading and working in Dubai. Traditionally, Dubai's construction disputes have been resolved by arbitration before the Dubai International Arbitration Centre (DIAC). It remains to be seen if the DIFC Court expansion will impact on the DIAC. **LM**

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