

GLOBAL REFERENCE GUIDE

real estate & construction

2010 with global advisor directory

FINANCIER
WORLDWIDE

FW
E-BOOK

MIDDLE EAST & AFRICA

Settlement of construction disputes in the Middle East

by Shabram Safai | Afridi & Angell

THE MIDDLE EAST has experienced significant economic growth over the past 10 years, fuelled by high oil prices. Such prosperity has resulted in an unprecedented construction boom in the Middle East. The global financial crisis of 2008 exposed the weaknesses of such a boom, resulting in a market crash, and resulting disputes, especially construction disputes.

Given the traditional roots of Middle Eastern culture, there is a strong emphasis on amicable settlement of construction disputes. Failing such settlement, and if no arbitration clause is contained in the construction contract, the dispute is referred to court. Generally the court system for a typical Middle Eastern jurisdiction consists of: (i) a Court of First Instance; (ii) a Court of Appeal; and (iii) a Court of Cassation.

As a case in point, one such typical Middle Eastern jurisdiction is the United Arab Emirates (UAE). Court hearings in the UAE are generally held in public and all court proceedings are in Arabic. However, there is usually little or no oral hearing. Also, the public cannot inspect the court file. Only the parties to the litigation and their lawyers have access to these records. As a result, although all proceedings are in theory public, they remain virtually confidential in practice. In the UAE, judgments of the higher courts are not binding on the lower courts and each case is decided on its own merits and facts.

The UAE operates under a civil law system and statutes are the primary source of law. Another body of law is the Shariah which is a body of religious, ethical and legal rules. Shariah is founded on familiar concepts of justice and equity, and the practical result in commercial matters is often the same as that reached under Western law.

Starting proceedings

Proceedings are started by filing a claim in the relevant court office on payment of the required court fee. On application by the claimant, payment of court fees can be deferred in exceptional cases. The court fee depends on the value of the claim, and has a maximum cap. Generally, the maximum court fee is: (i) 7.5 percent of the claim value, subject to a maximum of AED 30,000 (about US\$8170), with further fees if provisional orders are sought; and (ii) 4 percent of the claim for the first AED 100,000 (about US\$27,220) and 5 percent of the amount over AED 100,000, up

to a maximum of AED 30,000. This fee is payable either on an application for provisional relief, or on filing the substantive suit.

The claim must meet procedural requirements, include the names and addresses of the parties to the action, and include details of the claim. Documents in support of the claim are usually annexed to the claim and must be translated into Arabic. The court issues a summons with a hearing date endorsed on it for service on the defendant, with a copy of the claim and any supporting documents filed by the claimant.

Subsequent stages

Once an answer has been filed, the trial is adjourned for the claimant to respond. Further adjournments are given so that memoranda can be filed by the parties. Once the court believes that the case has been sufficiently pleaded, it reserves the matter for judgment. The entire proceeding is based on written submissions supported by documentary evidence. The court usually appoints an expert to assist it and usually accepts their report.

Arbitration

Arbitration proceedings have become increasingly popular as a means of settlement of construction disputes in the Middle East and many parties elect for resolution of disputes by arbitration under their construction contracts.

For example, in the UAE, the Dubai Chamber of Commerce and Industry established the Dubai International Arbitration Centre (DIAC), in effect a re-branding of the commercial conciliation and arbitration services that have been available since 1994. The DIAC has issued arbitration rules and maintains a list of arbitrators. The Abu Dhabi Chamber of Commerce and Industry in Abu Dhabi also has an arbitration centre that has issued its own set of procedural rules. Foreign arbitration institutions, most notably the International Chamber of Commerce's Court of Arbitration, are also often used in large construction disputes. Also, the Dubai International Financial Centre/London Court of International Arbitration (DIFC/LCIA) Centre was established in February 2008 and is based in the Dubai International Financial Centre in Dubai.

It is important to note that there are no rights of appeal available from an arbitration proceeding in the UAE. Also, the UAE federal arbitration legislation is currently contained only in a short section of the UAE Civil Procedure Code and requires court ratification of awards.

Importantly, the New York Convention was adopted by the UAE in 2006 and applies to all arbitration proceedings conducted in the UAE. However, no significant decisions have yet been made after the adoption of the New York Convention by the UAE. ❧

C