

Construction Claims Management in The Middle East Countries

Prepared by
Wail Al-Sabbali



Outline

- Introduction
- Contracts in the Islamic Law
- Arbitration in the Middle East
- Litigation in the Middle East
- Conclusion



Introduction

- Middle East countries have experienced a rapid growth in constructions in past three decades.
- Claims Management has become of an essence to construction agencies in the Middle East



East & West

- Judicial systems in the Middle East countries are different.
- Islamic Law “Shari’a” is the main source for most of the rules and regulations that govern the contracts in the Middle East.
- Conflicts are very likely to happen when one or more of the stakeholders are not familiar with the judicial system.



Jurisdiction System

- Islamic Law is very often called Shari'a
- Shari'a can be defined as the rules and laws that are extracted from Qur'an, Sunna, or Ijma'.
- Islamic Law have different schools, and hence it differs from a place to another
- Although, Islam Law is the main source for jurisdictions in the Middle East, yet, some countries have combined laws from different judicial systems.
- Many Islamic countries have adopted Civil Codes

Contracts In The Islamic Law



- Qur'an elevates the contractual undertakings to the level of religious duty
- Contract in Islamic Law is sacred. It is the Shari's of the parties
- Qur'an forbids certain types of contracts;
 - Riba: translated as usury. Some scholars suggest that interest is disallowed altogether, while more liberal scholars suggest that interest can be justified as "compensation for inflation" or the decline in the real value of goods or money
 - Gambling and all unjust enrichment

Contracts In The Islamic Law



- As all legal systems require, offer and acceptance are required in the Islamic Law.
- “Majlis”: translated physical proximity, the time during which an offer remains open. Majlis begins when parties come together and ends when they separate.
- “Khayar Al-Wasf”: This option allows an injured party to rescind a contract where the quantity or quality of goods or services, as described in the contract are not met.

Contracts In The Islamic Law



- “Khayar Al-Tadlis”: Another option to rescind for fraud.
- Islamic Law requires a breaching party to compensate the injured party.
- Islamic Law accepted force majeure as valid grounds for rescinding a contract



Claims Management

- The term “Claims Management” is relatively new for the Middle East construction industry
- Most international construction firms that move into the Middle East go into a joint ventures with local partners. This is an excellent way to reduce the likelihood of conflicts with other contract parties.
- Ignorance of the judicial system is major factor for conflicts in big construction in the Middle East

Arbitration in The Middle East



- Islamic Law regulates for the conduct of arbitration
- In Egypt, Chambers of Commerce was empowered to arbitrate disputes
- In Saudi Arabia, Chambers of Commerce is empowered to conduct arbitration

Litigation in The Middle East



- Islamic Law governs all litigations in Islamic courts.
- Most international contractors are reluctant to submit their claims to national court, especially when the country does not have a developed jurisprudence or a tradition of judicial independence.
- Most of contractors will be pleased to submit their disputes to their own national courts



Conclusion

- Claims Management is relatively a new concept for the construction industry in the Middle East
- Islamic Law “Shari’a” is the main source for laws and regulations in the Middle East Countries
- Some Islamic Countries have combined laws from different judicial systems
- Islamic Law regulates for arbitrations
- Foreign contractors in the Middle East are reluctant to submit their disputes to national courts