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## CONTRACTING IN THE MIDDLE EAST – NEXT STOP LIBYA?

By Raid Abu-Manneh

With the credit crunch hitting projects hard in Dubai, contractors have been turning their attention to Libya, where the construction market is booming.

Contractors who have previously contracted under UAE law will find themselves in relatively familiar territory but they need to be aware that in Libya they are exposed to additional risks. This is because, unlike Dubai, Libya does not yet have a proper legal infrastructure to deal with disputes.

### Libyan law

Like most Arab laws, including that of the UAE, the Libyan Civil Code of 1953 is based almost entirely on the Egyptian Civil Code. In fact, Sanhoury, who wrote the Egyptian Civil Code by combing Shari'a with the French Civil Code, chaired the Committee which wrote the Libyan Civil Code. Despite the similarities between UAE and Libyan law, however, contractors should not assume that Libyan law will be identical and they need to obtain specific advice on Libyan law. Where, for example, the contract is with the Libyan Government, administrative and public procurement laws may apply to the project and these need to be carefully considered.

As in other parts of the Middle East, in Libya the FIDIC form of contract is extensively used but contractors should note that such contracts

are often significantly changed in the employer's favour. Proposed terms and conditions therefore need to be properly reviewed and compared with the FIDIC form.

### Enforcing entitlements.

The Libyan courts generally have a good reputation but they are unlikely to be able to cope with a large and complex project dispute.

Libya does not have a widely recognised arbitration centre like the Dubai International Arbitration Centre nor does it have a separate arbitration law like the new DIFC arbitration law. All awards currently have to be ratified by the courts before being enforced. In addition, Libya is not a signatory to the New York Convention on the Recognition and Enforcement of Foreign Awards, so that even if awards are recognised by the courts, parties are often able to appeal and so delay the process of enforcement.

Effective contract management may, of course, avoid disputes but, as a deterrent to disputes, it is important to ensure that contracts include reference to arbitration in an established venue such as London and Paris. This is particularly effective where the employer has assets outside Libya against which the contractor could execute an award.



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