

Abu Dhabi government orders payment to contractors within 30 days

The Executive Council of the Emirate of Abu Dhabi has issued circular No.1 of 2019 concerning the payment of dues to contractors and suppliers.

Submitted	13 May 2019
Applicable Law	United Arab Emirates
Topic	Construction Dispute Resolution - Commercial
Sector Focus	Energy and Infrastructure
Contact	Harriet Jenkins, David Risbridger

Background

Delayed payment from developers to contractors is endemic in the Middle East construction industry, and its effects are felt widely. Delayed payment stalls projects and leads to serious cash flow issues for contractors and subcontractors, affecting performance and having knock-on effects down the supply chain.

In fact, 60% of the respondents to a recent survey identified that late payments causing cash flow problems is the biggest financial risk facing construction companies in the UAE. Contractors are unable to look to banks to inject cash as banks are increasingly reluctant to extend more credit to the industry.

These cash flow issues combined with low market fluidity and a general downturn in real estate has therefore caused difficulty to UAE contractors in recent years, leading to a lack of specialist sub-contractors such as MEP contractors in the region.

The Circular

To address the cash flow problems in its construction industry, the Executive Council of the Emirate of Abu Dhabi has issued circular No.1 of 2019 concerning the payment of dues to contractors and suppliers (the Circular). By virtue of its legislative jurisdiction, the Abu Dhabi Executive Council issues circulars to streamline the activities of the Emirate and its people, which are reported in the Abu Dhabi Official Gazette.

The Circular instructs government department and state-owned entities to:

- pay construction contractors within 30 days of receiving the invoice, and
- amend contracts so as to require contractors and suppliers to pay subcontractors within 30 days of receiving payment from government departments and state-owned entities.

If part of the outstanding invoice is disputed between the parties, the undisputed part must be paid. However, payment of the undisputed part shall not constitute a waiver of rights by either party until an agreement as to the outstanding amounts is reached in accordance with the contract.

Resolving cash flow issues

Whilst the Circular does not offer contractors a new remedy for delayed payment, it does demonstrate the Abu Dhabi government's recognition and willingness to resolve the cash flow problems in the Emirate's construction industry. It can be perceived as a gesture of support for contractors, who can now at least refer to the Circular and order of the Abu Dhabi Executive Council as another legal basis when chasing state-owned clients for payment.

The requirement to pay subcontractors within 30 days of receiving payment seeks to address the "pay when paid" provisions that are common in UAE construction contracts, namely that the subcontractor will only get paid once the contractor is paid. Such provisions give rise to cash flow issues for subcontractors when the contractor has not received payment from the developer. The requirement to pay subcontractors within 30 days is therefore welcomed as an attempt to ensure payment flows down the chain promptly.

It is hoped that improved cash flow in the construction industry will prompt wider improvements to the accounting process. Since [VAT was introduced across the UAE](#) in 2018, many contractors have delayed issuing invoices to avoid being exposed to VAT liability in respect of works they did not expect prompt payment for. If the Circular provides contractors with better confidence regarding payment, it could ease the burden that uncertain cash flow has on VAT liability.

A step in the right direction

The Circular is undoubtedly a step in the right direction. The Circular also demonstrates the Abu Dhabi government's general effort to improve pragmatism in its processes. Another example of this is the recent decision to include Hindi as the third official language used in Abu Dhabi courts (alongside Arabic and English), to better accommodate its large expatriate community.

However, it remains to be seen whether entities will seek to circumvent the Circular's provisions by simply disputing invoices as a way to delay payment. This may be particularly the case where changes to the scope of work may be in issue, and/or where additional budget for such varied work may be required.

We wait with anticipation to see whether any of the other UAE Emirates will follow suit.

Other jurisdictions have focused on improving the cash flow issue in the construction industry, for instance through the use of compulsory adjudication in the UK. This is a 28-day statutory procedure, designed to protect cash-flow during construction, and often viewed as a "pay first, argue later" approach to resolving disputes. Is this a step too far for the UAE?

English Translation of the Circular

This document (and any information accessed through links in this document) is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.

© Simmons & Simmons LLP 2019. All rights reserved. Registered in England & Wales Registered Number OC352713

elexica Limited, CityPoint, One Ropemaker Street, London EC2Y 9SS