

Lebanon

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1 Joint ventures

Must foreign designers or contractors enter into a joint venture with a local contractor to design, build and be paid for their work? Does the law require that the local contractor control the joint venture?

One must distinguish from the outset between foreign designers and foreign contractors. Pertaining to foreign contractors, there is no obligation for them to enter into a joint venture with local contractors, however, the foreign contractor must have a legal presence in Lebanon in order to be able to carry out its activity and procure projects. Such a presence can be achieved through establishing a branch of the foreign contractor's corporate entity, by incorporating a limited liability company by shares, or by opening a representative office in Lebanon. That said, it is frequent to find many joint ventures in Lebanon comprising both local and foreign contractors, and in many cases the foreign contractor is in control of the joint venture and leading it, seeing as the local contractor benefits from the foreign contractor's reputation, experience, and track record in order to procure substantial projects. However, pertaining to public projects tendered by the Lebanese Council for Development and Reconstruction, there is a requirement that a certain percentage of the shareholding of the foreign contractor and its corporate vehicle in Lebanon should be Lebanese (see question 3).

Concerning foreign designers, the regulations in Lebanon require that architects be registered by the professional body in Lebanon so as to gain the right and power to prepare design documents and present them for the relevant permits. Foreign designers have to apply to the Lebanese Syndicate of Engineers for registration in order to have the right to sign off these documents. This registration is conditional upon the acceptance of the syndicate, which verifies that the syndicate of the foreign designer would also accept to register Lebanese designers. If foreign designers are not registered in the Lebanese syndicate, then they must enter into agreements with local architects whereby the local architect agrees to review the foreign designer's work and sign off on all relevant design documents. However, foreign designers cannot enter into such agreements without the prior authorisation of the Lebanese Syndicate of Engineers.

2 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

As stated above, the foreign contractor will have the option of opening a branch of its company or a representation office, or incorporating a new entity in Lebanon. Pertaining to opening a branch of a foreign company, Lebanese law requires a foreign company to register its branch with the Registrar of Commerce, and foreign joint stock and limited liability companies should make a declaration to the Ministry

of Economy and Trade if they intend to open one or several branches in Lebanon. Amendments to the articles, the increase or decrease of the capital, the designation of new agents, merger with other companies, the dissolution and the bankruptcy of the foreign company are to be notified to the Ministry.

As for opening a representation office in Lebanon, local laws require that the foreign company produce minutes of meeting of its general assembly or board of directors, including the decision to open a representative office in Lebanon and the appointment of the representation office manager who must be vested with all necessary powers to represent the company and to appoint lawyers. Such minutes must be duly certified by the Registrar of Commerce in the home country and the Lebanese embassy.

Finally, with regards to establishing a Lebanese company limited by shares, a Lebanese joint stock company, Lebanese laws require that the majority of the board of directors be of the Lebanese nationality and that the authorised signatory of the company be Lebanese. It should be noted here that Lebanese commercial law requires all board of director members to be shareholders in the company and therefore the Lebanese members of the board of directors will necessarily have to own shares in the company.

3 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Foreign contractors do not need a particular licence in order to carry out their activities in the private construction sector in Lebanon. However, pertaining to public works, contractors have to be registered in the Syndicate of Contractors and have to be classified by the Ministry of Public Works and Transportation in order to qualify for their execution. The said Ministry classifies the contractors into different classes according to their track record and ability to carry out certain sizes of projects. Therefore, in order to qualify for certain public works projects the contractor has to be registered in a certain class. However, it should be noted here that according to the Council for Development and Reconstruction in Lebanon, which is a government entity that carries out tenders for certain public projects, in order to prequalify for the projects tendered by it, the foreign contractor must have at least a 49 per cent Lebanese shareholding both in its country of origin and in the corporate vehicle set up in Lebanon.

Pertaining to foreign designers, they should be registered with the Lebanese Syndicate of Engineers in order to have the right to sign off any design documents and present them to the competent authorities to acquire the required building permits. Failing such registration, foreign designers must and should enter into agreements with local designers whereby the local designer reviews the foreign designer's work and signs the design documents; such agreements

should have been made with the prior approval of the Lebanese Syndicate of Engineers.

4 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

There are no such laws dedicated to construction projects, however Lebanese labour law in general gives priority to Lebanese nationals for any jobs offered in Lebanon. According to the labour laws, foreign labour can only procure jobs in Lebanon if there is no Lebanese worker who can carry out the same job. However, in practice the application of these laws is extremely lax, particularly regarding construction projects on which the vast majority of labour – if not its entirety – is nationals from neighbouring Arab countries, notably the Syrian Arab Republic and Egypt.

5 Local labour law

Are there any labour laws applicable to construction and infrastructure projects?

Governmental Decree No. 163/2 dated 31 of January 1995 regulates the number of working hours applicable to construction projects both for labour and the use of equipment. The working hours for labour should be between seven in the morning to seven in the evening; no work can be carried out on Sundays or during official holidays without prior approval from the competent authorities. Pertaining to minimum wages, the minimum wage in Lebanon is decided by a governmental decree that sets the minimum wage for all the labour working in Lebanon.

6 Health and safety regulation

Are there any specific health and safety rules regulating the construction industry?

Lebanese Decrees No. 11,958 issued on the 25 February 2004 and No. 14,293 issued on the 11 March 2005 regulate health and safety procedures in the construction industry. These decrees provide for the safety regulations that the contractor, owner and the contractor's workmen should abide by throughout the construction of a project.

In addition to these decrees, the owners tend to require contractors to abide by certain safety protocols throughout the execution of a project or at least to follow international standards of safety adopted by the construction industry.

7 Close of operations

If a foreign contractor, who has been legally working, decides to close its operations, what are the legal obstacles to closing up and leaving?

If the foreign contractor opts to close its operations, the said contractor will have to dissolve the corporate vehicle – be it a joint stock company, branch office or representation office – which it had set up in Lebanon in order to pursue its activities.

The corporate vehicle cannot be successfully dissolved unless the competent government authorities establish that the foreign contractor does not have any liabilities towards any third parties. In the case of a company limited by shares, the foreign contractor can choose to sell its shares or alternatively will have to dissolve the company.

As for a branch office, in this situation the procedures are simpler than that of a limited company, and the foreign contractor will have to go through a deregistration process but will still have to establish that it does not have any liabilities towards any third parties.

8 Standard forms of construction contracts

What standard-contract forms are used for construction and design?

The vast majority of contracts used in the construction industry in Lebanon are based on the fourth edition of the International Federation of Consulting Engineers (FIDIC) Conditions of Contract for Works of Civil Engineering Construction (1987), more generally known as the FIDIC red book. However, both the owners and contractors tend to modify this contract to suit their needs and those of the project. It should be noted here, that pertaining to public works, most of the contracts used by the Lebanese government are standard government-issued conditions, however, some government entities, notably the Council for Development and Reconstruction, have begun to adopt and use the fourth edition of the FIDIC red book which the industry is accustomed to.

As for the new suite of FIDIC contracts issued in 1999, they have begun to make a shy appearance in the construction scene in Lebanon, an appearance that could become more and more prominent as members of the industry open up to them.

Design consultancy agreements between owners and architects do not follow a certain standard form of contract. The 1998 FIDIC white book is used, however, the vast majority of design services contracts are drafted on a case by case basis and every architect seems to use a contract catered to his specific needs.

9 Price escalations

In typical construction contracts, who assumes the risk of material price escalation and shortages?

It is the norm in the construction industry in Lebanon to find clauses in almost all the construction contracts transferring the risk of material price escalation and shortages to the contractor. The fourth edition of the FIDIC red book is amended in order to reflect this transfer of risk, and subclause 70.1 is removed from the contract and replaced with a clause that stipulates that the contractor is not entitled to any modification to the contract price for any increase or decrease in the cost of labour or material. However, given the constantly varying and increasing cost of materials in the construction industry, some contractors are successfully negotiating clauses which transfer the risk of material price escalation back to the owner and establish a mechanism for compensating the contractor in such situations.

Pertaining to construction contracts for public works, albeit that a majority of these contracts impose the risk of material price escalation on the contractor, in situations where the increase of the price of materials is sharp and unexpected the Lebanese government tends to issue decrees directly, by virtue of which contractors who are performing public works become entitled to a certain compensation for the said increase in materials' price. These decrees contain mechanisms and equations which establish the amount to which the contractor is entitled and they specify which government entity is to compensate the contractor.

10 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Local laws do not provide any advantage to domestic contractors over foreign contractors in the realm of public works. In order to qualify for the construction of certain public works, contractors have to have been registered in the Lebanese Syndicate of Contractors and have to obtain a certain classification from the Ministry of Public Works and Transportation, a classification which is given to the contractor in light of its track record and capabilities. Such registration is open to both foreign and local contractors equally.

As for the classifications of the said ministry, they are given to both local and foreign contractors without any distinction, and therefore no advantage is given to local contractors. However, pertaining to public projects tendered by the Lebanese Council for Development and Reconstruction there is a requirement that a certain percentage of the shareholding of the foreign contractor and its corporate vehicle in Lebanon be Lebanese (see question 3).

11 PPP and PFI

In certain forms of construction such as PPP and PFI, where the contractor is responsible for long-term quality control and maintenance, how is the risk of additional future costs considered and mitigated?

In this situation, the risk of additional future costs is mitigated by reducing the period in which the contractor is responsible for maintaining the project. In addition, the contractor can try to negotiate a clause whereby the maintenance costs are mutually reviewed and amended by both parties or in accordance with a certain mechanism in the event of maintenance costs substantially increasing for reasons that were unforeseeable by the contractor at the outset of the project.

12 Payment of fees

How may a contractor secure payment of its fees from an owner? May the contractor place liens on the property?

Contractors can strive to ensure payment of their fees at the outset of the project by negotiating frequent interim payment certificates and certain forms of securities. In this respect, it would be wise for the contractors to use the suite of 1999 FIDIC contracts that give the contractor the right to terminate the contract if the owner cannot furnish evidence of the availability of enough funds to execute the project within a certain time limit. Such a provision would safeguard the contractor's interests and limit the damages that he could potentially incur.

If the owner fails to pay the contractor, then the contractor can resort to the competent court to request seizure of the owner's assets in order to recover the monies due and potentially place liens on the property. However, in this case, the court shall have to establish that the monies the contractor is claiming are certain and due. Furthermore, article 677 of the Lebanese Code of Obligations and Contracts stipulates that the contractor has the right to retain the property and not release it to the owner until the latter pays the contractor all the monies it is entitled to.

13 Tort claims and indemnity

Do local laws permit a general contractor to be indemnified against all acts, errors and omissions arising from the work of a subcontractor, even when the general contractor is negligent?

Pursuant to articles 221, 252 and 253 of the Lebanese Code of Obligations and Contracts, the parties to a contract have to fulfil their obligations, and if one of the parties fails to, the second party shall be entitled to be indemnified. Therefore, a general contractor will be indemnified against all errors and omissions arising from the work of a subcontractor. In accordance with article 139 of the said code, the general contractor can include a provision in the agreement in which the subcontractor stipulates that the former shall be indemnified as a result of the latter's acts, errors and omissions, even when the former was negligent; however, if the general contractor committed an intentional mistake that was linked to the subcontractor's acts, errors and omissions, then it shall not be entitled to uphold such a provision and will not be entitled to indemnification.

14 Insurance

Do local laws require the maintenance of any specific type of insurance on construction projects?

Lebanese Decree No. 14,293, issued on 11 March 2005, requires the maintenance of an insurance policy issued by an insurance company which is licensed to operate in Lebanon on construction projects. This insurance policy must cover compensation for damages as a result of the collapse of the project (partial or complete) due to faulty design, faulty workmanship or faulty material. Moreover, owners usually specify in construction contracts that the contractors are obligated to keep a contractors' all-risk insurance policy in effect throughout the duration of a project. The minimum threshold of such policies varies depending on the size of the project and its location.

15 Insolvency and bankruptcy

If a contractor files for insolvency, or is declared insolvent, may its contract be terminated for default and a new contractor retained to prevent delay on the project?

Insolvency of the contractor does not necessarily entail the automatic termination of the contract, unless the terms of the contract stipulate otherwise. Once a contractor's bankruptcy is declared, a court-appointed administrator takes charge of all of the contractor's activities and administration. This said administrator may opt to keep the contract in force and continue its execution if he or she deems that such a choice would benefit the contractor's creditors. However, as stated above, the majority of construction contracts in Lebanon are based on the fourth edition of the FIDIC red book which provides in subclause 63.1 that the owner can terminate the contract if the contractor files for insolvency or is declared insolvent, and in this situation the owner may retain a new contractor to complete the execution of the project.

16 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

Government agencies cannot assert sovereign immunity as a defence to a contractor's claim for payment; the contractor can pursue its claim legally through the dispute resolution mechanism contained in the contract. The vast majority of public works contracts give the competent Lebanese courts, which are the administrative courts, the jurisdiction to settle disputes arising out of or in relation to the contract. The government entities do not have immunity of jurisdiction, however, they can assert immunity of execution, which translates to the contractor being able to successfully bring a claim against the government entity in the competent court and may even get a judgment ordering the said authority to pay; however, the contractor has no means available to effectively execute and enforce the said judgment.

17 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable?

Bribery is a criminal offence that is punishable by law; articles 351, 352 and 353 of the Lebanese Penal Code provide for imprisonment and fines in the case of committed bribery. Furthermore, article 363 of the said code deals with deceit and fraud in relation to the government's money, which equally result in the imprisonment and fining of the offender. A contract that has been illegally obtained can be declared invalid and void at the request of one of the contracting parties.

18 Arbitration

Can a government agency agree to arbitrate disputes privately rather than go to court?

The Lebanese Code of Civil Procedure was recently amended in 2002 and one of the provisions that were amended is article 762 of the said code, which provides in its second paragraph that government entities can enter into arbitration agreements with private persons. Therefore, a government agency can agree to arbitrate disputes privately rather than go to court.

19 Foreign corruption

Do local laws prohibit illegal actions in foreign jurisdictions?

Lebanon is not a signatory to the UN Convention against Corruption, and therefore the prohibition of illegal actions in foreign jurisdictions will have to be the subject of bilateral treaties concluded between Lebanon and other states.

20 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

The Lebanese Code of Obligations and Contracts regulates in articles 341, 342, and 343 the impossibility of the execution of an obligation. According to these articles, the parties are released from the execution of an obligation when such execution has become naturally or judicially impossible, provided that the impossibility of execution does not emanate from any fault committed by either party. In addition, article 643 of the Code of Obligations and Contracts, which deals with construction contracts, expressly states that such contracts be terminated if their execution is rendered impossible due to force majeure. Lebanese courts and jurisprudence require that three conditions are fulfilled so as force majeure exists and the parties are released from their obligations. The first condition is that the event giving rise to force majeure should be foreign to the parties and was not caused by any of them; the second condition is that the said event should have been unforeseeable by the parties; and the third condition is that the said event should render the execution of the parties' obligations impossible. If these conditions have been fulfilled then the parties shall be released from the execution of their obligations.

It should be noted here that pertaining to construction contracts for public works and the occurrence of events beyond the control of the parties, the parties benefit from the *theorie de l'imprevision*. According to this theory, if a non-governmental party to a contract encounters an event which it has not caused, which is abnormal and unforeseeable and which is temporary, then said party shall be entitled to compensation as a result of the said event. This event can be the result of harsh changes in the economic factors surrounding the contract or from actions by the government which had a substantial impact on the circumstances surrounding the contract.

21 Dispute resolution mechanisms

What dispute resolution procedures are successfully used to solve construction disputes?

Pertaining to construction disputes in the private sector, parties generally resolve their disputes through local or international arbitration. In general, the decision to resort to local or international arbitration depends on the size and value of the project and the nationality of the contracting parties. In the case of large project values and contracting parties from different nationalities, disputes are generally resolved through international arbitration.

As indicated earlier, most of the contracts used in the construction industry in Lebanon are based on the Fourth edition of the FIDIC red book and therefore the dispute resolution mechanism adopted contains two tiers, the first being the engineer who assumes the role of a quasi-adjudicator and renders a decision, and the second tier being the arbitration tribunal that renders an award. Dispute adjudication or review boards are seldom used unless the parties expressly include them in their agreements.

As for construction disputes in the public sector, agreements in this sector provide for the resolution of disputes through the competent Lebanese courts as opposed to arbitration.

22 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

There are no specialised tribunals in Lebanon, similar to those in England, which are dedicated to resolving construction disputes. However, it should be noted here that the tribunals that are competent for resolving disputes pertaining to contracts in the public sector differ from those tribunals that are competent in the private sector. Lebanon, as France, has adopted a legal system which differentiates between private and public law, and therefore administrative courts exist which are in charge of resolving disputes between private and public persons. The Lebanese Conseil D'Etat is the competent court for disputes arising out of or in relation to public works contracts.

23 Dispute review boards

Are dispute review boards (DRBs) used?

Seldom does one come across dispute review boards in Lebanon; however, with the appearance of the new suite of FIDIC contracts (1999) in the industry, dispute adjudication boards have begun to be used.

24 Mediation

How is mediation defined? And is it commonly used to resolve project disputes?

Lebanese law does not define or regulate mediation and it remains an option that contracting parties have to provide for in their agreements. If the contracting parties wish to include mediation in the dispute resolution mechanism provided for in their agreement, then the parties have to determine how the mediator is to be appointed and what are the procedures to be followed in the mediation.

25 Confidentiality in mediation

Are statements made in mediation confidential?

In order for mediation to be confidential, parties to the mediation must include an express provision in their mediation agreement or clause to this effect. Lebanese courts will generally uphold such a confidentiality agreement, and therefore statements and documents disclosed in mediation proceedings will not be permitted to be produced in subsequent court or arbitral proceedings.

26 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Lebanon signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 11 August 1998 and it entered in force on 9 November 1998. Therefore, the basis upon

Update and trends

As a result of problems encountered under the fourth edition of the FIDIC red book with the role of the engineer as a quasi-adjudicator, parties in the construction industry are gradually moving forward to adopting the

1999 suite of FIDIC contracts and the use of dispute adjudication boards. Therefore, in the near future the construction industry in Lebanon should be witnessing a shift to the new suite of FIDIC contracts.

which a foreign arbitral award may be rejected by local courts has to be included in the New York Convention, and in particular article V of this convention.

27 Governing law and arbitration provider

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

Parties in the construction industry in Lebanon tend to provide for arbitration under the rules of arbitration of the International Chamber of Commerce; this might be due to the widespread use of the Fourth edition of the FIDIC red book, which provides for arbitration under the ICC rules or due to the fact that parties in the construction industry and their legal representatives are accustomed to said rules. The seat of arbitration is usually specified in the arbitration agreement and is generally located in a country neutral to both parties. As for the hearings, they equally tend to be held in a neutral location. Pertaining to the applicable law to the merits of the dispute, this law is generally the law of the location of the project which is Lebanese law.

28 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Lebanon is not party to the Stockholm Declaration of 1972, however, it has signed and ratified numerous international conventions pertaining to the protection of the environment (38 conventions to date), notably the Kyoto Protocol and the ACCOBAMS convention.

The local Lebanese law which provides for the preservation of the environment while constructing projects is the Lebanese Law No. 4,444-2002 for the protection of the environment. This law does not provide for green building, however, it deals with (in general) cutting trees, providing for green spaces, designs that protect the environment (to certain extents) and air pollution. It should be noted here that said law does not venture into the details of constructing projects and aims mostly to protect the general public.

29 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business?

Foreign contractors should be aware that Lebanese laws prohibit, among other things, the importation into the Lebanon of products or components thereof:

- i originating in Israel;
- ii manufactured, produced, or furnished by companies organised under the laws of Israel; or
- iii manufactured, produced, or furnished by nationals or residents of Israel.

30 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Lebanon has signed 49 bilateral investment treaties to date with various countries in the Middle East, Africa, northern America, Asia and Europe with the aim of protecting the investments of foreign entities in Lebanon. As an illustration, the bilateral investment treaty signed between Lebanon and the United Kingdom (entered into force on 13 May 2002) defines the term 'investment' as follows:

'The term "investment" means every kind of asset and in particular, though not exclusively, includes:

- (a) *movable and immovable property as well as any other property rights in rem, such as mortgages, liens, and pledges;*
- (b) *shares in and stock and debentures of a company and any other form of participation in a company;*
- (c) *claims to money or to any performance under contract having a financial value;*
- (d) *intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, technical processes, know-how and goodwill, as well as other similar rights recognised by the laws of the Contracting Parties; and*
- (e) *business concessions under public law, including concessions to search, extract or exploit natural resources as well as other rights given by law, by contract or by decision of the authority in accordance with the law.*

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.'

31 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Lebanon has entered into numerous conventions for the avoidance of double taxation. As of September 2007, Lebanon had signed 33 conventions to this effect with various countries in the Middle East, Africa, northern America and Europe.

32 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

There are no currency controls in Lebanon that prohibit or regulate the change of operating funds from one currency to another.

33 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

There are no Lebanese laws that restrict removal of profits and investments from the Lebanese jurisdiction; however, foreign contractors will have to pay taxes on their profits and dividends made in Lebanon before they can transfer them to another country.

34 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

The vast majority of construction projects in Lebanon are based on the traditional relationship between the owners and the contractors whereby the owner tenders for the project and the contractor under-

takes to construct it. Seldom are construction managers used by owners; in general owners prefer to have a direct relationship with the contractor. Design-and-build contracts are not too numerous, and owners still prefer to have a design consultant provide the design of the project and not the contractor. In most cases, the owners tend to retain the design consultants as the engineer under the Fourth edition of the FIDIC red book.

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