

The bespoke conditions of contracts construction essay



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This chapter focused on areas of Conditions of Contracts of bespoke Forms of Contract in the Dubai Construction Industry. The bespoke Conditions of Contracts prevalent were modified version of the Red Book. As a Dubai construction industry professional the idea was to investigate in depth of the bespoke Conditions of Contracts were vital and useful to the industry and in particular to the professionals in the industry. It was not anticipated that the current practice to be revised by this research. The real understanding of the issues was to investigate and analysis of the result that enable for a healthy awareness to the construction industry in Dubai.

Study Background

“ The construction industry has characteristics that separately are shared by other industries but in combination appear in construction alone” (Hillebrandt, 1984: pg1). “ The UAE is one of the largest and fastest growing economies in the Middle East. The country has witnessed massive investment in the construction industry from both public and private enterprises in recent years. It outpaced Saudi Arabia and became the largest construction market in the GCC region in 2008. Followed by Saudi Arabia, Algeria and Egypt the UAE accounted for nearly 20. 3% of total construction industry in the region. Despite the sluggish growth in 2009 amidst the global financial distress, the construction industry managed to record strong growth during 2007-2009 and contributed approx. 8% to the country’s GDP in 2009” (uae_construction_industry_outlook_2012. html).

According to the new research report UAE Construction Industry Outlook to 2012, “ the UAE construction industry is anticipated to grow at a CAGR of

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around 20% during 2010-2013. Rapid economic development is the main factor driving construction activities and infrastructure development in the UAE. The UAE has drawn investments from all around the world. Most of the investments were generally focused on the development of infrastructure for tourism, hospitality, retail and healthcare industry. In addition, the efforts of the government to diversify its economy to free from oil-based enabled to boost other industries with adequate infrastructure that will enable investments in future” (uae_construction_industry_outlook_2012. html).

“ The UAE will continue to develop despite the global economic slowdown, several projects in tourism, housing, industrial and commercial facilities, education and healthcare amenities, transportation, communications, utilities, ports and airports” (uae_construction_industry_outlook_2012. html).

As per the study conducted by Dubai Chamber of Commerce and Industry it was revealed that UAE was currently leading the current Gulf infrastructure and construction projects. The details appended below in table form as well as graphical presentations. The figures as per the study shows the UAE’ infrastructure, real estate and construction has vast opportunities for the construction industry professionals (Gulf News Sunday, August 1, 2010)

Figure 1. 1

Source: Dubai Chamber based on data from various government agencies (Gulf News Sunday, August 1, 2010)

Figure 1. 2

Source: Dubai Chamber based on data from various government agencies
(Gulf News Sunday, August 1, 2010)

Table 1. 1

Aims and Objectives for the Research

Aims

To study the bespoke Form of Contracts prevalent in Dubai to enable and test the selected hypothesis “ Employers in Dubai preferred FIDIC 1987 fourth edition (Red Book) than FIDIC 1999 first edition (New Red Book).

Objectives

To compare and contrast all relevant Clauses of both Forms

To research and weigh the pro and cons of clauses in both Forms

To research the existing weakness and show how clauses are amended by various employers’ in the Conditions of Contract.

To research the terms in the Form of Contracts and how it affects the Parties involved.

To research how the RB is used in Lump Sum contracts.

To test the hypothesis “ Employers in Dubai preferred FIDIC 1987 Fourth edition than FIDIC 1999 First edition”

Construction law and the legal system

The term “ construction law” is now understood universally to cover the whole field of law which directly affects the construction industry and the legal instruments through which it operates. Efficient and workable construction contracts requires that the needs of the construction process and should be taken into account by applying the principles of management. Construction law is, thus, an inter-active subject in which both lawyers and construction professionals, including managers, have an essential part to play (Construction Law by John Uff, Ninth edition 2005).

Construction law and construction contracts

The term “ construction contracts” has a statutory definitions covering most but not all types of construction work, and including both building and engineering work (Construction Law by John Uff, Ninth edition 2005).

A contract is a binding agreement between two or more persons (such as individuals, businesses, organizations or government agencies) to do, or to refrain from doing, a particular thing in exchange for something of value. The Contracts generally can be written, using formal or informal terms, or entirely verbal. If one party fails to live up to its part of the bargain, there’s a “ breach” and certain remedies for solving the differences are available. The terms of the contract (such as who, what, where, when, and how of the agreement) define the binding promises of each party to the contract (http://law. freeadvice. com/general_practice/contract_law/contract_agreement. htm [Accessed on 07 August 2010]).

Hypothesis

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The hypothesis of the dissertation is “ Employers in Dubai preferred FIDIC 1987 fourth edition (Red Book) than FIDIC 1999 first edition (New Red Book). In UAE most of the bespoke Conditions of Contract are modified based on FIDIC that could arrive based on the environment and nature of the Employer.

“ The Engineering News Record” publication states that 55% of the world’s major construction project (Blick J, 1999) is dealing with the Red Book. It is considered that the Red Book is commonly used as the base to create bespoke Conditions of Contract by the Employers.

Outline Methodology

Fourteen major bespoke Conditions of Contract prevalent in Dubai has been selected for analysis in detail. Further six numbers of bespoke Conditions of Contract has been selected including Abu Dhabi Employer’s bespoke Conditions of Contract. The Dubai Employer’s Conditions of Contract are based on RB and the Abu Dhabi Employer’s bespoke Conditions of Contract are based on NRB. The analysis will be focused on detailed study of the bespoke Conditions of Contracts and the result shall be discussed in brief at Chapter 5 Analysis and presentation of evidence and a detailed result shall be annexed in the Appendix to enable the reader to aware of the amendments and additional provisions in the bespoke Conditions of Contracts prevalent in Dubai. The appendices shall be helpful for the reader in case the reader is dealing with any professional involvement in the construction industry of Dubai.

The survey questionnaires have been forwarded to forty eight selected construction industry professionals in Dubai. The respondents are selected such as RICS qualified Chartered Quantity Surveyors, Resident Engineers, Project Managers etc. to get the analysis of the responses questionnaires from senior level professionals in the Dubai construction industry.

The United Arab Emirates

United Arab Emirates comprise Abu Dhabi, Ajman, Al Fujeirah, Al Sharjah, Dubai, Um Al Quwain and Ras Al Khaima. (<http://www.worldatlas.com/webimage/countrys/asia/ae.htm> [Accessed 09 August 2010])

Population 2, 563, 200

Capital City Abu Dhabi

Currency Emirati Dirham (AED)

Languages Arabic (official), English, others

National Day December 2

Religions Muslim (96%), others Geographic Coordinates Latitude/Longitude (Capital City) 24° 27' N, 54° 23' E

the statics is as follows : Coastline is 1, 318 km ; 82, 880 sq. km of land ;

Highest Point Jabal Yibir – 1, 727 m; Lowest Point Persian Gulf – 0 m.

(<http://www.worldatlas.com/webimage/countrys/asia/ae.htm> [Accessed 09 August 2010])

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Figure 1. 3 – Map of Dubai

Figure 1. 4 – Map of the United Arab Emirates

Source: <http://www.worldatlas.com/webimage/countrys/asia/lgcolor/aecolor.htm>

[Accessed 09 August 2010]

The Structure

The structure of the dissertation comprises the following:

The abstract

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