The Future of Saudi Arabia: Opportunities and Challenges in Infrastructure Projects and Beyond

Saudi Arabia’s government has approved a long term economic blueprint for a post-oil era promising significantly increased investment in infrastructure

**Saudi Arabia Vision 2030**

In recent years the world has seen oil prices plummet, leading to significant revenue shortfalls in energy-exporting nations. The Kingdom of Saudi Arabia, a nation known for its dependency on oil reserves, has announced plans for the biggest shakeup of its economy in recent memory.

The Kingdom’s Deputy Crown Prince, Mohammed bin Salman announced earlier this year details of an economic reform plan known as ‘Saudi Arabia Vision 2030’. Vision 2030 is a long term economic roadmap which aims to end the Kingdom’s reliance on oil. It also targets greater private investment in non-extractive industries, including infrastructure and transportation. In addition, Vision 2030 envisages a partial privatisation of state-owned oil giant Aramco.

The centrepiece of Vision 2030 is a five year plan known as the National Transformation Plan (NTP), a programme intended to restructure the Kingdom’s entire economy. The NTP was approved on 6 June 2016 by the Kingdom’s cabinet in a late-night session in Riyadh. A core component of the NTP is for 40% of projects during the five-year period to be funded by the private sector, with the aim of reducing financial pressure on the state.

**Opportunities**

The construction and transportation sectors have traditionally been amongst the largest recipients of investment in the Kingdom. Investment in these sectors is now expected to further increase in the years to 2030, and to do so
rapidly. A corresponding increase is expected in the number of development projects underway as the NTP is implemented.

A significant element in the Vision 2030 roadmap is the construction of a 30-mile bridge across the Red Sea linking Saudi Arabia with Egypt. The bridge is intended to provide a significant boost to trade and commerce by linking two of the region’s biggest economies and providing a platform for transporting millions of dollars worth of cargo. The bridge is an example showcasing the scale and scope of the NTP’s ambitions for the wholesale transformation of the Kingdom’s infrastructure.

The implementation of Vision 2030 in the long term and the NTP in the short term presents significant opportunities for contractors and consultants alike. Given the pace inherent in the NTP, it is anticipated that it will not be long before tenders are issued and contracts awarded on the first raft of projects to be implemented under it. A plethora of opportunities is subsequently expected for work on a significant number of projects, ranging from the mundane to significant flagship schemes such as the Red Sea bridge.

Challenges

However, with these greater opportunities come great challenges. The legal marketplace in the Kingdom is very different from that in the UK and Europe, and even that in other Middle Eastern countries such as the UAE. A measured approach must be adopted to identify and seek to mitigate potential risks at every stage of a project, from initial contract negotiations, through delivering the works, right through to settling payment of the final account.

It is overwhelmingly likely that an appointment governing a project in the Kingdom will be governed by Saudi law. To a very large extent, Saudi law comprises Shar’iah law. Key principles of Shar’iah law are as follows:

(a) freedom of contract – parties are generally free to negotiate their own terms (unless expressly prohibited by legislation);
(b) fairness and good faith – contracting parties must observe and maintain principles of fairness and equity in their dealings;
(c) uncertainty and speculation – a contract that involves deception, excessive uncertainty or speculation on a future outcome will generally be considered void;
(d) unjust enrichment – contracts where one party gains unjustly at the expense of the other will be void; and
(e) interest – contracts including clauses which provide for payment or receipt of interest will generally not be enforceable.
Unlike in other Middle Eastern jurisdictions such as the UAE, the Kingdom has no overarching civil code or commercial law (although individual Royal Orders, Ministerial Circulars and the like can impose additional legal obligations). There is also no system of judicial precedent or reporting.

In practice, therefore, it is difficult to assess in advance how Saudi law will apply in a particular matter. So it will be particularly important when working in the Kingdom to negotiate reasonable and certain contract terms.

**Delivering Project Works**

In delivery of works, in addition to an obligation to comply with the contract, Shari’ah law imposes a general obligation on parties to observe and maintain principles of fairness and equity. This is equivalent to a ‘good-faith’ obligation.

In delivering a construction project, a contractor or consultant must also comply with the Saudi Building Code. This is a prescriptive set of legal, administrative and technical regulations and requirements that specifies the minimum standards of construction in relation to a wide range of disciplines, including architectural, structural, electrical mechanical, energy conservation and fire protection.

Further, as with a number of Middle Eastern jurisdictions, decennial liability is a risk on certain construction projects in the Kingdom. The Government Tenders and Procurement Law (GTPL) applies to all contracts procured by government entities, and provides *"a ten year warranty against partial or full collapse … due to a construction defect"*. Liability for decennial liability cannot be excluded or limited. Furthermore, decennial liability is outside the scope of most professional indemnity insurance policies. This is therefore a significant risk for contractors and consultants. The GTPL does not apply to private-sector projects; however, beware of projects procured by ‘hybrid’ entities, partnerships between state and private entities, and similar arrangements.

**Payment**

Payment can present major challenges for those working on projects in the Kingdom. The typical contract in the Kingdom is silent on sanctions imposed on the employer in the event of non-payment, and on remedies available.

Saudi law also provides very limited protections in this circumstance. As set out above, levying interest on late payments is contrary to Shari’ah law, and is therefore not permitted.
There is also no statutory entitlement to suspend services or to terminate an appointment in the event of non-payment. As a result, a party working on a construction project in the Kingdom is generally obligated to continue to provide services even if payment remains outstanding, which of course could have significant consequences.

The usual recourse in the event of a dispute as to payment on a project in the Kingdom is therefore to the dispute resolution provisions of the contract.

**Disputes**

In the Kingdom’s court system, the majority of commercial disputes will be heard either in the Shari’ah courts (which have general jurisdiction to deal with all civil and criminal cases) or by the Board of Grievances (a specialist tribunal with jurisdiction to hear most commercial and contractual disputes involving government bodies). Any dispute involving a public-sector entity is likely to be heard by the Board of Grievances.

As a specialist tribunal with greater expertise in determining commercial disputes, the Board of Grievances is generally seen as the more reliable body. However, due to the lack of an overarching commercial law and the absence of a system of judicial precedent, the Kingdom’s court system can be unpredictable regardless of which track a dispute follows.

It is therefore generally advisable for disputes to be resolved through arbitration, preferably under the framework of an internationally recognised body such as the ICC or the DIFC-LCIA. Note however that, although the Kingdom is a signatory to the New York Convention, enforcement of foreign arbitral awards can in practice be extremely challenging, with courts regularly considering the merits of underlying disputes. However, whichever route is chosen, the enforcement process is likely to be long and arduous.

August 2016

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