

COVID-19 Update:

UAE Banks Relax Payment Terms for Contractors with Payment Certificates

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In the wake of the UAE Central Bank's measures to relieve pressure on financial institutions and ensure liquidity, the UAE banks yesterday announced that they are more open to extend repayment terms for contractors given the COVID-19 crisis.

Examples given as to how this could work in practice included the scenario where a contractor has a payment certificate and the employer is due to pay within 30 days of the issuance of the payment certificate. Assuming payment is delayed and the contractor has provided the bank with the payment certificate, the bank may consider extending the payment terms of the contractor's own funding facilities to a duration to match the employer payment to the contractor.

We are all keenly aware that cash flow is the lifeline of the construction industry, and even in ordinary circumstances, contractors and subcontractors in the region often suffer from delayed payment forcing the contractor to self-fund projects.

This move by the UAE banks will undoubtedly have the ability to assist contractors suffering from delayed payments provided there is engagement by funders. However, what of uncertified amounts? This is where most issues will likely arise. Taking the FIDIC Redbook, as an example, the un-amended Sub-Clause 14.6 provides that the Engineer is to issue an interim payment certificate to the Employer within 28 days of receiving the Contractor's statement and supporting documents. Under this clause, an interim payment certificate can be withheld for two reasons, (1) where the work done or thing supplied by the Contractor is not in accordance with the Contract any costs of rectification can be withheld and (2) if the

Contractor is failing to perform its work or obligation in accordance with the Contract and has been notified by the Engineer of its failure.

We anticipate that as the COVID-19 pandemic shows its effects on construction progress contractors will likely suffer a delay in receiving payment certificates especially where they are seen to not be performing under their contract. It is, therefore, more important than ever for contractors and subcontractors to proactively engage in communication with their employers, agree what activities can be performed and those that cannot and what can be done about them, put in the relevant notices under the contract and maintain detailed records on site to avoid being seen to delay performance of work. Contractors should also consider what aspect of their scope of work is not affected by the virus. For example, design and planning works, where these are part of the contractor's scope, still remain doable. Contractors should focus on achieving these.

Please get in contact with any queries you may have. We are offering a virtual in house service to assist our clients at this time to address your queries and concerns.

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