

A-Z of construction law in Bahrain





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Introduction

Welcome to the A to Z guide to construction law in the Kingdom of Bahrain.

As Bahrain works towards achieving its Vision 2030, which outlines a comprehensive strategy to transform the nation into a diversified, sustainable and globally competitive economy, knowledge of the legal framework in the rapidly evolving construction sector is essential for success. Within this vision, the construction industry plays a key role in driving economic growth, infrastructure development, and job creation.

Vision 2030 emphasises the importance of developing modern infrastructure to support economic diversification and enhance the competitiveness of Bahrain on the global stage. This includes investments in transportation, utilities, healthcare facilities, educational institutions and other vital infrastructure projects. Sustainable urban development is also a focus, with the creation of communities that cater to the needs of residents and businesses. This involves the construction of smart cities, green buildings and sustainable housing developments that prioritize environmental conservation.

Increased participation of the private sector in the construction industry is also encouraged through public-private partnerships. By leveraging private sector expertise and investment, Bahrain seeks to accelerate infrastructure development and improve the quality and efficiency of construction projects.

This guide provides clear and concise explanations to help all stakeholders to navigate the complexities of construction projects in Bahrain. From contracts and regulations to dispute resolution and emerging trends, Trowers & Hamlins has all stakeholders covered from A to Z.

About Trowers & Hamlins

Active in Bahrain since 1959, Trowers & Hamlins combines local understanding and deep relationships with international expertise and strategic thinking. We are a consistent and assured presence: our group of partners based permanently in Bahrain all have at least a decade of experience in the Kingdom.

We are involved in advising on the core of Bahrain's critical infrastructure, from its airport and bus network to its power plants. We have advised on the majority of the island's major development projects and the first ever housing PPP, and work closely with government departments and agencies along with the leading financial institutions and investment houses.

“A” is for Arbitration law

The Kingdom of Bahrain has a well-established arbitration regime that provides a legal framework for conducting arbitration proceedings in the country. The primary legislation governing arbitration in Bahrain is Law No. 9 of 2015 (**Bahrain Arbitration Law**). It is based on international recognised arbitration principles such as UNCITRAL Model law, providing a level of familiarity and compatibility for international parties engaging in arbitration in Bahrain.

Autonomy of the parties to agree to arbitration is recognised by the Bahrain Arbitration Law. An arbitration agreement can be in the form of a standalone contract or a clause within an agreement.

The Bahrain Arbitration Law sets out rules and procedures governing the conduct of arbitration proceedings. It ensures the rights of parties to be heard, the principle of equality and the tribunal’s duty to act fairly and impartially. The tribunal can consist of one or more arbitrators as agreed upon by the parties.

There are established mechanisms for enforcement of arbitral awards, with the Courts generally recognising and enforcing both domestic and international arbitration awards.

The Bahrain Courts have limited grounds for intervening in arbitration proceedings. The courts can only intervene in certain circumstances such as appointment of arbitrators, jurisdictional challenges or the setting aside of an arbitral award. This promotes principles of party autonomy and limits judicial interference.

“B” is for BCDR

The Bahrain Chamber for Dispute Resolution (**BCDR**) was established in 2009 and, until recently, was operated in partnership with the American Arbitration Association (**AAA**). In 2022, the BCDR’s partnership with the AAA ended amicably and the BCDR became autonomous as one of the leading arbitration centres in the region, with its own arbitration rules. In 2022, the BCDR also published specialised sports arbitration rules dedicated to resolving disputes in sport. The BCDR is expected to publish new rules specific to disputes in Islamic finance.

The BCDR’s casework comes from disputes before the BCDR Court and disputes referred to the BCDR’s Arbitration and Mediation Centre. As of 10 March 2023, cases before the BCDR Court can now be heard in English.

The BCDR Court has jurisdiction over certain disputes that fall originally within the jurisdiction of Bahraini Courts (e.g. claim value over BHD 500,000; one party must be a financial institution licensed by the Central Bank of Bahrain; or dispute must be of international commercial nature). The BCDR Court has jurisdiction over certain real estate disputes and trust disputes governed by Legislative Decree No. 23 of 2016. Judgments issued by the BCDR Court are final and not appealable.



“C” is for Civil code

The Bahraini Civil code was promulgated by Legislative Decree No. 19 of 2001 (**Civil Code**) and is the primary source of law for construction contracts in Bahrain. Whilst it does not specifically address construction contracts in detail, several provisions of the Civil Code are applicable to such agreements.

The Civil Code contains general principles of contract formation that apply to construction contracts. It recognises freedom of the parties to enter into contracts and establishes the requirements for offer, acceptance and mutual consent.

The obligations of the contracting parties are set out within the Civil Code, including those related to construction contracts. It provides guidance on performance warranties, liability and remedies in the case of breach. Parties to a construction contract must fulfil their obligations such as completion of the construction work as agreed, ensuring the quality of materials and adhering to specified timelines.

The Civil Code addresses the issue of defects and warranties in contracts, which is relevant to construction projects. It establishes the rights and obligations of both the contractor and the employer regarding defects in the construction work, including the doctrine of decennial liability in relation to structural defects.

Principles of liability and damages in contracts are also set out in the Civil Code. It outlines the liability of the parties for non-performance or defective performance of their contractual obligations.

The Civil Code includes provisions on termination of contracts and force majeure events (see section F below). It sets out the circumstances under which a contract can be terminated and the consequences of termination. Additionally, it addresses the impact of force majeure events such as unforeseen circumstances or events beyond the control of the parties on the performance of contracts.

“D” is for Dredging

The Bahrain construction market has seen a significant amount of dredging and land reclamation works for new development, particularly in the last two decades, and Bahrain now comprises more than 30 natural and artificial islands.

In 2008, the Ministry of Works (**MoW**) launched reclamation guidelines and a Dredging & Land Reclamation Technical Manual for all dredging and land reclamation works in Bahrain.

Standard specifications addressing dredging, reclamation and shoreline protection are issued and updated by the MoW to cover the main requirements for materials, plant, methods and surveys, and the procedures for controlling the quality of such works. The standard specifications contain minimum acceptable criteria and quality standards for MOW projects which design professionals are expected to meet.

In 2014, a new law was issued to regulate the extraction and sale of sea sand (Law No. 37 of 2014). The law prohibits the extraction and / or exportation of marine sands without obtaining the relevant license and approvals from authorities.

In addition, the Supreme Council for the Environment runs two programs, the Reclamation and Dredging Projects Monitoring Program and the Coastline Reclamation Projects Monitoring Program, to verify and ensure that dredging and reclamation works are meeting environmental requirements contained in the projects' licenses.



“E” is for Energy Performance Contracting

Traditionally, the abbreviation EPC is used to refer to Engineering, Procurement and Construction but is also now increasingly being used as an acronym for Energy Performance Contracting.

Energy performance contracting (**EPC**) can be described as a form of contracting for either: (i) capital improvements and energy upgrades to existing buildings or assets by energy service companies (**ESCOs**), or (ii) projects undertaken by ESCOs which will result in the generation of renewable energy for asset owners, and for the purposes of this section both examples will be referred to as **EPC Projects**. The energy performance contract is formed between the client (typically a building or asset owner) and the ESCO, and the energy upgrades are funded through energy cost reductions achieved through the implementation of the capital improvements and energy upgrades. The income from the energy cost savings, or the renewable energy produced, is used to repay the costs of the EPC Project, including the costs of the investment.

Perhaps the key feature of an EPC Project in this context is the ESCO's sharing with the asset owner of the energy cost savings of the upgraded assets following the ESCO's implementation of energy savings measures or the ESCO's sharing in the proceeds of any sale of renewable energy generated, to repay the capital costs of the EPC Project. EPC allows asset owners to benefit from improved energy efficiency and sustainability of their assets without any initial capital outlay (as the ESCO will fund the energy savings measures themselves), to share the reduced energy costs with the ESCO, and to transfer the technical risks of the energy savings measures to the ESCO through performance guarantees given by the ESCO under the EPC. As responsibility for covering the cost of the initial investment falls to the ESCO through performance of installed generation or efficiency schemes, EPCs are seen as a fairly low-risk method of financing and delivering energy efficiency improvements and renewable projects.

In May 2021, it was reported that the Sustainable Energy Authority (**SEA**) of Bahrain and the Etihad Energy Services Company (**Etihad ESCO**) (a wholly-owned subsidiary of the Dubai Electricity and Water Authority,) signed a memorandum of understanding to initiate collaboration and strategic partnerships toward achieving Bahrain's sustainability ambitions particularly, the Kingdom's National Renewable Energy Targets and National Energy Efficiency targets. SEA is the authority established by a legislative decree and has the power to design energy efficiency policies and promote renewable energy technologies in support of Bahrain's long-term climate action and environmental protection ambition as outlined in Bahrain's Vision 2030.

Media reports in respect of the memorandum of understanding indicates that Bahrain will be rolling out more EPC Projects such as solar on-grid and off-grid installations, facility management and electromechanical services, IT solutions, and technologies including command and control centres, Internet of Things (IoT), smart automation and network operations, in addition to capacity building training services.¹

¹Source: <https://www.mepmiddleeast.com/business/77977-etihad-esco-bahrain-sea-collaborate-on-energy-efficiency-and-sustainability>

“F” is for Force majeure

The concept of force majeure is derived from civil law and generally refers to exceptional events or circumstances that are beyond the control of the contracting parties such as natural disaster or prevent the performance of contract. The rationale behind a force majeure clause in a construction contract is to remove the affected contracting party's liability where it is unable to fulfil its contractual obligations due to a force majeure event. Typically, a construction contract will provide that such relief applies where the events or circumstances cannot be overcome, do not arise from the affected contracting party's act or omission, and the affected contracting party is actually prevented from performing its contractual obligations.

Force majeure is recognised under Bahraini law and is codified in Article 165 of the Civil Code which provides that a party shall not be liable for damages that have arisen from an external cause beyond its control such as force majeure, unforeseen incident or the intervening act of a third party unless there is a provision to the contrary. From our experience, construction contracts will contain a list of events which the contract will constitute as events of force majeure. A key point of negotiation between the contracting parties is whether such a list should be exhaustive. Often contracting parties agree a list of events that will not constitute an event of force majeure, typically by reference to events which are reasonably foreseeable.

The burden of proving the occurrence of “an external cause” to trigger the relief under Article 165 of the Civil Code lies on the party seeking to be excused from non-performance (where such non-performance may be in respect of the entirety of its contractual obligations or only in part) by the Bahrain Courts. From our experience, the Bahrain Courts adopt a strict and narrow interpretation when dealing with cases seeking relief under Article 165 of the Civil Code thus contracting parties must be mindful to strictly adhere to the conditions precedent e.g. notice and reporting obligations, for triggering the contractual relief arising from an event of force majeure. Additionally, the Bahrain Courts will examine or consider whether the affected contracting party seeking relief from the Bahrain Courts has taken reasonable mitigation steps.



“G” is for Good faith

The principle of good faith is codified in Bahrain’s Civil Code and requires the parties to a contract to deal with one another and conduct themselves fairly and honestly pursuant to the following Articles as translated: Article 127 “A contract is not only limited to the express terms that the parties have set out in their agreement or to the applicable provisions of law, but also includes everything which according to law, custom and equity is deemed in view of the nature of the obligation, to be a requirement of the contract, taking into consideration custom and usage, requirements of equity, nature of transaction, good faith and honesty” and Article 129 “A contract shall be performed in accordance with its provisions and in such manner consistent with the requirements of good faith and honesty”. In any event, it is common for construction contracts to include the ‘good faith’ principle in provisions relating to the parties’ performance of their obligations and the dispute resolution mechanism.

“H” is for Health, safety and environment (HSE)

Health, safety and environment, generally referred to in acronym form as ‘HSE’, are considerations which are adopted in policies and procedures annexed to, referred to, or documented within a contract, to be followed during the execution of the construction project. The legal framework broadly governing HSE is provided in Bahraini Labour Law for the Private Sector promulgated by Bahrain Decree-Law No. 36/2012 (largely contained in Chapter 15 ‘Occupational Safety and Health and Work Environment’) and Ministerial Order No.8 of 2013, which regulates occupational safety and health in establishments.

There are additional regulations for specific matters, for example: the ban from working (a) in the construction sector and (b) in the sun and open areas during Summer between noon and 4:00pm in Ministerial Order No.24 of 2007 and No.3 of 2013; required conditions and precautionary measures for workers in building, construction and civil engineering works in Ministerial Order No.4 of 2014; required reporting procedures for occupational injuries and diseases in Ministerial Order No. 12 of 2013; required conditions and precautionary measures to protect workers from mechanical hazards and work environment in Ministerial Order No.38 of 2014; the required services and conditions to protect workers from the hazards of boilers, steam containers and air receivers in Ministerial Order No.28 of 2014; and the requirements for protecting workers for the hazards of highly flammable liquids and liquefied petroleum gases at establishments and worksites in Ministerial Order No.15 of 2014.

“I” is for Indemnity

Indemnities are primary obligations between the parties to a contract parties, whereby one party is required to reimburse the other for loss or damage that the indemnified party suffers, in particular from third-party claims. In the context of construction contracts, indemnities allocate risk for claims for loss or damage between the client and the contractor, the client and its consultant, or the contractor and its subcontractors, in particular for risk of claims for personal injury, property damage, professional negligence in design, and breach of third party intellectual property rights.

Bahrain law does not prohibit contracts from containing indemnity clauses in respect of any commercial matters and Bahrain's Civil Code itself contains various provisions for indemnities (e.g. Article 135(b), Article 659(c) and Article 660(a)).

“J” is for Jurisdiction (or jurisdictional challenges)

The jurisdiction of the Bahrain Courts is governed by the Judiciary Law (Law No. 42/2002) which sets out the different categories and levels of the Courts and their respective jurisdictions. However, the BCDR Court, since its establishment in 2009, has jurisdiction over cases previously held under other Bahrain Courts, as explained above at “**B – BCDR**”.

In terms of jurisdictional challenges, the Civil High Court is the national court with jurisdiction to hear disputes relating to arbitration before, during, or after the commencement of arbitral proceedings.

“K” is for Kingdom’s Vision 2030

The Economic Vision 2030 of Bahrain (**Vision 2030**) was launched in 2008 by His Majesty King Hamad bin Isa Al Khalifa and aspires to transition Bahrain's economy from an economy built on oil to a productive, globally competitive economy. Vision 2030 is a comprehensive economic vision directed at shaping the vision of the government, society and economy based on three guiding principles: sustainability, fairness and competitiveness. Following the launch of Vision 2030, the Economic Development Board was constituted and it assisted the various ministries to compile the first National Economic Strategy which now serves as a roadmap to achieve Vision 2030.

The principle of sustainability is directly linked to the construction industry as Bahrain's vision includes a sustainable natural living environment for its nationals and residents. Sustainable living is being achieved through the implementation of energy efficient regulations for buildings and investments in technologies that reduce carbon emissions, minimise pollution and promote the sourcing of more sustainable energy.

“L” is for Liquidated damages

Liquidated damages are pre-agreed sums of money that parties to a contract stipulate as compensation for specific contractual breaches including delays to project completion for which the contractor is responsible, or failure of mechanical or electrical plant to achieve contractual performance guarantees during testing and commissioning. These damages serve as a means of quantifying the potential loss that a party may suffer due to the breach, thus providing a level of certainty and mitigating the need for costly and time-consuming litigation. Article 226 of the Civil Code allows the Bahraini Courts' ability to adjust or even remove liquidated damages if they are found to be grossly exaggerated or if the principal obligation has been partially performed. This approach is derived from principles of Sharia Law which seeks to prevent harm and ensure that damages are proportional to the actual loss suffered by the non-defaulting party.

“M” is for Mediation

Mediation is a form of alternative dispute resolution whose objective is to negotiate and mutually agree upon terms to settle a dispute outside of legal proceedings which involves a mediator, who is an independent and impartial third party to the parties in the dispute. Mediation generally occurs prior to litigation or arbitration and if mediation fails, disputes will be referred to litigation, or if the contract contains an enforceable arbitration clause to arbitration. The Legislative Decree No. 22 of 2019 (Mediation Law) covers construction disputes.

“N” is for Net zero

Net Zero refers to achieving a balance between the amount of greenhouse gas emissions produced and the amount removed from the atmosphere, resulting in no net increase in atmospheric greenhouse gases. Bahrain, as a signatory to the Paris Agreement, is committed to reducing its carbon footprint and promoting sustainable development. In the construction sector, this translates to the adoption of green building practices, energy-efficient designs, and renewable energy technologies to reduce the industry's environmental impact.

During COP28 in 2023, Bahrain reaffirmed its commitment under the Paris Agreement and now aims to reduce carbon emissions by 30% by 2035 and reach net zero by 2060. The built environment and more sustainable construction techniques are each a key focus of Bahrain's recently announced National Action Plan (“Blueprint Bahrain”) to achieve net zero.

“O” is for Omission

Omission is sometimes referred to as descoping or a negative variation. The concept of omission in a construction contract allows flexibility to the employer to omit certain works from the contractor's scope. Contractors are generally averse to omissions of work as they can be denied an opportunity to realise profit. While standard form construction contracts include a right for the employer to omit work from the contractor's scope, not all allow the employer to give the omitted part of the works to a third party and some expressly prohibit the employer from doing so. For example, both the FIDIC Red and Yellow Books (1999) which are commonly used for construction projects in Bahrain provide in Sub-Clause 13.1 [Right to Vary] that a Variation may include omission of any work unless it is to be carried out by others.

An entitlement to give omitted works to a third party must be expressly provided for in the contract to avoid any arguments alleging a breach of contract or the employer's repudiation of the contract.

In addition to express contractual rights allowing the employer to omit work, Article 590 of the Civil Code entitles an employer to rescind a contract or obtain leave to perform the contract at the expense of the contractor if it appears during the progress of the work that the contractor is performing the work in a defective manner or in breach of the contract. This entitlement is subject to the employer serving a notice of the contractor to rectify the method of performance and the contractor having failed to remedy the notified breach within the specified time.

“P” is for Photovoltaic

Photovoltaic (**PV**) technology is a method of generating electricity by converting sunlight into direct current electricity using semiconducting materials. Bahrain has been actively investing in renewable energy, with the target to generate 5% of its total power from renewable sources by 2025. The construction industry in Bahrain has increasingly incorporated photovoltaic systems into building designs, both for new projects and retrofitting existing structures, to promote energy efficiency and contribute to the country's renewable energy goals.



“Q” is for Quantity surveyor

A quantity surveyor is a qualified professional who advises on the costs of a construction project. Quantity surveyors are appointed by employers to prepare cost plans and estimates and play a key role in construction projects by managing costs effectively. They estimate and monitor project expenses, prepare tender documents typically including the bills of quantities and assess financial risks. Quantity surveyors also ensure that construction materials and resources are used efficiently and align to the budget constraints.

Quantity surveyors are typically appointed on bespoke or FIDIC-based consultancy terms, however in 2009 in Bahrain Ministry of Works published standard form contract agreements and conditions of contract for (i) pre-contract quantity surveying services, (ii) post-contract quantity surveying services, and (iii) pre- and post-contract quantity surveying services. These forms are now commonly used in the Bahrain construction sector.

Q

“R” is for Retrofitting

Retrofitting refers to the incorporation of new materials, products and technologies into existing buildings to increase their energy efficiency and/or lower their energy consumption and carbon emissions. The Sustainable Energy Centre in Bahrain, launched in 2014, established twenty-two (22) major initiatives focusing on reducing greenhouse gas emissions. Some of these initiatives are directly linked to retrofitting and construction such as (i) the integration of energy efficiency objectives into regulations and existing building codes governing design, construction and maintenance of structures, and (ii) the introduction of the green building initiatives to retrofit all government buildings. The Ministry of Works, Municipalities Affairs and Urban Planning has developed a green building and sustainability programme which enforces the implantation of solutions to transform the conventional practices in the building industry to sustainable and greener ones for new and existing buildings.

R



“S” is for Standard specifications

Specifications play a crucial role in construction contracts serving as detailed and precise documents that outline the employer’s technical requirements, standards and expectations of a construction project.

Specifications define the quality standards and technical requirements for materials, equipment and workmanship. They should serve to ensure that the construction project meets the desired level of quality and complies with applicable regulations, codes and industry standards. For example the specification may specify the required strength of concrete or allowable tolerances for dimensional accuracy of the types of electrical fixture to be used.

By providing precise descriptions, measurements and instructions leaving little room for misinterpretation, clear specifications help prevent disputes between the parties. For example specifying the exact dimensions, finishes or performance criteria for different elements of the project leaves little room for conflict.

Specifications should also guide inspectors, supervisors and project managers in assessing the work and ensuring compliance with the specified requirements. Inspections can verify whether the construction work meets specified standards, allowing for necessary corrections and adjustments. They serve as benchmarks against which the completed work can be evaluated. If the contractor fails to meet the specified requirements then the specification provides a basis for holding them accountable for non-compliance.

Specifications also help to establish a clear basis for pricing and bidding in construction contracts. Detailed specifications enable contractors to accurately estimate the cost of labour, materials and equipment required for a project. Precise specifications also help in evaluation and comparing bids received from different contractors.

Overall the specification provides for a comprehensive framework for defining the scope, quality and requirements of the construction project. They ensure consistency, compliance and accountability throughout the project’s lifecycle. By incorporating detailed specifications into construction contracts, the parties can mitigate risks, prevent disputes and ensure that the final outcome aligns with the agreed expectations.

“T” is for Time bar

Time bar provisions are clauses commonly found in construction contracts which place time limits on a party's right to enforce a contractual right or to claim a contractual entitlement. In Bahrain, the courts assess the impact of time bar provisions in construction disputes on a case-by-case basis, exercising their discretion and flexibility. They may use several provisions within the Civil Code to guide their decisions, such as Article 28(c) addressing the proportionality of harm, Articles 182 and 183 pertaining to unjust enrichment, and Article 129 which requires parties to execute their contracts in accordance with the principle of good faith. As a result, Bahraini courts may prevent an employer from relying on a time bar provision to avoid payment for completed works under certain circumstances. These can include situations where the contractor's sole breach is a late claim submission, and the employer was aware of the contractor's intention to raise the claim, or the delay was caused by the employer's breach.

“U” is for Unjust enrichment

Unjust enrichment occurs when one person is enriched at the expense of another in circumstances that the law considers unjust. Article 182 read together with Article 183 of Bahrain's Civil Code prohibits unjustified enrichment by providing that any person who, without just cause, enriches themselves to the detriment of another shall be liable, to the extent of their profit for the loss sustained to the other. Any claim for unjustified enrichment prescribes after three (3) years from the date in which the injured party knew of their right to be compensated or fifteen (15) years from the date in which the right arose, whichever is sooner.

“V” is for Variations

Variations (also known as changes) are variations to the original scope of works (either through increase or decrease of the works or changes to conditions timelines or specifications of the works). These are usually anticipated and dealt with in a construction contract under a variation clause. Absent to a variation clause, any legal entitlement to variations will be subject to the contracting parties' mutual agreement, as provided under Article 70 of the Civil Code. The principle of good faith, exemplified under Article 129 of the Civil Code, may also apply to any claim for variation at law.

“W” is for Work permits

Building work permits play a vital role in the construction industry in Bahrain. They are official authorizations issued by the relevant government authorities that allow individuals or companies to commence construction or renovation projects.

Obtaining a building work permit is a crucial step in the construction process in Bahrain. It helps ensure legal compliance, safety, environmental responsibility, and professional oversight, ultimately contributing to the successful and sustainable completion of construction projects.

They also ensure compliance with local laws and regulations governing construction activities, demonstrating that the construction project has undergone the necessary scrutiny and approvals required by the authorities. Without a valid permit, engaging in construction activities can lead to legal consequences, such as fines, project shutdowns, or legal disputes.

Building work permits often require consideration of environmental factors to ensure that construction projects in Bahrain are carried out in an environmentally responsible manner. Authorities may require an environmental impact assessment to evaluate potential environmental impacts and mitigation measures. For instance, permits may include requirements related to waste management, energy efficiency, water conservation, or preservation of natural habitats.

Often building work permits involve engagement with qualified professionals such as architects, engineers, and consultants. These professionals review construction plans, ensure compliance with regulations, and provide expertise to optimize design and functionality. The permit process facilitates professional oversight, helping to maintain high standards in the construction industry.

Building permits are also often necessary for obtaining construction-related insurance coverage. Insurance providers may require proof of a valid permit to extend coverage for construction projects. Having appropriate insurance coverage helps protect both the construction project and the parties involved from potential liabilities and financial risks.

Applications typically involve a review of architectural and engineering plans to assess the structural integrity, fire safety measures, electrical systems, and other essential aspects of the project. By obtaining a permit, it signifies that the construction plans meet the required safety standards, reducing the risk of accidents or structural failures.





“X” is for Exclusion clauses

Exclusion clauses are clauses that exclude or limit the liability of a contracting party for certain types of loss or damage. While there are specific provisions within the Civil Code on construction contracts, the general principle of freedom of contract and rules of contract interpretation in the Civil Code for commercial agreements will apply to a construction contract, including exclusion clauses.

Pursuant to Article 125 of the Civil Code, where a contractual provision is clear, the provision must be interpreted in accordance with its ordinary meaning, but where a contractual provision is subject to interpretation, Article 125(b) requires that the common intention of the parties be discerned with due regard to the nature of the transaction, as well as to the honesty and confidence that should prevail between the parties in accordance with commercial usage. As exclusion clauses can be contentious it is important that these clauses are drafted clearly without any ambiguity.

Typically, an exclusion clause within a construction contract will seek to exclude liability for certain types of loss and in Bahrain. It is common for contracting parties to agree to exclude liability for consequential losses or indirect losses.

“Y” is for Yellow Book

International Federation of Consulting Engineers or Fédération Internationale des Ingénieurs Conseils (**FIDIC**) publishes a suite of standard form contracts applicable to different forms of procurement for construction projects known as the FIDIC Rainbow Suite. The Yellow book for design-build is the most commonly used standard form design and build contract in Bahrain.

Most construction contracts in Bahrain are based on the forms published by FIDIC but extensively modified through Particular Conditions of Contract to accommodate local laws and market practices, as well as to allocate additional contractual risk and responsibility to the contractor.

The other FIDIC Rainbow Suite standard forms commonly used in Bahrain are the Red and Silver books for construction and EPC works respectively, and the FIDIC Green Book for minor works. Although FIDIC published an updated edition of the Red, Yellow and Silver book in 2017 (2017 Suite) there has not yet been a widescale adoption of the 2017 Suite and it is still common to see the FIDIC forms published in 1987 in use for certain projects in Bahrain.

The FIDIC Client / Consultant Model Services Agreement (FIDIC White Book) is occasionally used for construction consultancy services for project management and for procuring design-only services, (including the Bahrain Ministry of Works forms described below) although most employers in the private sector choose to engage consultants on bespoke terms.

Bahrain's Ministry of Works publishes a suite of Standard Contract Agreement and Conditions of Contract used for contracts to be entered into by governmental entities of Bahrain. Categorized into the following 4 books, they are based on the FIDIC 1999 forms.

1. Building And Engineering Works;
2. Engineering Consultancy Services;
3. Quantity Surveying Consultancy Services; and
4. Minor Works, Supply of Materials, Supply of Equipment, Supply of Human Resources and Maintenance & Repair Works.



“Z” is for Zoning

Zoning regulations are government or municipality urban planning regulations that dictate how land and property can be used within specific areas or “zones”. There are various laws and regulations dealing with urban planning and development in Bahrain. Legislative Decree by-Law No. (3) of 1994 concerning the division of land plots intended for construction and development according to Resolution No. (56) of 2009 and Resolution No. (165) of 2018, provide lists of the different zone types available in the Kingdom of Bahrain.



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