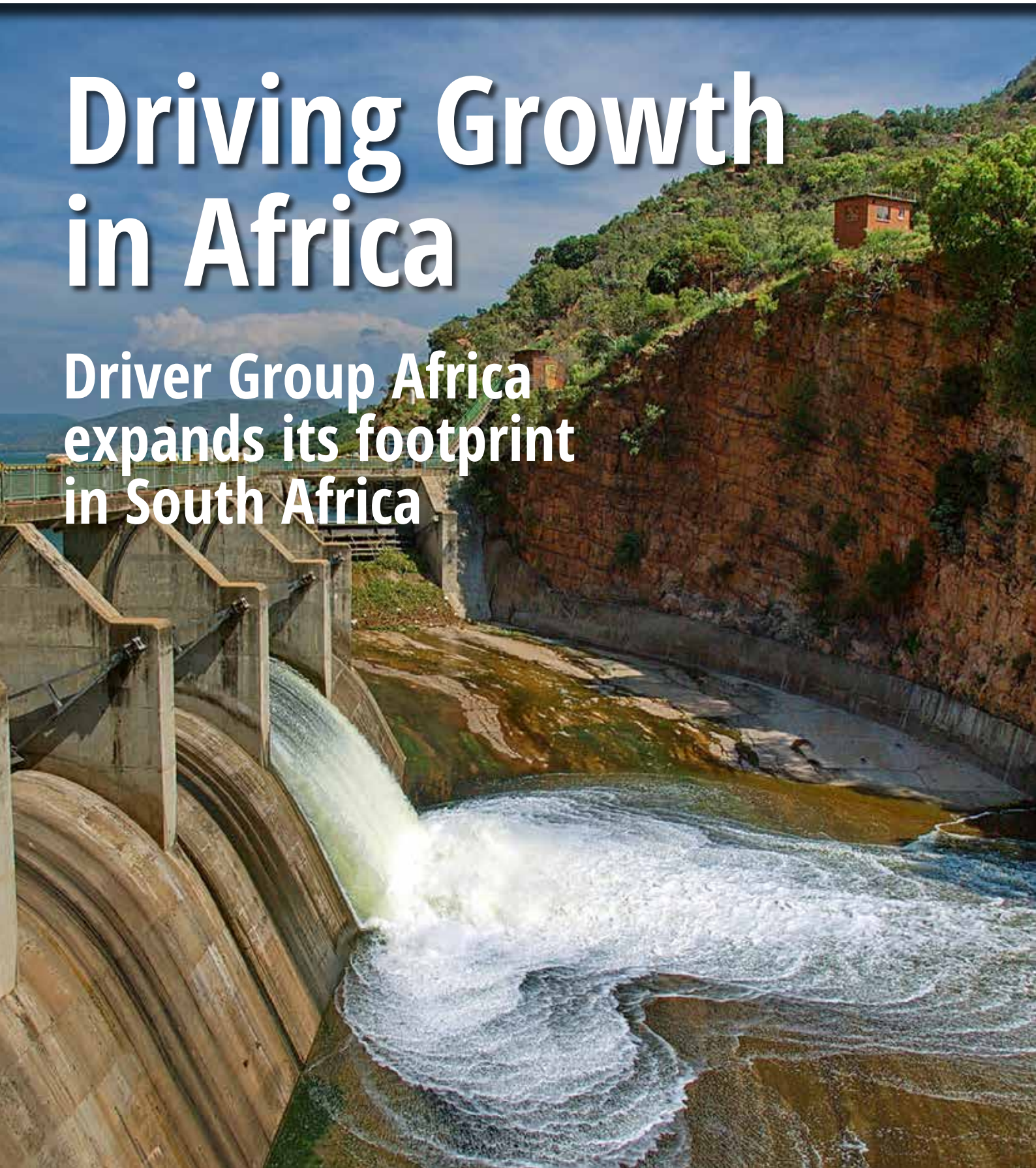
driver THE DIGEST

Issue 9 | June 2015

Driving Growth in Africa

Driver Group Africa expands its footprint in South Africa



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Welcome to the Driver Group Digest

A very warm welcome to the 9th issue of the Driver Digest.

As we have been putting together this edition it has become clear that the Digest reflects the true diversity of the work we cover, the people we employ and countries in which Driver operate. Through our team of over 20 nationalities, we have provided contractors, suppliers, corporate and governmental clients across 5 continents with solutions and services that can really make a difference. The digest echoes this diversity through the variety of contributions received from staff both far and wide.

I am delighted to showcase the opening of our 2 new South African offices in Cape Town and Durban on page 8, and the African theme continues with a feature on another hotspot; Kenya. We also feature an article from Emmanuelle Becker Paul from our new office in Paris, discussing the difficulties of contract management in France.

We are very pleased to present 4 guest articles in this issue. On page 6, Jane Lemon QC from Keating Chambers looks at the difficulties in choosing the right arbitrator and Michael Mendelblat from Herbert Smith Freehills considers Expert evidence on page 16. Parisian based lawyers Matthieu Hue and Romain Aubessard discuss a new form for the amicable settlement of disputes in France on page 17 while Johan Beyers a South African barrister and Gavin Murphy a Director with Driver Group Africa examine time-bar clauses throughout the Commonwealth on page 19.

I very much hope you enjoy this edition of the Digest.

You can follow us and keep up to date with what we are up to in between editions via our website www.driver-group.com and LinkedIn pages.

David Brodie-Stedman

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Singapore Accepting the Modular Construction Challenge – Can Tolstoy Help?

ALASDAIR SNADDEN, SENIOR CONSULTANT, SINGAPORE.

Finding out Singapore is taking on the challenge of trying to introduce modular construction to main stream construction made me think about a passage from Tolstoy's famous and brilliant novel, 'Anna Karenina'. It is where the character Levin took to the ice rink and skated with such elegance, such beauty and ease, Tolstoy described it like Levin's 'will alone' made it possible.

Obvious question, why would, even should, a passage written by a man known for anarchic tendencies have relevance to the great State of Singapore? What significance can someone ice skating have to Singapore as it seeks to progress its construction industry using a different building technique?

Before explaining, I'll briefly highlight what modular build is and why it is argued to be so special.

Modular Build and Perceived Benefits

Modular build is also known as design for manufacture and assembly (DfMA) or prefabricated pre-finished volumetric construction (PPVC). Simplistically looked at, it involves transforming the build process so that rather than being predominantly constructed on site, it is done off site, adopting manufacturing type techniques and processes. On site works become more of a 'stitching' together process, erecting and fixing the manufactured pieces in place.

Some of the main benefits appear to be based around common sense logic that, the more controlled and consistent the environment is in which we build, the more efficient and productive it is likely to be. It could, for example, bring faster, safer, more consistent and a higher quality build process, with drastic reductions in congested resources on site. To supporters, it is a key step any advanced modern society should make in the evolution of its construction sector.

The Relevance of Levin's Ice Skating

So why is Tolstoy's passage relevant?

One key aspect, I believe to take from the passage, is Levin's ability to seize that common arena. Levin took control of the ice rink, standing out, not only for his abilities, but also the effortlessness in which this was deployed.

To command an ice rink like this is not easy. Many people, including myself, find even the basic matters of standing up difficult to do. Levin's performance must have been astonishing.

To me, conquering modular build construction will be like Levin's performance. As a concept and practice, modular

build, just like an ice rink, is nothing new. Indeed, many countries and companies have, are and will attempt to conquer it. But has anyone done this yet to the extent it leaves the rest of the industry looking on in amazement? I am not so sure.

Individual projects, companies and certain schemes exist which embrace modular type techniques. For example, the techniques and effort deployed on the Leadenhall project (known as the Cheese Grater) in London should not go unnoticed. It managed to complete this complex build by adopting DfMA techniques to around 85% of this 47-storey inner city build. Similarly the Shard's (London's tallest building) spire was a pre-constructed element. China too has examples of individual buildings using a modular form of construction, the timeframes of which seem unimaginable when compared with more traditional forms of construction.

However such isolated examples cannot be put into the same context as Singapore. Singapore has the chance to make a Country's building techniques evolve from traditional techniques, to ones where, if the productivity efficiency desired is achieved, it would surely leave the rest of the world looking on in great admiration. Singapore would indeed become the Levin character; pioneering how construction can, even should, be done.

Be Careful When Working on Ice!

Being the pioneer must be a great feeling, but does Tolstoy give any indication of just how easy, or difficult, this can be? I think he may.

Ultimately, when Levin took to the ice rink that day, he looked effortless in his greatness. But it has to be asked; can 'will alone' make this happen?

It is very unlikely Levin achieved a great performance without first putting in a lot of time and effort into his skating abilities. Invariably this would have meant spending a lot of time on the ice. Plus, as anyone who dare step onto the ice will know, it can be an unforgiving arena and probably left Levin with many bumps and bruises as souvenirs.

This, I would suggest, offers some help and guidance about the road Singapore must take if it wants to champion modular construction. It must be remembered modular build is likely to require changes in the practices, processes and structure of the people and organisations involved within the industry. They will have to adapt to a new way of construction. Further, it cannot be expected that change happens overnight or won't throw up challenges, complications, risks and dangers, just like Levin faced on the ice.

A recent example illustrating the difficulty change, or more specifically the modular change, brings is found in Brooklyn, New York. A developer engaged a contractor to build a 32 storey modular building. This would have been quite a statement. At the time it would have made it the tallest modular build in the world.

Sitting just 10 stories high, the relationship between the contractor and developer broke down to the extent the contractor terminated their contract with the developer. The contractor referred to the significant costs of the commercial and design issues being faced. They believed the developer failed to take responsibility for it and left them with no option but to take drastic action. The developer, possibly unsurprisingly, appears to view matters differently, and is likely to seek recourse through the courts.

To onlookers, this perhaps shows just how difficult implementing modular build can be. Indeed, there may well have been the desire, or 'will', by both parties to create this development. However when realities of creating something new, never seen before, become apparent, it can seem to those involved difficult, if not impossible, to carry on.

Ultimately, Singapore will have to confront such challenges when initiating modular build and have the determination and commitment in place to make sure those involved do not quit, if a Levin type performance is eventually going to come to fruition.

Can Singapore Conquer the Ice?

So can Singapore do it?

It is difficult to believe one article or author comprehends everything required to turn a modular dream into reality. Tolstoy's relevance would be stretched if his novel, first published over 140 years ago, was looked to for all the answers.

However deconstructing Tolstoy's passage has helped raise the question; do you have the ability to produce stand out performances, like Levin? In other words, have you got the commitment and aptitude it will require?

It is often tempting, when raising such questions, to reply with prima facia facts. Within Singapore, examples exist of why it may be believed a commitment does exist. The government will, in order to promote modular build, invest millions of dollars and allocate some of the precious and scarce land of Singapore solely for modular build developments. Further, one developer has indeed decided they will press forward with the modular build of a condominium, which would see the development become one of the world's largest modular builds.

Notwithstanding all this, it may be the case that the real tests of success lay in less overt areas of commitment – the finer points, which allow modular construction to flourish.

To illustrate, for new techniques like modular ones to succeed, appropriate agreements need to be put in place. Such agreements often do not already exist. For example, when the British Airport Authority (BAA) undertook construction of London Heathrow terminal 5, it knew it was looking to complete one of Europe's largest and most complex construction projects. BAA therefore came to a decision that it had to create it's own strategy and contracts, rather than rely on any pre-existing ones already in the industry.

This included setting up a unique form of contract, in which BAA sought to treat their Contractors as partners with the view that both sides would focus on innovation and high levels of performance, rather than being adversarial and simply trying to defend their corner. To achieve this, risk remained with BAA and the contracts were premised on cost reimbursable forms of contract, with the Contractor's profit pre-determined.

The reason for highlighting the above is not to suggest Singapore necessarily adopts BAA forms of contract. Rather that Singapore has to look at changing things and possibly creating forms of agreement and contracts, which encourages parties to adopt modular construction. Plus, on a more monotonous but important point, the idiosyncrasies of off-site construction will need to be covered by these agreements and contracts too. For example, payment of off-site materials and Client ownership rights to off-site materials. This is perhaps made more interesting to handle if suppliers are located in differing countries, with differing jurisdictions.

It is not unfathomable to believe Singapore can and will handle such challenges. Singapore recently mourned the sad passing of Mr Lee Kwan Yew, the founding Prime Minister of Singapore. Mr Lee was Prime Minister of Singapore when it became independent, an independence which will celebrate 50 years in 2015. These circumstances bring reflection and with it allow understanding of the extent Singapore has evolved in this time and when Mr Lee was in Government.

Such initiatives and development often meant Singapore tailoring how things were done to make sure they fulfilled the needs and required by Singapore. Indeed such an approach did not escape the construction industry. For example, most construction projects being built in Singapore are likely to be using a form of contract drafted specifically for the Singaporean market. Be it the Singapore Institute of Architects (SIA) form of contract for building works; the public sector standard conditions of contract (PSSCOC) for public sector works; READAS forms of contract for design and build; and Land Transport Authority (LTA) forms of contract for infrastructure works.

Now whether this moves forward with modular construction and Singapore becomes a Levin type character, I suggest you literally watch this space! ■

Singapore will have to confront such challenges when initiating modular build.

Choosing the Right Arbitrator

JANE LEMON QC SPECIALISES IN INTERNATIONAL ARBITRATION INVOLVING CONSTRUCTION, ENGINEERING, ENERGY, SHIPBUILDING AND TECHNOLOGY DISPUTES. SHE IS RECOMMENDED IN CHAMBERS AND PARTNERS, CHAMBERS GLOBAL AND THE LEGAL 500 FOR BEING A FINE ADVOCATE WHO IS "VERY CLEVER" AND "FAMED FOR HER INTELLECTUAL PROWESS" BUT ALSO A TEAM PLAYER WHO IS "EXCEPTIONALLY HARD-WORKING", "EXTREMELY USER-FRIENDLY AND A DARLING OF THE CLIENTS". AS A RESULT, SHE CONTINUES TO BE COUNSEL OF CHOICE TO MANY LOYAL CLIENTS AND HAS ACTED ON NUMEROUS COMPLEX INTERNATIONAL ARBITRATIONS BUT ALSO SUBSTANTIAL DOMESTIC LITIGATION.

In international arbitration, parties rely heavily on their legal advisers not only for guidance on matters of law, evidence and procedure but also, importantly, for advice on selecting the tribunal who will be deciding the case.

A major advantage of arbitration is that parties can participate in that selection, either by proposing an individual as sole arbitrator or by nominating one of the two arbitrators who then choose the President on a three member tribunal.

Selecting an arbitrator is one of the most important decisions a party will take, particularly given that the grounds for appealing any award are usually very limited. Indeed it has been observed that 'arbitration is only as good as its arbitrators'.

There are a number of factors to take into account when advising a client on the selection of an arbitrator.

Independence and Impartiality

First, ensuring that a potential arbitrator is free from any conflict of interest, independent and impartial is fundamental. The concept of independence addresses any relationship between the arbitrator and the parties. Impartiality is a more subjective concept that is aimed at the behaviour of an arbitrator and ensuring that he or she will not be prejudiced towards either party.

A requirement for independence and impartiality is found in many arbitration rules. Thus, for example, Article 11 of the ICC Rules 2012 provides that every arbitrator must be and remain impartial and independent of the parties involved in the arbitration and must disclose in writing to the Secretariat any facts or circumstances which might call into question this independence in the eyes of the parties. Equally, Article 5.4 of the LCIA Rules 2014 provides that every candidate shall sign a written declaration stating whether there are any circumstances currently known which are likely to give rise to any justifiable doubts as to his or her impartiality or independence and, if so, specifying in full such circumstances in the declaration.

Furthermore, at the end of 2014 the IBA published its new Guidelines on Conflicts of Interest in International Arbitration replacing their 2004 predecessor. The Guidelines still contain at Part I a short list of General Standards followed by a series of explanatory notes for each together with "traffic light" red, orange and green lists of practical examples of potential conflicts at Part II. The basic approach has not been altered with an obligation upon an arbitrator to decline to accept an appointment where he or she has any doubt as to his or her ability to be impartial and independent, together with a duty to give full disclosure of any circumstances which may give rise to doubts in this regard.

However, there are some noteworthy changes in the 2014 Guidelines. For example, in terms of waiver, General Standard 3(b) provides more clearly that advance declarations or waivers of possible conflicts relating to circumstances that may arise in the future do not "discharge the arbitrator's ongoing duty of disclosure." Furthermore, General Standard 4(b) now explicitly states that acceptance by the parties of conflicts contained in the Non-Waivable Red List cannot cure that conflict and any appointment will be invalid. General Standard 6(a) now requires an arbitrator to "bear the identity of his or her law firm" thereby allowing a party to consider potential conflicts of interest involving an arbitrator's loyalty to his or her firm's clients and the arbitrator's duties in the arbitration. The new Guidelines also now clarify that they apply equally to non-lawyers sitting as arbitrators.

In terms of the practical examples at Part II, the Non-Waivable Red List, which contains examples of conflict which preclude a candidate's appointment, has been expanded to clarify that (i) an arbitrator cannot be an employee of a party (ii) he or she cannot have a controlling interest in a third-party funder and (iii) his or her firm cannot regularly advise a party.

The Waivable Red List, which gives examples of when the arbitrator can only act if he or she first makes disclosures and the parties expressly agree to the appointment, has also been expanded so that (i) the definition of an arbitrator's "close family member" who has a significant financial interest in the outcome of the dispute has been widened to include not only a spouse, sibling, child, parent or life partner but also "any other family member with whom a close relationship exists" and (ii) regular advice by the arbitrator to any

party (as opposed to the appointing party) which is not a significant source of income has also been included.

The Orange List gives examples of when the arbitrator has a duty to disclose but can nonetheless act unless the parties make a timely objection. New entries include (i) where enmity exists between an arbitrator and counsel, a senior representative of a party or a third party funder, witness or expert and (ii) where the arbitrator, within the past three years, has acted as co-counsel with another arbitrator or counsel for one of the parties.

Finally, the Green List, which gives examples of minor conflicts that do not normally require disclosure, has been expanded to include situations where (i) an arbitrator teaches or has spoken at conferences with another arbitrator or counsel or (ii) has a relationship through a social media network with one of the parties.

Whilst not legally binding unless agreed by the parties, the 2014 Guidelines are intended as an expression of best practice in international arbitration. Parties considering a potential candidate can therefore request disclosure by reference to the Guidelines in order to flush out any potential conflicts and reduce the opportunities for future challenges to appointments.

In addition to considering any disclosures made by a potential arbitrator, legal advisors should make enquiries of colleagues and carefully review CVs, articles and other publications to ascertain an arbitrator's opinions. If a candidate has strong views on an issue which is central to the dispute, they need to be identified and appraised. A party does not want to appoint an arbitrator who is strongly against its position on a particular issue. Equally, while a degree of sympathy for a party's case is desirable, an arbitrator who merely adopts positions helpful to the interest of the appointing party will be unlikely to gain the respect of other members of the tribunal and so will command little influence.

Relevant Skills, Qualifications and Experience

A further important consideration is choosing an arbitrator with the requisite skills, qualifications and experience. An arbitrator needs to have a good judicial demeanour, intelligence, integrity and attention to detail. In addition, he or she will need to be familiar with the arbitral process including relevant rules and procedures together with the cultures of the parties involved.

While none of the arbitration rules contain specific requirements regarding the qualifications and expertise that an arbitrator should possess, many parties prefer to choose a legally qualified arbitrator who will be familiar with complex procedural, legal and factual issues and able to draft potentially lengthy, reasoned awards. A lawyer is also likely to have strong case management skills which are invaluable in the more flexible procedures adopted in arbitration. The advantage of this flexibility is that procedures can be adapted to suit the parties' particular requirements but if not properly managed delays will occur and costs inevitably increase.

In disputes involving difficult technical arguments or very specialist industries, parties may prefer to appoint a technically qualified arbitrator. However, bear in mind that the tribunal is likely to have the benefit of expert evidence and therefore any lack of technical qualification may not be of as much importance as, for example, familiarity with the arbitration process itself.

Ongoing Caseload

Parties should also ensure that a potential arbitrator has a manageable caseload. Well-known and popular arbitrators are much in demand and may be extremely busy for many months, if not years, in advance. Make sure that your arbitrator is able to devote sufficient time to your client's case so as to avoid proceedings being delayed and costs inevitably increasing.

This issue has been expressly dealt with in the new 2014 LCIA Rules, which provides at Article 5.4 that prospective arbitrators must declare not only that they are independent and impartial, but also that they are "ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration". Equally, under Article 13 of the ICC Rules 2012, the ICC Court will consider a candidate's availability when confirming or appointing an arbitrator.


Jane Lemon QC

Nationality

A final consideration is the nationality of a potential arbitrator. Parties may want their appointed arbitrator to have the same cultural background and outlook as they do and may see the appointment of an arbitrator of the same nationality as a means of achieving that aim. Whilst the nationality of a candidate is not usually a problem for a party appointed expert on a three man Tribunal, in arbitrations where the parties are of different nationalities, arbitral institutions often direct that a sole arbitrator or president of the arbitral tribunal cannot be the same nationality as one of the parties so as to prevent any real or perceived bias in the proceedings. This requirement can be found, for example, at Article 13 of the ICC Rules 2012 and Article 6 of the LCIA Rules 2014. It is also worth noting that where nominated co-arbitrators are of differing nationalities an institution is more likely to select a chairman of a different nationality to avoid any suggestion of favouritism. ■

An arbitrator needs to have a good judicial demeanour, intelligence, integrity and attention to detail.

Driver Group Africa, Expanding the Footprint

DRIVER GROUP AFRICA ARE EXCITED TO INFORM YOU THAT WE HAVE OPENED NEW OFFICES IN DURBAN AND CAPE TOWN TO ENHANCE SERVICE AND SUPPORT OFFERED TO EXISTING CLIENTS AS WELL AS ATTRACTING NEW CLIENTS IN THESE AREAS.

We are excited to announce the opening of two new Driver Group offices in South Africa, one in Durban and one in Cape Town. These offices will provide us with a greater national footprint and the ability to enhance our service and support to our existing clients in those areas as well as expand our client base, with a particular focus on the new sectors and major projects that are relevant to these regions.

The Operational Director responsible for the Cape Town office is Christo de Witt, who will be supported by Herman Louw, one of our Senior Consultants, who is based in Cape Town. The Operational Director responsible for the Durban office is Gavin Murphy, who will be supported by Christiaan Bredenkamp, also a Senior Consultant, based in Durban.

The opening of the new offices was the first in a series of strategic steps to establish Driver Group Africa as a leader in providing construction and engineering focused services in South Africa and across Africa.

Durban was identified as a key location due to its position as an important centre of trade and industry and a premier international business investment destination in South Africa, accounting for 15% of the national GDP. Durban's coastal location, sea port, trade port and superb

Our footprint in South Africa now covers three major provinces. These new offices will also form the base for expanding into the Eastern and Northern Cape regions of South Africa.

rail, road and air links give it a distinct advantage over many other centres in Africa for export-related industry. Its harbour has grown to become Africa's busiest container port, 2nd busiest in the Southern Hemisphere and the 9th busiest harbour in the world.

Durban is poised to maximize its development potential with existing and proposed infrastructure projects to facilitate growth and expansion. One of these projects is the proposed Durban Dig-Out Port, to be built on a site 11km away from the existing Durban port and will be in addition to the current expansion and upgrade of the latter. After completion, the Durban Dig-Out Port will be the biggest port in the southern hemisphere and will have three times the existing Durban port's capacity. It is estimated that the total construction could span from between 20 to 40 years, with the project expected to create approximately 64 000 construction jobs and 28 000 operational jobs.

Other exciting prospects for the Durban office include potential developments in the oil and gas sector as hydrocarbon rich subsea geological structures have been identified off the Durban coast. Similarly in addition Durban has been tipped to be the favourite to host the 2022 Commonwealth Games which would necessitate the development of world class sports and recreational infrastructure.

Through the aforementioned projects coupled with the ongoing transport, industrial, commercial and residential infrastructure developments continuing in Durban and surrounding areas, the Durban office will position Driver Group Africa in the midst of potential growth opportunities.

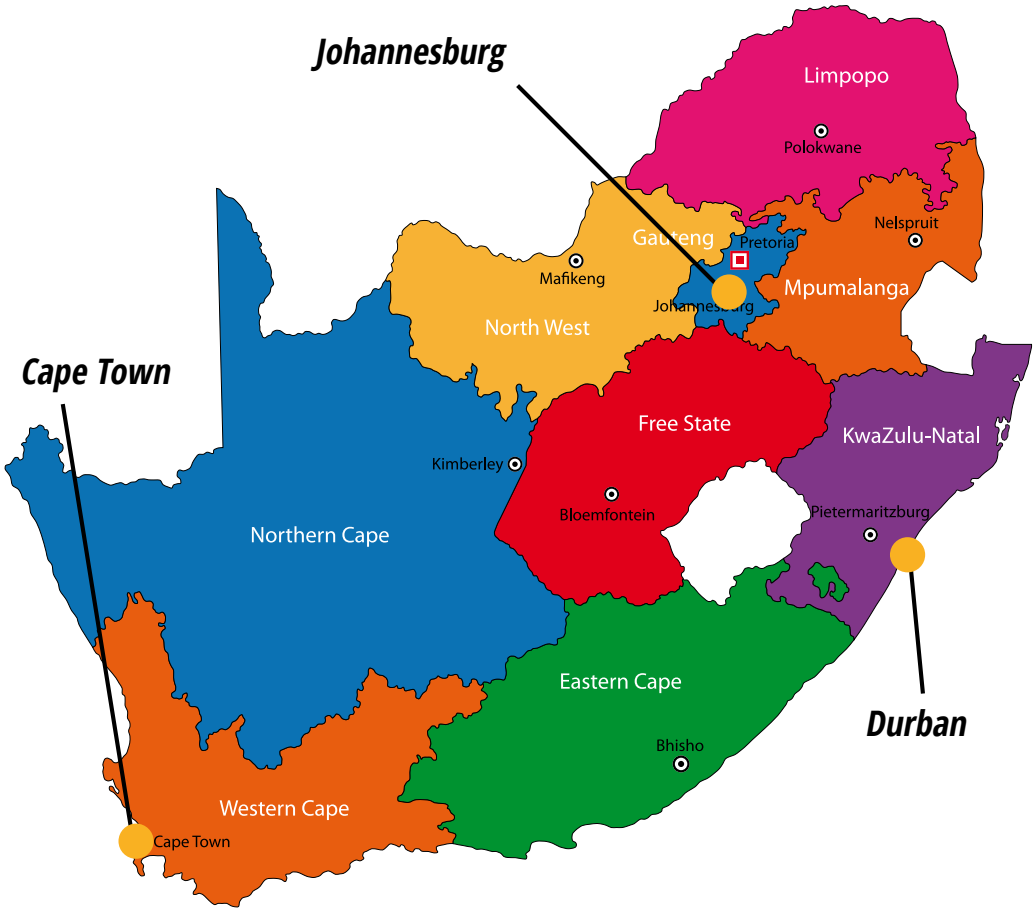
The Cape Town team is driven to improve service and support to existing clients as well as developing new business in the area. With the opening of the Cape Town office, our footprint in South Africa now covers three major provinces. These new offices will also form the base for expanding into the Eastern and Northern Cape regions of South Africa.

As with the Durban office, the decision to open an office in Cape Town emanated not only from the economic importance of Cape Town's geographic locality but also from the activities around the harbour and strategic developments in the Western Cape, such as the Saldanha Bay Industrial Development Zone, planned increased oil and gas facilities and other flagship projects in the region.

Cape Town's location is well placed to service ships travelling between Asia and South America, while many companies that provide oil and gas services along the west coast of Africa choose to base themselves in Cape Town.

The city of Cape Town's vision is to transform the region into Africa's Global City with the ultimate aim to influence business and policy direction to increase economic activity, investment and transform the Cape Town region into a vibrant international business destination. Cape Town is the leading city for new international companies, as well being the preferred location for the expansion of various domestic and international operations in recent years. Cape Town is not just a great place to visit, but also a great place to do business, due to its infrastructure and lifestyle.

These new offices will enable Driver Group Africa to better serve existing and new clients in these hubs of economic development in South Africa and build on the services offered from our existing Head Office in Johannesburg as part of our continued growth in the continent of Africa. ■



Christo de Witt is Driver Group Africa's Operational Director for the South Africa offices.

African Hotspots

FOLLOWING THE RECENT OPENING OF NEW DRIVER GROUP AFRICA OFFICES IN CAPE TOWN AND DURBAN WE LOOK AT ONE OF EAST AFRICA'S ECONOMIC CENTRES, KENYA.

Elsewhere in this issue of the Digest you will see that Driver Group Africa have recently opened two new regional offices in South Africa, located in Durban and Cape Town, to enhance our service to our South African Clients. Here we look at one of the other economic hotspots in the Region.

One of the key regional areas of growth in recent years has been East Africa, covering Tanzania, Burundi, Rwanda, Uganda, Sudan, Ethiopia, Eritrea, Djibouti, Somalia, and Kenya.

Within this article we look specifically at the economic growth and development in Kenya.

The Republic of Kenya is a former British colony which became independent in 1963. It is strategically situated on the Eastern coast of Africa along the Indian Ocean and via the port of Mombasa, serves as a regional entry and export point for goods going to or from Uganda, Tanzania, Burundi, Rwanda, Ethiopia, DR Congo and Southern Sudan.

In 2103 the construction industry contributed 4.8 per cent of Kenya's Gross Domestic Product (GDP), which increased to Sh5.36 trillion from Sh4.73 trillion– representing a nominal growth of 13.3 per cent.

Latest data from Kenya National Bureau of Statistics (KNBS) shows that the Kenyan construction industry output rose 13.1 per cent in 2014, compared to 5.8 per cent a year earlier. According to the Economic Survey 2015, the double-digit expansion was mainly supported by robust growth in property development, a vibrant real estate sector and the ongoing mega infrastructure projects.

Among the projects that contributed significantly to this growth were the earthworks construction for the Mombasa-Nairobi railway, the expansion of airport(s) as well as the ongoing construction of roads and energy infrastructure in various parts of the country. A number of other major projects are under development, construction or planned within Kenya. Some of which are detailed briefly below:

Lake Turkana Wind Power Project (LTWP) aims to provide 300MW of reliable, low cost wind power to the Kenya national grid, equivalent to approximately 20% of the current installed electricity generating capacity. The €600 million Project will be the largest single private investment in Kenya's history. The wind farm site, covering 40,000 acres (162km2), is located in north-eastern Kenya and will comprise 365 wind turbines, the associated overhead electric grid collection system and a high voltage substation. Associated works will consist of the upgrading of approximately 200km of existing roads.

Regional Development Funds – Rabai Power Project – Construction has started on the €114 million, 90MW diesel power plant to be located at Rabai, near Mombassa.

Highway Projects – Construction of the 28.6km Nairobi Southern Bypass is proceeding on schedule, with completion of the Sh17.1 billion project set for this July. The main contractor on the project is the China Road and Bridge Corporation who said they were "working hard to complete the remaining work". The bypass project involves construction of a 28.6km dual carriageway with 12km of slip roads and an extra 8.5km of service roads.

There are also numerous regional road upgrading projects underway and planned, as part of the Kenya National Highways Authorities Vision 2030 initiative.

LAPSSET – The Sh2 trillion Lamu Port-South Sudan-Ethiopia-Transport Corridor project is hoped to trigger economic activities and more than double Kenya's GDP. Its significant components include the Lamu port, Lamu-Ethiopia-South Sudan superhighway, Lamu-Juba-Addis Ababa railway line, an oil refinery and a 2,240 km oil pipeline connecting oil fields in South Sudan to the refinery at the Lamu Port. It also includes construction of three resort cities at Lamu, Isiolo and Lokichoggio, construction of airports in the resort cities and development of associated infrastructure such as a 1,100MW power line and a 185 km water supply line.

Standard gauge railway – Construction of the Mombasa-Malaba standard gauge railway was launched by President Uhuru Kenyatta on November 28, 2013. Phase one of the project has kicked off and will involve construction of a 500km railway line from Mombasa to Nairobi at an estimated cost of Sh327 billion. The project is set for completion in 2017.

Greenfield Terminal – The Sh55.6 billion terminal at Nairobi's Jomo Kenyatta International Airport, the busiest airport in East Africa, is expected to give the airport an extra handling capacity of 20 million passengers annually.

Dongo Kundu Free Port – Construction of the first berth of the Mombasa Special Economic Zone (SEZ) is expected to start in 2016, as Kenya prepares to launch its logistics and industrial hub in the coastal city. The government seeks to establish a 24-hour port, operated along the lines of the Dubai Free Port concept. The project also includes the construction of a 16km bypass and bridge, which is expected to decongest Mombasa, serving as an alternative to Likoni ferry and will link the mainland to the south coast.

Konza Technology City – The Sh900 billion project has been identified as one of the key drivers of the achievement of Vision 2030.

Based on the above, the construction industry is expected to sustain its strong growth this year and into the upcoming years, as the State rolls out several multimillion dollar projects. Some of which are well known, such as the 10,000km roads project. This is a government strategy to see that 10,000km of roads are paved to bitumen standards in the next five years. Phase two of the standard gauge railway, Lamu Port construction and airport(s) expansion projects among others. These major infrastructure investments, combined with the extensive oil and gas exploration currently underway both on and offshore, make both Kenya and the rest of the East Africa Region an area to watch.

Future issues of the Digest will give details on the other growth areas in this vibrant continent. ■

Simon Cowan is an Operational Director based out of the South Africa offices.

Designing and Building a Metro System From Scratch in an Already Congested City Like Doha

MATTHEW WOOD, ASSOCIATE DIRECTOR, QATAR TALKS ABOUT OVERCOMING LOGISTICAL, EQUIPMENT, STAFF AND LABOUR REQUIREMENTS IN BUILDING DOHA'S METRO.

All aboard the next metro, scheduled for departure in 2019.

The Doha Metro is a project with a starting value of US $38 billion and is an integral part of the Qatar Rail Development Program (QRDP). Consisting of four lines, the Metro network will cover the Greater Doha area and will include connections to town centres and commercial and residential areas throughout the city. In central Doha the Metro will be underground whilst at the outskirts it will be at ground level or elevated. When complete the system will run over 216 kilometres of track operating across 48 termini and have over 100 stations.

LINES

Following the pattern of most metro rail systems throughout the world the Doha Metro will adopt colour-coded line descriptors.

Red Line (Coast Line):

North-South Line connecting the towns of Al Khor in the north and Mesaieed in the south via Lusail, West Bay, Musheireb and, importantly, the New Doha International Airport completed in 2014.

Green Line (Education Line):

The Green Line follows Al Rayyan Road connecting Education City with the central business district of Doha. Furthermore it links to Umm Slal and the Industrial Area South.

Gold Line (Historic Line):

Runs in an East-West direction and connects Airport City North via central Musheireb with Al Waab Street, Al Rayyan South and Salwa Road.

Blue Line (City Line):

Semi-circular line that connects the residential and commercial areas of West Bay and Airport City North along the main C-Ring Road.

Stations

There will be approximately 100 stations built for the entire Metro Network including two major stations to be built at Musheireb and Education City.

Construction

167 kilometres of the project will be underground tunnel construction carried out by twenty one (21) Tunnel Boring Machines (TBM) imported from the German firm Herrenknecht. The TBMs are 7.05 metres in diameter and 120 metres long. They travel between 12 metres and 21 metres per day and excavate between 600 and 1100 cubic metres of spoil each in a 24hr period. A lot of this spoil is being reused in embankment works for Qatar's

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DUBAI, UAE: THE DUBAI INTERNATIONAL ARBITRATION CENTRE (DIAC), HAS LAUNCHED A NEW FORUM TO SUPPORT THE DEVELOPMENT OF YOUNG ARBITRATORS IN THE MIDDLE EAST AND THE NORTH AFRICA REGION, CALLED DIAC 40 – YOUNG PRACTITIONERS GROUP.

DIAC Launches DIAC 40 – A New Initiative to Assist Young Arbitrators

The initiative, which is open to all young practitioners and members of the arbitration community under 45 years, was launched by H.E. Dr. Habib Al Mulla, Chairman of the DIAC Board of Trustees, at an official dinner at the Park Hyatt Hotel, Dubai on 13 April 2013.

Speaking at the launch, H.E. Dr Al Mulla said: "DIAC has always been at the forefront of international institutions with regard to appointing young arbitrators. Over the past five years 40% of the arbitrators appointed by DIAC Executive Committee were young and 30% were women.

"As a natural progression of our efforts and achievements we have decided to establish DIAC 40 – Young Practitioners Group to provide support and assistance to members of the arbitration community aged under 45 to develop their skills, learn from their peers and build contacts across the arbitration and legal communities of MENA," said H.E. Dr Al Mulla.

Prof. Dr Tarek Fouad Riad, Chairman of the DIAC Executive Committee, said: "DIAC 40 – Young Practitioners Group aims to become an international network and forum for young arbitrators where they can discuss relevant topics on international arbitration openly, with a special focus on the MENA region".

"The benefits of this initiative are that it will give young practitioners the opportunity to learn from experienced arbitrators, identify mentor relationships and interest groups as well as gain practical training in both Arabic and English," Prof Dr Riad said.

Ms Maria Chedid, Partner at Baker & McKenzie (San Francisco) who is a well-known arbitrator both in the Western US and worldwide, spoke to the attendees at the Launch of DIAC 40 about her experience as a female arbitrator.

Ms Chedid explained that she started out in arbitration in New York, specialising in UN Compensation Committee Cases. When Ms Chedid decided to move to San Francisco, on the West Coast of the US, she was told she would not be able to continue her arbitration practice there, as arbitration practices were usually located on the East Coast. However, Ms Chedid persisted in her arbitration practice in San Francisco and grew it to be a leading practice on the West Coast.

Ms Chedid's advice for women wishing to enter into the traditionally male dominated field of arbitration was to recognise the importance of establishing a reputation for their expertise.

Ms Chedid explained that this was best done by the experience of acting as an arbitrator. However, for new arbitrators without such experience, she recommended young arbitrators demonstrate their expertise by the publication of papers on specialist topics, which will also attract public speaking invitations. Ms Chedid explained that potential parties to arbitration need to be familiar with an arbitrator's approach and style before they decide to appoint, so public speaking and written articles will give potential parties such insight into a young arbitrator's approach and will build up their reputation, accordingly.

Ms Chedid commended DIAC 40's initiative to promote diversity within its panel of arbitrators and in particular its commitment to support and mentor women practicing in the region.

Mr. Ahmed Ibrahim, Partner at Ahmed Ibrahim in association with Fenwick Elliott, gave his perspective, as a young arbitrator, of how to build up a successful arbitration practice and how DIAC 40 can assist its members. Mr.Ibrahim advised attendees to focus on three key factors.

Firstly, education and training to enhance one's knowledge of arbitration and of the industries which commonly use arbitration. In particular, young arbitrators with Middle East experience should study cultural differences in respect of procedural matters such as cross-examination or disclosure which are sometimes carried out in accordance with common law principles in arbitration.

Secondly, Mr Ibrahim recommended networking as a vital means to meet arbitrators from other jurisdictions to exchange views and experience, which

opportunities will be provided by DIAC 40.

Finally, Mr Ibrahim agreed with Ms Chedid's recommendation that young arbitrators should seek publication of their papers and articles, and noted in particular that more arbitration information published in Arabic is necessary and urged young arbitrators to write articles in Arabic for publications such as the DIAC 40 journal.

Mr Mahmood Hussain, Founding Partner of Mahmood Hussain Advocates and Legal Consultancy, Dubai, recalled how, in his route to becoming an arbitrator, he found that mentorship was lacking, to provide young arbitrators with guidance on how to deal practically with issues of ethics, challenging situations, pressure and how arbitrators should conduct themselves generally. Mr Hussain looked forward to the networking opportunities offered by DIAC 40 as they would enable young arbitrators to benefit from the experience of seasoned local and international arbitrators.

Following the speakers, Prof Dr Riad opened the floor to the attendees to propose initiatives to be considered by DIAC 40. Various ideas were suggested, including the establishment of an internet forum for DIAC 40 members, the proposal to parties of appointing DIAC 40 members as Tribunal Secretaries and mock arbitration competitions for members, which suggestions Prof Dr Riad agreed to introduce immediately.

The launch of DIAC 40 comes in a year of major celebration for DIAC as it marks its 10 year anniversary, as well as the appointment of H.E. Dr Al Mulla as the first Arab Chairman of the Board of Trustees and DIAC reaching the benchmark of more than 2000 cases during the past 6 years, making the centre the most popular choice of appointing authority in the Middle East.

Membership to DIAC 40-Young Practitioners Group is open to all members of the arbitration community below 45 years of age. Members will be invited to conferences, workshops, seminars and other networking events organised by DIAC 40 – Young Practitioners Group and other young arbitral institutions. There is no fee for joining DIAC 40 – Young Practitioners Group. ■

Maria Deus, Director, Dubai UAE.

« CONTINUED FROM PAGE 11

long distance railway. As a comparison the cross-rail scheme currently under construction in the United Kingdom is using eight (8) TBMs.

Impact on the Economy of Qatar/ Doha

This project is a part of Qatar's committed investment of US $210 billion to deliver the FIFA 2022 World Cup. The project is being built concurrently with other major drainage and highway infrastructure programmes in Qatar which all have an absolutely non-negotiable deadline – to be completed and operationally tested prior to the World Cup.

As an indicator of growth, Qatar's population has increased 37% from 1.7 million in 2010 to 2.35 million in 2015. This is putting pressure on an already stretched infrastructure. Although major projects are either started or due to start to accommodate this growth, Qatar, despite its immense wealth from oil and gas, is struggling to maintain the speed required to provide the required infrastructure. In the construction sector the Gulf Cooperation Council (GCC) has a projected growth rate of 5.5% from now until 2020 compared to 2.2% in developed countries.

The challenges the project design and construction teams are facing are numerous. These include issues such as:

Traffic

Before the conception of the Metro project Doha was already suffering from significant traffic congestion. Since the start of excavation for the Metro interchange stations and station boxes, sometimes covering entire city blocks, traffic has had a major impact on project logistics. To cite an example, a three (3) hour truck ban is in place in the city and metro area between noon and 3 in the afternoon to ease the congestion.

Availability of Raw Materials

The demand for cement has increased six (6) fold from 2,000 tons per day to 12,000 tons per day since 2005. As a further illustration of the size of this project, Musheireb Station contains more than twice (730,000 m3) the volume of concrete contained in the Burj Kalifha Tower in Dubai the world's tallest tower (330,000 m3).

Logistics

Incoming Sea and Air freight has increased by 50% in the last five years. Doha port now clears containers 24 hours a day to keep up with the demand. The key stakeholders in the Metro project are Ashghal (Public Works Authority), Ministry of Municipality & Urban Planning (MMUP) and the Civil Defence Department. Coordination of these key stakeholders along with utility providers is proving complex for both designers and contractors. However an indication of progress is an impressive solution to removing spoil from the densely populated West Bay area and to ease truck movements is the construction of a conveyor belt system similar to that found on a mining project. This conveyor is scheduled to move over 400,000 m3 of spoil in 2015.

Staffing

Given the experience in the UAE and Qatar when the global financial crisis impacted construction activity, Qatar is understandably cautious admitting ex-pat staff. The Resident's visa process, affects the number of staff from different geographical areas that are admitted into Qatar. Further the No Objection Certificate, or what is known as an NOC process, that limits an employee changing jobs without a letter of approval from his previous employer, is restricting to both contractors and designers alike. As a result design firms are having to carry out work off-shore because of the time constraints in mobilising staff to Qatar.

Labour

Qatar needs to double its migrant labour workforce to 2.5 million by 2020 in order to meet demand of current projects. This is a huge challenge and contractors and their sponsors are in continuous dialogue with the authorities regarding quotas and the logistical challenges associated with such large increases in expat workers.

Housing

The demand for quality housing currently outweighs supply. A villa in the Al Waab area, close to schools, rents for QAR 18,500 (US $5,100) per month. Since the announcement that Qatar had won the right to stage the 2022 World Cup rents have increased 10% year on year. The option to purchase property in certain developments is available to expatriates although a 50% deposit is required.

Schooling

Currently demand for quality English speaking schools is three (3) times availability. Major design and contracting firms are being forced to form partnerships with schools to ensure their staff can have their children educated, or restrict recruitment to single status staff.

Delays

With the focus on Qatar and the 2022 World Cup, delays are not going to be accepted. Traditionally the Middle East is not a region where completion of projects occurs as programmed. On time completion will be paramount to the Metro and the success of the World Cup. Setbacks have already taken place, an example being where recently an under-construction tunnel flooded and a TBM was completely engulfed by water causing major damage to the equipment. This will no doubt cause delay to the completion date of that tunnel and contractors and designers will be under considerable pressure to take mitigation measures to recover time lost.

Summary

With all the challenges, it is going to take a monumental effort by all involved to deliver the Metro project on time and on budget. However this project alone offers huge opportunities to construction professionals from all over the world who are interested in being part of a massive infrastructure scheme

Doha Metro is one of many projects that has the ultimate deadline – the FIFA World Cup 2022.

It's essential that aforementioned speed humps are not cause for disappointment but are worked through to a positive and profitable outcome. See you on the metro! ■

Time Bars and Condition Precedent in Construction Contracts

STEVE PALMER, ASSOCIATE DIRECTOR, LIVERPOOL UK.

In recent years there has been an increase in the use of time bar clauses in both in bespoke and standard forms of construction contracts, where the serving of a notice is a condition precedent to the Contractor's entitlement to a claim and a claim may be disallowed if the requisite notice has not been served. But are they really effective?

Two examples of standard forms of contract that include time bar clauses are the Engineering and Construction Contract (NEC 3) and FIDIC forms.

Clause 63.1 of NEC 3 provides that;

'If the Contractor does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Price, the Completion date or a Key date unless the Project Manager should have notified the event to the Contractor but did not.'

Clause 20.1 of FIDIC 1999 provides that;

'If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim.'

It can be seen that both of the standard forms above are similar in structure and the intention is that a notice must be issued within the stipulated period of time or the claim will fail. There may of course be a challenge to when exactly the Contractor is deemed to "be aware", however, with both contracts there is a clear duty to notify a delaying event and failure to do so is stated to result in a loss of any entitlement.

The courts have been reluctant to set out the strict requirements of a notice required under time bar clauses and without clear language would be unlikely to consider a clause to be a condition precedent. However in instances they have found that if any such clause includes clear and unambiguous wording as to the requirements of the notice then a failure to adopt strict compliance with its terms would prejudice the rights to claim (as was the case in the Scottish Court of Session case Education 4 Ayrshire Ltd v South Ayrshire Council [2009] Scots CSOH 146.)

> It is often said by contractors that the reasons they never issued notices were because they didn't want to appear aggressive in the eyes of the Employer.

In the often referenced and commented upon Australian case Gaymark Investments Pty Ltd v Walter Construction Group Ltd (1999) N.T.S.C. 143. 79 the contract provided that no extension of time could be awarded if the contractor did not give a notice of the delay. Therefore if the Contractor failed to serve a notice of delay (which in this case it did) then ordinarily the contractor would not be entitled to any extension of time and thereby could incur liquidated damages. The Employer claimed liquidated damages but the claim was dismissed by the court on the basis that as there had been a delay by the Employer, irrespective of the failure by the Contractor to comply with a notice provision that was a condition precedent, that an award of liquidated damages would be entirely unmeritorious. Further that the delay by the employer constituted acts of prevention with the result that there was no date for completion putting time at large and therefore, the contractor was obliged to complete in a reasonable time.

It has been said that Gaymark takes the acts of prevention principal a step too far and there has been criticism of Gaymark both from the courts and construction law texts. This however seems to have split many an opinion. For example, on the one hand Keating appears to support the Gaymark decision as there are conceptual difficulties with what it terms the 'Gaymark principal' where a party gains benefit from its own act of prevention. The opposite view has been taken in Hudson on Building Contracts who appear to consider Gaymark to be wrongly decided.

The Gaymark principal was cited as the legal basis for argument in the case Multiplex Constructions (UK) Ltd v Honeywell Control Systems Ltd (No 2) [2007] EWHC 447 (TCC) where Honeywell argued that its own failure to issue the required notice and Multiplex acts of prevention put time at large. Given the facts of this case Mr Justice Jackson distinguished Gaymrak and did not have to decide if Gaymark represented the law of England but did make the following comment at paragraph 103 of his judgement:

"Whatever may be the law of the Northern Territory of Australia, I have considerable doubt that Gaymark represents the law of England. Contractual terms requiring a contractor to give prompt notice of delay serve a valuable purpose; such notice enables matters to be investigated while they are still current. Furthermore, such notice sometimes gives the employer the opportunity to withdraw instructions when the financial consequences become apparent. If Gaymark is good law then a contractor could disregard with impunity any provision making proper notice a condition precedent. At his option the contractor could set time at large."

The court clearly doubted whether Gaymak represented good law as the Contractor could in effect disregard a condition precedent notice to set time at large and thereby create uncertainty. It was held that even if Honeywell forfeited its entitlement to an extension of time Multiplex could only recover loss or damage caused by the failure of Honeywell. Therefore if the relevant delays were caused by Multiplex, not Honeywell, then Multiplex could not recover damages against Honeywell, thereby maintaining the prevention principal.

The analysis of Jackson J in Multiplex was reviewed in the case Steria Ltd v Sigma Wireless Communications Ltd [2008] B.L.R. 79 which included a substantial dispute on the proper construction of the extension of time provisions in a heavily amended version of the standard MF 1 Form. The judgement in this case supported Muliplex and held that the prevention principal does not mean that failure to comply with a notice puts time at large. The meaning of the wording of the extension of time clause was also examined as to whether an express statement was required to the effect that unless written notice is given the contractor would lose entitlement. It was held that this was not necessary provided the circumstances giving rise to the delay were clear in its meaning.

In a recent case Obrascon Huarte Lain SA v Her Majesty's Attorney General for

Gibraltar [2014] EWHC 1028 (TCC) Mr Justice Akenhead considered clause 20.1 of the FIDIC Yellow Book Form and accepted that it imposed a condition precedent but also gave some guidelines on timing of notices. Further, that the clause should be construed reasonably broadly "given its serious effect on what could otherwise be good claims for instance for breach of contract by the Employer". Mr Justice Akinhead found that extension of time could either be claimed prospectively (when it was clear there would be a delay) or retrospectively (when the delay had started) thereby considerably extending the period during which the contractor can serve notice. This is clearly advantageous to the contractor under the FIDIC forms and the JCT Standard Forms will likely follow the FIDIC findings, however, there is no similar authority on timing of notices under NEC3.

Conclusion

Despite there being no clear and binding authority, it seems that the Courts may give effect to liquidated damages provisions where such notices are construed to be a condition precedent and the contractor fails to give the requisite notice. That is provided that those clauses are clearly worded, unambiguous and consistent with the language of the contract and represent the intention of the parties. However, as can be seen by the analysis of the cases above, the failure of a Contractor to give a notice may not necessarily be fatal to its claim. However, that said it would clearly be best to air on the side of caution and ensure that notices are issued when the Contractor is aware that an event has occurred which will likely have a time (and/or cost) impact. It is often said by contractors that reasons they never issued notices were because they didn't want to appear to be aggressive in the eyes of the Employer. The cold reality is that typically it is Employers that insert such clauses and as a result the contractor is obliged to comply and therefore such actions should not be seen as aggressive but more so good and proper management/ administration of the contract, which can only benefit all parties by allowing issues to be addressed and dealt with timeously. ■

Q&A: David Brodie-Stedman

Digest: You have been set some pretty tough targets by the board for the AMEA region. Can you outline what they are?

DBS: I have been tasked to double the size and profitability of the business in 4 years. That's what the target is. That's the mission for AMEA. The UK and Europe are mature markets but the AMEA region has huge growth potential. The targets may be tough but they are achievable.

Digest: What is the biggest challenge that the AMEA business faces?

DBS: The biggest challenge is growing the business at the rate that we plan to whilst ensuring we maintain quality. To ensure this we are applying rigorous standards when employing new candidates and ensuring that all employees have access to continued professional development. Our business support department ensures that a framework is in place across the region to uphold our qualities and values.

Digest: What is your plan for the region? How are you going to reach these growth figures?

DBS: We are working hard to bring the AMEA offices together under one umbrella. The aim is that individual offices will benefit from shared support resources while being able offer a truly global consulting service locally to their clients. We offer over 350 international claims consultants through our local offices and that number is growing all the time.

Digest: What keeps you enthusiastic about this industry?

DBS: I love this job. I love doing what we do. I love being the company that people call when they have a huge problem and being able to help them. I know that sounds a bit altruistic but being part of a business that offers solutions and services that can make a difference is really important to me.

Digest: When you first joined Driver Group what were you happiest to find?

DBS: When I first arrived I found a really strong team culture. It's a very friendly business, hierarchical, but people at every level are willing to engage with others. There is a lot of respect in the business and I like that.

Digest: Given that you are recruiting hard at the moment, what sort of leadership style could a prospective employee expect from you?

DBS: I like to have a personal relationship with everybody in the team to extent that that is possible. I think it's important for example that when people join the business that I find some time, even if it's just 10 minutes, to welcome them to the team. I tell them more or less the same things, give them my phone number and say that they can call me if they ever have a problem. Most of them don't ever call me but I think it's important for them to know that I value them as an employee not just a number on a payroll. This is a people business and we must never lose sight of that.

Digest: What do you do when you're not working?

DBS: I love being outdoors. The last place you'll find me is in a mall. I'll doing anything to avoid going to a mall or shopping in general. I like motorbikes, boats and anything that gets me out in the fresh air.

Digest: Do you read?

DBS: I do when I can. I really like history related stuff and recently I have really enjoyed the Bill Bryson books,

'A Short History of Nearly Everything' and his other one 'At Home'. I like his investigation and the way he presents things in a way that you can understand. I really enjoy that sort of thing. And I read any of the Freakonomics types of books. I love seeing their different takes on social issues.

Digest: What's your first memory?

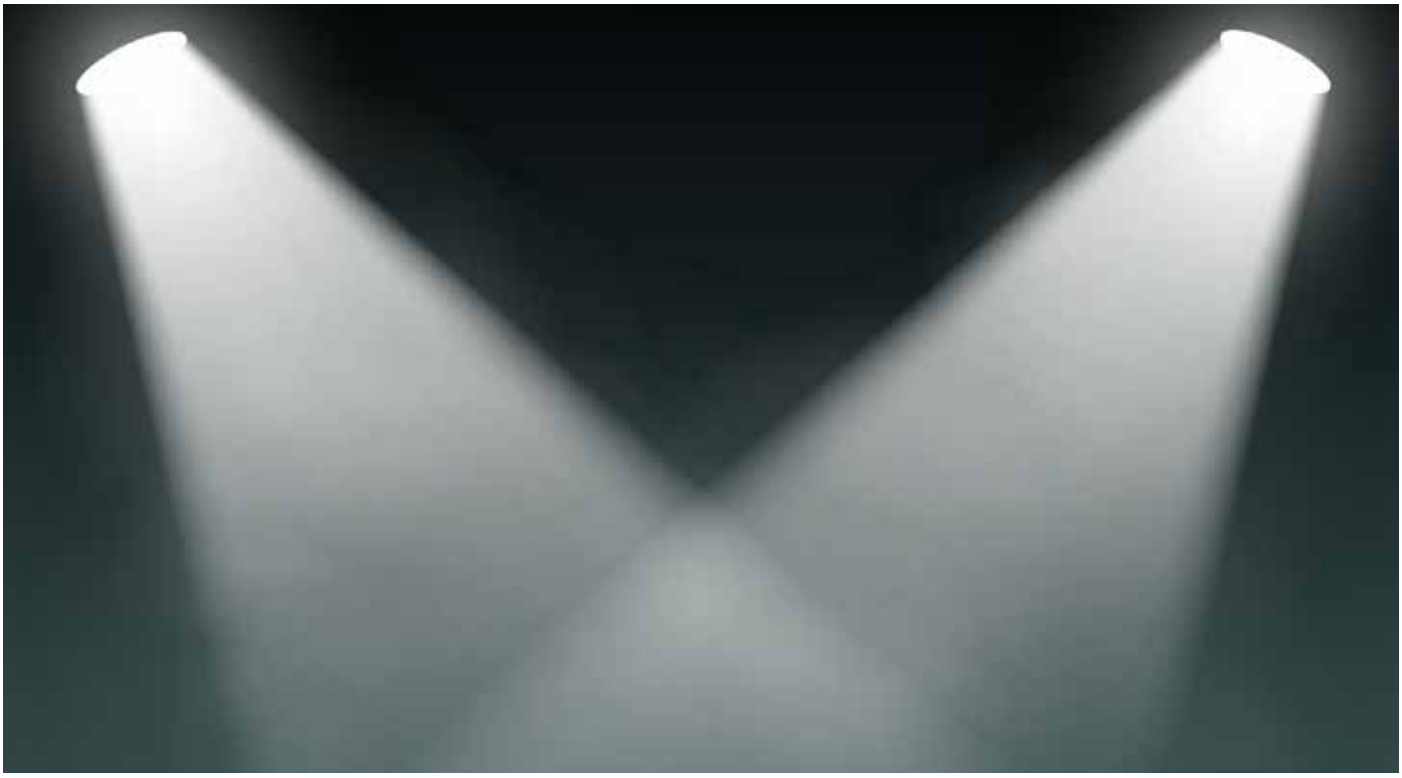
DBS: Living as a child in Stockport, always outdoors getting into scrapes with my brother.

Digest: What was your first job?

DBS: My first job was a Youth Training Scheme with the gas board. I really enjoyed that job, but I learnt that digging holes in the road, climbing up chimneys and going under floors is hard work and wasn't something I wanted to be doing in 20 years' time. It persuaded me to go back to college, study hard and gain a professional qualification that would set me on a solid career path. I'm proud of the fact that that was my first job and I wouldn't change it for the world.

Digest: What is the ideal way to spend an evening?

DBS: At home in the Lakes in the UK, takeaway curry and watching Question Time or Have I Got News for You on the television. ■



Expert Evidence is Under the Spotlight Like Never Before

MICHAEL MENDELBLAT IS A PROFESSIONAL SUPPORT LAWYER FOR THE CONSTRUCTION GROUP AT HERBERT SMITH FREEHILLS. HE HAS OVER 30 YEARS' EXPERIENCE OF ADVISING ON LEGAL ISSUES IN CONSTRUCTION AND ENGINEERING-RELATED MATTERS.

It is now commonplace for judgments in the courts of England and Wales to include at the outset an overall review of the expert evidence. The judge will often give a brief (and usually forcefully expressed) summary of his views which may draw a stark contrast between the performances of each side's expert. Experts may be criticised where they are unaware of their duties and responsibilities under the Civil Procedure Rules. It is the task of solicitors to familiarise experts with the applicable rules to which experts must ensure they adhere, both in spirit and to the letter. In particular, criticism is frequently made of experts who fail to have a proper regard to the requirement that their task is to provide assistance to the court, not to act as advocate for the party instructing them.

It follows that if an expert changes his views, he should inform both the other side and the court without delay. In some cases where this occurs, the party instructing the expert may come to the view that he needs to change expert. Recent cases as referred to below have indicated the way in which the court will approach this issue.

The starting point as provided for in the Rules is that the court's permission is always required to use expert evidence. A party may employ an expert on an advisory basis before the court's permission is given and at this stage, the court has no control over a party's choice of expert. However, once the court has given permission, the position changes. The court may either give permission for an expert in a particular discipline (for example, programming) or identify the expert by name. A party will only require the court's permission to change expert once that party has identified the expert in a particular discipline. It is at this latter stage that most of the decided cases have addressed the circumstances in which a party may change his expert and on what terms.

The court discourages "expert shopping", that is to say instructing successive experts to attempt to gain the most favourable view. Therefore, once an expert has been identified, then a party will only be able to change that expert where there is a good reason to do so (Guntrip – 2012) and an example of such a good reason may be that an expert is no longer willing to continue acting (Adams – 2013). The court may impose conditions on the change of expert, for example that the first expert's report is disclosed, even if obtained before the action commenced (Edwards-Tubb – 2011). The mere fact that an expert has changed his views in the light of additional evidence is not a good reason to allow the change (Singh – 2009).

The court encourages the use of a single joint expert instructed by both parties where possible and particularly where relatively uncontroversial evidence is involved; this is often the case in relation to quantum issues. However, permission may be given to call a party's own expert if grounds can be demonstrated for thinking that the single joint expert is wrong (Cosgrove – 2001).

The courts are also adopting new procedures to make more effective use of expert evidence. One of these is the introduction of concurrent giving of evidence, also known as "hot-tubbing". New provision has been

made in the Civil Procedure Rules and the associated Guidance.

In this procedure the court may direct experts from like disciplines to give evidence concurrently. This means that they take their place together in the witness box. Each expert is made available for the judge to question. This takes place on the basis of an agenda jointly agreed between the parties indicating the areas of disagreement identified in the experts' joint statement, made following their meeting.

The judge initiates the discussion by asking the experts in turn for their views upon which they may be questioned by the judge. The other expert(s) may be invited to comment or ask their own questions of the first expert.

Once this procedure has been completed for all the experts, the parties representatives may put questions to the experts. They may do so to test the correctness of an expert's view or seek clarification of it. However, full cross-examination is neither necessary nor appropriate.

The judge may then summarise the experts' differing positions and ask them to confirm his summary.

Proponents of "hot-tubbing" point to efficiency gains in that the experts' differing views can be more readily compared and the areas of disagreement more easily identified. It is also likely to save time at trial. However, concerns have been expressed as to the loss of control by Counsel and potential for the experts' personalities to assume a disproportionate importance when the procedure is adopted. As ever, the key to success is likely to be effective preparation so that experts are fully aware of the issues and the dangers of making inappropriate concessions.

Another area where the court is taking a tighter grip on the conduct of proceedings is in relation to costs. A system of costs budgeting was introduced in 2013 for all civil cases, although its application is discretionary where the amount in issue is above £10 million. Where it applies, an estimate must be provided at the first case management conference of the costs expected to be incurred, which includes those attributable to expert evidence. Further, in all cases where parties apply for permission to adduce expert evidence, they must provide an estimate of the costs of the proposed evidence.

The court has power to order that a party's costs budget will represent the maximum recoverable amount after trial, thereby effectively limiting the amount that can be recovered for experts' fees. The court may also refuse permission to call expert evidence (or restrict it) if the estimated costs are considered disproportionate.

When circumstances change during the progress of a case, the court should be informed and, if necessary, an application should be made to increase the applicable cost budget. The court may make an adverse order if an application is not made at the time the change in circumstances occurs and may refuse to allow a retrospective increase.

In the recent case of CIP (2015) the court disapproved a proposed budget for a party's expert evidence of some £2.3 million. The court explained that, in its view, the case centred on just six individual defects but the claimant "maintain[ed] the fiction that this case concerns hundreds of items in dispute" and that expert costs had become out of control. The court decided that a figure of £1.2 million was reasonable for the entirety of the expert's costs on the basis of its views as to the items genuinely in issue between the parties. A further observation in the case is of particular interest as regards the issue of proportionality, a factor the court must have regard to in assessing budgets.

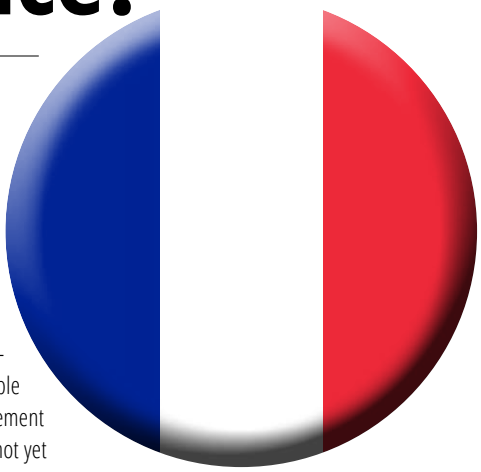
"The value of the claim is of course a factor in calculating proportionality although, in a case of this type, it is not as important as complexity. After all, it might cost £300,000 or £30 million to rectify any defects, but the expert evidence necessary to prove these defects (and the reasonableness of any remedial scheme) will be the same."

Whilst each case must be considered on its merits, the CIP case indicates that all costs (including those of experts) will be scrutinised critically.

Taking all the above into account, it can be seen that the courts are taking an interventionist line in relation to expert evidence and that both its relevance and its cost effectiveness must be rigorously justified, if it is to be successfully adduced. The courts are also likely to adopt innovative methods for giving evidence, such as hot-tubbing, when justified in the circumstances. ■

Facing a Dispute in France?

THIS IS HOW TO RESOLVE IT WITH YOUR OWN LAWYER AND WITHOUT TRIAL



Born in 2010, the French procedure named « procédure participative » (participatory procedure) is inspired by collaborative Anglo-Saxon law. This procedure, considered as a new form for amicable settlement of disputes, is an agreement by which the parties to a dispute, not yet before a judge or an arbitrator, commit to work together and in good faith to resolve their dispute amicably. This agreement is entered into for a specified period of time. All natural or legal persons may conclude such an agreement.

Requirements

All the regulation for the participatory procedure can be found in the French Civil Code (articles 2062 to 2068) and the Code of Civil Procedure (articles 1542 to 1559).

The agreement of participatory procedure is, under penalty of nullity, included in a writing that specifies its term, the object of the dispute, the documents and information necessary for the resolution of the dispute and the modalities of their exchange.

Any person, assisted by his legal counsel, may conclude an agreement of participatory procedure concerning rights that he may freely dispose. The assistance of a legal counsel is necessary and the company's managing director will choose a person qualified in collaborative law, with negotiation skills.

The participatory procedure can be used to resolve international disputes. However, no agreement may be concluded whose effect is to resolve disputes arising from any labour contract governed by the French Labour Code between employers or their representatives and their salaried employees.

If no agreement is reached and the dispute has to be judged, the judgement will be rendered without any pre-trial phase.

Outcome of the "Procedure Participative"

Participatory procedure may be terminated in the following ways:

- The parties who, upon arrival of the term of the agreement of participatory procedure, reach an agreement that settles all or part of their dispute, must submit that agreement to the judge for formal confirmation. The lawyers must countersign the agreement. In case of a partial agreement, the parties may apply to the judge to solve the litigations that remain existing;
- When, upon arrival of term of the agreement of participatory procedure, the parties have failed to reach an agreement on their dispute, they

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submit their dispute to the judge, and they are freed from the obligation to enter a mediation or a conciliation, if that had been provided for. The hearing will take place immediately, without any pre-trial phase.

Benefits for Each Party

Even though it's used sparingly, participatory procedure offers numerous benefits.

First of all, confidentiality. As long as it is in effect, an agreement of participatory procedure makes inadmissible any demand to a judge to rule on the dispute. However, if one party to the agreement does not execute it, the other party is then authorized to call on the judge to rule in the dispute. There is a suspension of any legal prescription and the parties are committed to an absolute confidentiality on all matters entrusted or communicated to them during the procedure.

Second, cost of the procedure. The cost for each party is only that of his legal counsel fees. In this way, no need to pay a third party as in mediation or arbitration procedure. A considerable time saving is also a way to avoid financial troubles.

Thirdly, the participatory procedure avoids the risk of a long trial and the uncertainty of the final result unlike judicial proceedings. Also for more complex queries, an answer may be requested from an expert in the relevant policy area. In fact, the parties remain in control of the procedure and free to give their agreement for each solution.

Finally, it's important to note that the parties do not lose time. Actually, if no agreement is reached and the dispute has to be judged, the judgment will be rendered without any pre-trial phase (phase supervised by a judge who controls the loyal conduct of the procedure, namely as to the timely exchange of pleadings and transmission of documents; the average time for completion of this stage is around one year). ■

Matthieu Hue and Romain Aubessard are lawyers based in Paris and legal counsels of Driver Trett France. They are specialized in commercial law and commercial litigation. You may contact them at contact@augure-avocat.fr

"Contract Management" en Français

COINCIDING WITH THE OPENING OF OUR PARIS OFFICE, EMMANUELLE BECKER PAUL CONSIDERS THE EMERGENCE OF CONTRACTS MANAGEMENT AS A DISCIPLINE IN FRANCE.

How would you say "Contract Management" in French ?

How many times have I been asked this question ...? Since I started working as a Consultant, I have been assigned to several major French companies who wanted to promote "Contract Management". So I had to write procedures on Contract Management, and it usually starts with the DEFINITIONS.

The struggle starts from there. I can't find the French words. And we French people do not like at all to use English terms when we think that we know better. How do we admit that there are no words for Contract Management in French? Isn't it embarrassing? Of course we could translate as "gestion des contrats", but that does not give the full picture of what Contract Management is.

There are no words for it because Contract Management is the big unknown in the French industrial and construction world. No word, no job description, no training. Or hardly any.

Of course there are exceptions. The oil & gas industry and to some extent large construction companies have developed this function. There are also the lucky few of us who have had the opportunity to work on large international projects, close to those English-trained consultants who help investors around the world to build things on time and within budget.

We French-trained engineers see ourselves as scientists and we do not bother with such trivial concerns. When I conduct seminars in France in induction to Contract Management, I usually start with: "you have to read the contract", and immediately after comes: "Contract is not a dirty word". Then I explain to the trainees, whether they are Contractors or Employers, that the French economy can no longer afford for the major investors, mostly government-linked companies, to pay extra costs without a proper assessment of the contractual responsibilities. I explain that they were asked to attend the seminar to get prepared for tougher and tougher negotiations in the years ahead.

So things are moving forward. Two books on Contract Management were published between 2013 and 2014, and in 2013 the AFCM (Association Française de Contract Management) was born. For the first time a university proposed a post graduate course on Contract Management.

Trust the French to develop Contract Management à la française. First, of course, we will fight each other on whether the Contract Manager should be a legal trained person reporting to the legal department, or a project engineering trained person reporting to the project operations director, or under the scope of the Procurement Department or managed by the Chief Finance Officer! Next we will give a French touch to the job: more concepts, less procedures, a pinch of Mediterranean flair...

Even today, my kids still struggle to tell their friends what work Mum is doing in the office ■

About the author: Emmanuelle Becker Paul is co-Director of Driver Trett France and is based in Paris. She is promoting Contract Management in France generally and especially among talented women professionals in France. The next "Contract management au féminin" event is scheduled on 19 June 2015, with author Alain Brunet presenting the "Theory of Games in Contract Management". Contact: Emmanuelle.paul@drivertrett.com

The opinion expressed in this article is personal and does not necessarily reflect the opinion of Driver Group.

How do we admit there are no words for Contract Management in French? Isn't it embarrassing?

A South African Comparative Review of Time Bar Provisions

CO-WRITTEN BY JOHAN BEYERS, SOUTH AFRICAN BARRISTER, CO-FOUNDER OF THE SOCIETY OF CONSTRUCTION LAW FOR AFRICA AND GAVIN MURPHY, DIRECTOR CLAIMS AND DISPUTES – AFRICA.

Introduction

Time-bar clauses are almost universally encountered in standard form construction contracts and often represent the first port of call for employers in defending a contractor's claim. In this article we examine the present state of the law as it pertains to time-bar clauses in the Commonwealth and we compare the respective approaches that have been adopted to these provisions in the United Kingdom, Australia and South Africa, respectively.

The Purpose of Notification and Time-bar Clauses in Construction Contracts

Timing is critical to the successful and cost-effective execution of construction projects. This is recognised in standard form construction contracts, in which notification provisions, which place a duty upon a party to promptly notify the other of a change in circumstances or of the existence of a claim, are an integral feature.

Timeous notice by a contractor allows the employer to make adjustments to the manner in which a contract is to be executed, enabling the employer to address the changed circumstances in the most efficient manner. Many standard form construction contracts couple the failure of a party to comply with a notification provision to a time-bar, particularly when dealing with the administration of contractor's claims. Whilst beyond the scope of this article, the suggestion that an employer is ignorant of its own breach and of the contractor's right to claim until notice is provided by the contractor, is fraught with difficulties.

Time-bar clauses raise interesting questions in construction litigation, as they require a balance to be struck between competing values. On the one hand, a time-bar clause contributes to efficient project execution and the administration of justice through the timeous disposal of claims and the avoidance of procrastination , but, on the other, it may cause a contractor to forfeit an otherwise valid claim and limit or exclude a party's access to justice .

The United Kingdom Position

The courts of England and Wales have held that time periods set in contracts are generally directory as opposed to madatory. Where the provision however, sets a precise time and specifies that the claimant will forfeit the right to claim if it fails to comply, the provision will be a condition precedent that the court will uphold.

Early in 2014 the TCC of England and Wales had reason to consider the time bar provisions of the FIDIC yellow book in the Obrascon case. Pertinently Justice Akenhead gave guidance on the 28 day time-limit under Clause 20.1 of the FIDIC form of contract. Justice Akenhead did not consider the validity of time bar clauses however did confirm that the serious nature of the clause required it to be interpreted contra proferentem. Specifically in this case, the point at which the right to claim arose and hence the time for notice under the timebar started to run was considered and interpreted in favour of the contractor.

The Australian Position

The Australian position generally closely follows the position in the United Kingdom, however much has been written around the recent case of Andrews v Australia and New Zealand Banking Group Ltd. Although not decided in a construction matter, the essence of the judgement was that where a collateral obligation such as a strict condition precedent denies the contractor's right to additional time and potential compensation it would be unfair to enforce the outcome. It would be unfair, especially in circumstances where the actual loss caused by the alleged late notification would be minor in nature, especially in contrast with the prolongation costs the contractor incurs and the delay damages the contractor might become liable for. A challenge to the enforcability of timebars on equitable grounds such as the law of penalties will be welcome relief to contractors who have along argued that the denial of the right to compensation for failure to provide a notice is manifestly unfair.

The South African Position

In principle, non-compliance with a notification clause in a contract may constitute

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a breach of contract, which would provide the counterparty with such remedies as may accrue upon breach, including the right to claim damages suffered as a result of the breach.

Whether non-compliance is also visited with a time-bar depends upon a proper interpretation of the relevant provisions of the contract. Within a particular contract, one may find that a time-bar is coupled to non-compliance with certain of the notice provisions, but not to others.

Section 34 of the Bill of Rights in the Constitution of South Africa guarantees a person's right of access to the courts. Time-bar clauses limit or exclude this right of access to the courts.

In Barkhuizen v Napier the Constitutional Court was called upon to determine the constitutionality of a time limitation clause in an insurance agreement which purported to prevent an insured claimant from instituting legal action if summons had not been served on the insurer within the time limit set out in the clause.

The Court recognised that provisions that limit the time during which litigation may be launched are common and serve a purpose to which no exception in principle could cogently be taken . As a result, public policy tolerates time-limitation clauses, subject to the considerations of reasonableness and fairness .

The Court proposed a two stage test against which a time limitation clause is to be measured for its constitutionality . The first is whether the clause itself is unreasonable. Secondly, if the clause is reasonable, the question is whether the enforcement thereof was reasonable in the light of the circumstances which prevented compliance with the clause.

The Court noted that there may well be time limitation clauses that are so unreasonable that their unfairness is manifest, for example, a clause that requires a claimant to give notice of a claim and to sue within 24 hours of the occurrence of the risk insured against. Having regard to the information that would need to be obtained, and the steps that would have to be taken before a written claim could be submitted and legal proceedings instituted, it would not require any additional information to conclude that the clause is so unreasonable that its unfairness is manifest.

The second question involves an inquiry into the circumstances that prevented compliance with the clause. The onus is upon the party seeking to avoid the enforcement of the time limitation clause to show that, in the circumstances of the case, there was a good reason why there was a failure to comply.

Thus, whilst time-bar clauses are in principle countenanced in South Africa, these clauses will not be enforced where either the clause itself, or the circumstances within which it is enforced, unreasonably or unfairly limit a party's right of access to justice in terms of s 34 of the Bill of Rights. In addition, since these clauses infringe upon a contractor's common law and Constitutional rights and operate to exempt an employer of liability, these clauses are likely to be restrictively interpreted.

Conclusion

It appears that the courts in the United Kingdom, Australia and South Africa share similar sentiments when confronted with time-barring provisions. These clauses are likely to be narrowly interpreted, as evidenced by the decision in Obrascon and that of the South African courts in the case of exemption clauses in general. The Obrascon approach is thus likely to find favour with South African courts in the interpretation of the FIDIC form of contract.

The application of Andrews in a construction setting is yet to be decided in Australia and coupled with the preference for construction contracts to be decided by arbitration, a clear position is unlikely to be determined for some time if at all. However, the approach adopted in Andrews bears similarity to that adopted by the South African Constitutional Court in Barkhuizen.

This area of law is not settled and contractors ought to be wary of timebar provisions in contracts. Contractors in the Commonwealth (and elsewhere) would be wise to proactively notify the employer of claims and follow best contract administration practices so as not to rely on Obrascon or Andrews until further decisions refining these judgements arise. ■

Principles of Measurement (International) vs. Other Methods of Measurement and their Risks to the Client

PETER LAING,
ASSOCIATE DIRECTOR, OMAN.

There are a number of methods of measurement used within the construction sector throughout the Middle East such as Principles of Measurement (International) (POM(I)), Standard Method of Measurement for Building Work (SMM), New Rules of Measurement (NRM) and Civil Engineering Standard Method of Measurement (CESMM). However the most utilised method of measurement within the Middle East is POM.

POM(I) was published in 1979 in several languages including Arabic, English, French and German with the last English edition being re-printed in 2004. SMM had its first edition published by the Royal Institution of Charted Surveyors (RICS) in 1922, superseding the Scottish Method of Measurement which was published in 1915. SMM is now in its seventh edition (SMM7) which was published in 1988 and revised in 1998. However, the use of SMM7 was largely redundant after January 2013 because NRM volume 2 (NRM2), published in 2012 by the RICS, became operative in January 2013. SMM7 and NRM2 are being used more widely through British and Commonwealth countries.

> In the Middle East, particularly Oman, the choice of method of measurement utlised on a project can present risk to the Client.

These methods of measurement have been developed for quantifying and describing proposed construction works to provide a uniform and commonly accepted basis for the preparation of "Bills of Quantities (BOQ)". In the Middle East, in particular Oman, the choice of method of measurement utilised on a project can present risk to the Client.

POM(I) as compared to SMM7 or NRM2 provides a method of preparing a BOQ in less detail in terms of descriptions and classifications of element of works. SMM7 and NRM2 classify each element of works in greater detail and therefore recognize the fact that the works required or the project will be completed and priced for by different suppliers and manufacturers. Furthermore, POM(I) does not take into consideration construction technology logic, for example: POM(I) does not classify different excavation levels required. SMM7 and NRM2 does classify the different depths required as set by the method of measurement, and therefore recognises the requirement of

the Contractor to utilise different plant and equipment and methods of construction as the depth of excavation increases.

In practice SMM7 and NRM2 are a more precise and technically superior method of measurement system in producing a BOQ to be included in the Contract Documents. However the reality of the market in Oman is such that the Contractor feels as if he has to price for the additional items placed within the BOQ. Therefore this elevates the price drastically and places a risk on the Client's budget.

POM(I) is widely used across Oman and is the Consultant and Client's preferred choice of method of measurement for producing BOQ's for projects.

However, the choice of POM(I) as the preferred method of measurement can fit the short term solution to reduce the tender return price for the Client, but it has the potential to present post contract risk in change management controls. As stated above, POM(I) provides a less detailed description of the class of work required, and in some circumstances provides composite items for the Contractor to price. If there is a change in design or Client requirement in which only an item within the composite item is affected, it presents the Contractor an opportunity to inflate the rates, through the evaluation of change procedure done by the Cost Consultant. If there is a large amount of change on the project, this can have a greater effect on the Client's budget that what would have occurred if SMM7 or NRM2 were utilised.

A further risk element to the Client is the pricing preambles document and how it is developed to support the particular method of measurement utilised.

The pricing preambles is a document that accompanies the BOQ. The preamble sets out the basis on which the BOQ has been prepared. The preamble provides the detail of what specific elements within the BOQ include in terms of measurement, and what the element is assumed to include for pricing purposes. The preamble is an important document when it comes to disputes on the method of measurement of a particular item in the BOQ.

POM(I) does not come with a standard set of preambles as does SMM7 and NRM2. The quality of the preamble provided with a POM(I) based BOQ, depends on the Consultant issuing the BOQ. This again poses a risk to the Client in such that if the preamble does not cover the BOQ in a suitable manner, this can create an opportunity for the Contractor to take advantage of a 'grey area' and potentially gain more out of a situation than the Contractor is entitled to.

With all the potential disadvantages and risks that POM(I) provides to a Contract, why is it still being preferred by the Clients in Oman?

POM(I) saves time and money in the generation of BOQ's and Contract Documents. With the broad method of measurement, the Cost Consultant does not have to spend as much time on developing a BOQ. This in turn results in lower professional fees for the Client to pay. The fact that the Oman Contracting market is not familiar with SMM7 or NRM2 presents a higher risk to the Client of the Contractor pricing the project at a premium to cover the risk if the project BOQ was developed based on POM(I).

In summary, POM(I) provides the Oman Client market with the short term fix of potentially lower Contract Values which has been the common practice over the years. SMM7 and NRM2 are far better forms of measurement systems as they detail the design within the BOQ in greater detail, allowing easier valuation of changes. They further allow the Contractor to price for the works as they are to be constructed and by whom they are to be carried out by. However, to try and change the market of this perception may be too much of a difficult task. ■

FIVE TIPS
FOR COMPILING A COMPENSATION EVENT UNDER NEC

Albert Akende, one of our commercial managers, gives five tips for compiling a compensation event.
For more hints and tips follow the Driver Project Services page on Linkedin.

1. GET YOUR EARLY WARNING NOTICES ISSUED
Get your early warning notices issued as soon as you are aware of an event that may lead to additional cost, or time, or adversely affect the project.

2. CHECK THE CLAUSE 60 LIST OF COMPENSATION EVENTS
Check the clause 60 list of compensation events that apply to the occurrence you believe is a compensation event and submit a notification with an explanation of why you consider it a compensation event under the clause.

3. COMPILE THE ADDITIONAL COST AND/OR THE PROJECTED COSTS
Compile the additional cost and/or the projected costs including risks resulting from the compensation event and add the fee percentage to your costs.

4. EVALUATE THE IMPACT OF THE COMPENSATION EVENT ON THE COMPLETION DATE OF THE PROJECT
This includes showing the effect the compensation event has on the programme for the remaining work.

5. REMEMBER THE TIME PERIOD IN WHICH YOU HAVE TO NOTIFY THE PROJECT MANAGER OF A COMPENSATION EVENT
And keep a schedule so that you do not inadvertently fall behind in your submissions. Also remember that notices should be submitted separately from other correspondence.

NEW SINGAPORE INTERNATIONAL MEDIATION CENTRE (SIMC)

Singapore is positioning SIMC as a neutral venue that would facilitate efficient and effective resolution for transnational disputes writes Les Harland, Regional Director of Driver Trett Singapore.

Singapore, which is focused on offering complete suites of dispute resolution options for international commercial cases, has recently launched a dedicated centre for the mediation of cross-border commercial disputes. The Singapore International Mediation Centre ("SIMC") will provide mediation and other related services to parties in cross-border commercial disputes. Mediation at SIMC will come with the unique benefit of enforceability, as settlement agreements may be made 'consent awards' under an Arb-Med-Arb Protocol between the Singapore International Arbitration Centre (SIAC) and SIMC.

Under the SIAC-SIMC Arb/Med/Arb Protocol, disputes are referred to arbitration at the SIAC, but after the respondent files its Response to the Notice of Arbitration, the arbitration will be stayed for a period of eight weeks and referred to mediation with a separate mediator appointed from the SIMC's panel. If parties are able to settle their dispute through mediation, their mediated settlement may be recorded as a consent award. If mediation is unsuccessful, they may continue with the arbitration proceedings. The Arb-Med-Arb process combines cost-effectiveness, flexibility and party-autonomy of mediation with the finality and enforceability of arbitration.

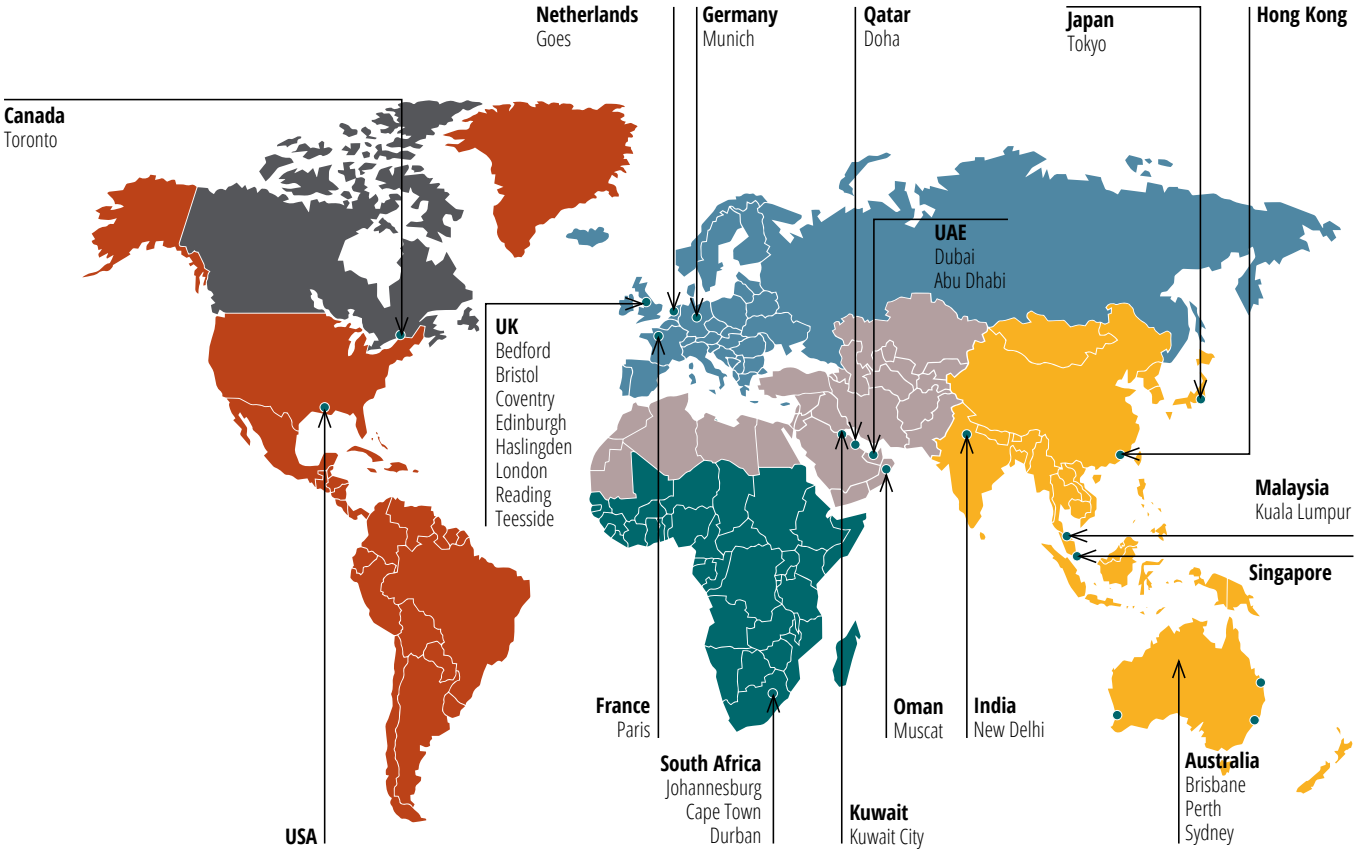
Legislation to strengthen the mediation framework in Singapore is being considered, including the provision for enforcement of mediated settlements conducted in Singapore as orders of the Singapore court. The ability to obtain a settlement agreement enforceable under the New York Convention, as well as the emphasis placed on the early resolution of disputes, is expected to make the Arb/Med/Arb Protocol a popular choice for users. However, users should be aware that many of the more "flexible" aspects of mediated settlements (such as promises to place future orders, and so on) are not justiciable and cannot be recorded in the tribunal's consent award. The non-justiciable elements of any mediated settlement will need to be recorded in a separate settlement agreement (which would not be enforceable under the New York Convention).

Maxwell Chambers, where the Singapore International Mediation Centre is housed. Photo: SIMC.com.sg

The range of dispute resolution services available in Singapore has been further enhanced with the opening of Singapore's International Commercial Court (SICC), which is a division of Singapore's High Court. These developments are expected to cement and strengthen Singapore's status as a dispute resolution hub

The SIMC offers a panel of an international mediation and technical experts. Les Harland is a technical expert on the SIMC panel of experts; **http://simc.com.sg/wp-content/uploads/2015/03/Leslie-Harland-CV-II.pdf**

DRIVER GROUP WORLDWIDE



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Driver Group has excelled at providing construction and engineering focused services since 1978. Our expertise supports the delivery of major projects worldwide and bridges the gaps between the construction, legal and financial sectors. Our continued success can be measured by that of our clients. It is the result of rigorously maintained standards and the commitment of our people to provide a quality service, to budget, within time and with the appropriate integration of the client's team.

DUE TO THE CONTINUED GROWTH AND SUCCESS AT DRIVER GROUP WE ARE RECRUITING ON A GLOBAL SCALE WITH SPECIALISMS IN THE FOLLOWING:

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- Construction law
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Should you be interested in exploring opportunities within the Driver Group, send your CV for a confidential discussion to Careers@driver-group.com.

Please quote DD9 in your communication.

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