

## **Appendix A**

Dear Sir

I would like to invite you to participate in a survey for a postgraduate research study that I am undertaking. The topic of the research is Limitation of Liability – Analysing a balanced approach to Limitation of Liabilities in Construction Contracts. The aim of the research is to understand and identify the basis related to limitation of liabilities and to analyse UAE Law's approach towards unlimited liability in actual situations (such as trials).

The objectives of the research are as follows:

1. To analyze the concept of liability and its limitation in Construction Industry
2. To analyze provisions in UAE law and understand how UAE courts may interpret liability clauses and limit liability.
3. To explore need for statutory intervention and recommend further research.

Your response to this interview questionnaire may be used in the research work and as such it is not considered confidential. However, if you would prefer to keep this confidential and not reveal your identity, please indicate below.

Thank you

Name : \_\_\_\_\_

Position : \_\_\_\_\_

Organization : \_\_\_\_\_

Please treat my responses ☐ Confidential

☐ Non-Confidential

1. How many years of professional experience do you have in the following:  
Legal : .....years  
Construction industry: ..... years  
Other: .....years  
Comments: .....
  
2. What is your main professional background?  
☐ Legal Advisory  
  
☐ Contracts Management  
  
☐ Other: .....
  
3. What is your view on limiting liability in construction contracts, as a general principle or concept?  
☐ Must be limited  
  
☐ Must be unlimited  
  
☐ This differs for each type of contract  
  
☐ This decision is dependent on many factors and is subject to the  
circumstance of each contract  
  
☐ Other: .....  
  
Comment: .....
  
4. If it is considered sensible to limit the liability by a provision, what is perceived as balanced and best industry practice, in terms of multiples of contract price or indicate 'Unlimited' if applicable?  
  
☐ Under Design Contract: \_\_\_\_\_

☐ Under Construction Contract: \_\_\_\_\_

☐ Under Design and Build Contract : \_\_\_\_\_

Comments: .....

5. Is unlimited/uncapped insurance for strict liability obligation & Expert Standards and Decennial liability (DL) insurance available in UAE? How is the risk of DL and the need for unlimited PI Insurance imposed by some Employers, tackled by Contractors and Consultants?

Comments: .....

6. It is argued by some commentators that UAE Civil code does not apply to Commercial contracts and shall apply only to Consumer contracts, in particular the muqawala provisions. There have been case decisions supporting this argument. There are also many rulings which referred to muqawala provisions as basis. What is your view on applicability of Civil Code to Construction contracts?

☐ Does not apply to Commercial Contracts

☐ Does apply to Commercial Contracts

☐ Other: .....

Comments: .....

7. In UAE, it is often seen contractual liabilities as limited, excluded and in some cases as unlimited, through different contract provisions. In absence of clear statutory provisions in UAE, with regards to what liabilities may be limited or excluded, the question about what types of direct and consequential damages will be recoverable from the breaching party becomes a big question. There appears to exist widespread uncertainty about how the Civil code provisions shall be interpreted in courts or rather

how these shall effect a contracting party in case of a dispute leading to litigation. Do you agree with these statements?

☐ Agree

☐ Disagree

☐ Other: .....

Comments: .....

8. Article 383 (1) of UAE Civil Code states “If that which is required of an obligor is the preservation of a thing, or the management thereof, or the exercise of care in the performance of his obligation, he shall have discharged that obligation if, in the performance thereof, he exercises all such care as the reasonable man would exercise, notwithstanding that the intended object is not achieved, unless there is an agreement or a provision of law to the contrary.”

UAE law through the Muqawala provisions imposes strict liability obligation on Designers. If the intended result is not achieved in a design contract that stipulates exercise of care as the obligation, do you think that Article 383(1) shall not be applicable and muqawala provision which implies strict liability obligation shall become operative?

☐ Yes

☐ No

☐ Other: .....

Comments: .....

9. The new Abu Dhabi contracts were introduced by Law No. 21 of 2006 basis of which is FIDIC 1999, generally considered to provide a better risk apportionment. Does this mean that we can now consider that the mandatory muqawala provisions in Civil Code need not be applied to Construction Contracts undertaken in Abu Dhabi, principally the strict

liability obligation? In other words, can this be considered as a relief to the strict liability presumed under Civil Code?

☐ Yes

☐ No

☐ Other: .....

Comments: .....

10. Abu Dhabi Government contract in line with FIDIC 1999 Redbook provides (under article 17.6) that in absence of a limit of liability agreed under the contract, limit of liability shall be the accepted contract amount, for liabilities arising from acts other than fraud, deliberate default and recklessness. If this form of contract is adopted, can the given limitation provision be considered as a relief from more stringent liability imposed on the Contractor under the muqawala provisions?

☐ Agree

☐ Disagree

☐ Other: .....

Comments: .....

11. Article 880 (1) states that if the subject matter of the contract is the construction of buildings or other fixed installations, the plans for which are made by an architect, to be carried out by the contractor under his supervision, they shall both be jointly liable for a period of ten years to make compensation to the employer for any total or partial collapse of the building they have constructed or installation they have erected, and for any defect which threatens the stability or safety of the building, unless the contract specifies a longer period. The above shall apply unless the contracting parties intend that such installations should remain in place for a period of less than ten years.

a) In event of proven proportionate liability, does the liability get apportioned on the fault basis between contractor and designer or among others in the supply chain who may be liable for the loss?

☐ Yes

☐ No

☐ Other: .....

Comments: .....

b) Does jointly liable mean if one of the liable parties is liquidated, the other party may be liable for the full liability above and beyond their fault?

☐ Yes

☐ No

☐ Other: .....

Comments: .....

12. Is it reasonable to consider that the Employer Representatives (the personnel of Client/Employer) understand the issues and concede that unlimited liability is unfair and unreasonable, but they implement these as they are required to follow Organisational or Governmental Policies?

Comments: .....

13. Is it usually seen that the low to medium sized firms have a tendency to accept more risk when compared to larger international firms with established standards of risk tolerance? Is this because in the smaller firms, the legal department is not well established and that the decision makers are not well informed about the probable consequences of the risks undertaken in a contract that is favourable to the Employer?

Comments: .....

14. In light of your experience in UAE, would you recommend introduction of legislative measures to prohibit unfair liability terms in a contract, to save the contracting parties from consequences of harsh or unconscionable express terms, including terms like unlimited liability, exclusion of liability for breach of primary obligations etc?

☐ Yes

☐ No

☐ Other: .....

Comments: .....

15. If you answered 'yes' to the previous question, would you recommend incorporation of legal clarity on following matters? Please choose multiple provisions as deemed applicable.

Recommended Provisions	Remarks
<input type="checkbox"/> Unfair Terms prohibition	
<input type="checkbox"/> Reasonableness of Terms	
<input type="checkbox"/> Negligence and Duty of Care	
<input type="checkbox"/> Proportionate liability	
<input type="checkbox"/> Types of Recoverable Losses	
<input type="checkbox"/> Indemnity and Hold Harmless Provisions	
<input type="checkbox"/> Whether Decennial liability is applicable to Supervision firms and other Consultants involved in the project?	
<input type="checkbox"/> Mandatory Decennial liability provisions including joint liability provision	
<input type="checkbox"/> Ability to limit tort based liability	

(excluding fraud, gross breach and negligence)	
<input type="checkbox"/> Removal of no-fault liability provisions from Muqawala articles	
<input type="checkbox"/> Duty to mitigate loss (Claimant's duty)	
<input type="checkbox"/> Introduce mandatory insurance requirements for Decennial Liability, Professional Indemnity etc.	
<input type="checkbox"/> Security of Payment	
<input type="checkbox"/> Vicarious Liability / Liability for Sub-contracted work	
<input type="checkbox"/> Other: .....	

Comments: .....