

## **(Contract Admin Training Level 4) Contract Administrator – Master Class - 25 Hours**

*(Only those who completed the Levels 1, 2 & 3 training of 40 hours and studied the 900+ Case Studies qualify for this course)*

**Course Overview :-** About half of the Syllabus of this course consists of the UAE Law related to Formation of Contracts, Breach & Damages, Subcontracts, Interpretations etc. and also the UAE Laws applicable to EoT & Costs, Price & Payment, Quality & Defects that the practitioners must necessarily know in order to deal with these aspects if their Contracts / Subcontracts are either silent about such provisions or the specified provisions are incorrect / inadequate. Remainder of the course consists of material that were not covered by the SCA and Advanced courses such as Acceleration, Disruption, Insurance, D&B Contracts, Design & Supervision Consultancy, Cost Plus Contracts, Guaranteed Maximum Price Contracts, Joint Ventures, Assignments, Novations, etc. There is also a Session on Case Management of Arbitrations as it is very likely that the practitioner may be called upon to either manage this task or to assist in this task.

**Who should attend :-** This course is available only to the CA-AC Alumni (of the Advanced Course) who have completed Levels 1, 2 & 3 training and studied the 900+ Q&A sent to them by email. This course would not only provide them with unique knowledge which is not available from any other source, but also would enable them to become part of a new generation of Master Class Contract Administrators.

### **Course Structure**

#### **Session A – Dealing with Acceleration Claims :-**

- Introduction to Master Class
- Understanding the terminology associated with Acceleration
- Learning the 3 types of Acceleration
- The 4 possibilities of the “Due Date” for completion of the Works
- Does the Engineer have authority to instruct acceleration under the Contract (or the Main Contractor under the Subcontract) ?
- Are there provisions in FIDIC Contracts/Subcontracts to claim Acceleration Costs, or should the claim be made as damages for breach ?
- What constitutes Acceleration Costs ?
- Are OH&P payable as part of an Acceleration Cost claim ?
- Under what circumstances can a Contractor/Subcontractor be successful in a claim for Constructive Acceleration ?
- If the Contractor attempts to accelerate but fails to achieve the accelerated completion date is the Contractor nevertheless entitled to claim Acceleration Costs (or liable for Delay Damages / Penalties) ?
- Reserving the rights and claiming the Acceleration Costs.
- Justification for the Acceleration Costs.
- Acceleration v Mitigation
- What savings should be offered to the Client following an Acceleration ?
- Questions and Answers

#### **Session B - Laws of the UAE (Formation of Contract) :-**

- What is Law ? Who makes the Law ?
- Is FIDIC Law ?
- Can the Parties to a contract make Law ?
- What is Freedom of contract ? How do you find out whether the Parties have Freedom of contract in the UAE ?
- There are 8 important ingredients to form a contract according to English Law (such as Offer, Acceptance, Consideration etc.). Is it the same in the UAE or different ?
- According to English Law generally there is no requirement for a contract to be in writing. What is the requirement in the UAE ?
  - Generally a Letter of Intent does not form a contract. Is it the same in the UAE ?
  - What happens if the contract does not specify the Contract Price ?

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- What actions would be considered as acts of bad faith (i.e. not acting in good faith) ?
- Specific Articles of the UAE Civil Code applicable to the topic of Formation of Contracts.
- Judgements of UAE Courts applicable to the topic of Formation of Contracts.
- Questions & Answers.

## Session C- Other Contracts Awareness – Part 1 (Design & Build Contracts, Cost Plus Contracts, Guaranteed Maximum Price Contracts)

- Provisions in traditional Build-Only contracts imposing design obligation on the Contractor for part of the Works.
- Standard of the design obligation of the Contractor.
- Design obligations under FIDIC Design & Build Contracts (Old Yellow Book, Old Orange Book and the new Yellow Book).
- Comparison of the provisions in the Yellow Book with those in the Red Book :-
  - Concerns in the Yellow Book 1999
  - Variations and valuation of Variations.
  - Extension of Time and Prolongation Costs.
- Drafting the Agreement for a Design & Build contract.
- Types of Contracts.
- Types of Cost Plus Contracts.
- Contractor preferred model and Employer preferred model of Cost Plus contracts.
- Drafting the Agreement for a Cost Plus contract.
- Formulae for allocating Head Office Overheads to a Cost Plus contract and for calculating Head Office Overheads recovery when completion of Cost Plus contract is delayed.
- Benefits of a Guaranteed Maximum Price (GMP) contract.
- How to adjust the GMP when variations are instructed.
- Questions & Answers.

## Session D – UAE Law (Extension of Time and Delay Damages)

- Requirement in UAE Law to specify Time in Contracts.
- The 6 reasons as to why we need an EoT provision in our contracts.
- Can a Contractor rely on Article 359 (2) of the UAE Civil Code to get an Extension of Time when completion is delayed?
- UAE Law and Extension of Time.
- Common Law Approach of Time-at-Large.
- UAE Law and Time-at-Large.
- Common Law approach to Concurrent Delays.
- UAE Law and Concurrent Delay.
- “No-EoT-for-Concurrent Delay” Clauses in modern contracts.
- The 6 reasons as to why we need a Delay Damages provision in our contracts.
- Common Law approach to Delay Damages.
- UAE Law and Delay Damages.
- UAE Law and cap on Delay Damages.
- Is it necessary for a loss to have occurred in order to levy Delay Damages ?
- Is it necessary for the Employer to demonstrate that he incurred the losses ?
- Can a Contractor get the Courts to decrease an excessive level of Delay Damages specified in the Contract ?
- Can an Employer recover more than the specified Delay Damages if his losses exceed them ?
- The 9 defences to Delay Damages.
- Understanding the UAE Civil Code Articles and judgements of UAE Courts.
- Questions & Answers.

## Session E – Insurance

- Understanding the terminology used in the insurance provisions of contracts.
- The 4 contractual requirements for insurance.
- Understanding the 21 Sub-Clauses related to insurance found in FIDIC contracts.
- The Tiers of Risks and Responsibilities imposed on the parties.
- Employer's timely taking-over obligation according to UAE Law.
- Can a Contractor procure insurance to cover his exposure to Delay Damages ?
- Questions and Answers.

## Session F – UAE Law (Price and Payment)

- The necessity to either state the Price in the contract or to specify with certainty how the Price should be calculated.
- Price v Value.
- Remedy for not being able to find the Price in a contract or a specified method of how to calculate the Price.
- UAE Law and Lump Sum type contracts.
- UAE Law and Re-Measurement type contracts.
- UAE Law and Variations.
- Employer's payment obligation according to UAE Law.
- Remedies for non-payment.
- Can a Contractor rely on a Payment Certificate issued by the Engineer to prove the value of Works completed (and payment due to him) ?
- Questions and Answers.

## Session G – Design & Supervision Consultancy

- Contractual obligations of the Designer.
- The FIDIC White Book
- Standard of design responsibility
- Professional Indemnity Insurance
- Liabilities of the Designer / Supervisor according to UAE Law
- Specific Articles of the UAE Civil Code related to Design and Supervision.
- Judgements of the UAE Courts related to Design and Supervision.
- Questions and Answers.

## Session H – UAE Law (Quality and Defects)

- Articles in the UAE Civil Code about the Contractor's and Employer's responsibilities regarding the quality.
- Contractual requirements about the quality.
- Obligation to achieve the level of quality according to custom / common practice (if the contract is silent about the quality requirements), according to a judgement by UAE courts.
- Other laws / regulations specifying quality requirements.
- Remedies for failure to achieve quality requirements.
- Why would a 3 year period apply to a Contractor's liability to remedy defects, if the Contract / Sub contract is silent about a Defects Liability Period ?
- Benefits for each party in specifying a Defects Liability Period in the Contract / Subcontract.
- Decennial Liability
  - In claiming damages for a failure to remedy any defects, the Employer is required to prove the Contractor's fault. Is the Employer required to prove the fault of the Designer and/or the Contractor in order to get

compensation under the decennial liability provision if the structure collapses or have serious structural defects ?

- Does the Decennial Liability apply if the collapse / serious defects are due to :-
  - Unstable ground conditions ?
  - Weak / unstable status of an existing structure that the Designer / Contractor did not design / construct ?
- Defences to Decennial Liability
- Questions and Answers

## Session I – Dealing with Disruption Claims

- Understanding the terminology associated with Disruption
- Delay v Disruption
- 4 illustrations of disruption
- Are there provisions in FIDIC Contracts to claim Disruption Costs, or should they be claimed as damages for breach ?
- What constitutes Disruption Costs ?
- Are OH&P payable as part of a Disruption Cost claim ?
- Reserving the rights and claiming the Disruption Costs.
- Demonstrating the Disruption Costs.
- Obligation to Mitigate
- Questions and Answers

## Session J – UAE Law (Interpretation)

- Sources of UAE Law
- Priority of various laws for the purpose of interpretation
- Establishing the Intention
- Rules of interpretation (Articles 257 to 266 of the UAE Civil Code)
- Jurisprudential Maxims (Articles 29 to 70 of the UAE Civil Code)
- Burden of proof in the UAE
- Evidence
- Court appointed experts
- Questions and Answers

## Session K - Other Contracts Awareness – Part II (Joint Ventures, Novations etc.)

- 20 points to ponder before drafting the JV.
- Drafting the JV
- Assignment vs Novation
- Drafting the Novation Agreement
- Questions and Answers

## Session L – UAE Law (Subcontracts)

- Articles in the UAE Civil Code about Subcontracts / Subcontractors
- Types of Subcontracts (domestic / nominated)
- Contractual provisions about nominated Subcontracts
- Who is responsible for the acts / defaults of a Nominated Subcontractor according to the UAE Law ?
- Forms of Subcontract (FIDIC etc.)
- Contractual provisions for the assignment of Subcontracts
- Provisions in the UAE Law for assignment.
- Does a Subcontractor have a right to claim payments from the Employer when the Main Contractor is not paying ?

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- The contractual position
- The position according to the UAE Law.
- Questions and Answers.

## Session M – UAE Law (Remedies for Breach)

- Obligation to perform the contract / promises (obligations) according to the UAE Law.
- Requirement to judge first according to the Islamic Shari'ah (if the UAE Laws are silent)
- Requirement to rely on the rules and principles of Fiqh, the Islamic Jurisprudence
- Definition of Public Order
- The breach
- Remedies for breach :-
  - Specific performance
  - Damages (compensation)
  - Self-Help remedies
- Determining the quantum
- Harmful Acts (Torts / Delicts)
- What would the damages include ?
  - Loss of profit ?
  - Moral damages (damage to reputation) ?
- Are Global Claims permitted according to UAE Law ?
- Mitigation of losses
- Questions and Answers

## Session N – Case Management of Arbitrations

- Check List to find out whether or not your company is ready to go to arbitration
- Setting up the War Room
- Are the Lawyers required or not ?
- Appointment of Lawyers
- Filing the Arbitration Application
- Nominating the Arbitrators
- Supporting the Lawyers in the preparation of the Pleadings
- Checking the accuracy of the pleadings
- Selecting the Witnesses of Facts
- Preparation of the Witnesses
- Checking the accuracy of the witness statements
- Appointment of the Experts
- Checking the factual aspects of the Expert Reports
- Providing the input required on behalf of the company in respect of procedural submissions
- Preparing the Hearing Bundle
- Participation at the meetings / hearings
- Providing the input and checking the accuracy of other submissions (Opening Statements, Closing Statements, Cost submissions etc.)
- Following up on timely payments to the Institution, Lawyers, Experts, Arbitrators (only if ad hoc), transcription services, venue etc.
- Provide the input necessary on behalf of the company for the challenge or enforcement of awards.
- Questions and Answers.

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