



Photo courtesy: CW archives

“Saudi Arabia’s legal field has witnessed a vast transformation”

Fenwick Elliott and Hammad Al-Mehdar speak to Construction Week’s editor Ashley Williams on the formation of the alliance, Vision 2030 opportunities and project challenges as part of The Legal Table webinar series

Established in 2019, international construction and energy law firm specialists Fenwick Elliott formed an alliance with one of Saudi Arabia’s most respected private law practices Hammad Al-Mehdar to provide the kingdom’s market with expert knowledge of local laws and procedures, as well as renowned international expertise.

Delving into the details of the alliance and legal matters in Saudi Arabia, Fenwick Elliott’s lead partner for the kingdom, Toby Randle, and Hammad Al-Mehdar’s partner, Ali Al Touki, came together to be part of Construction Week’s The Legal Table webinar series.

Explaining the reasons behind the collaboration, Randle told Construction Week that while they have history of acting on a number of significant disputes in the kingdom, they witnessed a need for local expertise in Saudi law, the Saudi courts and particularly “the intricacies” of the dispute resolution processes in the kingdom.

“The reason why Fenwick Elliott and Hammad Al-Mehdar work so well together is that Ali has his own construction team that provides very specific expertise in the local law, which is very important,” Randle tells CW.

“We provide heavy international construction law experience and we work

very well together in terms of meeting clients and the whole approach to the market.”

When the alliance was formed, Al Touki admittedly told Construction Week that it worked “better than they had expected”.

“We have high hopes for the future of the alliance,” Al Touki tells CW. “Both of our firms have been able to provide our clients with best practices in terms of construction and energy law advice, market knowledge, and the managing of disputes in the kingdom.”

While the Saudi Arabia built environment is progressing rapidly, Randle said this will bring “multiple challenges” to delivering projects for the kingdom.

“We are involved with major infrastructure developments across the kingdom and the obvious problem that occurs repeatedly is funding, cash flow and for instance, the contractor may have been performing its services perfectly well within the contract, but they are not being paid on time,” says Randle.

“This presents very interesting challenges in terms of how can a contractor approach this? You can’t be too aggressive with your client. The challenge for us is being able to get the balance right between the contractual entitlements under the contract in terms of suspending work, issuing notices, threatening termination, which will enable contractors to receive payment.”

Among the project challenges that Randle has faced during his tenure at Fenwick Elliott includes the Riyadh Metro.

“Fenwick Elliott are actively involved in three international arbitrations related to the Riyadh Metro, and some of these arbitrations have been going on for around two years, and possibly could carry on for a further two years,” he adds.

With regards to progression in Saudi Arabia’s legal field compared to a decade ago, Al Touki elaborated that the kingdom has witnessed a “vast transformation”.

“The Ministry of Justice are currently in the middle of a digital transformation for legal services that will make our sector much more advanced than countries around the world,” says Al Touki. “Within the last few weeks, we have seen online course sessions for the first time in Saudi Arabia, so the possibilities are very promising to construction companies to receive fast and efficient justice.”

Fenwick Elliott and Hammad Al-Mehdar have also been heavily involved in supporting clients wishing to be part of the Vision 2030 agenda.

“Saudi Arabia’s Vision 2030 agenda has a very concrete plan with various ambitious projects such as NEOM and The Red Sea Project. We regularly keep in touch with them and we are able to help our clients to figure out how they can support these initiatives and be part of Vision 2030,” says Al Touki.

He adds: We are able to give our clients a good view into what they need to consider to be able to participate in these exciting projects. We manage the overall legal aspects such as contracts and knowing what is customary in Saudi Arabia, and we are able to advise clients on what they need to



Toby Randle, Fenwick Elliott's lead partner for Saudi Arabia



Ali Al Touki, Hammad Al-Mehdar partner

avoid.”

Despite echoing Al Touki’s views on the opportunities that Vision 2030 presents, Randle said there have been some “setbacks” for the agenda such as funding, COVID-19 and oil prices.

“There has been a clear build in momentum over the past 12 months with the Vision 2030 agenda, but clearly there have been some setbacks such as funding over a period of time, and the latest global pandemic hasn’t assisted along with the other challenge of the oil prices,” explains Randle.

“The impact of the oil price on the funding of these huge projects will cause challenges going forward.”

Randle also went on to discuss the main dispute resolution methods adopted in Saudi Arabia.

“Fundamentally, the two main resolution forums are through Saudi Courts and Arbitration. Arbitration is something we see often as a pre-agreed dispute resolution mechanism in the kingdom.

“Arbitration is through a private process and not in the public domain. You can choose the arbitrator suitable for the dispute. The other aspect that is quite attractive is that it gives parties much more control in terms of time tabling, budgets and issues to be

addressed.”

Al Touki also touched upon the new procurement law that came into force in Saudi Arabia in November 2019, and how the alliance is helping stakeholders to adapt to the new law.

“The new procurement law is envisioned to resolve a lot of problems that the government witnessed through the old law. They have adopted many principles and best practices that allows the government to be much fairer to both the contracting community and to make the government more agile and flexible for conducting contracts.”

Al Touki added: “We have been helping clients to see how they can include this in their business model and that there will be a more transparency on their projects.”

Concluding the webinar on Saudi Arabia’s outlook for the construction sector, Randle believed the kingdom won’t be “held down” in terms of its ambitions for Vision 2030 and construction, but admitted that it wouldn’t be a smooth process.

“I think in terms of investments and future projects that there may be some bumps in the road.

“However in the long-term, it’s a positive outlook for the construction industry in Saudi Arabia.” **CW**