

Termination of Construction Contracts in Qatar

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July – August 2014

Termination provisions in contracts reflect the mutual agreement of the parties to the terms governing the dissolution of their specific contractual relationship. In construction contracts, contractual parties may stipulate certain events that would trigger the termination of a contract and may also grant a party (usually the employer or main contractor) the right to unilaterally sever the contractual relationship in the event of breach by another contractual party. In addition, the termination provisions in a contract may also contain, per the parties' agreement, specific formalities which must be adhered to in order to effectively terminate the contract (such as the issuance of a notice of default allowing the breaching party time to rectify its breach before a notice of termination may be issued). In Qatar, the parties are free to determine the terms governing their contractual relationship and the dissolution thereof; however in certain instances, such as termination, the Qatari Civil Code (Law No. 22 of 2004) ("Civil Code") requires the intention of the parties to be very clearly set out in the contract. Where a party to a contract wishes to terminate the contract and the termination rights therein are ambiguous, implied or are of such nature that they leave room for alternative interpretations, the relevant provisions of the Civil Code become applicable.

Under the Civil Code, a construction contract may be terminated based on one of two grounds: termination for convenience (also referred to as "termination at will") and termination for default.

Termination for convenience

In accordance with Article 707(1) of the Civil Code, an employer or main contractor may terminate the contract and stop performance of the work at any time prior to the completion of the work, provided that the terminating party compensates the other party. Under the Civil Code provision, the compensation paid to the non-terminating party must include costs of the work completed, costs expended and profit that may have been earned if work were completed as per the contractual terms. However, the parties may agree in the contract to limit or otherwise alter the terms of compensation in the event of termination for convenience.

Article 707(2) permits the court to assess or otherwise adjust the compensation due to the non-terminating party under Article 707(1). The court is tasked with determining the compensation due if the compensation due is disputed by the contractual parties. The court may make two types of adjustments in accordance with Article 707(2): discretionary adjustments and compulsory adjustments. In respect of the former, the court evaluates the surrounding circumstances, the work completed and the contractual terms and thereafter adjusts the compensation due based on principles of fairness. With respect to compulsory adjustments, the court must decrease any compensation due to the non-terminating party if the said party has proceeded to mitigate its losses as a result of the termination for convenience and received compensation from expending its efforts elsewhere.

Termination for convenience allows the party seeking termination to dissolve the contract with immediate effect, without a judicial order, provided that the party compensates the other contracting party as per Article 707(1) or the terms set out in the contract. This type of termination is preferred where the

terminating party wishes to have a clean break and to avoid a lengthy and possibly onerous judicial or arbitration process.

Termination for Default

Construction contracts typically encompass terms governing the unilateral termination of a contract in the event of default by one party of its contractual obligations. However, if a contract is silent or the contractual terms are ambiguous as regards the right of a party to terminate the contract unilaterally, a contractual party may rely on Article 183(1) of the Civil Code to terminate the contract where the other party has failed to fulfil its obligations under the contract. Article 183(1) requires the party (seeking to terminate the contract) to first give notice to the defaulting party of the default and the former's intention to terminate the contract. Article 183(2) grants the judge wide discretion to terminate the contract, allow the defaulting party additional time within which to rectify the breach or refuse termination of the contract if the breach is minimal in light of the defaulting party's total obligations under the contract. In order to give effect to a termination in reliance of Article 183, the party seeking to terminate the contract must apply to the court to grant such termination. As noted above, the court is given wide discretion under Article 183 to study the surrounding circumstances and decide on the issue of termination.

It is common, in the context of construction contracts in Qatar, for the parties to agree to unilateral termination by one contractual party by notice; however, the contractual parties often overlook certain necessary contractual requirements which must be specified in the contract as required under Article 184 of the Civil Code. In many contracts, the language of termination provisions relating to default and the right of a party to unilaterally terminate by notice often fail to achieve the level of precision required by Article 184. Article 184(1) permits the contractual parties to agree to terminate the contract without obtaining a court judgment in the event of a breach by one party; that is, the parties may agree to allow one party to unilaterally sever the contractual relationship by notice in the event of a default. However, Article 184(2) stipulates that the agreement (referenced in Article 184(1) to dissolve a contract without first obtaining a judicial order of termination), will not be given effect unless "the wordings of the contract were clearly indicative towards the parties' intention to the same". Article 184(3) goes a step further and mandates the issuance of a notice by the terminating party to the non-terminating party of the default and termination.

In practice, most construction contracts contain termination clauses which fall short of clearly stating the parties' intention to allow unilateral termination of the contract by notice following a default by a contractual party. Generally, in the event of a default, a party will issue a notice of default, which may be subsequently be followed by a notice of termination. The party seeking to terminate the contract then deems the contract terminated. As noted above, however, unless the language of the contract clearly states the parties' intention to allow termination by notice, the termination would be unlawful without a court order giving effect to the termination.