

# **Qatar Courts Release their Grip on Restrictive Compensation Chains**

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The compensation amount was determined based on the nature of the contract and appropriate proportion to the incurred losses. This judgment is a deviation from the familiar approach adopted by the Qatari courts and this article explores matters in some further detail.

## **Case Facts**

A foreign subcontractor (the “Claimant”) entered into a subcontract agreement with a local contracting company (the “Defendant”). The contractual works included the design, supply, testing and commissioning of certain technical systems for a large project worth approximately 2 billion Qatari Riyals.

The Claimant filed a civil case against the Defendant when the Defendant withheld payments over an extended period of time against the contractual works (including works performed under variation orders made by the Defendant) completed by the Claimant. The alleged outstanding payment amounted to more than US\$15 million. The Claimant also asserted that any delays in completing the works was due to the Defendant’s variation orders and not by any fault of the Claimant.

The Defendant filed a counter-claim alleging that the Claimant caused delays in completing the contractual works, and at times, failed to complete the contractual works. The Defendant sought compensation from the Claimant for damages incurred by such delays. The Defendant requested the appointment of an engineering expert to assess the claims and seek to prove default on the part of the Claimant.

The Court appointed an engineering expert, and the expert verified the validity of the documents presented by the Claimant. The expert produced evidence of completed works by the Claimant for which the Defendant had not paid, and also confirmed that the issuance of the variation orders and suspension instructions by the Defendant had caused delays.

## **Ruling of the Court of First Instance**

The Court of First Instance joined the Claimant’s case and the Defendant’s counter-claim and issued a combined judgment. The Court found the following:

- Regarding the Defendant’s breach of contract, the Court took the view that the contract is the law of the contracting parties, and as such, it is not up to any party to unilaterally rescind, amend or waive the contract unless the contract or the law so provides. Therefore, the Court ruled that it was not up to the Defendant to stop payments for the contractual works completed, and that any concerns about delay should have been notified to the Claimant in order that it be provided with the opportunity to challenge the Defendant’s position. By simply withholding payments, the Defendant had denied the Claimant the benefit of the contract despite the Claimant having performed its contractual obligations. Accordingly, the Court ruled in favour of the Claimant and obliged the Defendant to pay the outstanding amounts as proven in the expert’s report.
- Regarding compensation, the Court ruled that the Claimant had indeed suffered consequential losses that flowed from the Defendant’s breach of the contract as the Claimant could not use or benefit from

the amounts unpaid by the Defendant. The Court stated that it has the authority to determine an appropriate compensation amount, which should include direct losses incurred by the Claimant plus loss of profit resulting from the Defendant's breach of contract. Accordingly, the Court ordered the Defendant to compensate the Claimant with the total amount of US\$800,000. In addition, the Court awarded that the Defendant meet the cost of the expenses, including the costs associated with the appointment of the expert.

- The Court rejected the Defendant's counter-claim for lack of a factual or legal basis.

### **The Effect of the Judgment - Can Subcontractors Rest Assured?**

Firstly, the judgment would give some comfort to subcontractors in situations of breach of contract for non-payment by the contractor after the subcontractor has performed the relevant contractual obligations (sufficiently supported by evidence). In such cases, if the Courts continue to adopt the same approach as set out above, the defaulting contractor will be held liable to reimburse the non-defaulting subcontractor. To date it has been (in practice) quite common for subcontractors to cease performance of the contract (to avoid further waste of time, money and efforts) upon realising that the contractors have stopped making further contractual payments with no apparent intention to make such payments.

Secondly, the judgment is highly significant as regards the amount of compensation that was awarded to the Claimant. Traditionally, the Courts in Qatar have been wary to render judgments with large compensation amounts. Compensation is awarded (if at all) at the Court's discretion which may not necessarily be based on calculations considering concepts of proportion. Accordingly, it is often the case that the awarded compensation is not sufficient in serving the actual purpose of recouping losses suffered by a claimant. In contrast, in this judgment the Court of First Instance has taken a more generous and unrestricted approach, as the compensation awarded is sizeable compared to previous similar cases, and is proportionate to the nature of the case, (i.e. non-payment for works performed towards a sizeable and expensive project involving significant investment).

If the Court maintains a similar approach in future cases, such judgments would also preserve and protect the sanctity and integrity of such projects in Qatar in addition to the protection of non-defaulting subcontractors against defaulting contractors. Further, the award of increased compensation in such cases may well encourage foreign direct investment in Qatar.

While the judgment is not final and remains subject to appeal, we anticipate that it is a stepping stone towards the Courts being set free from its prior restraint in terms of infamous compensation shackles.