

English Court's decision (Oct. 2019) in the Sidra Arbitration highlights the importance of understanding/applying Qatar's Law

1. Introduction/Analysis

- 1.1 The English Commercial Court's recent public Judgment ([2019] EWHC 2539), regarding the ongoing arbitration relating to the Sidra Hospital Complex in Qatar, is essential reading for all Construction and Engineering stakeholders operating in the State of Qatar.
- 1.2 As mentioned in our recent note, summarising the law of the State of Qatar (<https://www.cels.global/insights/>), the Judgment highlights the importance of understanding how Qatar law impacts a *Muqawala* contract i.e. a Construction and Engineering contract, at every stage of a project's lifecycle.
- 1.3 Specifically, the Judgment rejects Obrascon Huarte Lain SA and Contrack's (**JV**) application to open and redetermine an ICC Tribunal's Partial Award, which held that Qatar Foundation (**QF**) lawfully terminated its £1.9 billion contract with the JV for the "design and build" of the Sidra Hospital Complex.
- 1.4 The Judgment has no legal force outside those proceedings, however, it suggests that in certain circumstances a party may not be required to seek a court order under Article 184 of Qatar's Civil Code 2004 prior to terminating a contract.
- 1.5 Our substantive experience indicates, however, that a Tribunal/Court will consider "terminating" a contract as a severe approach to progressing a project and stakeholders should take care.
- 1.6 Given that each dispute is different, including the contract and the facts, stakeholders would be wise to instruct construction and engineering lawyers, with substantive legal and industry experience, prior to making such a substantial decision.
- 1.7 The key to success is ensuring that the termination is lawful – if you are wrong it could be an expensive error!

2. Project / Contract / Arbitration

- 2.1 Obrascon Huarte Lain SA and Contrack (**JV**) entered into a contract with Qatar Foundation (**QF**) in 2009 to design and build the Sidra Hospital Complex (**Sidra**) in Doha for approximately £1.9 billion (**Contract**).
- 2.2 The Contract was governed by the law of the State of Qatar (**Qatar**) and its final forum for dispute resolution was arbitration under the Rules of Arbitration of the International Chamber of Commerce and the seat of arbitration was London.

3. Termination / Contentions / Tribunal's Partial Award

- 3.1 QF terminated the Contract with a "notice of termination", alleging a variety of grounds, under the Contract's relevant provisions and in 2014 commenced arbitration claiming damages in excess of £1 billion on the basis that its termination was lawful.
- 3.2 The JV, however, disputed QF's claim and advanced several contentions including alleging QF's termination was unlawful. Specifically, the JV argued that QF failed to obtain a court order in accordance with Article 184 of Qatar's Civil Code 2004 (**QCC**) to terminate the Contract and argued:

“QF was not entitled to unilaterally terminate the Contract without a prior order from the court or tribunal...Article 184 [of Qatar’s Civil Code 2004] only allows for automatic termination, without recourse to the court/tribunal, if there is express wording in the termination clause...there is no such wording...”

3.3 QF’s position was that the Contract’s termination clause was clear, unequivocal and should therefore be construed to implicitly exclude the requirement to obtain a court order under Article 184 QCC.

3.4 The Tribunal considered the issue, including the parties’ respective Qatari law experts’ reports, and accepted QF’s arguments. It handed down its Partial Award in November 2018 and stated that QF had complied with the Contract’s termination clause and that its termination of the Contract, therefore, was lawful.

4. JV’s Challenge / Court’s Judgment

4.1 The JV commenced a challenge against the Partial Award at the Commercial Court (**Court**) in London, in accordance with Arbitration Act 1996 (**Act**), alleging that there was a “*serious irregularity*”.

4.2 Specifically, the JV contested that the Tribunal’s decision that QF lawfully terminated the Contract was based on a legal analysis which was not explored fairly or properly with the parties and the Tribunal had, therefore, failed to discharge its duty under Section 33 of the Act.

4.3 On 2 October 2019, the Court handed down its Judgment and dismissed the JV’s challenge.



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