



CIOB

The Chartered
Institute of Building

AND

C&E

LEGAL SOLUTIONS

The Construction and
Engineering Law Specialists

Understanding Your C&E Contract & Qatar Law is the Key to Avoiding Disputes & Successfully Delivering Your Projects

Presentation to The Chartered Institute of Building
(Qatar)

John Coghlan

Principal

C&E Legal Solutions

Date: 21 June 2022

Location: Radisson Blu, Doha

Doors Open: 18:30

Start: 19:00



- **Fully Regulated Boutique International Construction and Engineering (C&E) Law Firm**
 - Construction & Engineering Law only: Full range C&E legal advice - international projects across the globe
 - Over 35 years experience in construction and engineering industry – subcontractor/solicitor (lawyer)
- **Services**
 1. Contract Documents:
 - Draft Clear and Concise Contracts
 - Contract Reviews: Identify a contract's risk profile to assist Clients to understand and manage the risk
 2. Project Delivery - Outsourced Project Counsel (**OPC**):
 - Our OPC resource works closely with a Client's Project Delivery Team to provide specialist practical legal solutions at any stage of a project's lifecycle / avoid disputes / reaching their objectives
 3. Dispute Resolution:
 - Advise on litigation and all forms of alternative dispute resolution (**ADR**) to achieve the best outcome
- **Sectors**
 - Built Environment's Key Sectors: Commercial Property, Healthcare, Housing, Leisure, Oil & Gas, Power, Transport and Water

- **Approach**

- Leading Cloud Based Legal Technology: Case Management Systems / Client Portal
- Modern Day Work Practices: Agile Working - Global Reach

- **Team / Global Network**

- Principal: John Coghlan
- C&E Consult
 - Modern day work practices and leading legal technology provides access to experienced and highly skilled construction and engineering legal consultants that work on a “project by project” basis
- Local Law Firms
 - Strong relationships with key local law firms in all major jurisdictions including Qatar
- Chambers: Construction and Engineering Law
 - Strong relationship with the leading chambers - Identify the counsel/advocate - best suits Client’s needs
- Expert Services:
 - Strong relationships with Expert Service Providers (Delay/Quantum/Technical) – best suits Client’s needs

- **Equates to Genuine Added Value – Lean Business Model – Significant Cost Saving – No Compromise on Service/Advice**

Introduction/Structure

- Civil Law/Common Law
 - Principal Features
- Qatar: Civil Law System of Law
 - Contract Formation / Mandatory Laws
 - Variations
 - Delay / Time at Large
 - Conditions Precedent
 - Suspension & Termination
- Conclusion
 - Questions & Answers

Key Legal Systems: Civil Law/Common Law

- Civil Law System of Law
 - Originates from Rome – Dominant System of Law
 - Middle East, Europe, Central & South America, Africa and Asia
 - Principal Feature: Country's law within a number of written codes
 - Each country adopts its own bespoke written codes i.e. statutes
 - Drafted to deal with specific legal issues & “general legal rules and principles”
- Common Law System of Law
 - Originates from England – Countries with legal heritage to England
 - Including: USA, India, Australia and South Africa
 - Principal Features: Country's law within statute and case law
 - Statutes are codified i.e. written
 - Case Law = Court's decisions
 - Doctrine of binding precedent applies

Qatar System of Law

- Civil Law System of Law
 - Based on:
 - French (Napoleonic) Civil Code
 - Jurisprudence from Egypt – pre-eminent jurist Dr Al Sanhuri
 - Islamic Law (Sharia Law)
 - Advantages: All laws are “codified” – straightforward system of law
 - Civil Code 2004
 - Disadvantages: Arguably vague/ambiguous. No binding precedent
 - Criticism’s could be misguided.
 - Courts apply the law in an “inquisitorial fashion”
 - On a case by case basis
 - Allows the judiciary latitude to hand down a judgment

Contract (1)

- Qatar Law Recognises
 - Contract Formation
 - Qatar Art. 69: Offer
 - Qatar Art. 72: Acceptance
 - Qatar Art. 76: Mutual Intention i.e. *“If an offer is met with acceptance, the contract will be concluded”*
 - Qatar Art. 79: Certainty of terms e.g. quantities of works / contract price / contract period
 - Freedom of Contract
 - Qatar Art. 154(1): *“A contract may contain any condition that is **agreed by the contracting parties**, if it is not **prohibited by law or contrary to the public order or morals** (emphasis added)*

Contract (2)

- Qatar Law Recognises
 - Contract is Law of the Parties
 - Qatar Art. 171: “... **the contract is the law of the contracting parties**, and it is not permissible to revoke or amend it, except by agreement of both parties or for reasons prescribed by the law” (emphasis added)
- Mandatory Laws
 - Laws that a Contract may not exclude
 - E.G. Qatar Art. 711: Decennial Liability
 - Contractor and Engineer guarantee the structural integrity of works for 10 years following completion
 - Qatar Art. 715: “Any condition that **seeks to exclude** an architect or contractor from liability or restrict it **will be void**”
 - Not all Mandatory Laws are identified with an express reference
 - Can be based on Public Policy
- **Caution:** Successful Legal Arguments – Not Straightforward - Particularise and Substantiate – Rules of Interpretation (Code & Contract)

Variations

- What is a Variation?
 - Generally: Two meanings in C&E contracts: (1) contract's terms or (2) the scope of works
- Qatar Laws Recognises
 - Variations to the Contractor's Scope of Works
 - Qatar Art. 709
 - Recognises Employer's right to vary the Works
 - Contractor seeks increase in "*total fee*" = fixed lump sum price
 - Recognises Contractual variation mechanisms
 - Agreed between the parties
 - Contractor "*authorised*" to seeks increase in "*total fee*" = fixed lump sum price
- **Caution:** Successful Legal Arguments – Not Straightforward - Particularise and Substantiate – Rules of Interpretation (Code & Contract)

Delay (1)

- What is Delay?
 - Generally: Event occurs that impacts the Critical Path
 - Causes Works to be completed beyond the contractual completion date
 - Contractor Delay Event: If Contractor causes delay it will be liable to pay Liquidated Damages – predetermined rate
 - Employer Delay Event: If Employer causes delay the Contractor will be awarded an extension of time (**EOT**)
 - Neutral Events: Neither Party causes the delay e.g. force majeure
- Qatar Law Recognises
 - Time/Contractual Completion Dates
 - Qatar Art. 687
 - Liquidated Damages
 - Qatar Art. 265

Delay (2)

- Liquidated Damages (cont.)
- Qatar Art. 266
- Qatar Law: Contractor Friendly
 - Contractor may challenge Liquidated Damages
 - Provisions act as a “ceiling” and not as a “floor”
 - Court may order no compensation – no damages suffered
 - Court may reduce compensation – if LADs are greatly exaggerated or obligation has been partially performed

Delay (3)

- Does Qatar Law Recognise “time at large”?
 - Common Law Principle: Summary
 - Employer delay event occurs
 - Contract does not allow completion date to be extended in that event
 - Case Law – genesis *Holme v Guppy (1833) HL*
 - Original completion date & LADs provision no longer valid
 - Time is deemed “*at large*”
 - Contractor has a “*reasonable time*” to complete
 - Application of the Prevention Principle
 - Employer has prevented the Contractor from completing the Works it may not insist on Contractor completing the Works in accordance with the original completion date i.e. Time is deemed “at large”

Delay (4)

- Does Qatar Law Recognise “time at large” (cont)?

- Qatar Art. 687

- In certain circumstances, the Contractor may complete the Works in:

*“...**such reasonable period** as is required by the nature of the work, while having regard to the trade custom...”*

- Arguably: If conditions exist:

- Employer delay event occurs
 - Contract does not allow the completion date to be extended in that event

- Contractor may argue that the principle applies

- Permits the Court to place time “at large”
 - Contractor may complete in a “reasonable period”

Delay (5)

- Does Qatar Law recognise concurrent delay?
 - Arguably - No
 - Qatar and other Civil Code jurisdictions do not adopt a prescriptive approach to “*causation*” applied in England and Wales
 - Freedom of contract principle applies
 - Parties are free to agree in their contract how concurrent delay is dealt with on a project
 - Silent contract?
 - Rules of Interpretation (Code & Contract)
 - Apportionment - may apply
- **Caution:** Successful Legal Arguments – Not Straightforward - Particularise and Substantiate – Rules of Interpretation (Code & Contract)

Conditions Precedent (1)

- What is a Condition Precedent?
 - Generally: An obligation a contracting party must fulfil to obtain an entitlement/require the other contracting party to perform an obligation
- Notices/Time Bars
 - E.G. FIDIC (Yellow) 1999 Clause 20.1

*“If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment ... the Contractor **shall give** notice to the Engineer ... **not later than 28 days** after the Contractor became aware or should have become aware of the event or circumstances ...*

*If the **Contractor fails** to give notice of a claim within such period of 28 days, the Time for completion **shall not** be extended and the Contractor **shall not** be entitled to additional payment, and the **Employer will be discharged from all liability** in connection with the Claim ...” (emphasis added)*

Conditions Precedent (2)

- Qatar Law: May Assist Contractors?

- Good Faith Applies

- Qatar Article 172:

- “1 – a contract must be executed in accordance with the contents thereof and in accordance with the **requirements of good faith.**” (emphasis added)

- Statutory obligation to “*executed*” in “*good faith*” – Performance Only

- Statutory Limitation Period to Claim

- Known as “Prescription” - generally 10 Years

- Qatar Art. 418(1)

- “*Prescription **may not** be renounced prior to the establishment of the right thereto. **Nor may** agreement be reached on **prescription running for any period that is different from that specified by the law**” (emphasis added)*

- Arguably a potential defence to “Time Bar” provisions?

- **Caution:** Successful Legal Arguments – Not Straightforward - Particularise and Substantiate – Rules of Interpretation (Code & Contract)

Suspension & Termination (1)

- Qatar Law recognises Parties right to Decline/Suspend Performance
 - Art. 191 of the Civil Code 2004 provides:

*“In contracts binding on both parties, **where corresponding obligations are due for performance**, either party may decline to perform his obligation if the other party fails to perform his obligation...”*
 - Obligations must be “*corresponding*” and “*due for performance*” before a party may decline to perform its corresponding obligation i.e. suspend performance
- Statutory Right to Decline/Suspend Performance
 - Not mandatory - parties may exclude the right:

“...unless the parties agree otherwise...” (Qatar: Art/192/Line 2)
 - Also a Party may waive the right
- **Caution:** Contractor must be ready and willing to perform the obligation that it is declining to provide i.e. continue the Works

Suspension & Termination (3)

- Qatar Laws Recognises Right to Terminate

- Employer's Right to Terminate

- Without Contractor fault i.e. "At Will" (Art. 707(1))

"An employer may withdraw from a contract and terminate the performance of the work at any time prior to its completion ..."

- Does a Party Require a Court Order in Qatar to Terminate a C&E Contract?

- On balance – Yes

- Qatar: Relevant Article 183

- Judge has discretion to refuse application if considers it appropriate or default minor

- However

- Art/184: Parties may agree that Court Order is not necessary

- **Caution:** Suspension & Termination – Complex – Get it Wrong and it's a Costly Mistake!!!

Conclusion

- In conclusion
 - Civil Law/Common Law
 - Principal Features
 - Qatar Law - Civil Law System of Law
 - Contract Formation / Mandatory Laws
 - Variations
 - Delay / Time at Large
 - Conditions Precedent
 - Suspension & Termination
- **Key to Success: Team Work / Instruct Experienced C&E Solicitor ASAP – Sooner the Better**

Benefits of Working with C&E Legal Solutions

- Fully Regulated Boutique International Construction & Engineering Law Firm
 - Construction & Engineering Law only
 - Over 35 years experience in C&E industry
 - Over 20 years experience of working as a Solicitor (Partner/Managing Partner) on large international infrastructure projects across the globe
 - Comprehensive understanding of how Qatar Law / Civil Codes impact a C&E Contract
 - Advise on Projects from inception to completion and all forms of ADR including Arbitration
 - Cost Effective
 - Flexible Fee Structures Including Fixed and Capped Fees for Defined Scope of Works
- **Delighted: Discuss C&E Legal Issues Covered**

Thank You: Any Questions?



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