



The Construction and  
Engineering Law Specialists



# *Suspension & Termination of Construction & Engineering Contracts under Laws of the Middle East – Get it Wrong and it’s a Costly Mistake!!!*

Webinar presentation to the Royal Institute of  
Chartered Surveyors (Middle East)

John Coghlan

Principal

C&E Legal Solutions

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Start: 18:00 (GST/UAE)



- **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 UAE
- Chambers: Construction and Engineering law
  - Strong relationship with the leading chambers - Identify the counsel best suits the Client’s needs
- Expert Service Provider (**ESP**) & Document Management Companies (**DM**)
  - Strong relationships with ESP (Quantum etc) - identify the expert best suits the Client’s needs & DMC for Cost Effective Document Management including AI led solutions/searches
- **Equates to Genuine Added Value – Lean Business Model – Significant Cost Saving – No Compromise on Service/Advice**

# Introduction/Structure

- Civil Law/Common Law
  - Principal Features
- Middle East: System of Law
  - Civil Law
- Middle East Laws – Qatar and Ref: Bahrain, Kuwait, Oman & UAE
  - Contract Formation
  - Mandatory Laws
  - Suspension
  - Termination
  - Damages
- Conclusion
  - Questions & Answers

# 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

# Middle East: System of Law

- Civil Law System of Law
  - Based on:
    - French (Napoleonic) Civil Code
    - Jurisprudence from Egypt
    - Islamic Law (Sharia Law)
  - Advantages: All laws are “codified” – straightforward system of law
  - 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)

- ME Laws Recognise
  - Contract Formation
    - Qatar Art. 69: Offer
    - Qatar Art. 72: Acceptance
    - Qatar Art. 76: Mutual Intention
    - Qatar Art. 79: Certainty of terms e.g. quantities of works / contract price / contract period
    - Similar Principles: Bahrain: Art. 29 - 68, Kuwait: Art. 31 - 64 , Oman: Art. 69 - 90 and UAE: Art. 129-148)
  - Freedom of Contract
    - Qatar Art. 154(1) Bahrain: Art. 109, Kuwait: Art. 176, Oman: Art.121 and UAE: Art. 205(2)

# Contract (2)

- ME Laws Recognise
  - Contract is Law of the Parties
    - Qatar Art. 171, Bahrain: Art. 128 , Kuwait: Art. 196...similar principle in UAE/Oman – a *party “must perform that which he is obliged to do under the contract”* - UAE: Art. 243 and Oman: Art 155
- However...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 (Kuwait: Art. 692, Oman: Art. 634, UAE: Art. 880 and Bahrain: Art. 615 - 5 years only)
  - Qatar Article 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



# ME Laws: Suspension (1)

- ME Laws recognise Parties right to Decline/Suspend Performance

- Qatar: 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, unless the parties agree otherwise...”* (Bahrain: Art. 150, Kuwait: Art. 219, Oman: Art.157 and UAE: Art.247)

- Statutory Right to Decline/Suspend Performance

- Not mandatory - Parties may exclude the right.

*“...unless the parties agree otherwise...”* (Qatar: Art. 192)

- Also a Party may waive the right

- Waiver: Party conducts itself in a manner which leads the other party reasonably to believe that it will not insist upon enforcing its rights

- E.G. Contractor continues to work after not being paid

# ME Laws: Termination (1)

- ME Laws Recognise Right to Terminate
  - Employer's Right to Terminate
    - Without Contractor fault i.e. "At Will"
    - Qatar: Art. 707(1), Bahrain: Art. 611, Kuwait: Art. 688
  - UAE and Oman adopt a different approach and C&E Contracts may be terminated upon one of the following:
    - Completion of the Works; or
    - Cancellation by consent; or
    - Cancellation by Court Order (Oman: Art. 646 and UAE: Art. 892)

# ME Laws: Termination (2)

- Does a Party Require a Court Order to Terminate a C&E Contract?
  - Termination Principles – Different see e.g. Bahrain: Art. 148, Kuwait: Art. 893, Oman: Art. 646 and UAE: Art. 892).
  - Qatar – Yes - Relevant Articles of the Civil Code 2004 Article 183 (1) & (2)
    - Judge has discretion to refuse application if considers it appropriate or default minor
- However: Qatar Art/184
  - Parties may set out and agree in their C&E Contracts that a court order is not necessary

# ME Laws: Damages (1)

- ME Laws Recognise Right to Damages for Breach of Contract
- Civil Law Systems: Starting Point
  - Primary remedy for breach of contract is the principle known as “*Performance by Compulsion*” - Court compels the party to perform their obligations under the contract
  - Qatar: Art/245, Bahrain: Art. 206, Kuwait: Art. 284, Oman: Art. 254 and UAE: Art. 380
  - If “*Performance by Compulsion*” is not possible Court has discretion to award “*compensation*” i.e. damages
  - Generally with C&E Contracts – damages is the practical remedy of choice

# ME Laws: Damages (2)

- ME Laws recognise the Assessment of Damages for Breach of Contract
- Generally ME Countries adopt a broadly consistent approach to assessing damages
  - Qatar Art. 263, Bahrain: Art. 223, Kuwait: Art. 300(2), Oman: Art.264 and UAE: Art. 389
  - right to recover all loss including loss of profit etc
- Limited to Loss which must be:
  - “*natural consequence*” of the breach & “...for the detriment that could normally have been anticipated at the time the contract was made...”
  - Addition: ME Laws refer to “*consequential loss*” i.e. indirect loss under Common Law, however, no specific definition/meaning is provided
- Generally – Recovery of damages is restricted to Direct Loss in the absence of
  - Deceit or Serious Default – knowingly misleading / fraud

# ME Laws: Damages (3)

- ME Laws do not formally recognise a Claimant is under a duty to Mitigate

- Check C&E Contract – E.G: FIDIC/99 Subclause 19.3 provides:

*“Each Party shall at all times use all reasonable endeavours to minimise any delay in performance of the Contract as a result of a Force Majeure [event].*

- However: Court may reduce Damages if claimant has contributed to the loss (Qatar Art/257, Bahrain: Art.217, Kuwait: Art.294 Oman: Art.180 and UAE: Art. 290

- ME Laws recognise the Limitation of Liability/Damages clauses

- Parties “*may agree*” - Limitation Clause (Qatar: Art/259, Bahrain: Art. 219, Kuwait: Art. 296 similar principles in Oman: Art. 261 and UAE: Art. 383).
- Number of Exclusions if liability arises:
- “*fraud of gross negligence*” and Mandatory Laws

# Conclusion

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  - Termination
  - Damages
- **Key to Success: Team Work / Instruct Experienced C&E Lawyer**

# 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/ME Laws 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 Suspension & Termination Issues*

*Organise a Complimentary Strategic Legal Consultation*



# Thank You: Any Questions?



# Contact

John Coghlan  
Principal



E: [johncoghlan@cels.global](mailto:johncoghlan@cels.global)

T: Qatar: +974-5559-3797

UK: +44-(0)7938-948-131

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