



## UAE - Civil Code: Suspension and Termination of Construction Contracts

by Nicholas Gould, Partner

Most standard form contracts provide a contractual code under which the parties can suspend or terminate the contract. In practice, parties often do not follow precisely the contractual procedures either by failing to issue the appropriate notices, or allowing the relevant time periods to lapse before either "suspending" or, in particular, taking the drastic step to terminate a contract. The background of the applicable law is, therefore, often important and in the UAE particularly important.

For those with a common law background, the concept of suspension does not exist, unless the parties have an express right in their contract, or legislation specifically provides for it. However, bringing a contract to an end prematurely is recognised as repudiation. If a party refuses or makes it clear that they no longer wish to be bound by a contract then the other party can accept that repudiation or in some instances insist on performance. The UAE Civil Code does not recognise suspension or the concept of repudiation; however, article 247 recognises that a party can refuse to carry out its obligations if the other party is not performing. For example, if a party is not making any payment then the other party can refuse to continue with the works. The danger in treating the contract as at an end when, for example, payment has not been made is that the other party could then treat you as trying to terminate the contract.

In the UAE, a distinction is made between everyday contracts, and commercial contracts which are referred to as Muqawala contracts. Construction contracts would therefore be governed by the law applicable to Muqawala contracts, and termination can occur in accordance with article 892 in the following manner:

- 1 Completion of all the agreed works or services;
- 2 By mutual consent; or
- 3 Court order.

It goes without saying that the contract will be complete once all works are performed. In the absence of mutual consent, it appears that a court order is required in order to formally bring the contract to an end. This is one of the vexing questions that often arise rather too late, most usually during the arbitration several years after the contractor has left site. Advice from local lawyers in the region varies, but a safe cause of action might involve continuing to work until the court order is obtained, and only then demobilising.

It is generally accepted that contractual provisions covering suspension and termination amount to mutual consent within article 892. It is therefore important to follow those contractual procedures carefully and to at least attempt to rely upon the mutual consent revisions within article 892 and hopefully avoid the need for a court order in the UAE.