

CONSTRUCTION & ENGINEERING ALERT

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Know your termination regime: Terminating construction contracts

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Know your termination regime: Terminating construction contracts

As a general principle, standard form construction contracts provide two features in their termination framework. Firstly, the standard form contracts will set out the grounds upon which a party may terminate the contract. Secondly, they will outline the procedure that ought to be followed for the lawful termination of the contract.

The standard forms of contract (FIDIC, JBCC and NEC) provide that the right to terminate a contract is dependent on the occurrence or non-occurrence of a particular event/s (termination events).

With respect to the termination process, the contract will clearly set out what steps are required to be taken by a party to validly terminate the contract. Generally, this process entails:

- a notice of breach or default being issued to the defaulting party, allowing the defaulting party limited time to remedy its breach; and
- should the breach not be remedied in the period allowed for in the breach/default notice, the aggrieved party can proceed to deliver a notice of termination, at which point the contract is lawfully terminated.

Standard form construction contracts are very specific as to the grounds upon which termination can take place, and the mechanism applied to terminate the contract, when and where it should be delivered, and to whom it should be delivered.

Accordingly, it is incumbent on the party wishing to terminate the contract to follow the prescribed procedure accurately.

An attempt to terminate a construction contract without complying with the grounds for termination and the prescribed procedures may amount to a repudiation of the contract.

More controversial is the right of an employer/client to terminate a contract at any time and without reason (at its convenience) by giving notice of such termination to the contractor. An employer/client's unfettered right to terminate for convenience will have major implications for a contractor, in particular in contracts of lengthy duration.

In summary, parties should pay particular attention to the termination regime in a construction contract as it may have far reaching consequences for both employers/clients and contractors.

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