

법무법인(유) 율촌 - 해외건설협회 공동주최 웨비나 리비아 재진출시 고려할 법적 쟁점

2021년 10월 14일(목) 16:00 - 18:00

1. Rules of Law

Libyan Civil Code

Article 1 Rules of Law

1. Provisions of law govern all matters to which these provisions apply in letter and spirit.
2. In the absence of applicable legal provisions, the Judge shall pass judgment in accordance with the principles of Islamic law. In the absence of Islamic legal precedent, he shall pass judgment according to prevailing custom, and in the absence of precedents in customary procedure, he shall pass judgment according to the principles of natural law and the rules of equity.

Article 147 Contract Makes the Law of the Parties

1. The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by the law.

* International Labour Organization 제공 영문 번역문

<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/26463/56730/F2024919639/LYB26463%20Eng.pdf>

2. Outstanding Payment

Contract Example

Payment

The First Party will effect the payment of the monthly payments of approving the achieved works inventory statements by the First Party, provided that shall be fulfilled all the conditions stipulated thereon. The payment shall be done after verification of the statements and payment applications and verifying its validity.

...

The completed works and duties shall be inventoried at the end of each month by the representatives of the Second Party and at this own expense, in collaboration with any designated person by the First Party for this purpose.

Inventory of the works shall be only acceptable by signature of the representatives of both parties. If the Second Party fails to inventory the completed works, he shall adhere to the measurements made by the representative of the First Party.

2. Outstanding Payment

Strabag SE v. Libya

Award

89 In February 2013, Al Hani signed agreements with the TPB providing for Al Hani to resume work on the Misurata, TIAR and Garaboulli road contracts. **The TPB agreed to pay 50% of the amounts due for previously executed works, and to pay the balance within 6 months.** Al Hani's claims for wartime damages were to be settled by a committee in which the Government had ultimate decision authority. **The TPB would not agree to any payments other than on approved payment certificates, including on war damages.** Al Hani accepted TPB's conditions, except for waiver of its right to make claims for damages during *force majeure*.

2. Outstanding Payment

Libyan Civil Code

Article 361 General Prescription

The term of prescription for obligation is **fifteen years** with the exception of those cases for which a special provision is contained in the law and with the exception also of the following cases.

Article 363 Special Conditions as to Prescription

The term of prescription for sums due to physicians, chemists, lawyers, **engineers, experts**, receivers in bankruptcy, brokers, professors or teachers is **five years**, provided that the debts are due as remuneration for work coming within the scope of their professions or in payment of expenses incurred by them.

2. Outstanding Payment

Libyan Civil Code

Article 369 Stay of Prescription

1. Prescription does not run whenever there is a bar, even a moral one, which prevents the creditor from claiming his right. It does not run between a principal and his representative.

Article 375 Renouncing of Prescription

1. A person, however, who is legally capable of disposing his rights, may renounce, even tacitly, a right to prescription which he is in a position to invoke, but a renunciation made to the detriment of this creditors will have no effect against them.

2. Outstanding Payment

Libyan Civil Code

Article 229 Damage for Delay

When the object of an obligation is the payment of a sum of money of which the amount is known at the time when the claim is made, the debtor shall be bound, **in case of delay in payment, to pay to the creditor, as damages for the delay, interest at the rate of four per cent in civil matters and five per cent in commercial matters. Such interest shall run from the date of the claim in Court, unless the contract or commercial usage fixes another date.** This article shall apply, unless otherwise provided in law.

2. Outstanding Payment

Libya Supreme Court Decision dated 16 June 2019 (Appeal No 467/64 J)

Decision

“The meaning of these provisions [Articles 1, 2, 3, 4, 5, and 7 of Law 1/2013] altogether is that it is only concerned with loans regardless of the types or denominations [...] And therefore, there is no way to apply it to the provision of Article 229 of the Civil Code [providing for delay interest]”

3. Compensation

Contract Example

Disposal of Equipment

The Second Party shall not remove or dispose of materials, machinery, equipment and temporary works brought to the site of work except by permission of the First Party until provisional handover. **The First Party shall not be held responsible for loss, damage or theft thereof.**

3. Compensation

Libyan Civil Code

Article 664 Destruction of Materials

1. When works are destroyed by a fortuitous event, before delivery to the master, the contractor has no claim either for the price of his work or for reimbursement of his expenses. The loss of materials fall on the party who supplied them.
...
3. When the master is formally summoned to take delivery of the works or when the works are destroyed or deteriorate by the fault of the master or by reason of a defect in the materials supplied by him, the master shall bear the loss resulting from the destruction of the materials and is liable to the contractor for his remuneration in addition to such compensation as may be due.

3. Compensation

Contract Example

Force Majeure Encountered by Second Party

If **general exceptional circumstance** occur, which are unavoidable and unforeseeable, thus making the execution of obligation burdensome and threatening the Second Party with serious loss **without becoming impossible** he may claim for compensation to recover financial balance of the contract to the reasonable extent.

If such circumstances continue to exist and unexpected to disappear, the contract may be terminated and the Second Party shall be **released from executing his obligations** if force majeure takes place making execution impossible.

3. Compensation

Libyan Civil Code

Article 360 Impossibility of Performance

An obligation is **extinguished** if the debtor establishes that its performance has become **impossible** by reason of causes beyond control.

Article 663 Impossibility of Performance

A contract for work comes to an end if the performance of the work for which the contract was concluded becomes **impossible**.

3. Compensation

Libyan Civil Code

Article 147 Contract Makes the Law of the Parties

1. The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by the law.
4. When, however, as a result of exceptional and unpredictable events of a **general character**, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, **the Judge may**, according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits the obligation that has become excessive. **Any agreement to the contrary is void.**

3. Compensation

Libyan Civil Code

Article 657 Lump Sum Basis

4. When, however, as a result of exceptional events of a general character which could not be foreseen at the time the contract was concluded, the economic equilibrium between the respective obligations of the matter and of the contractor breaks down, and the basis on which the financial estimates for the contract were computed has subsequently disappeared, **the Judge may grant an increase of the price** or order the resiliation of the contract.

4. Bond

Contract Example

Performance Security

The Second Party shall deposit with the First Party within thirty days from the second day he is informed that his offer has been accepted or within the expiry date of tender/bid security (if any) **a Performance Security amounting of (2) % of the total value stated in this Contract.** The contract shall not be binding upon the First Party prior to the deposit of the said guarantee. The security can be deposited in cash, accredited Cheque or by unconditional or irrevocable guarantee letter in which the bank shall put it under the disposal of the First Party. The security shall be kept by the First Party for the good performance of the contract and to deduct any due payments for him from the Second Party. The Second Party shall restore the security with the same amount deducted from it within at most one month from the date he is notified to do so by a registered letter otherwise the First Party may cancel the Contract and confiscate the rest of the security or to withdraw the work from the Second Party and to exercise at his expenses without prejudice of the First Party to claim compensation. This shall be made by mere notification to the Second Party by registered letter without need to approach the court or to take any other procedures. This shall not prejudice the right of the First Party to claim any payment due him from the Second Party in relation to this contract or to any other public authority.

4. Bond

Contract Example

Payment Conditions

The First Party shall pay to the Second Party after site hand over, submitting of the Performance Security and the registration of the Contract in the tax department based on his request on **Advance Payment on his account equals to 15% of the value of the Contract after submitting a letter of guarantee amounting to the credit valid** throughout the Contract period issued by one of the commercial banks operating in Great Jamahiriya or certified by them.

4. Bond

Administrative Contracts Regulations

Article 105

If general exceptional conditions occur, being unforeseeable, as would make execution of the obligation burdensome threatening the contractor with serious loss, without being impossible, the contractor shall have right to compensation for recovering the contract financial balance to the reasonable limit.

4. Bond

Contract Example

Force Majeure Encountered by Second Party

If general exceptional circumstance occur, which are unavoidable and unforeseeable, thus making the execution of obligation burdensome and threatening the Second Party with serious loss without becoming impossible he may claim for compensation to recover financial balance of the contract to the reasonable extent. If such circumstances continue to exist and unexpected to disappear, the contract may be terminated and the Second Party shall be released from executing his obligations if force majeure takes place making execution impossible.

5. Termination

Contract Example

Work Suspension

The Second Party has no right to stop or suspend the work without written instructions of the First Party. He undertakes to protect the works during the suspension period. The First Party shall compensate the Second Party by additional period equal to the period of suspension if the reasons of suspension are not due to the Second Party. **If the suspension period continues for more than six months for reasons due to the First Party, the Second Party has the right to request the termination of the Contract.** In this case the Second Party shall have the right to claim the amount of the work he has executed and his actual loss due to the suspension period without any work compensation to the First Party.

5. Termination

Contract Example

Force Majeure Encountered by Second Party

If general exceptional circumstance occur, which are unavoidable and unforeseeable, thus making the execution of obligation burdensome and threatening the Second Party with serious loss without becoming impossible he may claim for compensation to recover financial balance of the contract to the reasonable extent. **If such circumstances continue to exist and unexpected to disappear, the contract may be terminated and the Second Party shall be released from executing his obligations if force majeure takes place making execution impossible.**

5. Termination

Libyan Civil Code

Article 360 Impossibility of Performance

An obligation is extinguished if the debtor establishes that its performance has become impossible by reason of causes beyond his control.

Article 664 Destruction of Materials

A contract for work comes to an end if the performance of the work for which the contract was concluded becomes impossible.

5. Termination

Libyan Civil Code

Article 159 Obligation of Bilateral Contract Extinguished by Impossibility of Performance

When an obligation arising out of a bilateral contract is extinguished by reason of impossibility of performance correlative obligations are also extinguished and the contract is rescinded ipso facto

Article 160 Effect of Recission of Contract

When a contract is rescinded the parties are reinstated in their former position. If reinstatement is impossible the Court may award damages.

6. Dispute Resolution

Contract Example

The Competence of the Libyan Judiciary

The Contract in its interpretation and execution shall be subject to the laws and regulations in force in Great Socialist People's Libyan Arab Jamahiriya – the Libyan Court is the competent court to settle any disputes arising from this Contract

6. Dispute Resolution

Korea-Libya BIT

Article 1 Definitions

For the purposes of this Agreement:

- (a) "investments" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and in particular, though not exclusively, includes:
 - (i) movable and immovable property and any other property rights such as mortgages, liens, leases or pledges,
 - (ii) shares in, stocks and debentures of, and any other form of participation in a company or any business enterprise and rights or interest derived there from,
 - (iii) claims to money or to any performance under a contract having an economic value,
 - (iv) intellectual property rights including rights with respect to copyrights, patents, trademarks, trade names, industrial designs, technical processes, trade secrets and know-how, and goodwill, and
 - (v) business concessions having an economic value conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

6. Dispute Resolution

Korea-Libya BIT

Article 2 Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.
2. Investments made by investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.
3. Neither Contracting Party shall in any way impair by arbitrary or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

6. Dispute Resolution

Korea-Libya BIT

Article 4 Compensation for Losses

1. Investors of one Contracting Party, whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situation in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable without undue delay.
2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:
 - (a) requisitioning of their property by the latter Contracting Party's forces or authorities; or
 - (b) destruction of their property by the latter Contracting Party's forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation no less favourable than that would be accorded under the same circumstances to an investor of the latter Contracting Party or to an investor of any third State. Resulting payments shall be freely transferable without undue delay.

6. Dispute Resolution

ISDS Cases Against Libya

1	2020	Özer and Dirlik v. Libya	Pending	Turkey
2	2019	Trasta v. Libya	Pending	United Arab Emirates
3	2018	Simplex v. Libya	Pending	India
4	2017	Ustay v. Libya	Pending	Turkey
5	2016	Cengiz v. Libya	Decided in favour of investor	Turkey
6	2016	D.S. Construction v. Libya	Pending	United Arab Emirates
7	2016	Etrak v. Libya	Decided in favour of investor	Turkey
8	2016	Güris v. Libya	Pending	Turkey
9	2016	Nurol v. Libya	Pending	Turkey
10	2016	Öztaş Construction v. Libya	Decided in favour of State	Turkey
11	2015	Strabag v. Libya	Decided in favour of investor	Austria
12	2015	Tekfen and TML v. Libya	Pending	Turkey
13	2015	Way2B v. Libya	Decided in favour of State	Portugal
14	2014	Olin v. Libya	Decided in favour of investor	Cyprus
15	2013	Shinhan v. Libya	Pending	Korea, Republic of
16	2013	Sorelec v. Libya	Decided in favour of investor	France
17	2011	Al-Kharafi v. Libya and others	Decided in favour of investor	Kuwait
18	2011	Ghenia v. Libya	Pending	Germany
19	2008	Intersema Bau v. Libya	Decided in favour of investor	Switzerland

Thank you