



CONSTRUCTION CONTRACTS IN EL SALVADOR: LEGAL RECOMMENDATIONS AND SUGGESTIONS

MONTHLY NEWSLETTER
THE LAW FIRM OF CENTRAL AMERICA

In 2021 and so far this year, there has been an increase in investments on construction projects in El Salvador. From a legal standpoint, this constitutes a challenge to the construction industry due to the high level of disputes and conflicts that usually arise between contractors and owners.

These conflicts generally occur when the contracts are being implemented and can be caused for various reasons such as unforeseen conditions in the ground, design flaws, discrepancies between various technical standards, delays from one or both parties, cost overruns, faulty supervision, construction defects, among others. Also, conflicts may arise from the different interpretations that the parties have of the contract or its annexes.

In this sense, it is fundamental that contractors and owners take into consideration some suggestions and recommendations for when they subscribe and implement these contracts, so that the probability of conflicts is minimized or that if they arise, at least an effective solution is guaranteed.

One of the recommendations we make when negotiating a construction contract is to agree upon an effective way to document the compliance on behalf of the parties of the terms and conditions of the contract.

In practice, construction projects have a log and periodic reports are issued so that the work plan, the work progress, unforeseen events, and other aspects of this nature are duly documented.

Another recommendation is to have an adequate supervision and financial control of the construction works. Cost overruns, construction defects, delays and other circumstances that may have a financial impact in the parties are common in these types of contracts and is here were the roll of the supervisor and the financial comptroller have relevancy, given that the works are limited by the terms agreed in the contract.

At last, it is suggested to select an efficient method to solve the disputes that may arise from the contract. In this regard, arbitration is an attractive alternative in comparison to common courts, due to advantages like the efficiency of the proceedings, the control parties have in selecting the most convenient way to conduct certain parts of the proceedings, the possibility to select the arbitrators, among others. Generally, arbitration is preceded by a direct settlement or mediation phase, according to the contract.

Ultimately, contractors and owners both have the expectation that the construction works are executed in the terms agreed in the contract and without any conflict that may cause any financial impact on any of them. For that reason, it is important to be cautious and to seek proper legal advice when structuring and defining the terms of a construction contract.

Contact us for advice regarding this matter.

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