

## **Contracts – Time is of the essence - Legal Alert – April 2017**

### **Introduction**

A very important provision in many contracts is the obligation regarding the time within which each component of each contract must be performed. Unfortunately, this important contractual requirement is held more in disobedience, contempt or abeyance, than in strict compliance.

In some instances, a contract could be silent with regard to the exact time within which the obligations in the contract are to be performed.

An examination of the legal implications of both instances described above, will be provided in the following paragraphs.

### **Time is of the Essence**

Time is said to be of the essence in the performance of the terms and conditions of a contract, where the parties to the contract expressly stipulate that time will be of the essence in the performance of their contractual obligations.

Time will also be held to be of the essence in the performance of the terms and conditions of a contract where the circumstance(s) for its performance, or the nature of the subject matter of the contract, reasonably implies and or inputs a strict adherence to its timely performance. An example is the urgent purchase and need for immediate possession of a property due to the expiration or loss of the possession of a previous property.

Where time is stated to be of the essence in a contract, the parties can by mutual consent, vary or extend the time for the performance of the contract.

Courts of Law and Equity will be very reluctant to enforce a time is of the essence provision in a contract where such a contractual obligation is punitive in nature.

### **Contract Silent as to Time**

Where a contract is silent regarding the time or period within which its terms and conditions are to be performed, the Law Courts have usually applied the equitable principle that all contractual obligations should be performed within a reasonable period of time.

Also, where a contract is silent as to the time for the performance of its terms and conditions, a party who suffers unreasonable delay can serve notice requiring time to be of the essence in the performance of the contract; especially where the delay persist(s) despite repeated entreaties for performance. This does not however restrain the innocent party from terminating the contract in accordance with the terms of the contract.

### **Breach of Time Obligations**

Any failure to adhere to the performance of a contract, within the period agreed, or within a reasonable period of time if no express time frame is provided for in the contract, can amount to a fundamental breach of the contract from which compensatory damages may be awarded in punishment.

**Disclaimer**

This is a **free educational material**. It does not serve as a source of solicitation, advertisement or the offering of legal services or advice of any kind. **No Client/Attorney relationship** is therefore created. Readers are strongly advised to always seek from qualified Legal Practitioners, competent legal counselling to their specific factual situation.

**Intellectual Property Protected!**

This material is protected by International Intellectual Property Laws and Regulations. This material can therefore **only** be reproduced or re-distributed for non-profit educational purposes under the strict condition that our Authorship of this material is explicitly acknowledged, and our above Disclaimer Notice is prominently displayed.