



# **WAITING FOR PAYMENT:** **Qatar's Pay-When-Paid Debate**

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Picture Abdulla, a hardworking electrician on a Doha construction site, watching the sun set each day without knowing when he will be paid. Months after completing a large project, his bill hangs in limbo, delayed because the main contractor says, "I haven't been paid by the boss yet." This is the human face of a pay-when-paid clause (albeit, a heavily dramatised one): a small-print provision that turns the contractor's cashflow problem into the subcontractor's risk.

In Qatar—as in much of the Gulf—these clauses are permissible. They allow a main contractor to delay paying subcontractors until they themselves are paid by the employer. In contrast, many jurisdictions, including the UK and Australia, place strict limits on such clauses to protect subcontractors. Canada also imposes important restrictions, depending on the province.

But is it fair for a subcontractor to wait indefinitely? The Qatari Court of Cassation has just said: no. In a landmark 2024 judgment (Case No. 1460 of 2023), the court ruled that a pay-when-paid clause is only a temporary extension of the payment deadline. It cannot serve as a blank cheque for endless delay. Instead, it must allow for a reasonable grace period—long enough to resolve upstream issues, but not open-ended.

If Abdulla's contract said he would be paid when the main contractor is paid, this new ruling means he cannot be left waiting for years on end. Even if the employer delays, the subcontractor's right to payment cannot be suspended indefinitely.



## The Legal Landscape in Qatar

Qatari law already offers clues as to how such clauses are treated. The Civil Code presumes that a contractor should be paid when the work is delivered, unless the contract or commercial custom states otherwise. It also allows for subcontracting, but makes clear that the main contractor remains liable to the employer for the entire project.

Subcontractors may, in certain circumstances, pursue claims against the employer—either indirectly through the contractor's rights or directly under Article 702 of the Civil Code. Overlaying all of this is a broad principle that all contracts must be performed in good faith, consistent with justice and custom. That gives courts a framework for scrutinising agreements that tilt too heavily in one party's favour.



## The Cassation Court's Ruling

In the case at hand, a subcontractor completed its work and submitted its invoices. The main contractor declined to pay, citing a pay-when-paid clause and arguing that payment was conditional upon receipt from the employer. The lower courts initially agreed.

But the Court of Cassation took a different view. It held that the clause was not a licence to delay payment indefinitely. Rather, it granted a temporary extension—a short window during which the main contractor could collect payment upstream. This delay, the court said, must be reasonable, and must not deny the subcontractor their rights for an excessive or undefined period.

The ruling stressed that what is “reasonable” depends on the facts of each case. In practice, that could mean weeks or a few months, but not years. The court made clear that the burden lies on the main contractor to act in good faith and pursue payment from the employer without delay.

Interestingly, the court also criticised the use of expert reports to interpret the legal meaning of the contract. It emphasised that the role of the expert is limited to technical matters that the judge cannot assess unaided. Legal interpretation—especially of contractual terms—falls exclusively within the domain of the court. The lower court's reliance on the expert's characterisation of the clause as “back-to-back” without independent judicial analysis amounted to an error of law and a failure in legal reasoning.

## An International Comparison

Compared to many common law jurisdictions, Qatar's approach is more flexible. In England and Wales, pay-when-paid clauses in construction contracts are generally unenforceable under the Housing Grants, Construction and Regeneration Act 1996. The only exception is in cases where the employer becomes insolvent.

In Australia, similar prohibitions exist under Security of Payment legislation, which prevents pay-when-paid provisions and enforces strict timelines for payment, irrespective of upstream delays.

In Canada, the picture is more nuanced. Ontario, for instance, has adopted prompt payment legislation that significantly limits the effectiveness of pay-when-paid clauses by imposing mandatory payment timelines. In other provinces, such clauses may still be enforceable, but only if they are clear and unambiguous. Courts often interpret them as timing mechanisms rather than conditions precedent, meaning the obligation to pay remains, even if payment from the employer is delayed.



## Implications for Contractors

This decision should offer comfort to subcontractors working in Qatar. They now have legal support to challenge unreasonable delays in payment, even if their contracts contain pay-when-paid language. If a subcontractor has waited an excessive period—particularly without transparency or justification—they may have a strong case.

Main contractors should take heed. They can no longer rely on open-ended pay-when-paid clauses to defer their obligations indefinitely. While the ruling does not render pay-when-paid clauses unenforceable per se, it limits their operation to a defined, reasonable period. Any attempt to defer payment indefinitely will be scrutinised and potentially invalidated. The decision reinforces that the obligation to pay remains, even where upstream delays occur, unless clearly and reasonably defined otherwise.

At a deeper level, this ruling reflects an emerging consensus: subcontractors deserve timely payment for work done. As Qatar continues to build, from infrastructure to high-end developments, a fair and balanced system of payment is essential. A pay-when-paid clause may buy time—but it cannot be used to abandon responsibility.

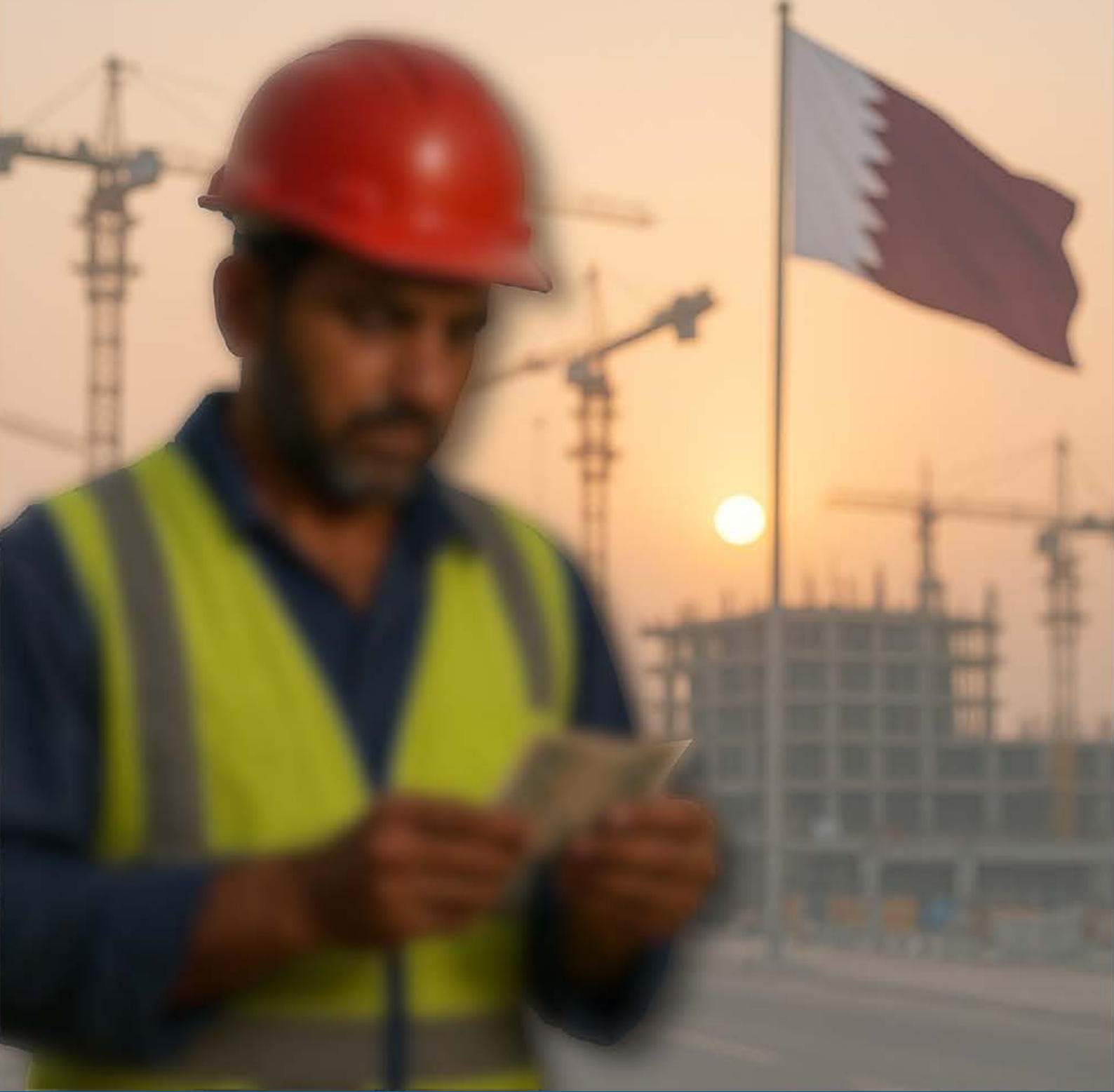
## A Final Note of Caution

While the Court of Cassation's ruling offers important guidance, each case will continue to be assessed on its own facts. The interpretation and enforceability of pay-when-paid clauses will depend on the precise wording of the contract, the behaviour of the parties, and the broader context. It remains to be seen how consistently and strictly these principles will be applied in future cases.

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