

## **Abusive Termination of Negotiations**

In our globalised economy based on the freedom of business, companies and their shareholders are constantly searching to improve their investments returns.

However, it is worth noting that extended discussions periods are creating more and more uncertainties for companies.

In addition, those discussions may also be suspended or even interrupted at any time by each party.

Therefore, companies should not only anticipate such risks but also should be fully aware of their rights in case of abrupt termination by the other party.

In this context, French Courts will review carefully the conditions of the exercise by each party of its right to terminate, at any time, the negotiation process. In case of abusive termination, the other party will be entitled to the payment of damages.

Abusive termination will be qualified depending on the circumstances of those negotiations.

Hence, would be considered as abusive termination (with no serious grounds) of lengthy discussions (several months or years) whilst the parties may have reasonably anticipated to reach an agreement.

Nevertheless, in some cases, termination of discussions would not be considered as abusive. This is the case if the parties decide to terminate, by mutual consent, the negotiations, if the negotiations are at the outset, if the parties disagree on the main points of the project or if the project could not be achieved.

In case of abusive or unfair termination, the other party will be entitled to the payment of damages.

The prejudice caused can be financial (travel expenses, consulting expenses) and/or strategic (loss of opportunity to negotiate with another party, transfer of confidential information in respect of the company's activities).

Generally, the financial prejudice is easy to establish and assess.

In the contrary, the strategic prejudice is rather difficult to prove and to assess.

Therefore, we always recommend to be extremely carefully on the information disclosed during the negotiations as well as on the timing of such disclosure. Needless to say that the most sensitive information should be disclosed as close as possible to the signing of the agreement.

The parties should therefore pay specific attention to the drafting of the pre-contractual documents, especially the one of the letter of intent. In practice, the parties tend to insert specific provisions in the letter of intent covering the split of expenses (legal fees, consultants) between them. It should be noted however that in case of abusive termination, this specific provision might prevent the other party to claim the repayment of its own costs and expenses.

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*Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies, the green business and the sustainable development in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.*

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