



PROJECT MANGEMENT: COMPETANCY OF PARTIES & CEASING A TREATY

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ABSTRACT

Any mercantile action requires mutual 'understanding' between people concerned. These understandings are time and again abridged into writing to give an outcome to the intention of the parties. Such official versions are known as "Contracts". These contracts describe the rights and obligation of different parties to make possible easy performance of the contractual obligations. The Indian Contract Act 1872 codifies the legal principles that preside over such contracts. The Act basically identifies the ingredients of a legally enforceable valid contract. The question arises then "who can enter into a valid Contract"? Can everyone enter into a valid contract? What should be

the competency of parties to qualify for entering into a valid Contract? Through this paper the researcher has explored and investigated about various issues related to the treaty caesuras.

Keywords: Contract, Competency, Valid, Caesuras, Contractual obligations.

INTRODUCTION

While all contracts are 'agreements', all agreements are not 'contracts'. Whichever agreement is legally enforceable alone is a contract. Agreements which are not legally enforceable are never "contracts" but, they remain as "void agreements". It is because; they cannot be enforced by both the parties but, only one of the parties to the agreement

may enforce it. Any mission can be terminated upon successful completion or unwillingness of entrepreneurs. As treaties near completion, there is a natural tendency to minimize costs by transferring people as soon as possible and by closing out work orders. With a successfully completed treaty, this will occur once all of the work of the treaty is finished, all of the outputs have been delivered and accepted by the Business Owner(s) and the target outcomes have been or are being realised. Cease is the stage of treaty Cycle where it becomes the responsibility of the Treaty Manager to originate treaty cease activities into the treaty work plan. It should be ensured that final reports are well written and an effective transfer of raw materials to other programs takes place on time. For this purpose, many treaties may even require one to two months after work completion simply for administrative reporting and final cost summarizing. There should be post auditing and formal evaluation of the treaty. Any successful treaty finalisation involves the formal acceptance of treaty outputs by the Business Owners, an internal review of treaty outputs and outcomes against the Treaty Business Plan, disbanding of the

Treaty Team and 'tying up' of loose ends of objectivity of the treaty.

According to Section 10 of the Indian Contract Act, "All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void".

According to Section 11 of the Indian Contract Act, "Every person is competent to contract, who is of the age of majority according to the law to which he is subject, and who is of sound mind and is disqualified from contracting by any law to which he is subject".

CAPACITY OF THE PARTY TO CONTRACT

Can any person in a contract become a party to a contract? The contracting persons have certain lawful obligations. Any person competent to contract should have a consideration to a treaty. Following are the capacities of the parties for entering into a valid contract.

- 1) Party to contract must be major:
According to the Indian majority Act, 1875, every domiciled Indian

attains majority on the completion of 18 years of age. Moreover, the commencement and operation shall come into force, and have effect only on the expiration of three months from the passing thereof. Hence, an agreement entered into by a minor is totally “void” and the question of enforceability does not arise at all. However, the minor can be a beneficiary. The minor can always plead majority. Ratification of any agreement is not allowed.

- 2) The contracting persons must be of ‘sound mind’: The person contracting would be considered to be of sound mind if he at the time of entering into a contract is capable of understanding it and forming a rational judgement as to its effect upon his interest. But a person who is of unsound mind but occasionally of sound mind may enter into a contract when he is of sound mind. Hence, the period of lucidity would be crucial as much as the periods of lunacy. But the burden of proof of unsound mind is on the person who

challenges the validity of the contract.

- 3) The contracting persons must not be disqualified by the Law: not only are the minors but there specific persons who cannot enter into a contract either wholly or partially. Any contracts with such person are ‘void’. An alien enemy cannot enter into a contract when an Indian subject during a war and, he cannot sue him in any Indian court too unless permitted by the Central Government. Moreover, sovereign states, diplomats, Ambassadors enjoy certain privileges as a result, they cannot be sued in Indian courts. However, they can at their will enter into a contract which may be enforceable in India. Insolvents, artificial persons, insolvents and convicts cannot enter into a contract in India.

GRAVITY OF FORMALY

TERMINATING A TREATY.

A treaty involves group of inter-related activities that are planned and then executed in a certain chain to create a unique product

or service, within a specific time frame in order to achieve planned outcomes, all treaty have a final date by which time all of the inter-related activities must be completed. Treaty's that are not formally closed often keeps going on. It is also a sign that, there was a loss of control on the treaty. This also reasons out things such as, lack of ownership by the business owners, failure to engraft the outputs into the normal business operations of the organisation, continued use of resources & enhanced outputs. Moreover, treaty documentation is also not finalised and filed according to relevant records and information management guidelines. This may be avoided by adopting a treaty management approach and, for larger treaties, the establishment of an effective Steering Committee.

The navigating committee is responsible for formally closing a treaty. The decision as to the timing for closure may be proposed in consultation with the Treaty Manager. In a treaty time is the important factor for triumph.

Reasons for treaty caesuras

The chief causes for treaty ceasing could be lack of clarity in its objectives. Secondly,

objectives of the treaty are not systematically documented, and details of the treaty and outcome expectation varies from the actual objectives. It also comes out as a major blow to the treaty manager and shakes the confidence of all the team members involved in the treaty. Besides successful completion of a treaty, it may be terminated due to the following reasons:

- Low probability of success.
- Low profitability.
- Excessive cost escalation.
- Change in competitive factors.
- Unsolved technical problems.
- Higher priority.
- Schedule delay.
- Lack of risk management planning.
- When requirements of the treaty are unclear.
- Where the underlying contract cannot be changed according to the present needs.
- When the parent organisation ceases to exist.
- When the product of the treaty goes obsolete and is no more in demand.
- When the changed strategy of the parent organisation does not support the treaty.

- The treaty terminates when there is disappearance of the necessary conditions.
- Sometimes unexpected force majeure like floods, earthquake, volcano's etc.
- Cease due to lack of customer support.

Some other reasons why treaty gets terminated are depicted in the below table.

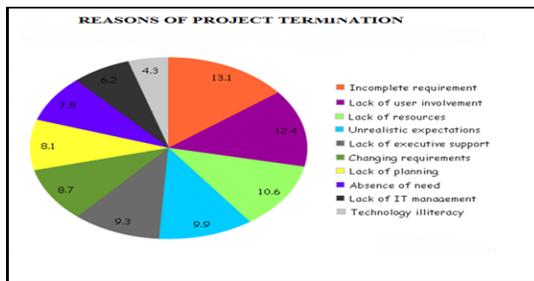


Table: 1 (Sources: Treaty Cease:BarryB)

Types of treaty cease

The treaty cease can be subdivided into four types which are as follows:

CEASE BY EXTINCTION: The treaty comes to a halt due to certain reasons such as- it might had been successful and achieved its goals; or has been unsuccessful or obsolete; the new product has been developed and handed to the customer; the software has been installed and running; a building construction is completed and

accepted by the customer etc. Cease by political assassination is a special case of extinction which is termed as “cease by murder”. It has two important characteristics’- sudden demise of the treaty and, lack of apparent signals that the death is proximate.

CEASE BY ADDITION: When a treaty becomes a major success, it may be terminated and its treaty personnel, equipment and property are transferred into a new treaty, or into a division of the parent organisation. The factors are transfigured from treaties to departments, divisions and even to subsidiaries of the parent firm.

CEASE BY INTEGRATION: Usually complex and successful treaties adopt this technique to terminate a treaty. The resources are distributed amid available subdivisions of the parent firm such as- the personnel's, property, material, equipments etc. Hence, the employees sucked from the terminated treaties into the existing ones, becomes a standard part of the operating systems of the parent firm.

CEASE BY STARVATION: In this method of cease, the budgets are reduced slowly leading to starvation of the treaty. Everyone who is involved in the treaty,

should face the budget starvation. This method of cease is adopted by the management when firm decision has been taken not to support the treaty. The senior managers in support of the management let it die on its own and they do not want it to roll back as there may be political threat for them to do so.

ROADMAP FOR SUCCESSFUL CEASE

It is very important to successfully close a treaty as the way it was formally kicked off. When a treaty schedule is developed initially, all the activities from its inception to be done gracefully till the closure of the treaty is written down and are followed rigorously. These activities are as follows:

- **ORGANISE CONTRACT CONCLUSION MEETING:** Before the treaty concludes, a meeting should be called to discuss and table with the team members, stakeholders, and sponsors etc., to convey formal closure of the treaty. It should include recalling the treaty inception, documentations, strengths & weakness in the journey of the treaty, the management processes, things that went wrong, the remaining steps pending to terminate

the treaty etc. A mention should be made about the focus of the objectives of the treaty accomplishment and, the actual outcome of the treaty. The agendas which should be mentioned in the meeting should be as follows:

- List of the initial objectives of the treaty.
 - List of the present achievements of the treaty.
 - Any deviation of the objectives laid down and achievements.
 - The lessons learned for future treaties.
 - List and documents for pending work to close the treaty.
- **COMMUNICATE SUCCESS/FAILURE:** The management of the treaty should declare was the treaty a success or lead to failure. The purpose of declaring success is to define what the criteria of success were. The treaty team could be evaluated based on those criteria.
 - **PERFORMANCE REVIEW:** Once the treaty completes, a performance review should be done. The treaty

sponsor evaluates the treaty manager and, the treaty manager reviews the entire team.

- **CLOSE THE CONTRACT:** In fact, the treaty manager is responsible to close the treaty. The treaty is not considered to be completed until all the closure activities are finalized. The treaty manager remains responsible for closing all specific sub contracts, and all the outstanding bills un-settled. The treaty closing also involves verifying all the works completed and updating of all contract records. The contract documentation are also important for which a procurement audit should be got done.

The treaty manager should also ensure before apprehending the cease of contracts, the breach of common law should be enforced. He should ensure screening non-violation of the contractual rights, conditions etc. of the parties to the treaty contract. The below diagram (table:3) depicts the code of cease conduct of any treaty.



Table: 2 (Sources: claytonutz.com)

Activities after cease

The post cease restrictive clauses may be contained with the contract of the employees working with the treaty. It restricts the right of the employees to conduct activities in competition with the former employer after the employment has ceased. Such contracts become important with employment at the senior levels that have all the access to confidential information, good relationships with key customers & clients, and good influence over the staff members about the treaty. These members are aware of the effects of post cease restrictions effecting the employments. This clause is not only applicable to the employment but, all the aspects of the treaty contracts. It imbibes the parties with whom the treaty contracts are signed into till its expiry which is laid in the contract. Hence, all those who enter into the contract with the treaty such as clients, customers, beneficiaries, suppliers,

purchasers etc are bounded by the contract with laid conditions.

Such contracts before being signed up and accepted should be studied very carefully as to what effects it could bring upon in future after the treaty is terminated.

CONCLUSION:

Paramount concern must be engaged in terminating a contract. The party that wrongfully terminates a contract may have been taken into repudiated the contract. The contract report is an extremely important aspect of the treaty. It should be properly structured and inoculate appropriate information's regarding the treaty. The treaty should be able to produce good results to satisfy the expectations of the clients. The activities after the cease of treaty are also crucial. The post cease activities of the treaty are tantamount to the report of an auditor which is based on documenting all the events systematically during the different phases of the treaty. It includes the appraisal report about the income and

expenditure which helps to analyse if all went well. If not, where and what went wrong in expending. Was there a system for expending? For example- were the goods purchased in accordance with the rules of purchasing by procuring lowest comparative quotations etc? The observations on analysing how was the overall performance of the treaty, the comments on administrative performance, employees' performance etc. All the dealings during life span of the treaty were it favourable for the treaty? If not, the causes and reasons which led to the cease of the treaty are also mentioned in this report. Moreover, the treaty manager should be richly experienced to handle the various treaty problems. He should be good at handling, recording and documenting events, knowledge about the labour laws, statutory laws of both local and central, appointing employees, capable of creating and releasing contracts keeping him within the ambit of contractual rights. The breach of any law could end up with an unfavourable note for the auditor.

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