Z&Co.
الزمخشري ومشاركوه



CASE STUDY October 2026 · 4 min read

CLIENT SUCCESS · LITIGATION AND DISPUTE RESOLUTION

No work, no pay?

Saudi appellate court rejects a service provider's claim for contractual base fees during a notice period in which it performed no services

By Zamakhchary & Co (Z&Co)

90 days
NOTICE PERIOD AT ISSUE

On appeal
COMMERCIAL COURT IN DAMMAM

Dismissed in full
THE PROVIDER'S CLAIM

Contents

	Executive summary	3
01	What happened?	4
02	Why did the court refuse base fees for the notice period?	5
03	How far does the decision go?	7
04	Practical points for service contracts in Saudi Arabia	8
05	Frequently asked questions	8
06	How Z&Co can help	9

THE CASE IN BRIEF

THE SITUATION

A two-year ERP support contract with a fixed monthly base fee and 90 days' notice

Our client gave notice; the provider did no work and claimed the base fee for the full notice period

→

OUR APPROACH

Appealed the first-instance judgment

A notice period does not create a right to fees where no work is done, and the provider bore the burden of proving performance

→

THE OUTCOME

Judgment set aside; the claim dismissed in full

Commercial Court in Dammam, appeal circuit

Executive summary

Z&Co overturns judgment ordering payment of base fees for a termination notice period

Z&Co has secured a successful outcome on appeal for a Saudi industrial client before the Commercial Court in Dammam. The appeal circuit set aside a first-instance judgment that had ordered our client to pay its former IT service provider a substantial sum, and dismissed the provider's claim in full.

KEY TAKEAWAYS

1 Base fees for the notice period refused

The appeal circuit rejected a service provider's claim for contractual base fees covering a 90-day termination notice period in which it performed no work.

2 Notice period seen as transitional

The court treated the notice period as a mechanism to organise an orderly exit, not as a paid extension of the contract, reasoning that fees under a services (*muqawala*) contract are tied to services actually performed.

3 Damages, not fees

The court indicated that a provider's remedy if it considered a notice period to have been breached is compensation for proven loss under Article 107 of the Civil Transactions Law.

4 A fact-specific decision

The ruling turned on the wording of the contract and the evidence, and should not be read as a general rule.



THE SITUATION

01 What happened?

Our client, a Saudi industrial company, had a two-year contract with a software and IT support provider to maintain its enterprise resource planning (ERP) system. The provider was entitled to a fixed monthly base fee, covering on-call availability and a set number of support hours, with hourly rates for hours above that allowance. Either party could terminate on 90 days' notice.

Our client gave notice of termination as it had replaced the system. The provider performed no work after notice was given, and our client made no further payments. The provider then claimed, among other things, the monthly base fee for the full 90-day notice period.

EXHIBIT 1

From termination notice to dismissal on appeal

The contract	Notice given	The 90-day notice period	First instance	On appeal
Two years of ERP support	**Termination**	**No work, no payment**	**Claim largely upheld**	**Claim dismissed in full**
A fixed monthly base fee; either party could terminate on 90 days' notice	Our client had replaced the system	The provider performed no work; our client made no further payments	The contract treated as continuing through the notice period	Judgment set aside; the circuit decided the case itself under Article 78(3) of the Commercial Courts Law

The court of first instance largely upheld the claim, treating the contract as continuing through the notice period. Z&Co appealed on our client's behalf, arguing that a notice period does not create a right to fees where no work is done and that the provider bore the burden of proving performance. The appeal circuit accepted those arguments, set aside the first-instance judgment, decided the case itself under Article 78(3) of the Commercial Courts Law, and dismissed the claim in full.

THE COURT'S REASONING

02 Why did the court refuse base fees for the notice period?

1 The fee follows the work.

The court characterised the contract as a *muqawala* (contracting) contract for continuing services, governed by the general rules of Islamic jurisprudence and the Civil Transactions Law. It reasoned that remuneration under such a contract is linked to the agreed service actually being performed, rather than to the contract merely remaining in existence.

2 The notice period was not a paid extension.

The first-instance court had relied on **Article 105 of the Civil Transactions Law** to treat the contract as continuing during the notice period. The appellate court held that Article 105 governs the effects of rescinding a bilateral contract and does not extend a contract for the length of a notice period. In its view, the 90-day notice period was intended to regulate the termination process and give both parties a transitional period, and did not of itself create a right to fees without actual performance.

3 No services were provided.

As the provider had stopped all services once the system was replaced, the court held that no fee was due for that period.

4 The remedy was damages, if proven.

The court indicated that claims in such circumstances would be for compensation for breach of a notice period (if proven) for which the remedy is compensation for actual harm that needs to be established with evidence, under Article 107 of the Civil Transactions Law, rather than a claim for the full fee. The provider had not put forward evidence of any such loss.

5 The provider bore the burden of proof.

Applying Articles 2 and 3 of the Law of Evidence, the court held that the provider had to prove it performed services after notice was given. The first-instance court had wrongly required our client to prove a negative.

EXHIBIT 2

How the appeal circuit departed from the first-instance judgment

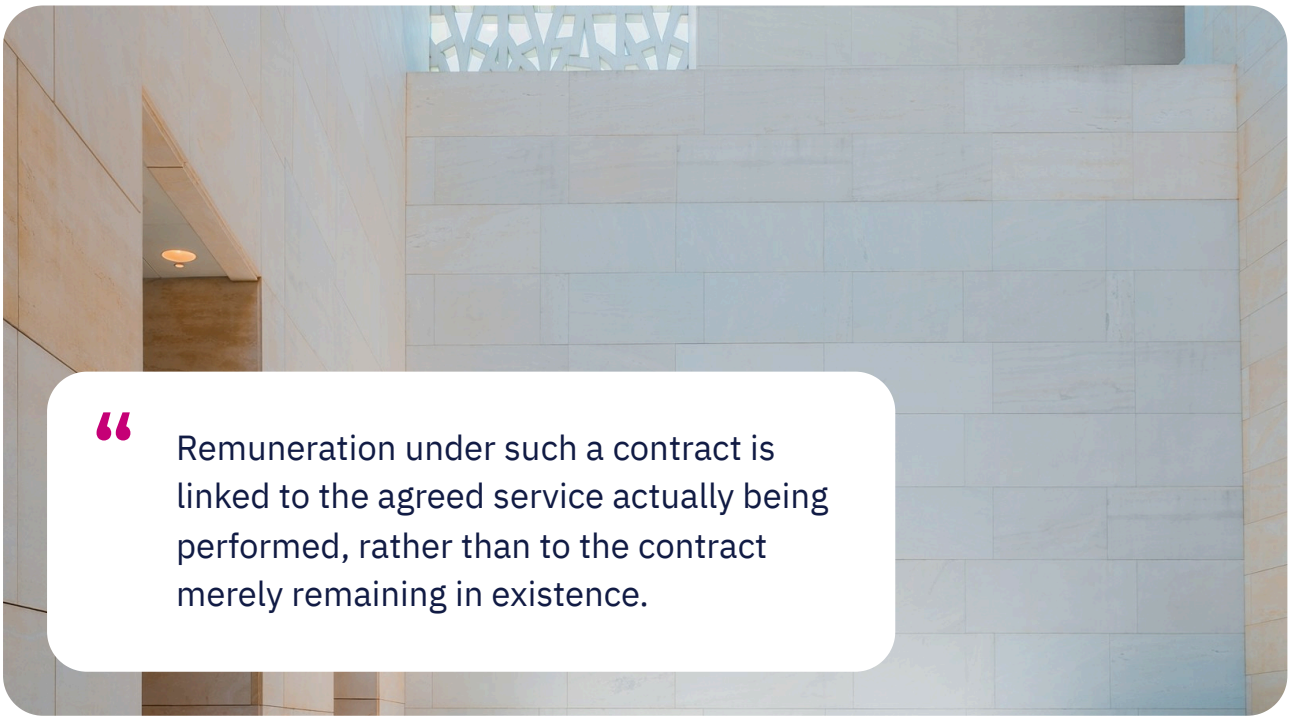
The provider claims the monthly base fee for the full 90-day notice period

FIRST INSTANCE

- The contract treated as continuing during the notice period, relying on Article 105 of the Civil Transactions Law
- Our client required to prove a negative
- **Claim largely upheld**

ON APPEAL

- A transitional period to regulate termination; Article 105 does not extend a contract for the length of a notice period
- The fee follows the work: no services were provided, so no fee was due
- The provider had to prove it performed services after notice (Articles 2 and 3 of the Law of Evidence)
- The remedy is compensation for proven loss under Article 107; no evidence of loss was put forward
- **Judgment set aside; the claim dismissed in full**



> "Remuneration under such a contract is linked to the agreed service actually being performed, rather than to the contract merely remaining in existence.

WHAT IT MEANS

03 How far does the decision go?

This is a single appellate decision on its own facts.
Several features were important:

EXHIBIT 3

What decided this case, and what could change the outcome

FEATURES THAT WERE IMPORTANT		WHAT COULD PRODUCE A DIFFERENT OUTCOME
the notice clause did not expressly say that base fees would be payable during the notice period;		An express minimum-commitment clause
the system was replaced and the provider did no work at all during the notice period;		A take-or-pay clause
the provider brought no evidence of performance or of any loss; and	VS	A standby-fee clause
the provider framed its claim as a claim for contractual fees rather than for damages.		A provider that remained available and could evidence its costs
This decision		**Could well differ**

A differently worded contract, such as one with an express minimum-commitment, take-or-pay or standby-fee clause, or a case in which the provider remained available and could evidence its costs, could well produce a different outcome.

FOR YOUR CONTRACTS

04 Practical points for service contracts in Saudi Arabia

1. **Say what the base fee pays for:** included hours, availability, or both.
2. **Address the notice period expressly:** state whether any fee is payable during notice and on what basis.
3. **Define termination payments** clearly, for example limiting them to services performed up to termination.
4. **Keep evidence:** customers should record when services stop; providers claiming fees or damages will need proof of performance or loss.

05 Frequently asked questions

Q **Can a service provider in Saudi Arabia claim base fees for a notice period if it does no work?**

In this case, the appellate court said no. It held that the 90-day notice period served to organise termination and did not entitle the provider to base fees where no services were performed.

Q **What can a service provider claim if a customer does not honour a notice period?**

The court indicated that the appropriate claim was for compensation for actual, proven harm under Article 107 of the Civil Transactions Law, rather than the full contractual fee for the notice period.

Q **Would the result be the same if the contract expressly required payment during the notice period?**

Not necessarily. The court was interpreting a notice clause that did not expressly provide for fees during notice. A clearly drafted minimum-commitment, take-or-pay or standby-fee clause could lead to a different result.

06 How Z&Co can help

This result reflects Z&Co's experience in commercial litigation before the Saudi Commercial Courts, including on appeal. We represent clients in commercial disputes and arbitration, and advise on drafting service, IT and government contracts. If you are facing a termination dispute or a claim for notice-period fees, please reach out to our disputes team on the contact details below.

CONTACTS

For further advice and information



Sarah Gonem
Partner, Litigation & Contentious (Disputes)

sarah.gonem@zamakhchary.com



Abdullatif Alharthi
Partner, Litigation & Contentious (Disputes)

Abdullatif.Alharthi@zamakhchary.com

For other questions about this article or the firm, contact us at **info@zamakhchary.com**.

Z & Co.

الزمخشري ومشاركوه

Zamakhchary.com · info@zamakhchary.com

This article is for general information only and is not legal advice. It discusses a single decision on its particular facts, and the outcome in any other case will depend on the contract terms and evidence. Client and case details have been withheld to preserve confidentiality.

© 2026 Zamakhchary & Co. All rights reserved.