Introduction

Qatar is largely a civil law jurisdiction. The general principles of civil law are therefore the basis of Qatari law. However, Qatari law is also influenced by Sharia law. Qatari civil law is codified in the Civil Code (Law 22, 2004). Article 171/1 of the Civil Code sets out the 'freedom of contract' principle. Individuals and legal entities are free to enter into any type of contract and to agree on their terms and conditions without governmental interference, provided that these contracts are not against public policy or morality. Article 172/1 reiterates the freedom of contract principle by stating: "A contract must be executed in accordance with the contents thereof and in a way that is consistent with the requirements of good faith."

Despite the freedom of contract principle, parties cannot agree to limit or exclude their tortious liability arising from an act or omission, or their contractual liability arising from a fraudulent act or gross negligence (Article 259 of the Civil Code).

Liquidated damages

As part of the freedom of contract principle recognised by Qatari law, the parties to a construction contract can agree to include a clause providing for the payment of monetary compensation or liquidated damages in the event of a specified event or default.

A liquidated damages clause reverses the burden of proof (ie, a party to a contract is not obliged to prove the extent of any damages to benefit from the clause). It is left to the defaulting party to prove that no damages were suffered by the other party as a consequence of the act or omission of the defaulting party (Article 266 of the Civil Code). A liquidated damages clause can also be subject to adjustments. Article 266 entitles the defaulting party to ask the court to reduce the liquidated damages amount:

- if the defaulting party proves that it fulfilled part of the relevant obligations under the contract; or
- if the defaulting party proves that the liquidated damages amount was grossly exaggerated.

On the other hand, Article 267 of the Civil Code entitles the injured party to ask the court to increase the liquidated damages amount:

- if the actual loss exceeds the value of the agreed on liquidated damages amount; and
- if the injured party proves that the defaulting party has committed fraud or gross negligence.

As a general rule, if the liquidated damages amount stipulated in the contract is lower than the damages suffered, the court has no power to increase the liquidated damages amount unless the defaulting party has committed fraud or gross negligence.

Decennial liability

The Civil Code provides for decennial liability under Article 711/1. The latter states:

"The contractor and the engineer shall be jointly held liable for ten years for any..."
destruction or defect, total or partial, in such buildings as they have constructed or fixed installations as they have erected, even if such destruction or defect is the result of a fault in the actual land or the employer has approved defective buildings or installations. Such liability will cover any defects appearing in the buildings or installations that threaten their stability and safety."

Decennial liability is jointly held by the contractor and engineer towards any types of works which involve the construction of immovable property in Qatar. The construction can be located on or above land (e.g., buildings, towers, schools, hospitals, theatres or bridges) or underneath it (e.g., tunnels or subways). The contractor and engineer are also held jointly liable for the types of materials used, unless the materials are provided by the employer.

By codifying the decennial liability, the Qatari legislature has aimed to protect the interests of employers which might not have the technical skills to deal with contractors or engineers. This strict liability cannot be passed onto subcontractors as stated in Article 711/3 of the Civil Code, which reads as follows: “The provisions of this article will not apply to any right of recourse the contractor may have against any subcontractors.” That said, the liability between the main contractor and its subcontractor is governed by the general principles of contractual liability.

Decennial liability cannot be waived or assigned, limited or excluded, and any contractual agreement which includes any of the above is null and void, as stated in Article 715 of the Civil Code as follows: “Any condition that seeks to exclude an engineer or contractor from the decennial liability or to restrict it is null and void.”

The period of decennial liability starts running from the date of final delivery of the works to the employer and applies in respect of any type of defect which threatens the stability or safety of the building or causes partial or total collapse of the works, unless such defects were a result of force majeure or an act of God, or unless the contractor or engineer can prove that such defects were due to the fraud or negligence of the employer.

Under Qatari law, there is no obligation on a contractor or engineer to procure what is often referred to as ‘inherent defect insurance’. Therefore, unless there is a specific contractual obligation to provide such insurance, it is not obligatory under Qatari law to provide it. However, in practice, this type of insurance coverage is common in Qatari construction contracts.

Comment

Given the freedom of contract principle in Article 171/1 of the Civil Code, the parties to a construction contract have a certain degree of flexibility in establishing an adequate liability regime through appropriate contractual provisions. However, the parties cannot disregard the provisions relating to public policy (e.g., liability arising from fraud or gross negligence and decennial liability) and morality. Despite the freedom of contract principle, a Qatari court can also adjust liquidated damages under certain circumstances.

For further information on this topic please contact Marcus Boeglin or Ramy Saleh at Lalive’s Doha office by telephone (+974 4496 7247) or email (mboeglin@laliveinqatar.com or rsaleh@laliveinqatar.com). Alternatively, please contact Melina Llodra or Georges Racine at Lalive’s Geneva office by telephone (+41 22 319 87 00) or email (mllodra@lalive.ch or gracine@lalive.ch).

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