

Decennial liability in construction contracts – recommendations for risk management

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Introduction

Qatar's construction boom has made it one of the most attractive markets for contractors, architects and engineers. The stadium and infrastructure requirements of the 2022 FIFA World Cup and the development objectives set forth in the Qatar National Vision 2030 have provided, and will continue to provide, significant opportunities for the construction industry for many years.

With opportunity comes risk, and contractors, architects and engineers should educate themselves on the Qatari regulatory environment in order to properly assess their potential financial exposure. In particular, decennial liability constitutes a significant potential liability that many construction professionals fail to evaluate properly.

Decennial liability in Qatar stems from mandatory provisions of law that impose strict liability on contractors and design professionals for a 10-year period following delivery of the works. These provisions govern the scope of decennial liability and its allocation among contractors, architects and engineers.

Statutory environment

Articles 711 to 715 of the Civil Code provide the statutory framework for decennial liability in construction contracts.

Article 711

Article 711 imposes joint strict liability on contractors, architects and engineers for any collapse or defect, either in whole or in part, of the buildings or other fixed structures constructed and designed by them. Liability attaches even if such collapse or defect arises from a defect in the land itself or the employer has authorised such defective buildings or structures. For example, a contractor building a bridge would be liable under decennial liability if, nine years after it was delivered, the bridge developed a defect as a result of variations ordered by the employer. If the intended lifespan of the building or structure is less than 10 years, the liability period is reduced to the intended lifespan. This liability cannot be passed on to subcontractors.

Article 712

Article 712 provides that if the work of the architect or engineer was limited to the design of the building or structure, they are strictly liable if the collapse or defect is a result of the design. They are not liable if the collapse or defect occurs as a result of the method of construction and execution. However, if the employer assigns the architect or engineer to supervise the execution of the works, they remain strictly liable for any collapse or defect that occurs as a result of the supervised works.

Article 713

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Article 713 provides that the contractor is not liable for any collapse or defect that occurs as a result of the design, provided that the architect or engineer was not employed by the contractor.

Article 714

Article 714 sets the statute of limitations for claims and provides that an action for liability is prescribed three years from either the time of the collapse of the building or structure or the detection of the defect.

Article 715

Article 715 provides that any provision that discharges the contractor, architect or engineer from decennial liability is void, as is any provision that limits such liability.

Implications

Contractors, architects and engineers should be aware of a number implications of decennial liability in Qatar:

- In order for a claim to prevail, the employer need only establish that there was a collapse of the building or structure, whether in whole or in part, or that there is a defect which threatens its stability. 'Collapse' and 'defect' as provided in Article 711 are not defined in the Civil Code, and disputes involving decennial liability are likely to be centred around the interpretation of these terms.
- Contractors, architects and engineers are obliged to take on the geotechnical risk of a project. Construction professionals cannot contract out of this risk, as any such provision would be void.
- Since decennial liability is imposed regardless of negligence or contractual breach, professional liability insurance and other insurance coverage may not cover decennial liability. Decennial liability insurance is not mandatory under Qatari law, although it is commonly required in Qatari construction contracts. Proper decennial liability insurance can be expensive and burdensome, as insurers may demand the right to be involved in the execution of the works.
- Construction professionals should be aware that they retain decennial liability even if the collapse or defect was the result of instructions provided by the employer.
- When taking into account the statute of limitations, contractors, architects and engineers can face claims up to 13 years following delivery of the works.

Recommendations

It is recommended that construction professionals in Qatar:

- establish a clear allocation of tasks and responsibilities in the project among contractors, architects and engineers;
- assess their exposure to decennial liability (design, execution or both) based on their project responsibilities;
- ensure that their insurance policies cover them for decennial liability for a 13-year period from delivery of works, or for the intended lifespan of the works plus three years, whichever is shorter;
- exercise caution when relying on geotechnical investigations and surveys provided by the employer, as they retain the risks of any undiscovered subsurface conditions. Where possible, contractors, architects and engineers should conduct independent and geotechnical investigations in order to properly mitigate this risk; and
- review, assess and potentially refuse instructions from the employer that could give rise to defects or compromise the long-term stability of the building or structure.

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