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The New Civil Transactions Law in Saudi Arabia - Contracts & Agreements

Saudi Arabian Civil Transactions Law promulgated under Royal Decree No: D/191 dated 29/11/1444 H. (18 June, 2023) which will come into effect on 21 December, 2023 can be referred as Civil Code.

Contracts & Agreements under 'Civil Transactions Law or Civil Code – 1444 H.'

Introduction:

Civil Transactions Law of Saudi Arabia that has codified the principles and rules covering civil transactions will come into force on 21 December, 2023. This note summarizes and comments on major provisions related to formation, validity and termination of contracts.

Pillars of Contract:

Firstly, the Civil Transactions Law reiterates the pillars of contract, the essential components without which no contract can be considered as legally valid, enforceable and invocable.

The Law prescribes in detail the conditions related to offer and acceptance. One of the main requirements for offer and acceptance to be valid is consent by persons having legal capacity to enter into contract and such intent is to be explicitly expressed.¹ While expression of intent could be verbal or in any understandable sign or through an actual deed, unless otherwise stipulated under any statutory provision or the nature of the underlying transaction² Although an offeror may retract its offer before the acceptance is expressed; however, in case the offer did not have a fixed term, the offeror will be obliged to notify the person to whom the offer was addressed; otherwise, the offeror would be liable to indemnify the accepting party for damages sustained by the latter.³ The offer shall be deemed expired upon expiration of term or retraction by the offeror or being declined implicitly or explicitly by the person to whom the offer was made. Any amendment included in the acceptance shall mean that the person has declined the offer and proposed a new offer or counteroffer⁴ Generally speaking, silence shall not be construed as acceptance; however, if there is a former dealing between the parties and if the offer is connected to such dealing, the silence will be considered as acceptance.⁵ The Law provides that negotiations between parties will not oblige parties to enter into contract; however, termination of negotiation in bad faith or lack of seriousness would entitle the party sustaining damages to seek compensation.⁶

The law also enables parties to have a framework agreement determining the basic terms

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1. Article 32
2. Article 33
3. Article 35
4. Article 36
5. Article 37 and 38
6. Article 41

governing the contract that the parties will execute and the same shall be deemed an integral part of the contracts. Furthermore, reference to provisions of any standard document or specific rules or other instructions shall also be deemed an integral part of the contract.⁷ It goes without saying that such referenced instruments might not have been concluded between the same parties.

Invalidation of Contract:

The Law allows a party to request invalidation of the contract if that party had made a fundamental mistake without which it would not have given consent to the contract provided that the other contracting party too committed the same mistake or had been aware of the mistake or could have easily detected the mistake. However, a mere material mistake in calculation or text shall not affect the validity of the contract.⁸

While allowing parties to request invalidation of a contract if the same was made under force or coercion, the Law provides for courts to invalidate a contract or lessen the aggrieved party's obligations or increase the other party's obligations if a contracting party had taken advantage of an apparent weakness or a pressing need of the other contracting party.⁹ Similarly, in cases of standard form contracts containing unfair conditions, the Law enables courts to either amend such unfair conditions or relieve the party having the inferior bargaining position in accordance with the principles of justice. Any agreement to the contrary shall be considered as null and void.¹⁰ This way, the Law protects the rights of parties that are weak or might have entered into a contract due to coercion or certain pressing need.

Provisions for invalidation request on account of injustice are not at par with the provisions related to invalidation due to coercion. Besides, such an invalidation cannot be made merely on the grounds of injustice and such request shall be determined on the basis of the customary practices.¹¹

While existence of an invalid condition will not invalidate the entire contract, yet the Law provides that if the party requesting invalidation proves that it would not have consented without that particular condition, the contract might be held invalid in its entirety.¹² Moreover, any contract whose underlying object is illegitimate shall be null and void.¹³

Any request for invalidating a contract shall not be heard after the lapse of one year following the date of becoming aware of the reason for invalidation and in all cases, no request for invalidation of the contract shall be entertained after the lapse of ten years from the date of signing of the contract.¹⁴

Like the effect of termination of contract before its expiration, in cases of invalidation or invalidity of the contract, the parties shall be restored to their original positions before the contract was made and if such restitution were to be not possible, compensation may be awarded.¹⁵

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| 7. Article 45 and 46 | 12. Article 74 |
| 8. Article 57 and 59 | 13. Article 75 |
| 9. Article 67 and 68 | 14. Article 79 |
| 10. Article 96 | 15. Article 82 |
| 11. Article 69 | |

Effect of Contract and Termination of Contract:

Once validly executed, the contract shall not be amended or terminated except by a mutual agreement or under a statutory provision. The rights resulting from the contract shall ensue without being contingent upon payment or anything unless a statutory provision stipulates otherwise.¹⁶

The law expands the scope of contract to include all requirements as prescribed by statutory provisions, customary practices and the nature of the contract.¹⁷ In fact, obligations created under customary practices are considered as enforceable as obligations prescribed under a legal provision.¹⁸

While a contract may be rescinded in whole or in part by mutual agreement, the Law enables parties to enter into a contract with the option to withdraw therefrom provided that the other party is notified of the same within the period stipulated in the contract.¹⁹

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16. Article 94

17. Article 95

18. Article 720 – Rule 3-4

19. Article 106