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The New Civil Transactions Law in Saudi Arabia - Compensation for Damages

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.

Compensation for Damages under 'Civil Transactions Law or Civil Code – 1444 H.'

Introduction:

Continuing the process of codification of laws and regulations with a view to have clarity vis-à-vis application and interpretation of different situations, conditions and circumstances by all parties including the judiciary, Saudi Arabia has promulgated Civil Transactions Law, the “Law” which will become effective on 21 December, 2023.¹

The Law will be applicable even to incidents, contracts and arrangements that were entered before the Law would become effective, with a few exceptions.²

Compensation for Damages:

The Law reiterates the principle of making good the damages sustained by any party and extends this principle to situations where the parties have not agreed in advance in such regard or do not have any contract as well as incidents and acts of omission that were not anticipated.

Wrongful Acts:

Any wrongful act, causing any harm to others, shall render the person who committed the act liable for damages. However, it exempts the person from any liability if the act was committed to defend himself, his property or honor provided that the self-defense did not exceed the necessary limits. Similarly, if the damage was caused by a person in order to avoid more serious damage to himself or others, the person will not be held liable for damages save to the appropriate extent determined by the court.³

Moral Damage:

One of the important issues, which was not dealt so clearly earlier, relates to compensation for a moral damage. This provision includes psychological damage sustained by a person as a result

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1. Royal Decree No: (D/191) of 1444 H. dated 29/11/1444 H. (18 June, 2023)

2. Fifthly of Cabinet Resolution No. 820 of 1444 H. approving the draft of the Law

3. Article 123 and 124 of the Law

of offending the person's body, freedom, honor, reputation and social standing. The courts are mandated to assess moral damages and award appropriate compensation.⁴

Quantification of damages:

As far as quantification of compensation is concerned, the Law provides for compensation that should be adequate or sufficient to remove the damage in full by restoring the aggrieved party to its possible or supposed pre-damage position. Continuing with the principle of fairness, the Law provides that the compensation should be proportional to the losses sustained and profits lost by the aggrieved person as a direct result of the wrongful act and the aggrieved party was not able to avoid it by making reasonable efforts expected of a prudent person.

Generally speaking, the compensation will be assessed in terms of monetary value and the courts may, according to circumstances, award compensation in-kind.⁶

Statutory Limitations:

The claims for compensation for damages will not be heard after lapse three years following the date on which the aggrieved party became aware of the damage and the identity of the person liable for it.

Damages in Lieu of Performance:

The Law requires the obligor (the person required to fulfill his obligations) to provide for damages in case the specific performance became impossible or delayed to the extent that it became useless for the person towards whom the obligation was due or there were damages sustained by that person due to delay in performance by the obligor. However, the damages will not be awarded if the obligor proves that the non-performance was due to a cause beyond the obligor's reasonable control.⁸ While the Law allows parties to agree on relieving the obligor from damages arising from non-performance or delayed performance, yet, it disallows any agreement for relief from liability arising out of a wrongful act.⁹

Liquidated Damages:

This component in any contract is always crucial to ensure that the parties will perform their obligations in a timely manner and the party failing to perform its obligations will be liable to compensate the party sustaining damages. While enabling parties to agree about liquidated damages in advance in the subject contract or a supplementary agreement, it does not require any notices for the damages becoming due under the contract.¹⁰ However, in the absence of any agreement related to liquidated damages, the damages will become due only after a notice is served upon the obligor.¹¹

Notably, the Law stipulates that the liquidated damages will not become due if the obligor proves that the obligee did not sustain any damage. Further, the courts will have the power to reduce the amount of the agreed liquidated damages if the obligor establishes that the liquidated damages were overestimated. Conversely, the courts may increase the liquidated damages in proportion to the damage sustained if the aggrieved party proves that the damages have

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4. Article 138

5. Article 137

6. Article 139

7. Article 143

8. Article 170

9. Article 173

10. Article 178

11. Article 175

exceeded the agreed liquidated damages as a result of fraud or gross lapse on part of the obligor. The Law specifically disallows any agreement to supersede or circumvent the provisions related to liquidated damages.¹² If there is no agreement in regard of liquidated damages, the courts will assess the same in accordance with the provisions related to compensation for damages.

Conclusion:

Firstly, the Law has clearly established the rights of the parties affected or harmed by any wrongful act as well as restricts parties from benefitting from any falsified or exaggerated claim against an alleged wrongful act.

Secondly, the Law has set the principles for determining, assessing damage and awarding compensation in monetary terms or in-rem.

As the provisions will be applicable broadly covering all personal affairs, civil affairs and commercial affairs, the administration of justice vis-à-vis wrongful acts and damages will become clear, transparent and unified.

It is also important to note that compensation will be subject to determination whether or not the aggrieved party exerted reasonable efforts to avoid the damages. Moreover, the Law places obligation on obligor to prove that the agreed liquidated damages are in excess of the actual damages sustained by the obligee. Similarly, it will be incumbent upon to the obligee to establish that the damages exceeded the agreed amount due to fraud or gross errors on part of the obligor.