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The New Civil Transactions Law in Saudi Arabia - Sales Contracts

Civil Transactions Law of Saudi Arabia (Law) which has codified the principles and rules covering civil transactions will come into force on 21 December, 2023. This note highlights major provisions related to sales contracts or sale purchase transactions.

Introduction:

Sale purchase agreements are common for numerous transactions covering movable and immovable properties. The Civil Transactions Law deals with issues surrounding the sale purchase transactions in a greater detail and fill in the gaps that emanate either due to silence by parties with regards to such transactions or ambiguities in contracts.

Conditional Sale:

The Law deals at length with the situation arising from transactions that provide for deferred payments, price determination based on the prevailing market rate and completion of transaction on fulfilment of conditions etc. For instance, if the sale of property is based on sample, the Law requires the actual property being sold to be identical to the sample and in case the sample is lost or destroyed while being in the possession of any of the contracting parties, the statements of the other party will prevail unless proven otherwise by the party which had the possession.

The Law enables conditional sale of property, including sale made on condition of trial by the Purchaser during a specific period of time and if the period is not agreed, the Law requires the same to be determined on the basis of usual trial period and provides that the Purchaser shall have the right to terminate the sale even without trying the property provided that the seller is notified of termination. However, if the Purchaser waives his right with respect to termination explicitly or implicitly or the trial period expires or the sold property perishes or is damaged by the act of the Purchaser, the sale shall be deemed completed in consideration of the price agreed between the parties.

One of the important factors while entering into a sale purchase agreement is determination of price. The Law stipulates that the price should be based on a valid criteria and that includes determination of price based on the prevailing market price at the time and place of the sale. However, if the parties fail to set a price, the sale will not be considered invalid if the circumstances show that the parties intended to adopt the current market price. While enabling for deferred payment of the price, the Law allows transfer of property to the purchaser before the payment of price, if the seller agrees for such transfer. At the same time, the Law allows the seller to retain the property until he receives the purchase price even if the purchaser has offered a collateral or security. However, in all cases, if the seller receives the price, the purchaser's ownership of the sold property shall be deemed effective as of the time of execution of the sale.

Seller's and Purchaser's Obligations:

The Law has set several obligations upon the seller and the purchaser. The seller is required to provide two specific warranties. Firstly, the seller is required to warrant that the purchaser will not encounter any inconvenience in the course of benefitting from the property in whole or part and warrant that no third party's right is involved in the property. Secondly, the seller is also obliged to provide warranties to the purchaser that the property is free from any defect that would diminish the value or usefulness for the intended purpose. The purchaser shall be entitled to either request invalidation of the contract or claim from the seller price difference, if a defect appears in the property. However, the seller will not be obliged to provide warranties if the purchaser was aware of the defect at the time of sale or he could have discovered the defect if he had carefully inspected the property, unless the seller warranted that the property is free from a specific defect or willfully concealed the defect.

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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

Besides, obliging the purchaser to inspect the condition of the property as soon as practically possible, the Law also places an obligation upon the purchaser to notify to the seller any defect within a reasonable time and if he fails to do so, the purchaser shall be deemed to have accepted the property with its defects. The parties may also agree to absolve the seller of compensation for any defect or agree on mechanism of reduction or increase in compensation.

Notably, the law provides for a statute of limitation of (180) days for seeking compensation for damages resulting from a defect in the property unless the seller has warranted the same for a longer period. However, this limitation will not be valid if it is proven that the concealment of the defect was a fraudulent act on part of the seller. Therefore, it would be incumbent upon the purchaser to ask for a longer period for seeking compensation against any defect if the purchaser deems it apt.

Regardless of whether or not the property was formally handed over to the purchaser, the purchaser would be deemed to have received the property and be obliged to pay the price if the sold property is destroyed or damaged while it was in the possession of the purchaser. However, if the damage occurs prior to the handover to the purchaser due to the act of the seller or a third party, the purchaser shall be entitled to cancel the transaction and claim damages against the party that caused the damage.

The Law elaborates on disputes raised by third parties over the title of the sold property and places a condition on the purchaser to notify the seller about any such claims in a timely manner to enable the seller to defend and intervene; otherwise, the purchaser will lose his right to seek compensation against the seller. However, if the purchaser in good faith acknowledges the right of a third party or makes a compromise with the third party, he will be entitled to compensation provided that he had notified the seller promptly.

If the parties had agreed that there shall be no sale if the purchaser fails to pay the price on the fixed date, the sale shall be invalidated at the discretion of the seller without any notice to the purchaser, unless otherwise agreed between the parties.

Conclusion:

While the Law provides for safeguards and protection for both purchasers and sellers entering into sale purchase transactions and contracts, it also provides greater flexibility for them to agree for greater warranties than provided in the Law as well as seek relief from warranties and guarantees. It is important that the parties review all of the issues surrounding their transaction to ensure that there is a clarity in all respect as well as they are well protected against any future event.

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