The Saudi Arabian Civil Transactions Law (the “Code”), enacted on 19 June 2023 by Royal Decree M/191, has now been published in the Saudi Arabian official gazette “Umm Al-Qura” and comes into force around 16 December 2023.

Prior to the enactment of the Law, and unlike most other countries in the region which have a civil code, civil transactions in the Kingdom were governed by traditional Islamic law.

The Code governs both civil and commercial transactions and addresses an extensive range of matters concerning contracts, where a matter is not addressed, 41 general rules of interpretation are also set out with the principles derived from Sharia law acting as the default position.

We set out below our key takes from the Code at this stage.

1. Binding force of contracts
The Code confirms the essential elements of a binding contract and recognises that the contract is the law of the parties.

The Code further confirms that “unless a statutory text stipulates otherwise, the contract parties must fulfil what the contract requires of them”.

This is similar to provisions seen in other civil jurisdictions in the Middle East, which recognise that the parties are bound by the terms of the contract they have agreed.

2. Contract interpretation
Consistent with other Middle Eastern civil codes, the starting position in contract interpretation is that if the language of the contract is clear, then it is not permissible to deviate from it and the parties are therefore bound by the terms.

If, however, there is room to interpret the contract, then the common will of the contracting parties must be considered.

This is guided by custom, the circumstances of the contract, the nature of the transaction, what is customary in dealings between the two contracting parties, their condition, and the trust and integrity that must exist between the contracting parties.

As a consequence, pre-contract correspondence can be considered to find the common will of the parties in order to resolve ambiguity.
The Code provides that in the event of ambiguity, doubt is interpreted in the interest of the party who bears the burden of the obligation or the condition.

3. Good faith

Similar to other civil jurisdictions in the Middle East, the Code also states that parties must execute their obligations in a manner that is consistent with the requirements of good faith.

4. Unlawful exercise of rights

The Code explains that the exercise of a right shall be unlawful if the use is intended only to harm others or if the benefit from its use is completely disproportionate to the harm it causes others.

The Code will allow the court to prohibit the enforcement of terms agreed in the contract where abuse of a right can be shown.

A party that insists that unfair and unreasonable contractual terms are adopted is therefore left with real uncertainty as to whether or not such terms will be upheld if the matter becomes contentious.

5. Compensation

The Code includes specific provisions concerning damages which are to return an innocent party to the situation in which it would have been in had the damage not occurred, as well as a test concerning the recovery of compensation and damages.

Furthermore, there is an element of foreseeability for the recovery of damages.

6. Limitations of liability

Under the Code, it is permissible to exempt liability for damage caused by delay or breach of contract unless it is due to fraud or gross error.

However, and similar to other jurisdictions, it is not permissible to include an exemption from liability which causes harm to a person.

7. Liquidated damages

The Code addresses liquidated damages as a form of remedy where a party is in default or in delay.

In line with other Middle Eastern civil codes, the Code provides that the parties may fix compensation in the form of liquidated damages in advance and set these out in the contract or in a subsequent agreement.

On request of the paying party, the court may reduce this compensation where it can be shown that the agreed compensation was exaggerated or the original obligation to which the liquidated damages apply was met.
Conclusion

The introduction of the Code is a welcomed reform that is in harmony with Saudi Arabia's Vision 2030 and the other multiple reforms aimed at modernising the Kingdom's legal framework.

The principles contained in the Code provide potential transparency, efficiency, and stability in transactions in the Kingdom and will go a long way in enhancing confidence in dispute settlement in the Kingdom generally.

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