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Design risk, time for completion and ground conditions risk in the GCC

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Introduction

GCC Civil Law position on

- Design risk
- Time for completion
- Ground conditions risk

Concentrating on the position in the UAE and Qatar



KSA excluded from the ambit of this discussion

How is it applied?

UAE Federal Supreme Court

- In the absence of any agreement to the contrary, there is an implied obligation on the contractor to prepare a design that avoids any serious defects.
- The contractual obligation arising from a *Muqawala* contract is an "obligation to achieve a result"

Federal Supreme Court Case No 336 and 470 of Judicial Year 21
dated 20 March 2001



Design risk - UAE

In summary:

- unless the parties' contract provides to the contrary, the standard of care imposed is that of **fitness for purpose**.
- the design prepared by the contractor must be such that the structure, when complete, is fit for its purpose



Extension of Time – UAE & Qatar

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No specific provisions for extending the time in either jurisdiction.

Parties rely on other provisions of the Civil Code to modify the rights and obligations in respect of any failure to complete the work on time.



Liquidated Damages – UAE

*“Delay fines clauses contained in construction contracts are, in substance, no more than **an agreed estimate** of compensation that would become due in case of the contractor’s failure or delay to perform its contractual obligations. According to Article 390 of the Civil Code, it is not sufficient - for the agreed compensation to become due - to establish the element of fault alone. It should be established, in addition, the element of loss which is suffered by the other party. If the contractor succeeds in establishing the absence of loss, **the agreed compensation should be repudiated.**”*

Federal Supreme Court No 25 of Judicial Year 24, dated 1 June 2004

Impossibility - Qatar

Article 148

"If the object of the obligation is impossible in itself, the contract is null and void".

Article 188

"In contracts that are binding on both sides, if the execution of the obligation of one of the parties to the contract becomes impossible for some external reason in which he played no part, this obligation terminates and the obligations that correspond to it terminate with it, and the contract is annulled automatically."

Article 402

"The obligation terminates if the debtor proved that performance of it has become impossible for him for an external cause in which he has played no part."