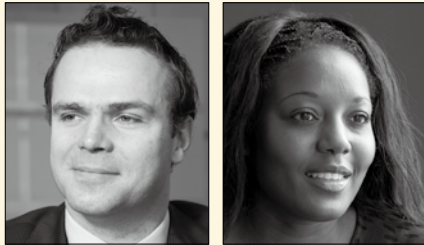


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Construction in Saudi Arabia: Decennial liability



Ben Cowling and Diana Hudson

Saudi Arabia remains a beacon for construction projects, with an estimated US\$600 billion in construction projects planned or underway*. In this article, we explore the principles of decennial liability under Saudi law and also discuss the extent to which insurance coverage is available to cover this risk.

Decennial liability is a strict liability obligation applied to construction projects whereby the contractor and/or the design consultant will be held liable (in the absence of any evidence of breach of contract or negligence) to compensate an owner or employer in the event of defective works in built structures. The liability typically lasts for ten years after project completion.

Saudi law is based on the Shari'ah (Islamic law). In contrast to other Middle East countries, Saudi Arabia has not enacted a civil code setting out the general principles either applying to commercial dealings or explaining when parties will be liable to each other for civil wrongs (i.e. torts) or under contract. Saudi Arabia does, however, have a comprehensive Government Tenders and Procurement Law (GTPL) that codifies the process for appointing contractors on government projects and the liabilities that arise from such appointments.

Decennial Liability in Saudi Arabia is governed by the GTPL, however, as its name suggests, the GTPL only applies to government contracts. Features of decennial liability under the GTPL are as follows:

- The trigger event is the partial or total collapse of the built structure;
- Liability arises where the defect occurs within ten years of completion / handover;
- Liability is triggered if the collapse is due to a construction defect;
- On its face, only contractors are liable and not consultants, however this will depend on how the GTPL is interpreted in a particular case;
- The contracting parties may agree to the built structure having a life span of a shorter period, in which case liability attaches for the duration of the life cycle.

Given the value and complexity of construction projects, contractors and consultants should ensure they are aware of specific decennial liability laws to determine their exposures

In respect of projects not subject to the GTPL, no codified decennial liability provision applies. Notwithstanding this, there is no concept of limitation periods in Saudi Arabia, therefore the contractor and/or consult will remain exposed to claims arising from structural defects decades after handover (albeit not on a strict liability basis).

Turning then to the availability of insurance, as a rule, decennial liability falls outside the scope of the standard cover provided by Contractors' All Risks (CAR) and Professional Indemnity (PI) insurance. As such, decennial liability is generally uninsured unless particular cover has been obtained.

More recently, professional liability insurers have begun offering 10 year Extended Reporting Period (ERP) extensions to professional liability policies that, subject to the wording of the policy, may provide additional coverage for decennial liability claims by third parties. However, typical PI cover based on a "negligent act, error or omission" style wording would probably not cover decennial liabilities, whereas a broader civil liability type wording might do so.

In Saudi Arabia (and the Middle East generally) insurance coverage available for inherent defects and decennial liability is generally limited and, where available, would be expensive as a result of the need for insurers' heavy involvement in monitoring the design and construction process. That said, parties would be wise to balance the costs of obtaining such insurance against the long-term risk which could be considerable.

Given the value and complexity of construction projects, contractors and consultants should ensure they are aware of specific decennial liability laws to determine their exposures. In particular, there are significant differences between risks arising from decennial liability in Saudi Arabia, in comparison to other regional markets (such as the UAE and Qatar). Contractors and consultants should also, so far as possible, seek to tailor their insurance needs accordingly as a means to limit having to pay a decennial liability claims out of their own pockets.

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* Deloitte, *GCC Powers of Construction 2012 – Construction sector overview*

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