

The logo for K&L GATES, featuring the text "K&L GATES" in white, uppercase letters on a solid orange rectangular background. This logo is positioned in the upper left corner of the slide, which has a background of a blue bokeh effect with light spots.

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Decennial Liability in Qatar

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Decennial Liability in Qatar - Introduction

- A legal concept that is foreign to English law but common amongst the majority of Civil Law systems, particularly in the GCC
- Concept originated in the French Civil Code
 - much of the case law on decennial liability derives from France
- Essentially decennial liability is liability for inherent defects
 - inherent defects are defects that are hidden / not obvious at the time of construction
- Generally, **strict liability** 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

Decennial Liability in Qatar – Introduction (2)

- Liability on a joint and several basis
- Liability is for 10 years from “handing over” (i.e. completion) of the works
 - Repairs – may restart the 10 year period
- Prescribed period is 3 years from discovery of defect – could mean a 13 year period to bring a claim
- Insurable?
 - Not ordinarily covered by PI insurance or CAR insurance
 - Not compulsory to carry insurance in Qatar (unlike in France or Egypt)
 - Not common practice to take out decennial liability insurance

The image features a background of blue bokeh light effects. A solid orange horizontal band is positioned in the center, containing the text.

Qatari Civil Code

Decennial Liability: Qatar

- Decennial liability is implied into construction contracts by statute and applies to both the contractor and the designing engineer

Article (711) of the Civil Code

“The contractor and the engineer shall be jointly liable for any collapse or defect, either in whole or in part, of the buildings or other fixed structures constructed by them, even if such collapse or defect arises from a defect in the land itself or the employer has authorized such defective buildings or structures. Such liability shall include any defects that may appear in the buildings or other structures which may threaten the safety and stability thereof . . .

Decennial Liability: Qatar (2)

Article (711) (cont)

Where the parties intend that the buildings or structures remain on the land for less than 10 years, liability shall be valid during any shorter period. In all events, the term shall commence from the date the work was [handed over].

The provisions of this Article shall not apply to any right of recourse by the contractor against the subcontractors.”

Decennial Liability: Qatar (3)

Article (712)

“Where the work of the engineer is limited to the design of the building or structure in whole or in part, the engineer shall be liable for such defects that may arise from the design but not for defects due to the method of construction and execution.*

Where the employer assigns the engineer to supervise the execution in whole or in part, such engineers shall also be liable for such defects that may arise from the method of execution supervised by him.”

** No distinction in Qatari law between the role of an Engineer and an Architect – so could apply to both*

Decennial Liability: Qatar (4)

Article (713)

“The contractor shall be liable only for defects of execution to the exclusion of defects from faulty design, unless such defects can be reasonably detected by the contractor according to professional practice

However, the contractor shall be liable for defects arising from the design if the engineer who prepared the design is employed by the contractor.”

Decennial Liability: Qatar (5)

Article (714)

“An action for liability shall prescribe after the expiry of three years from the time of the collapse of the building or structure or the detection of a defect therein.”

Article (715)

“Any provision intended to discharge the contractor or the engineer from liability or to limit such liability shall be void.”

The image features a blue bokeh background with a central orange horizontal band. The bokeh consists of numerous out-of-focus light spots in various shades of blue and white, creating a shimmering effect. The orange band is a solid, vibrant color that spans the width of the image.

Decennial Liability: Enforcement

Decennial Liability: Enforcement

- Decennial liability applies to all buildings and fixed installations constructed in Qatar
- Applicable even if the contract is governed by the laws of another country?
- Enforced by way of local courts or via arbitration
- Is there an arbitration agreement given the right exists in statute not contract?
 - Note the dispute will relate to work performed under the contract
- Can such decisions be enforced in foreign jurisdictions?

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Decennial Liability: Standard Form Contracts

Decennial Liability: Standard Form Contracts

- FIDIC
 - Does not expressly deal with decennial liability
 - Compliance with laws provision

- QP's General Conditions of Contract
 - Does not expressly deal with decennial liability
 - Compliance with laws provision

- Standard Form Consultant Appointments (e.g. FIDIC White Book)
 - Does not expressly deal with decennial liability
 - Compliance with laws provision

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Decennial Liability: Common Defects Clauses

Decennial Liability: Interaction With Common Defects Clauses

- Contractual Defects Clauses
 - Express Clause
 - Limited in application to the works performed
 - Obliges the Contractor to remedy defective work during the defects liability period only – typically 12/24 months
 - Potentially very wide application – can cover any defect
 - Not commonly found in design consultant's appointment
- Contractual Liability for defects
 - 6/12 years in the UK; 15 years in Qatar (Article 403 of the Civil Code)
 - After the DLP, only remedy against a contractor is to bring a claim for defective work
 - Not strict liability, must establish causation
 - Damages subject to remoteness test
 - Only remedy against a design consultant is to bring a claim

Questions ...



Thank you!

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