



AUGUST 2025

NAVIGATING THE SAUDI CIVIL TRANSACTIONS LAW: CONTRACTUAL REMEDIES AND DAMAGES

Saudi Arabia's ambitious Vision 2030 has sparked an unprecedented wave of "*giga projects*"—vast infrastructure projects including NEOM, New Murabba, the Red Sea Project and other notable projects as part of the country's economic diversification plans. In the context of these giga projects, a web of contracts is often formed between employers, contractors, subcontractors, consultants and others. Many of these contracts are governed by Saudi law which, therefore, makes it critical for parties to understand what remedies and damages are available to them under Saudi law as that may have an impact on how contracts are negotiated and structured, how parties manage their contracts and relationships, and how they deal with any potential disputes that arise before, during or after a project.

This article examines how the new Saudi Civil Transactions Law ("**CTL**"), which reflects Saudi Arabia's broader legal reform agenda under Vision 2030 to align its laws with international and regional standards, governs legal remedies and damages.

This article uses the terms "*creditor*" and "*debtor*" as these terms are generally used in the English translation version of CTL. In this regard, a "*creditor*" refers to a harmed party who can pursue a course of action and "*debtor*" refers to a breaching party (i.e. a party who has failed to fulfil a particular obligation).

THE SAUDI LEGAL SYSTEM

Saudi Arabia's legal system is rooted in Shariah law, which has long governed contractual and civil relationships through established jurisprudential principles. Historically, the absence of codified civil law in Saudi Arabia created uncertainty for international parties. However, in 2023, Saudi Arabia enacted the CTL, which came into effect on 15 December 2023.

The CTL codifies many principles familiar from modern contract law, while at the same time recognises the application of Shariah law, particularly where the CTL does not expressly deal with a particular matter. Article 1 of the CTL stipulates: "*...[i]n cases where none of the provisions of this Law can be applied, the General Rules provided for in the Concluding Provisions shall apply, and in the absence of a relevant general rule, the provisions derived from Sharia that are most consistent with this Law shall apply*".

That said, it is important to understand precisely how the CTL and Shariah law are interpreted and applied in contracts that are based on internationally recognised standards, and where the Saudi is the governing law of a contract.

We note that the CTL applies prospectively to contracts executed after its effective date, and to contracts executed prior to its promulgation, except when: (1) there exists a statutory provision and/or judicial principle applicable to the event that conflicts with a provision of this law and it is invoked by a party; or (2) where the limitation period for a claim started to run prior to the date in which the CTL took effect.

SPECIFIC REMEDIES AND DAMAGES UNDER SAUDI LAW

1. Specific Performance and Performance In Kind

While the express recognition of specific performance and performance in kind under the CTL is a significant development, the CTL is still relatively new, and its practical application remains subject to practical judicial application. Therefore, this is an area to watch closely as the courts apply and shape the law in practice.

At the outset, we note that Saudi law recognises the general concept of the freedom of contract and that contracting parties must perform their contract, unless it is mutually agreed otherwise. Articles 94 and 95 of the CTL support these principles and are set out below.

Article 94 states that: *“A valid contract may not be terminated or amended except by agreement or pursuant to a legal provision”*.

Article 95 further states that: *“1. A contract shall be implemented as per its provisions and in a manner consistent with good faith practices...2. A contract shall be binding on a contracting party not only in terms of its provisions, but also in relation to other requirements as prescribed by legal provisions, custom, and the nature of the contract”*.

These provisions also reflect principles of Shariah law, such as Rule 10 of the Concluding Provisions of the CTL, which states that *“[c]ontracts and conditions shall be presumed valid and binding”*.

Further, article 161 of the CTL recognises a debtor’s rights to apply for a specific performance order to compel the other side to fulfil their obligations under certain circumstances, subject to a judge’s discretion. In this regard, specific performance essentially involves obtaining an order for the other party to perform a certain obligation and it is typically applied where monetary damages are deemed inadequate, such as in cases involving the sale of specific real estate property.

Article 161 of the CTL states: *“A debtor shall perform his obligation when it becomes due; if he fails to do so, such obligation shall be enforced against him provided the legal requirements for enforcement are satisfied”*.

The combined application of the principle of freedom of contract and Article 161 of the CTL means that a debtor’s failure to fulfil its contractual obligations may entitle the creditor to seek, and potentially obtain, a specific performance order under Saudi law. For example, an employer could apply for—and be granted—an order compelling a contractor to carry out the agreed work.

However, article 161 of the CTL empowers Saudi courts to decline issuing an order for specific performance if *“the legal requirements for enforcement”* are not met. The CTL does not provide an exhaustive list or a precise definition on what constitutes these legal requirements. Instead, the assessment is left to the discretion of the court in light of the specific facts and circumstances of each case. This approach reinforces the principle that specific performance is not granted automatically, and it is subject to judicial discretion. This approach is broadly consistent with the English common law position.

A creditor also has the right to request performance in kind provided that the conditions of Article 164 of the CTL (as set out below) have been notified, namely that: (1) the debtor has been duly notified of the performance in kind; (2) the performance in kind is capable of being performed; and (3) such performance is not unduly burdensome on the debtor. In deciding whether to compel performance in kind, a court must carry out a delicate balancing exercise which involves weighing the burden on the debtor against the harm likely to be suffered by the creditor. This is a fact-sensitive inquiry, so Saudi courts have wide discretion in determining whether such relief is appropriate in each case.

Article 164 of the CTL states that: *“1. A debtor shall, after being notified, be obligated to perform his obligation in-kind if possible...2. If a performance in-kind is onerous to the debtor, the court may, upon his request, limit the creditor's right to compensation if this does not entail severe harm to the creditor”.*

Moreover, article 167 of the CTL provides for cases where a contractual obligation consists of performing a particular action—i.e. an obligation *“to do”* something. These rules are especially relevant in contracts for services and works, or any obligation requiring a party’s active performance. Article 167 of the CTL provides that:

“If the obligation is the performance of an action, the following provisions shall apply:

- a) If the agreement or the nature of the action requires that the debtor perform the obligation himself, the creditor may refuse performance of the action by any other person.*
- b) If the debtor fails to perform his obligation, the creditor may petition the court for permission to perform the obligation at the debtor’s expense if such performance is possible. The creditor may, in urgent circumstances, perform such obligation at the debtor’s expense without the court’s permission.*
- c) A court ruling shall stand in place of the performance of the obligation if the nature of the obligation so requires”.*

Article 167 of the CTL reflects three key principles set out below:

- **Personal performance:** If the nature of the obligation—or the contract itself—requires personal execution by the debtor (e.g. in cases involving special skill or trust), the creditor is entitled to reject performance by any other person (i.e. the creditor can require that only the specific debtor must perform the required obligation).
- **Substitute performance at debtor’s expense:** If the debtor fails to perform its obligation, the creditor can request the court’s permission to undertake the relevant obligation itself or have the obligation performed by a third party at the debtor’s expense. In urgent cases, such as where delay would cause harm or loss, the creditor may act without a court’s approval and then seek compensation for the costs.
- **Judicial substitution:** In certain circumstances, the court may issue a ruling that stands in place of actual performance, in which case the performance would be fulfilled in specific applicable circumstances (e.g. where legal approval is required and it is granted by judicial order).

These provisions offer creditors with practical legal tools to assist in securing performance, subject to appropriate judicial oversight.

Where performance in kind of an obligation cannot occur for any reason, the creditor can seek compensation, or compensation could be awarded by a court. Article 170 of the CTL outlines that “[i]f

performance in-kind is not possible, a judgment for compensation shall be issued against the debtor; this shall include cases where performance is delayed by the debtor until the creditor no longer benefits from such performance”.

2. Termination, Restitution and Recoverable Damages

2.1 Termination for Breach

Article 108 of the CTL now recognises that a party may terminate a contract where the other side is in breach of their obligations without a judicial ruling. Article 108 states that “[a] creditor may, by agreement, have the right to terminate a contract upon the debtor’s breach of his obligations without a judicial ruling”.

However, this provision adds that, prior to termination, a creditor must notify the debtor of its intention to terminate, unless there is an agreement otherwise.

It is still unclear however, how the courts will apply this in practice.

2.2 Recoverable Damages

When contractual termination has taken place pursuant to above, Article 111 of the CTL states that the “parties shall be reinstated to their status prior to the conclusion of the contract [and] [i]f reinstatement is not possible, the court may order payment of compensation”. This provision reflects similar provisions in the civil codes of regional jurisdictions, such as Article 274 of the UAE Federal Civil Code (Law No. 5/1985) (“When a contract is or shall be rescinded, the two contracting parties shall be reinstated to their former position, prior to contracting, and in case this is impossible, the Court may award damages”) and Article 164(1) of the Qatar Civil Code (Law No. 22/2004) (“...In the cases of contract nullification and invalidity, both contracting parties shall return to their pre-contract condition, otherwise, an equivalent compensation may be adjudged”).

Under the CTL, creditors can recover compensation for financial damages suffered by them as a result of a breach of a contract. Article 136 of CTL states that “[c]ompensation shall fully cover the harm; it shall restore the aggrieved party to his original position or the position he would have been in had the harm not occurred”. While it is not clear whether restoration to the original position is ordered or the creditor is ordered to be put in the position it would have been in had the harm not occurred, the provision does state that the compensation awarded “shall fully cover the harm”.

In respect of financial damages, Article 137 of the CTL now clarifies that a creditor can recover all its loss, including indirect or consequential loss, such as lost profits, provided such loss is a natural result of the harmful act (i.e. if it was caused by an unlawful breach). A loss is a “natural result of the harmful act” if the creditor is unable to avoid the harm by exercising reasonable care as objectively (as opposed to subjectively) expected of such a person in light of all the surrounding circumstances.

The same article states that: “The harm for which a person is liable for compensation shall be determined according to the aggrieved party's loss, whether the loss is incurred or in the form of lost profits, if such loss is a natural result of the harmful act. Such loss shall be deemed a natural result of the harmful act if the aggrieved party is unable to avoid such harm by exercising the level of care a reasonable person would exercise under similar circumstances”.

Article 137 of the CTL broadly reflects other similar provisions in the civil codes of regional jurisdictions, such as Article 292 of the UAE Federal Civil Code in Law no. 5/1985 (*"Damages shall, under all circumstances, be assessed to cover the prejudice sustained and the lost profit provided it is a natural consequence of the prejudicial act"*) and Article 263 (2) of the Qatar Civil Code in Law No. 22/2004 (*"...The compensation includes the loss sustained by the creditor and the gain he lost as a natural result from the failure to fulfill the obligation or the delay in its fulfillment. The damage shall be considered a natural result if the creditor was unable to avoid it by exerting a reasonable effort"*).

Article 138 of the CTL clarifies that moral damages are recoverable, but that it relates only to natural persons. Article 138 states that: *"1. Compensation for a harmful act shall include compensation for moral harm"*.

The same article clarifies that *"moral harm"* includes *"physical or psychological harm sustained by a natural person as a result of an infringement on his body, freedom, honor, reputation, or social standing"*.

Under Shariah law, the application of moral damages is not a standalone remedy and depends on there being a material loss for it to be applicable, i.e. moral damages are not awarded in isolation; rather, they stem from a material loss, subject to a court's assessment in each case.

2.3 Limitation of Liability/Compensation

Furthermore, Article 180 of the CTL clarifies the limits of contractual liability with respect to compensable damages. It establishes that, unless fraud or gross negligence is involved, a debtor is only liable for damages that were foreseeable at the time the contract was concluded. This reinforces the principle that remote or unforeseeable damages are not generally recoverable. Article 180 of CTL states: *"If the amount of compensation is not specified in a contract or a legal provision, it shall be determined by the court in accordance with the provisions of Articles 136, 137, 138, and 139 of this Law. However, if the obligation arises from the contract, the debtor who has not committed any act of fraud or gross negligence shall be liable only for compensating harm that could have been anticipated at the time of contracting"*.

This provision generally aligns with established principles in many civil law and common law jurisdictions, which limit liability to foreseeable harm, save for exceptional circumstances related to fraud or gross negligence.

Article 173 of the CTL recognises that a party may limit their liability for failure in performing their contractual obligations unless it is caused by fraud or gross negligence or other harmful act (a tort). The same article provides that: *"1. An agreement may be made to exempt a debtor from paying compensation for harm arising from his failure or delay in performing his contractual obligation, unless it is caused by an act of fraud or gross negligence by the debtor...2. No agreement may be made to exempt a party from liability for a harmful act"*. It is to be seen how such provisions are applied in practice in the Saudi courts or whether the Saudi courts would opt to compensate for the actual loss and damages incurred, irrespective of the existence of a limitation of liability provision.

2.4 Burden of Proof

To obtain compensation, a creditor must prove its loss and damages as stipulated under Article 2 (1) of the Evidence Law, promulgated by Royal Decree No. D/43, which provides that *"[a] claimant shall have the*

burden of proof, and a defendant shall have the burden of defense". All elements of contractual liability, namely breach, causation and damages, must be proven by a creditor.

The requirement for causation generally ensures that a debtor's liability is contingent upon a direct causal connection between the debtor's breach of contract or a tortious duty and the consequent harm, so losses which are a direct result of the debtor's breach of contract or a tortious duty are recoverable.

2.5 Impossibility to Perform

Furthermore, if a contract becomes impossible to perform beyond the debtor's control, the contract may be automatically terminated under Article 110(1) of the CTL. Otherwise, if a part of a contract becomes impossible to perform, the obligation in that relevant part would be extinguished in certain circumstances. In this scenario, the creditor may demand the termination of the contract, but the court may dismiss any petition for termination if the part that is impossible to perform is "*insignificant*" to the broader applicable obligations in a contract. Article 110 of the CTL provides that:

"1. If the performance of an obligation in a bilateral contract becomes impossible for a reason beyond the debtor's control, said obligation and the corresponding obligation shall be extinguished, and the contract shall be automatically terminated...2. If only part of the obligation is impossible to perform, the obligation shall be extinguished only for such part and its corresponding obligation. Such provision shall apply to temporary impossibilities in time-based contracts. The creditor may, in either case, demand termination of the contract. The court may dismiss the petition for termination if the part is insignificant compared to the obligation".

3. **Liquidated Damages**

3.1 General Rule of Application

Many contracts contain a liquidated damages provision. These provisions stipulate that a particular amount is to be paid by a party who fails to fulfil certain obligations, e.g. for delays in a construction contract. Saudi law generally recognises and enforces these clauses based on the freedom of contract principle mentioned above. The CTL reinforced this principle based on its article 178 which stipulates that: *"[t]he contracting parties may specify in advance the amount of compensation, whether in the contract or in a subsequent agreement, unless the subject of the obligation is a cash amount. The right to compensation shall not require notification"*.

3.2 Scope of Enforceability

Despite the general rule for liquidated damages under article 178 of the CTL, Saudi courts continue to have wide discretion to order that a liquidated damages provision should not be payable or should be decreased or increased in specified circumstances. Article 179 of the CTL provides some clarity as follows:

1. a liquidated damages clause is not enforceable if the debtor proves that the creditor has sustained no harm (*"A compensation that is contractually agreed upon by the parties shall not be payable if the debtor proves that the creditor has sustained no harm"*).
2. a Saudi court may, upon an application by the debtor, reduce the compensation if the debtor established the pre-agreed compensation was excessive or that the original obligation was partially

performed (*"The court may, on a petition by the debtor, reduce the compensation if the debtor establishes that the agreed-upon compensation was excessive or that the original obligation was partially performed"*).

3. Article 179 (further provides that a court may, upon an application by the creditor, increase the contractual liquidated damages amount to reflect the actual harm suffered the creditor can establish that the debtor has caused it to suffer greater harm through the debtor's fraud or gross negligence (*"The court may, upon a petition by the creditor, increase the amount of compensation to the extent necessary to cover the harm if the creditor establishes that an act of fraud or gross negligence by the debtor is what caused the harm to exceed the agreed-upon compensation"*)).

This framework stands in contrast to English common law, which generally enforces liquidated damages provisions if the provisions do not amount to a penalty clause. Under Saudi law, however, the enforceability of such provisions is not automatic. Instead, it is subject to judicial scrutiny, with the Saudi courts empowered to vary the agreed compensation based on actual harm, proportionality, and the conduct of the parties. Given a Saudi court's wide discretion, parties may want to assess how they draft their liquidated damages provisions to ensure their enforceability. In litigation practice, both parties may be well advised to comprehensively plead and substantiate their positions, as the outcome of a case (and its financial implications) may depend on the strength of the evidence presented by the parties.

Another way in which the enforceability of a liquidated damages provision can be potentially impacted is if there was an intervening event which was beyond the control of the debtor, such as a force majeure, or an intervening fault committed by a third party or the aggrieved party (unless agreed otherwise).

Article 125 of the CTL reflects this position as follows: *"A person shall not be liable for harm the cause of which is established to have been for a reason beyond said person's control, such as force majeure or a fault committed by a third party or the aggrieved party, unless agreed otherwise"*. There is no further explanation of the specific scenarios in which the provision may be triggered; however, the last few words of this article enable parties to carve out the applicability of this legal provision by mutual consent.

Article 125 broadly reflects other similar provisions in the civil codes of regional jurisdictions, such as Article 287 of the UAE Federal Civil Code (Law no. 5/1985) (*"If a person proves that the loss arose out of an extraneous cause in which he played no part such as a natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering loss, he shall not be bound to make it good in the absence of a legal provision or agreement to the contrary"*).

3.3 Hardship Provision

Article 97 of the CTL establishes a mandatory hardship provision that cannot be waived or overridden by contractual agreement. Article 97 of the CTL states that:

1. *"In case of extraordinary events which were unforeseeable at the time of contracting and which make the fulfillment of a contractual obligation excessively onerous on the part of the debtor in such a way that it may cause heavy losses, the debtor may, without undue delay, invite the other party to negotiate."*
2. *The request for negotiation shall not grant the debtor the right to not perform his contractual obligations."*

3. *If no agreement is reached within a reasonable period, the court may, after taking into consideration the relevant circumstances and the interests of both parties, reduce **the onerous obligation to a reasonable level**.*
4. *Any agreement contrary to the provisions of this Article shall be deemed null and void”.*

In essence, the CTL requires that contractual performance must become “*excessively onerous*” before hardship relief can be sought by a party. This provision sets a high threshold, demanding that parties prove more than mere inconvenience or increased costs; rather, performance must have become unreasonably and disproportionately burdensome due to unforeseen events. This standard aims to prevent abuse of the hardship doctrine and protect the sanctity of contractual performance.

CONCLUSION

Saudi Arabia’s giga projects, which are being pursued at an unprecedented pace, present immense opportunities for international and local entities. But equally, the rapid acceleration of legal reforms brings significant complexities that must be properly understood to effectively manage—and minimise—the associated legal risks for parties partaking in these projects. Stakeholders must keep abreast of the developing legal regime, including in respect of the applicable remedies and damages framework under Saudi law. Although Saudi laws are increasingly becoming aligned with local regional standards, which should give international parties some comfort as similar provisions have been tested and applied in those jurisdictions, it is ultimately to be seen how provisions of the CTL are practically interpreted and applied in the Saudi courts.

EXECUTIVE TAKEAWAYS ON REMEDIES AND DAMAGES UNDER SAUDI LAW

- Saudi Arabia’s CTL is a significant positive development in the codification of the country’s legal regime, including with respect to available remedies, termination rights and recovery of losses and damages. That said, as a relatively new law, the CTL is largely untested, and it remains to be seen how it will be applied in practice by the Saudi courts.
- The CTL generally recognises the freedom of contract as recognised in common law jurisdictions. Notwithstanding this general position, the CTL expressly allows Saudi courts to adjust damages in appropriate circumstances, including ordering no damages, or increasing or decreasing damages.
- Given the CTL’s impact on the available remedies and damages, including the Saudi court’s ability to adjust liquidated damages provisions in appropriate circumstances, parties must ensure that their contractual clauses are drafted in a manner that appropriately balances and mitigates risks.
- Although the primary remedy sought by creditors in most cases is damages, as a corollary to the freedom of contract and sanctity of an agreement, the CTL now expressly recognises specific performance and performance in kind, and empowers courts to issue such orders when it considers it appropriate. It is possible for courts to award specific performance or performance in kind alongside damages, subject to judicial discretion.
- The CTL recognises moral damages as potentially recoverable, although it appears to apply only to natural persons. While no exact guidance is provided on how such damages would be calculated, the law clarifies that moral damages include “*physical or psychological harm sustained by a natural person*”

as a result of an infringement on his body, freedom, honor, reputation, or social standing". Additionally, under Shariah law, moral damages must stem from a material loss and are not awarded independently of any underlying material loss.

- The CTL recognises that a variety of losses and damages may be recoverable, provided the requirements of the law are met. These include both direct and indirect losses, such as lost profits. The potential to recover indirect losses in addition to direct losses represents a significant development that brings the CTL more closely in line with international standards.
- The CTL recognises that a force majeure may extinguish a party's liability. However, it allows parties to opt out of the application of this provision by negotiating a bespoke force-majeure clause that appropriately balances and mitigates risk.
- Finally, the CTL contains a mandatory provision that recognises that undue hardship may lead to an onerous obligation being reduced to a reasonable level in exceptional circumstances, including cases involving *"extraordinary events which were unforeseeable at the time of contracting and which make the fulfilment of a contractual obligation excessively onerous on the part of the debtor in such a way that it may cause heavy losses"*.

This article is intended to provide general guidance and does not constitute any form of legal advice. Readers should obtain specific legal advice tailored to their individual circumstances when necessary.

AUTHORS



Celine Abi Habib Kanakri

Partner

celine.kanakri@blkpartners.com



Wissam Hachem

Partner

wissam.hachem@blkpartners.com



Tamim Momeni

Counsel

tamim.momeni@blkpartners.com