

Designers' and Contractors' 10-Year Guarantee Under Saudi Building Code

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Abstract

The main objective of this study is to demonstrate the adequacy of legal guarantees to protect building owners who are not experienced in construction operations from the risk of collapse of buildings or fixed structures constructed by the supervising designer and contractor and any defects that may threaten their durability and safety, as defined by the Saudi Building Code Implementation Law and its regulations. The study also highlights the role of mandatory insurance against hidden building defects in protecting building owners and successive owners, as beneficiaries of the insurance contract, from decimal civil liability, which may arise as a result of the confirmed possibility of defects appearing in the building within ten years commencing from the effective date of the policy. Furthermore, it outlines a set of legal procedures and measures to enhance this protection through the provisions of the Building Code Implementation Law and its regulations and to impose penalties on anyone who violates the code or any of its provisions. The seriousness of the damages that may result from defects that constitute a real danger to buildings and fixed structures, which may endanger lives or property or directly cause damage to human health or the environment, has led the Saudi legislator - similar to most contemporary civil legislation - to depart from the general rules of civil liability in the Civil Transactions Law with regard to building and construction contracting, by establishing special rules for the liability of the supervising designer (contractor) in the Saudi Building Code Implementation Law and its regulations, the purpose of which is to test the strength and solidity of these buildings and fixed structures from the date of issuance of the (occupation certificate) from the municipal authority after ensuring its compliance with the building code.

Keywords: Decennial liability, Saudi Building Code, designer, Contractor, Law

Introduction

The ten-year warranty in building and construction contracts is an economic necessity that most countries seek to adopt, implement, and provide to their citizens, especially in light of the population growth and increased investment in the real estate and construction sectors these countries are witnessing. This, in turn,

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requires the ongoing intervention of the legislature to safeguard the interests of all members of society, ensure the safety of lives and property, and guarantee public health, whether human health or environmental health. This is achieved by issuing and developing legislation that is consistent with the requirements of modernity and keeps pace with domestic and international developments.

The Saudi legislature was one of these legislators. The provisions for this are set forth in the Building Code Implementation Law (2019), (Article (8) of the Saudi Code Implementation Law), and (Article (29) of the Implementing Regulations of the Building Code Implementation Law) (2023). This is due to the negative impacts that may result from the demolition of buildings or fixed structures, as well as the defects that may exist therein, which threaten their durability and safety, exposing lives or property to danger or directly causing harm to human health or the environment. Therefore, the Saudi legislator has emphasized in the Building Code Implementation Law and its regulations the responsibility of the supervising designer and the implementer (contractor), urging them to exercise the utmost care. All precautions have been taken through legal texts and a set of legal procedures and measures to enhance this protection in the Building Code Implementation Law and its implementing regulations, imposing penalties on anyone who violates the code or any of the provisions of the law and its regulations, which ensure that buildings and structures are sound and free of defects that threaten their safety and durability. This guarantee is commonly referred to as the ten-year guarantee or ten-year liability, reflecting the estimated guarantee period of ten years. It is also known as the special architectural liability or the special guarantee, as it was established by virtue of special texts that went beyond the usual rules of civil liability, taking into account the unique nature of this guarantee, which necessitated a special and distinct adaptation. We will adopt the name (ten-year guarantee) in the study.

Research Methodology

The study adopted a critical analytical approach to a specific legal case that the study focuses on: the guarantee of the supervising designer and implementer (contractor) against the total or partial collapse of the buildings or structures they have constructed and against any hidden defect that threatens the building's durability and safety within ten years from the date of issuance of the (certificate of occupancy) in the Saudi Building Code Implementation Law and its regulations.

Research Questions

To what extent are the legal provisions in the Saudi Building Code Implementation Law and its regulations sufficient and effective to guarantee the supervising designer and implementer (contractor) protection for the building

owner who is not experienced in construction operations and society as a whole, and to protect the national economy from the risk of defects or collapse of buildings and fixed structures?

To what extent are the provisions of the unified policy for latent defects insurance sufficient to protect the actual insured (building owner) and cover hidden defects that appear in buildings?

Are the legal procedures and measures in the Saudi Building Code Implementation Law and its regulations sufficient to enhance this protection for the building owner and society as a whole and to protect the national economy from the risk of defects or collapse of buildings and fixed structures?

Research Limits

The study was limited to the provisions of the Building Code Implementation Law, relevant texts for the study area, its implementing regulations, and the Building Code Violations Classification Regulations and their amendments for the study's completion date.

Previous Studies

Through our research, we did not find a study in the Kingdom of Saudi Arabia that addressed the liability of the supervising designer and the contractor under the Saudi Building Code Implementation Law. Therefore, we review a group of related previous studies. Laila Muhammad Al-Sayyid (2023) addressed the concept of the decennial guarantee in Qatari and comparative law and the scope of the decennial guarantee in Qatari and comparative law. Hussein Fayd Allah and Qader Hussein (2023) conducted a comparative study on the personal scope of the decennial guarantee. The study was limited to the creditor under the guarantee (the building owner) and the debtor under the guarantee (the contractor and the architect). A study conducted by researcher Alali Nasira (2022) examined the decennial liability of building contractors in Algerian law, reviewing the conditions for establishing decennial liability, the characteristics of decennial liability, and the role of decennial liability insurance for building contractors. Researcher (Mulfara Naima) (2022) addressed (The Responsibility of the Owner, Contractor, and Engineer for the Durability of the Building in Comparative Legislation), reviewing the owner's responsibility for building collapse, followed by the engineer's and contractor's responsibility for the building's durability. Titled (The Responsibility of the Contractor and Engineer for the Durability of the Building in Jordanian Legislation), by (Ahmed Al-Adwan) (2022), he discussed the legal nature and characteristics of the contractor's and engineer's responsibility and the scope of application of the legal provisions for the contractor-engineer's responsibility. The

study (The Personal Scope of Obligation to the Ten-Year Warranty between the Traditional and Modern Concepts) by (Mohammed Al-Sayed Faris) (2022) sheds light on the concept of the ten-year warranty, its legal adaptation, and the personal scope of the obligation to the ten-year warranty. Previous studies relied on the civil legislation under study, which included regulatory texts related to the provisions of the ten-year warranty within the contracting contract. They relied on the ten-year warranty period, which starts from the date the building owner, who is not considered an expert in construction operations, receives the building. This is one of the reasons that prompted legislators to intervene in regulating this responsibility through legal texts aimed at urging the supervising designer and the executor (contractor) to emphasize their responsibility to carry out their work properly and to exert their utmost effort to ensure the work is perfected and of high quality. The study we are discussing is unique in stating the position of the Saudi legislator in the Building Code Implementation Law and its regulations, such that the start of the ten-year warranty period was not suspended from the date the building owner receives the building, but rather from the date of issuance of the (Certificate of Occupancy) by the municipal authority after ensuring its compliance with the Building Code. This was confirmed by the first paragraph of Article (29) of the Executive Regulations, which stipulates that: "The designer supervising the construction implementation and the implementer shall be jointly responsible for compensating the owner for what occurs within ten years from the date of issuance of the Certificate of Occupancy,," and the Certificate of Occupancy means: a permit to occupy the building issued by the municipal authority after ensuring its compliance with the code. (Item (12) of Article One of the Building Code Implementation Law).

The Saudi legislator has obliged the building owner to conclude contracts with the designer, supervisor, and implementer in accordance with Article (7) of the Building Code Implementation Law, which states: "Design, supervision, and implementation shall be carried out under contracts with specialists holding practice licenses." A practice license means: "A professional permit issued by the relevant authority to natural and legal persons to practice studies and designs, implementation, supervision or inspection work, in accordance with the code." (Clause (25) of Article 1 of the Executive Regulations). Article (14) of the Executive Regulations clarified what was stated in Article (7), which states: "The license applicant undertakes to abide by the code and to assign the design, supervision, and implementation work to specialists holding professional practice licenses issued by the relevant authority, and to submit the contracts concluded with them, specifying their addresses and means of communication with them, provided that these contracts explicitly state the practitioners' obligation to implement the

work assigned to them in accordance with the code. The license applicant is obligated to specify his address and means of communication with him and update them if they change, and notification through them is considered valid.” Among them is (the supervisor) to carry out the supervision work (Abdul Rahman Al-Zeer, 2022), which is one of the conditions that must be met to issue a building permit from the municipal authority. The third paragraph of Article (6) of the executive regulations of the municipal licensing procedures system indicated the tasks and responsibilities of the supervising engineering office, which is concluded by printing the occupancy certificate from the electronic platform.

This study will address the provisions of the Saudi Building Code Implementation Law and its regulations in the following sections:

First Section: The specificities associated with the nature of the responsibility of the supervising designer and the executor (contractor).

Legal scholars differ regarding the legal nature of the liability of the supervising designer and executor (contractor). One side considers this guarantee, by its very nature, to be based on contractual liability, as it is based on a contractual obligation originating from the contracting contract. Another view considers it to be based on tortious liability, the basis of which is the harmful act. This is because the guarantee of the supervising designer and executor (contractor) regarding the quality of the work completed originates from the contracting contract and expires upon the delivery of the building to the owner. Delivery covers all defects that appear thereafter. If the obligations expire, the contract is voided. Therefore, the basis of this guarantee is the tortious act that gives rise to tortious liability, as this liability arises when a person suffers damages, not as a result of a breach of a contractual obligation. Another opinion that we support is that the ten-year guarantee, in terms of its legal nature, is one of the special applications of the general theory of contractual liability, which the legislator has subjected to special regulation to suit the specifics of the practical problems posed by construction contracts, and to establish a fair and reasonable balance between the two parties of this type of contract, and to ensure a degree of physical safety for the building owner and his property (Adnan Al-Sarhan, 2023; Ali Al-Zoubi, 2020). This is what the Saudi legislator adopted, as he did not mention the special texts for the responsibility of the supervising designer and implementer (contractor) within the contracting contract in the Civil Transactions Law (2023), which was issued after the issuance of the Building Code Implementation Law (2019), but rather addressed it in the Building Code Implementation Law and its regulations. The Saudi legislator did well to include in the Building Code Implementation Law and its regulations precautionary measures that guarantee the safety of buildings and fixed structures from demolition or hidden defects.

In this section, we address the unique characteristics of the civil liability of the supervising designer and the executor (contractor), which together constitute the legal system of the decennial warranty. This is achieved through the following points:

1- The decennial warranty is regulated by mandatory rules assumed by force of law: The supervising designer is bound to the owner by a design and supervision contract, and the executor (contractor) is bound to the owner by a contracting contract for the construction of buildings or the erection of fixed facilities. Both contracts entail an obligation to guarantee the safety of the building from risks it may be exposed to during the warranty period, such as the demolition of buildings or fixed facilities and any defects that may threaten its durability and safety. This obligation is independent of the obligation to construct buildings or erect facilities.

We must identify the persons responsible under the decennial warranty to determine their liability. The approved designer is: "A natural or legal person licensed by the relevant authority, with whom the owner contracts to conduct studies and designs to meet the owner's needs and requirements in accordance with the code" (Article (15) of Article 1 of the Executive Regulations). The supervising designer is: "A natural or legal person licensed by the relevant authority to carry out supervision work, with whom the owner contracts as a responsible designer to supervise implementation in accordance with the approved licenses and plans." (Article (16) of Article 1 of the Executive Regulations). The implementer (contractor) is: "A natural or legal person licensed by the relevant authority to carry out construction activities, with whom the owner contracts to carry out construction, installation, operation, or maintenance in accordance with the code." (Article (17) of Article 1 of the Executive Regulations).

According to the Building Code Violations Classification Regulation, it is a violation for the building owner to carry out construction work without contracting with a contractor approved or licensed by the relevant authority to perform construction activities or without obtaining the relevant authority's approval. This violation is classified as a serious violation in the field of implementation. A serious violation means: "Every A code violation that, if not promptly removed or corrected, would endanger life or property or directly cause harm to human health or the environment. (Article (29) of Article 1 of the Executive Regulations), Moreover, the penalty for violating the building owner is a fine of (ten thousand riyals), with work being suspended until a contract is signed with a supervising engineering office or a contractor approved or licensed by the relevant authority or body. The work that was implemented in violation is removed, or a report is submitted by the supervising office on the safety of the implemented work before contracting with an approved or licensed supervising/contractor office (according to

Table No. 1 for violations of the implementation of the building code in the residential sector, attached to the Building Code Violations Classification Regulations). Among the persons that Article (14) obligates the building owner to conclude contracts is the supervisor to supervise implementation in accordance with the approved licenses and plans. The supervisor is "the licensed natural or legal person who is assigned to carry out supervision work." (Article (10) of Article 1 of the Building Code Implementation Law). It should be noted that the field of (supervision) is one of the engineering work fields that are permitted to be practiced according to Article (7) of the Executive Regulations of the Engineering Professions Practice System, and for a person to practice the profession, Supervision must be by an engineer, and the professional accreditation required to practice this profession must be obtained from the Saudi Council of Engineers (Article 2 of the Engineering Professions Practice Regulations).

Failure to contract with an accredited supervising engineering office or one licensed by the relevant authority to practice supervision work will result in the building owner committing a violation, as classified in the Building Code Violations Classification Regulations, which categorizes it as a serious violation in the field of supervision. The penalty consists of a fine of ten thousand riyals for the building owner, along with a suspension of work until a contract is concluded with a supervising engineering office or a contractor accredited or licensed by the relevant authority. The work that was implemented in violation must be removed, or a report must be submitted by the supervising office on the integrity of the work carried out before contracting with an accredited or licensed supervising/contractor office (according to Table No. 1 for Building Code Violations in the Residential Sector, attached to the Building Code Violations Classification Regulations).

Despite the position of the "supervisor" in the Building Code Implementation Law and its regulations, we do not find the supervisor among the persons responsible under the decennial guarantee. Rather, it is limited to the traditional two persons: the supervising designer and the implementer (contractor). The designer is assigned to supervise the process, so they are jointly responsible with the implementer (contractor). This is what is stated in the first paragraph of Article (29) of the Executive Regulations of the Building Code Implementation Law, which states that: "The designer supervising the construction implementation and the implementer are jointly responsible for compensating the owner for what occurs within ten years from the date of issuance of the occupancy certificate - of total or partial demolition of the buildings they have constructed or facilities they have erected and for every hidden defect that threatens the strength and safety of the building." The third paragraph of the same Article indicates that the designer is

responsible for design defects if his work is limited to developing the design only without supervising the implementation.

The ten-year guarantee, established by the Saudi legislature for the supervising designer and the executing contractor (contractor) vis-à-vis the owner, is based on contractual liability established by law and governed by mandatory rules that consider the public interest. From this logic, the ten-year guarantee is essentially a form of contractual liability to which the legislature has specifically assigned stringent provisions. It is a liability assumed by force of law and jointly and severally. The supervising designer is bound by a design and supervision contract with the owner, the subject of which is the design of a building or facility, as well as the supervision of its implementation. The executing contractor is also bound by a contract with the owner, the terms of which guarantee that the construction process will be carried out in accordance with the engineering design submitted to them. If a defect occurs in the building or collapses, it is due to a breach by either of them or by one of them of their contractual obligations. Without these two contracts, this liability cannot be established.

Regarding the ten-year warranty, it is legally assumed. This means that the obligation placed on both the supervising designer and the implementer (contractor) pursuant to (Article (8) of the Saudi Code Implementation Law and Article (29) of the Executive Regulations of the Law), is an obligation to achieve a result, which is the preservation of the building they have constructed or the fixed facilities, sound and solid for ten years, effective from the date of issuance of the (occupation certificate). The Saudi legislator did not explicitly stipulate the legal presumption in the ten-year warranty. Referring to Article (29) of the Implementing Regulations of the Building Code Implementation Law, it becomes clear that the liability of the supervising designer and the contractor is presumed by force of law. This is because the Saudi legislator used the term "guarantee claim" to denote the liability of the supervising designer and the contractor and used the term "obligation to compensate" to denote the liability of the supervising designer and the contractor. The obligation to compensate falls on both the supervising designer and the contractor, without requiring the building owner to prove their fault. This liability is considered established on the part of the supervising designer and the contractor unless they prove a reason to compensate for it, such as by proving an external cause.

On the other hand, this obligation is to achieve a result, not to exercise due diligence. It is sufficient for the building owner to prove that there are two contracts: design, supervision, and contracting, the subject of which is the construction of a building or permanent structures, and that this building or structures have collapsed or suffered defects within ten years from the date of

issuance of the "certificate of occupancy." There is no need to prove that a fault existed on the part of the supervising designer and the executor (contractor), as the presence of a defect in the construction itself constitutes a fault, just as it would with any obligation to achieve a goal. (Muhammad Al-Ahmadi, 2024; Balqoun Al-Saleh, 2014)

In conclusion, the existence of a legal presumption of liability on the part of the supervising designer and executor (contractor) or the guarantee exempts the employer from proving the fault of the supervising designer and executor (contractor) and proving a causal relationship between their activity and the collapse of the buildings or fixed structures they constructed, as well as any defects that may threaten their durability and safety. The burden of proof shifts to the supervising designer and executor (contractor), as they can only absolve themselves of liability by proving an external cause. In other words, they cannot prove that they are without fault. (Ahmed Awad, 2024)

As a result, and after analyzing Article (29) of the Executive Regulations of the Building Code Implementation Law, we can say that when the legislator intended to impose stricter liability on the supervising designer and the implementer (contractor), he created a presumption against them, making this liability joint and several between the supervising designer and the implementer (contractor). This is to facilitate the aggrieved employee's obtaining fair compensation, spare the entire community the harm of demolition and disruption of public interests, and close off avenues for evading liability for the supervising designer and implementer (contractor), encouraging them to be creative and dedicated to their work, and keeping them away from fraud and negligence. Furthermore, the solidarity between the supervising designer and implementer (contractor), explicitly stipulated in Article (29) of the Executive Regulations, makes it easier for the building owner to recourse against any of them to obtain his rights and even against the most solvent and capable of benefiting. In my opinion, if the Saudi legislator expanded the scope of the ten-year guarantee, in terms of those obligated within the personal scope in Article (29) of the Executive Regulations of the Building Code Implementation Law, to include the "supervisor" individually, to compensate the owner for the demolition of buildings or fixed structures and any defects that threaten their durability and safety within ten years from the date of issuance of the "Certificate of Occupancy," in solidarity with the executing party (contractor), the phrase "supervising designer" in the article indicates the connection between design and supervision. That is when the building owner assigns the design and supervision process to a single office under a "design and supervision" contract. In such cases, the approved designer will be liable for design defects if their work is limited to

developing the design only without supervising its implementation. (Paragraph 3 of Article (29) of the Executive Regulations)

In other words, when the building owner concludes three contracts: A contract with the (approved designer), a contract with the (supervisor), and a contract with the implementer (contractor) (Article (7) of the Building Code Implementation Law) (and Article (14) of the Executive Regulations), and we suggest to the Saudi legislator to add a paragraph to Article (29) of the Executive Regulations with the following wording: "The supervisor of the construction implementation and the implementer shall be jointly responsible for compensating the owner for what occurs within ten years from the date of issuance of the occupancy certificate - of total or partial demolition of the buildings they constructed or the facilities they erected and for every hidden defect that threatens the strength and safety of the building."

We support our viewpoint with evidence that indicates the importance of the supervisor's role in enhancing this protection, namely:

First, by monitoring the supervisor's duties during the construction phases, in accordance with the Construction Permit Services Procedures Manual (2022), issued by the Saudi Ministry of Municipal and Rural Affairs and Housing, entitled: (Responsibilities, Powers, and Duties of the Supervising Engineering Office). This evidence demonstrates the important role played by the supervisor, including reviewing drawings and notifying relevant authorities of the commencement of implementation work through the Balady platform; reviewing drawings and notifying relevant authorities of the commencement of implementation work through the Balady platform; submitting a certificate of completion and compliance of work, a technical report, and reports on fire prevention and protection work issued by the engineering consulting office, and attaching its approval through the Salama electronic portal. Second, The Building Code Violations Classification Regulations stipulate financial fines for violations committed by the supervising office. The Building Code Violations Review Committee imposes a fine based on the severity of the violation. For example, if the supervising engineering office submits supervision reports on construction stages that are inconsistent with the actual situation, a fine of three thousand riyals is imposed for each report, classified as a serious violation. In addition to the fine, the Review Committee may also suspend work until reports are submitted (in accordance with Table No. 1 for Building Code Violations in the Residential Sector, attached to the Building Code Violations Classification Regulations). Meanwhile, the penalty is specified in Table No. 2 for violations of other building occupations according to the Saudi Building Code, attached to the Building Code Violations Classification Regulations, according to the specified category, with a fine ranging from three thousand riyals

for each report to one hundred and twenty thousand riyals for each report. In addition to the fine, the Review Committee may also suspend work until accurate reports are submitted that reflect the project's reality. The violation may be referred to the competent authorities. Suppose the supervising engineering office fails to submit reports and notifications regarding the project's construction phases in a timely manner. In that case, a fine of three thousand riyals will be imposed for the first report and one thousand riyals for each additional report not submitted. This is classified as a non-serious violation and is decided by the review committee in addition to the fine. 1) The office will be fined three thousand riyals for failing to submit the first report, which includes a review of the drawings and the notification of commencement of implementation. 2) The office will be fined one thousand riyals for each additional report not submitted on time. 3) The required reports must be prepared and submitted on the Balady platform (according to Table No. 1 for violations of the implementation of the building code in the residential sector, attached to the Building Code Violations Classification Regulations). The penalty is set (Table No. 2 for violations of other building occupations according to the Saudi Building Code, attached to the Building Code Violations Classification Regulations), according to the specified category, with a fine ranging from three thousand riyals for the first report to seven thousand riyals, and one thousand five hundred to three and a half riyals for each additional report not submitted, also in addition to the fine. Preparing the required reports and submitting them to the Balady platform.

In some cases, when the violation is repeated, the penalty may include the suspension of the practice license, in addition to the financial fine, in accordance with Article (12) of the Building Code Implementation Law, which states: "Anyone who violates the code or any of the provisions of the system or its regulations shall be punished by either or both of the following two penalties: 1) A financial fine not exceeding one million riyals for a single violation in a single building. 2) Suspension of the practice license for a period not less than one month and not exceeding one year."

In accordance with Article (11) of the Saudi Building Code Violations Classification Regulations, the Review Committee shall impose appropriate penalties for each violation, taking into account the following criteria: the degree of seriousness of the violation and its impact on harm to lives, property, health, or public order; the violator's initiative to remove or correct the violation; and the repetition or multiplicity of the violation, as imposing the penalty is not a substitute for removal or correction.

From the above, the role of the engineer assigned to supervise the implementation becomes clear, whose role is no less than that of the engineer designing the work, as his role is a safeguard against the errors and negligence of contractors, which, in my opinion, requires the Saudi legislator to expand the scope of the ten-year guarantee in terms of those obligated in the personal scope in Article (29) of the executive regulations of the Building Code Implementation Law, and to include it within the paragraphs of the Article in the previously proposed form.

2- The strictness of the provisions of the ten-year warranty, contrary to the usual rules of contractual liability.

The Saudi legislator was keen to impose stricter provisions on the ten-year warranty, contrary to the general rules of contractual liability. He made the supervising designer and the implementer (contractor) strictly liable for failure to fulfill their obligation to achieve the goal (delivering a building or fixed structures in good condition and free of defects). According to Article (29), paragraph two of the Implementing Regulations of the Saudi Building Code Implementation Law, a defect in the soil upon which the building was erected is not considered a force majeure that negates the architect's liability. This is because studying the soil and its characteristics and detecting any defects to avoid their consequences are among the duties and responsibilities of the designing engineering office, according to Article (6), paragraph two of the Implementing Regulations of the Municipal Licensing Procedures System. To distinguish the ten-year guarantee for the supervising designer and the implementer (contractor) from the general rules of civil liability, its exceptional rules made the legislator give it a criminal dimension, as he considered violating the code or any of the provisions of the Building Code Implementation Law or its regulations as deserving of the perpetrator of both penalties or both of them; the first: a financial fine not exceeding one million riyals for a single violation in a single building, and the second: suspension of the practice license for a period not less than one month and not exceeding one year (Article (12) of the Building Code Implementation Law). The legislator's strictness reaches its highest level when it imposes a fine along with the correction of the violation, in accordance with the phrase: "Imposing a penalty shall not be considered an alternative to removal or correction" (Article 2 of the Building Code Violations Classification Regulations). Therefore, the Saudi Building Code Violations Classification Regulations consider the failure to submit a soil test study from an accredited office (in accordance with Table No. 1 for violations of the application of the building code in the residential sector, attached to the Building Code Violations Classification Regulations) a violation that entails a fine of (five hundred riyals) and the suspension of work and the building permit until the soil test study is

submitted. The structural design is redesigned in accordance with the soil report. Submitting a soil test containing incorrect data or a plot allocated to land other than the one for which the license is to be issued constitutes a violation that entails a fine of (five thousand riyals) and the suspension of work and the building permit until the soil test study is submitted. The structural design is redesigned in accordance with the soil report. Both are classified as serious violations. According to Table No. 2 for violations of other building occupations according to the Saudi Building Code, attached to the Building Code Violations Classification Regulations, failure to submit a soil test study for the site from the designing engineering office is punishable by a fine under the specified category, ranging from (five hundred) to (eight thousand) riyals for each failed probe. The fine also includes: 1) Requirement to conduct probes. 2) Review and approve the construction drawings and building loads. When a soil test is submitted by the designing engineering office containing incorrect data or a report allocated to land other than the one to be licensed, a fine under the specified category, ranging from (five thousand) to (forty thousand) riyals for each report, is imposed. The fine also includes: 1) Suspension of work and the issuance of the building permit until the soil test study is submitted. 2) Redesign the structural design in accordance with the soil report. 3) Referral of the violation to the competent authorities. The architect and contractor cannot absolve themselves of liability by proving the employer's consent to the construction of defective buildings or structures (paragraph two of Article (29) of the Implementing Regulations).

3- Mandatory Insurance for Hidden Construction Defects.

The Saudi legislator, pursuant to Cabinet Resolution No. (509) of 2018 requires contractors in non-governmental projects to insure against hidden defects that appear in buildings and structures after their use.

The Saudi Arabian Monetary Agency (SAMA) issued the standard form for the Hidden Defects Insurance Policy (2020). This policy aims to protect the financial interests of the contractor by ensuring their ten-year civil liability for engaging in the construction of buildings or the erection of fixed facilities as an insured. It also protects the building owner and subsequent owners, as beneficiaries of the insurance contract, from ten-year civil liability that may arise from the confirmed possibility of defects appearing in the construction within ten years commencing from the effective date of the policy, as per the Gregorian calendar. Here, a problem arises between the Hijri calendar, which marks the beginning of the ten-year warranty period, starting from the date of issuance of the occupancy certificate, and the Gregorian calendar, which marks the beginning of the insurance policy's validity. On the other hand, the insurance policy's validity commences after the commencement of the ten-year warranty period, with the issuance of the

occupancy certificate. This is evidenced by the reference made to the standard form of the latent defects insurance policy under the heading "Insurance Coverage Period." In other words, there will be a difference between the ten-year insurance coverage period and the ten-year warranty period. It is more appropriate to adopt either the Hijri or Gregorian calendars, on the one hand, and the insurance policy's validity period, which starts from the date of issuance of the occupancy certificate, on the other hand. This requires reconsideration by the Saudi legislator.

The Saudi legislator has not imposed a penalty for the contractor's failure to comply with the requirement to insure against latent construction defects. However, the contractor's absence of an insurance policy prevents the municipality from issuing a building permit, as it is considered one of the documents required by the building permit applicant. (Amani Barnawi, 2023)

The personal scope of any insurance is limited to a specific group of persons: the insured, the insurer, and the beneficiary. Insurance companies (the insurer) are the primary parties to the insurance contract and are the entities licensed to practice insurance activities by providing insurance and reinsurance services. The task of managing latent defect insurance products for buildings in the Kingdom of Saudi Arabia has been entrusted to Malath Cooperative Insurance Company. The "insured" is the second party in the insurance contract. It refers to the person obligated to take out the insurance, who bears the burden of obligations, such as paying insurance premiums and providing information about the insured risk (Mahnawi Sara, 2021). Through the definition of the "insured" in "Clause 2/10" of the standard formula for the latent defects insurance policy, it appears that there are two successive insureds. The executor (contractor) is the insured party before the start of the insurance coverage period. He is the person responsible for issuing the insurance policy in order to obtain a building permit. The building owner is the actual insured during the ten-year insurance coverage period commencing from the policy's effective date. He is the "beneficiary" of the insurance and is the third party in this contract. It refers to the natural or legal person to whom the benefit of the insurance policy accrues and whose damages are covered by the insurance policy (Zainab Musa, 2020; Ramadan Bakura, 2016). The actual beneficiary of the insurance provisions is the building owner. Anyone to whom the ownership of the building is transferred thereafter is a beneficiary of the insurance policy. He is linked to the building itself and is not transferred to another party without obtaining prior written approval from the insurance company (Clause 3/5 of the standard form of the insurance policy). Hidden defects mean "any defect in the construction works or their protective elements that weaken the strength, stability or steadiness of the building due to errors, faults or shortcomings in the design, materials, soil examination or construction, provided that this defect was not discovered on the

date of issuance of the occupancy certificate." (Item (18) of Article 1 of the Executive Regulations is identical to (Item 2/8) of the standard form of the insurance policy.)

Regarding the scope of the insured works, we find that the legislator has obligated the implementers (contractors) of non-governmental sector projects to insure against hidden defects that may appear in buildings and structures after their use. What is stated in (Item 2/13) of the standard form of the insurance policy against hidden defects) is to define buildings as all and any part of the works located within the address specified in the policy schedule, which includes construction works, protective elements, non-structural works, equipment, fixtures, and fittings. According to the definition, the legislator was satisfied with specifying the concept of parts of buildings and did not define construction in its technical sense. Rather, the definition came to encompass the elements that comprise buildings.

Although insurance against latent defects that appear in buildings and structures after their use is mandatory, it is limited to the contractor only, not the supervising designer. This has the effect of enhancing protection and raising the ceiling of compensation from the insurer. Perhaps the reason for its exclusion, which seems to me with reservations, is the presence of the "technical examiner," who is: "the party or parties appointed by the insurance company at the expense of the insured (the contractor) to inspect and review the plans, specifications, bills of quantities, and other documents related to the work and inspections requested by the technical examiner and the insurance company." (Clause 2/14) according to the standard form of the latent defects insurance policy.) The examiner is required to submit a "safety confirmation certificate," which he submits to the insurance company upon actual completion of the project work under the construction contract or thereafter, and any additional certificate submitted by the technical examiner to the insurance company to confirm the continued safety of the buildings in the event of a re-inspection at any time (Clause 2/3) according to the standard form of the latent defects insurance policy. The Saudi legislator has imposed such an obligation on the insured. The technical inspector recognizes that supervision during the construction process is one of the most important means of reducing the risk of latent building defects from the effective date of the policy. This is achieved by ensuring that the designs, materials, and construction process comply with the technical and professional principles of the building code. He also seeks to involve the insurer in monitoring and maintaining the construction process, not limiting his role to compensation alone.

In my opinion, the policy has failed to protect the building owner from economic losses or damages resulting from personal or bodily injury, as it includes

them among a group of exclusions, as stated in the standard form of the latent defects insurance policy under the heading "Policy Exclusions," which include: Economic Losses "any direct or indirect economic losses, such as loss of enjoyment of the buildings, loss of use, income, or business opportunity, difficulty, distress, or any other indirect or economic loss of any kind or description, other than as provided elsewhere in this policy." Also, "Liability for Personal Injury or Bodily Injury."

This means that the building owner may file a lawsuit against the supervising designer and contractor during the ten-year warranty period. (The contractor) before the competent court to compensate him for these exceptions.

We must not overlook the importance of the ten-year warranty in protecting the public interest, as construction defects not only harm the building owner but also often lead to disasters that cause significant damage to lives and property, including those of residents, neighbors, and pedestrians on public roads. These are not mentioned in the standard form of the latent defects insurance policy. The only option for those harmed is to file a tort lawsuit against the building guard (owner) (Muhammad Al-Ahmadi, 2024) to claim compensation, even though the two parties responsible for the damage were the supervising designer and the contractor, against whom the building owner has the right to seek compensation for the damages incurred by others as a result of the building's collapse and the resulting harm (Abdul Rahman Al-Zeer, 2018).

The second section: The specificities associated with guaranteeing compensation and exemption therefrom.

Given that the decennial guarantee is linked to protecting the building owner who is not experienced in construction operations, the Saudi legislator has enshrined exceptional provisions related to public order. These provisions guarantee compensation through the joint liability of the supervising designer and the contractor, excluding various agreements that exempt them from liability. Therefore, our discussion of this axis is based on the following points:

1. The presumption of joint liability between architects and contractors.

Comparative civil legislation agrees that the liability of architects and contractors during the guarantee period is joint and several and is presumed by law. It is, therefore, objective liability, such that the beneficiary of the guarantee merely has to prove the damage represented by the total or partial collapse of the building or the presence of a defect in the construction, along with proof of the existence of a contracting contract and a design contract, in order for their civil liability to be established under the decennial guarantee (Muhammad Al-Ajmi, 2019). The Saudi legislator, similar to comparative civil legislation, made the responsibility of the supervising designer and executor (contractor) joint for ten years from the date of

issuance of the (occupation certificate) by the municipal authority after ensuring its compliance with the building code. This joint liability is considered to exist by force of law based on an explicit legislative text under the first paragraph of Article (29) of the executive regulations, which stipulates that "the designer supervising the construction implementation and the executor shall be jointly responsible for compensating the owner for any occurrence within ten years from the date of issuance of the occupancy certificate - of total or partial collapse..." This is considered an affirmation of the contractual nature of the ten-year liability; if it were not so, the Saudi legislator would not have needed to stipulate this joint liability explicitly. However, since the liability is contractual, joint liability is not assumed. However, it must be stipulated by law or agreed upon in accordance with what is stipulated in Article (222) of the Saudi Civil Transactions Law (Muhammad Al-Qarni: 2024). The joint liability of the supervising designer and the contractor is in the guarantee, not in the liability. Joint liability is stronger than joint liability, as joint liability is linked to the availability of certain conditions. It only exists if each of the responsible parties has committed an error that causes harm. It requires the occurrence of the harm and the participation of all responsible parties in causing it (Lara Farhat, 2022). Based on this, the building owner may demand the full amount of compensation from one of the more solvent parties upon execution of the final judgment awarding compensation, provided that the payer recovers an amount exceeding his share from the other party, whether on the basis of a subrogation claim or a personal action (Ahmed Makhoulouf, 2024). A liability claim is brought by the person entitled to the ten-year warranty, namely the building owner or his successor, against the person obligated to it, namely the designer, supervising contractor, and implementer. Most Arab civil laws include a specific provision for claims, but they vary in the statute of limitations, which ranges from one to three years from the time of the collapse or the discovery of the defect. If this period expires without the building owner filing a claim, the claim will not be heard (Khafir Al-Omari, 2016). The Saudi legislator did not include a specific provision for this in the Building Code Implementation Law or the Civil Transactions Law, which stipulates three periods within which the claim is not heard. Article (295) stipulates a ten-year period, which is the general rule in all cases where the law does not specify a shorter period as a general rule. Therefore, the statute of limitations for a liability claim from the person entitled to the ten-year warranty in Saudi Arabia is ten years (Muhammad Al-Qarni, 2024; Basil Al-Salibi, 2024). Here, we must differentiate between the warranty period and the warranty claim. The ten-year warranty period is a testing period for the building's strength, not a statute of limitations. Therefore, it is not subject to a statute of limitations or interruption. This means that if the building or structure collapses or becomes

defective within ten years of its completion, the warranty claim and compensation claim will remain valid for ten years from the time of collapse or defect. However, filing a lawsuit to claim compensation or a warranty within ten years of the collapse or defect is subject to a statute of limitations that is susceptible to suspension and interruption (Muhammad Al-Haqbani, 2024).

If the ten-year period expires without the building owner filing a lawsuit, his claim for compensation will not be heard. Therefore, if the collapse occurs or the defect that warrants the warranty becomes apparent within the tenth year of the date of issuance of the occupancy certificate, the owner may file a warranty claim within the following ten years. In this case, the warranty will remain in effect for 20 years. In my opinion, the period of inadmissibility of a claim against the denier should be reconsidered, and a special provision should be established in line with Arab legislation. The best of these is for a period of three years to pass from the time the collapse occurred or the defect was discovered. If this period passes without the building owner filing their claim, it will not be heard, thereby ensuring a balance in the rights and obligations of the parties under the ten-year guarantee.

2- The civil liability in the decennial warranty departs from the principle that the date of issuance of the occupancy certificate exempts from liability for damages.

The decennial warranty is established upon the full completion of the buildings, with the aim of covering damages incurred from the date of issuance of the occupancy certificate as a result of the demolition of the buildings or fixed structures they contain and any defects that may threaten their durability and safety.

Therefore, the Saudi legislator has taken care, within the legal texts, to clarify the concepts associated with the occupancy certificate and the penalties for violating it, considering its importance. It is the criterion upon which the commencement of the decennial warranty period depends. The occupancy certificate is a permit to occupy the building issued by the municipal authority after verifying its compliance with the code (Article 1, Clause (12) of the Building Code Implementation Law). The Saudi legislator has adopted the beginning of the ten-year guarantee from the date of issuance of the occupancy certificate from the Municipal Council in (the first paragraph of Article (29) of the Executive Regulations) and thus excluded the beginning of the ten-year guarantee from the date of receipt of the building owner, who is a person other than an expert in construction operations that require scrutiny, follow-up and monitoring of the engineer and contractor from the beginning to the completion of construction, and this is what most Arab civil legislation includes. The building owner may assign a person to supervise, and this assignment is not binding on the building owner in certain civil legislation (Ahmed Al-Adwan, 2022). However, the Saudi legislator

has required the building owner to enter into a contract with a supervising engineering office to undertake supervision work. This contract is a prerequisite for obtaining a building permit from the municipal council. This protects the building owner who is not experienced in construction operations by delegating supervision work to a supervising engineering office. Given the seriousness of the issue, the Saudi legislator has imposed a financial penalty on the building owner if they carry out construction work without contracting with a supervising engineering office approved or licensed by the relevant authority to perform supervision work. This is classified as a serious violation in the field of supervision according to the Building Code Violations Classification Regulations. The penalty is a fine of (ten thousand riyals) for the building owner, along with stopping work until contracting with a supervising engineering office or contractor approved or licensed by the relevant authority or the authority and removing what was implemented in the violation or submitting a report from the supervising office on the safety of the work carried out before contracting with an approved or licensed supervising/contractor office (according to Table No. 1 for violations of the application of the building code in the residential area, attached to the Building Code Violations Classification Regulations). Due to the importance of the occupancy certificate, the Saudi legislator also did not tolerate the building owner occupying the building or changing its use without an occupancy certificate, as he set the penalty, which is a financial fine between (ten thousand riyals) and (one million riyals) for one building, according to Table (No. 4) for the classification of operational violations of the requirements of the Ministry of Municipal and Rural Affairs and Housing attached to the building code violations classification regulations). The Saudi legislator did not ignore this importance by fining the supervising office if it requested the issuance of an occupancy certificate for the building despite the presence of serious building code violations. These violations are classified as serious under the Building Code Violations Classification Regulations in the field of supervision. The penalty is a fine of seven and a half thousand riyals for the owner of the supervising office, along with a ban on occupancy and a temporary suspension of the occupancy certificate until the violations are addressed, all code-violating work is re-implemented, and a consultant prepares a report stating that all violations have been addressed. In the event of recurrence, the supervising office's practice license will be suspended in accordance with the Building Code Implementation System (as per Table No. 1 for Building Code Implementation Violations in the Residential Sector, attached to the Building Code Violations Classification Regulations). Table No. 2 for other building occupancy violations, as specified in the Saudi Building Code, attached to the Building Code Violations

Classification Regulations, outlines the fines, which range from twenty thousand riyals to four hundred and eighty thousand riyals, depending on the category.

The executive regulations of the Building Code Implementation Law include legal provisions in Chapter Four (Certificate of Occupancy), where Article (17) requires the building owner or his authorized representative (the supervisory office) to apply to the municipal authority after construction is completed. The application must be accompanied by the necessary licenses and requirements, as well as approvals for final inspection and testing work and plans as implemented. To ensure that the license is not delayed, Article (18) requires that the application for an occupancy certificate be decided upon after verifying compliance with the code's requirements and stipulations within three working days from the date of application submission. If the application is rejected, the applicant shall be informed of the reasons for the rejection by the applicable notification methods. Article (16) stipulates that a building may not be occupied unless a certificate of occupancy is obtained from the municipal authority.

The issuance of an occupancy certificate does not exempt those obligated to the ten-year warranty from compensating the building owner in the event of the demolition of buildings or permanent structures or any defects that threaten their durability and safety.

In view of the Saudi legislator's extreme caution, an occupancy certificate is not issued until it is confirmed that the construction work has been completed in accordance with the building code, including the supervision of a licensed engineering office during the construction phases. This office is the one assigned by the building owner to carry out the supervision work. Under a binding supervision contract, the building owner must conclude with an engineering supervision office in accordance with the Building Code Implementation Law and its implementing regulations. This contract is also a requirement for issuing a building permit. We previously explained the role assigned to the engineering supervision office as an entity mandated by a supervision contract with the building owner. We should not forget that Saudi law provides criminal protection for negligence in the occupancy certificate by imposing financial fines and accompanying procedures in accordance with the Building Code Violations Classification Regulations.

3- Excluding agreements amending the provisions of decennial liability as a consequence of their connection to public order.

Paragraph four of Article (29) of the Executive Regulations of the Building Code Implementation Law stipulates that: "Any condition intended to exempt the contractor or supervising designer from or limit the liability shall be null and void."

It is evident that the above text, which stipulates that the provisions of the liability of the supervising designer and executor (contractor) for construction

contracts and fixed structures from the date of issuance of the occupancy certificate are considered a matter of public order, protecting the building owner who is not experienced in construction operations. This protection is also established in the public interest, ensuring that the demolition of buildings does not harm society and that they remain stable and retain their properties for the public good (Ali Al-Zoubi, 2020). Since the legal relationship resulting from the conclusion of a contracting contract is essentially a relationship between two parties, one of whom is a weak person and the other possesses qualifications that the building owner lacks, Saudi lawmakers are obligated to impose strict guarantees on the supervising designer and the contractor to protect the building owner who is not experienced in construction operations. The primary objective of these special provisions is to encourage the supervising designer and the contractor to construct permanent buildings and structures that are not susceptible to collapse and do not contain defects that threaten their durability, safety, or prevent their collapse. This period is considered a probationary period for the building's durability and strength, especially since both the supervising designer and the contractor possess qualifications that the building owner lacks. (Ahmed Al-Adwan, 2022)

Hence, Saudi lawmakers have focused on contracting contracts for permanent buildings and structures, establishing strict liability rules for both the supervising designer and the contractor. Considering these rules and liability are at the heart of public order, the goal is to prevent the supervising designer and the contractor from evading liability through private agreements, as they are the technical parties. It is more appropriate to impose their conditions on the building owner, who is often inexperienced in construction processes, leading to his compliance with these conditions were it not for the legislator's attention (Muhammad Al-Zoubi, 2020).

Furthermore, construction defects, the resulting collapse of buildings or fixed structures, and the defects they may contain that threaten their durability and safety do not only harm the building owner. Rather, they often lead to disasters that cause significant damage to lives and property, including those of residents, neighbors, and pedestrians on public roads. To protect the safety of all individuals from the risks associated with the collapse of buildings and fixed structures, it has become imperative that the supervising designer and the contractor not be allowed to exclude their liability for these damages through private agreements. This is because the durability and safety of buildings are closely related to public order, and therefore, invalidating the exemption conditions is necessary to protect public safety (Ahmed Taha, 2015). Based on the above, it follows that the guarantee of the supervising designer and the implementer (contractor) is linked to the public order, and it is not permissible to agree to exempt or mitigate the provisions of the ten-

year guarantee; however, it is permissible to tighten them. Accordingly, we will discuss these issues as follows:

First: The impermissibility of exemption from the ten-year warranty.

The responsibility of the supervising designer and the implementer (contractor) is a matter of public order and safety. This is justified by the fact that the demolition of buildings or fixed structures, and any defects that may exist therein, that threaten their durability and safety, not only harms the employer but also leads to disasters that affect the lives and property of others. If an agreement to exempt from this responsibility were permitted, the supervising designer and implementer (contractor) would have included clauses in their contracts that exempt them from liability. This would be detrimental to the building owner, who is often ignorant of construction matters. This has led the Saudi legislator to consider any agreement that would exempt them from this liability null and void. The invalidity applies only to the condition and does not extend to the contract or other conditions as long as they are valid. Accordingly, any condition that seeks to exempt the supervising designer and implementer (contractor) from their liability based on their presumed fault for construction defects is null and void.

Second: The impermissibility of limiting the ten-year warranty.

The effects of invalidity extend not only to exempt agreements but also to any agreement that limits, reduces, or narrows the scope of the warranty. Thus, any agreement that reduces or restricts the warranty period is considered invalid. Similarly, any agreement that limits the warranty to the supervising designer or the executor (contractor) to the exclusion of the other that excludes joint liability between the supervising designer and the executor (contractor) or that requires proof of fault on the part of either party before the warranty can be reclaimed, is also invalid. Similarly, an agreement that specifies in advance the amount of compensation or a condition that limits the amount of compensation due and payable by the architect or contractor in the event of a defect or collapse is also invalid.

All of these contractual conditions that reduce the warranty, whether related to the warranty period or the amount of compensation, regardless of the form of the contractual condition, are considered invalid for violating public order. Therefore, the presence of this contravening condition in the contract does not preclude the building owner's right to fully reclaim the warranty from the supervising designer and executor (contractor) despite the existence of the contravening condition.

Third: The permissibility of increasing the ten-year warranty.

We previously learned that the rationale behind making liability a matter of public order is to increase the ten-year warranty beyond what is required by general rules. There is nothing to prevent an agreement that liability be more stringent than

the liability stipulated under the special provisions of Paragraph 4 of Article (29) of the Implementing Regulations of the Building Code Implementation Law.

Under the provision, the building owner, the supervising designer, and the contractor may include in contracts a condition that limits the latter's warranty to a period of fifteen years or more, for example.

Referring to the general rules, we find that Article (174) of the Civil Transactions Law permits an agreement to increase the ten-year warranty, stating: "It is permissible to agree that the debtor shall bear the consequences of force majeure," such that the supervising designer and contractor bear the compensation. (Ahmed Awad, 2024) In other words, the Saudi legislator has made this provision interpretive or supplementary. Therefore, it is permissible to agree to increase the ten-year warranty to include force majeure. In violation of the fourth paragraph of Article (29) of the Implementing Regulations of the Building Code Implementation Law, it is permissible to tighten liability rules pursuant to an agreement clause. The purpose for which the text was enacted is to provide legal protection, the rules of which were established by the legislator to safeguard the interests of the building owner, who is often inexperienced in construction operations. Therefore, whenever the tightening of liability proceeds in the same direction as the legislator, i.e., in the interest of the building owner, then such an agreement is permissible, as it would also encourage the supervising designer and the executor (contractor) to exert maximum possible effort to ensure the safety and durability of the buildings for a longer period. Accordingly, it is permissible for the building owner, on the one hand, and the supervising designer and executor (contractor), on the other, to agree to extend the liability period to more than ten years. They may also agree that the supervising designer and executor (contractor) shall bear all damages incurred by the building owner as a result of the total or partial collapse or a defect in the building, even if the cause of the collapse or defect was due to force majeure.

Conclusion

The Saudi legislator was unique in issuing the Building Code Implementation Law and its regulations, providing the most effective protection for building owners who are not experienced in construction operations against the risk of building or fixed structure collapse and any defects that may threaten their durability and safety. The Saudi legislator not only guaranteed the protection provided by the Building Code Implementation Law and its regulations to the building owner but also required the contractor to insure against hidden defects, benefiting both the contractor and the building owner. The existence of a regulation classifying building code violations imposes financial fines and procedures that may extend to suspending the practice license for a period not exceeding one year for those who comply with the ten-year guarantee. It also imposes procedures for building owner

violations, including halting construction work if the violation is due to failure to contract with an approved or licensed engineering office. This is the greatest guarantee of compliance with the building code.

Thus, we recommend the following: Add a paragraph to Article (29) of the Executive Regulations with the following wording: "The building supervisor and the contractor shall be jointly liable for compensating the owner for any total or partial collapse of the buildings or structures they have constructed within ten years from the date of issuance of the occupancy certificate, and for any hidden defect that threatens the strength and safety of the building." Adopting the Hijri or Gregorian calendar on the one hand and ensuring that the insurance policy's effective date is the date of issuance of the (occupancy certificate), on the other hand. The insurance policy should include compensation for the building owner (the beneficiary (the insured)) for economic losses or damages resulting from personal or bodily injury and compensation for individuals, in line with Arab legislation. The preferred provision is three years from the time of the collapse or discovery of the defect. If this period expires without the building owner filing a claim, the claim shall not be heard, thereby achieving a balance between the rights and obligations of the parties to the ten-year insurance.

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