

Can a court adjust your liquidated damages assessment?

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Introduction

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Liquidated damages are damages whose amount is designated by the parties during the drafting of a contract for the harmed party to collect as compensation on a specific breach (eg, late performance). If a party breaches the contract, it will be liable to pay the other party the pre-designated amount in damages.

A hot topic in Lebanon is whether parties in a contractual dispute can apply to the courts for a liquidated damages adjustment (either upwards or downwards), so that they align with actual damages. In other words, how do Lebanese courts respond to applications for liquidated damages adjustments?

Facts

Articles 259 and following of the Code of Obligations and Contracts give the courts – on application by either party – the power to award compensation equal to actual loss. In this respect, it is important to read Section 259 in light of the actual contract under which compensation is being sought. If no liquidated damages clause has been provided for in the contract, the court – under Articles 259, 260 and 262 of the code – will assess the amount of compensation as equivalent to the actual damage suffered. Typically, these provisions will be used to lower the actual amount of damages being sought; the use of these provisions to increase the damages sought is rare.

However, the situation becomes complicated if the contract contains a liquidated damages clause. The courts will not use their discretion if actual damages have clearly been incurred and the party seeking to enforce the contractual provision can demonstrate that the liquidated damages amount was the product of a genuine and reasonable estimate.

Put simply, Lebanese law allows courts to alter a pre-determined amount for liquidated damages to reflect actual damages suffered. However, if the contract stipulates an amount to be paid in the event of a breach, the claimant can recover reasonable compensation not exceeding the specified amount. For example, a stipulation for delay damages acts as an upper limit on the damages recoverable by the claimant for a breach. While courts can reduce the amount of damages at their discretion, they cannot increase the amount beyond that which is stipulated in the contract.

Comment

While Lebanese law gives courts the power to alter any amount of liquidated damages being sought, they generally use this power to lower such amount, rather than increase it. If the contract stipulates an amount to be paid in the event of a breach, this acts as an upper limit on the damages recoverable by the claimant and courts can lower the amount only to reflect the actual damages incurred.

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Parties to a contract rely on liquidated damages to recover a reasonable estimate of the damages that they will incur in the event of a breach of contract. Without such contractual provision, they may find themselves liable to pay a greater sum than expected if a court rules that the actual amount of damages suffered is greater than that for which the claimant seeks compensation. However, the purpose of a liquidated damages clause is to compensate an injured party, rather than punish a party in breach of the contract. Courts will therefore seek to achieve a fair result that accurately reflects the actual damages suffered by a party.

For further information on this topic please contact [Alaa Zeineddine](#) at EMEA Legal Counsels by telephone (+961 1 609 900) or email (azeineddine@emealc.com). The EMEA Legal Counsels website can be accessed at www.emealegalcounsels.com.

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