

The Ethiopian Construction Law Relating to Immovables

Description

By DMLF Team

Background

The Ethiopian Civil Code of 1960 from Articles 3019-3040 incorporates the legal basis for construction rules of contracts of work and labour relating to immovables. These are special laws that override general contract laws. The scope of the law relates to construction works in relation to buildings, repairs or installation of immovables. There are other construction related laws within the Civil Code. One of them relates to contracts of work and labour covered under Articles 2610-2631. These articles apply to construction of buildings where the cost of the building does not exceed 500 Ethiopian dollars. The other provisions of the Civil Code on construction relate to administrative contracts that range from Article 3131-3306. Article 3244 provides that a contract of public works is a contract whereby a person the contractor binds himself in favor of an administrative authority to construct, maintain or repair a public work in consideration of a price. This brief article is about Civil Code provisions from Article 3019-3040. An attempt shall be made to shed light on topics of form of contract, experts, alterations, termination, dispute settlement, warranty and sub-contractors. A brief conclusion shall end the article.

Form of Contract

The construction work of an immovable property is required to base itself on a contractual agreement. Here, unlike the general contract provision of the Civil Code relating to immovables where such contracts need to be written and witnessed, this special law does not provide for a special form of contract. Rather the law here identifies two essential aspects of the contract – to agree on the work to be done and the price.

The work to be done could be described by means of a plan, scheme or other document. If the description of the work on the immovable is in general terms, the interpretation of the work will be restrictive.

The other essential element of the agreement is the price. The price could be determined in lump sum or fixed in estimation. The law recognizes as well payment of price in stages of compilation of work. The remuneration of the contractor is separate from the price in which the agreement of the client and contractor should fix the remuneration. In the absence of a specific fixed remuneration, the contractor shall notify the client the wages corresponding to the contractor's work.

The proof of evidence of a contract of immovables is where the contractor has undertaken work to the knowledge of the client or received an advance from the client.

Experts

The idea of a consultant to the client is also introduced in the Civil Code. The client may require the

amount appearing in the accounts of the contractor or the progress achieved in the work or quality of materials used and work completed be assessed by an expert. The fact that there is no specific expert appointed may not prohibit the client from seeking such services from experts.

Alteration

There are two types of alterations. One is when the client demands the alteration and the other is when the contractor requests alteration. When the client requires alteration, such demand could be taken as a right in two conditions. One is when the alteration needs to technically be made and two is when the alteration does not destroy the solidarity of the work already done. The alteration may result either in reduction of originally agreed price or the alteration may result in increase from the originally agreed price. The contractor is at liberty to disagree on the alteration where the altered work exceeds by 20% of the value at which the original work was or could have been estimated.

Similarly, the alteration may be demanded by the contractor. In such a case, the contractor is required to serve notice to the client.

Warranty

The Civil Code introduced a warranty due by the contractor. The contractor is duty bound to guarantee during ten years from delivery the proper execution and solidity of the work done by the contractor. The contractor is responsible for loss or deterioration of the work that comes due to defects in execution or the soil on which the construction has been done. Such warranty cannot otherwise be agreed to be shortened or cannot relieve the contractor from warranty.

Termination

The right to terminate the contract for no fault of the contractor is given to the client. When such happens, the right of the contractor is to be paid to the extent of the work done, material value used and the whole remuneration agreed with the client. However, when the client terminates the contract due to the fault committed by the contractor or contractor not accepting alterations, the right of the contractor is limited to the part of the price and remuneration that corresponds to the work already carried out.

Dispute Settlement

The contract of work and labour on immovables indicates in different provisions how disputes be resolved between client and contractor. For instance, in cases where there is no agreement on the amount of remuneration, the client has the right to require such remuneration be fixed by arbitrators. When it comes to alteration and there arises dispute on reduced or increased price due to alteration, such dispute shall be settled by arbitrators appointed by the parties or failing such, by the court.

Sub-contractors

The idea of principal contractor and subcontractors is also introduced in the Civil Code of 1960. The independent subcontractors or work men could be employed under a contract of work and labour relating to an immovable. For the work performed, these sub-contractors or the work men can claim against the person on whose behalf the work was done.

Conclusion

The Ethiopian Civil Code of 1960 covers those construction contracts on immovables where the agreement of the parties fails to cover. The provisions of Articles 3019-3040 still are enforced. Aside from construction contracts of public works which are handled under administrative law provisions, any other construction contract on immovables should follow these provisions.

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