

Contract Law – Limitations on Freedom of Contract

Full Description

Allowed Level of Damages That Can Be Awarded to Injured Party

The laws of some countries, such as England, require that any damages that may be recovered for breach of the contract or other obligations should be limited to the level of damage or loss actually suffered. Any provision in a contract, such as a liquidated damages clause in a construction contract, seeking to set damage levels in certain situations, will be void if it exceeds what would be a genuine pre-estimate of damage. It would then be for the court to determine the appropriate level of damages.

Duration of Agreement

When considering whether the enabling environment is consistent with the infrastructure project, existing laws that prescribe the length of a contract or the period that public assets can be let to a private entity need to be considered. For more information, see [Agreements](#).

A host country may also wish to enact such limitations to create boundaries for projects.

Other issues that need to be considered in this respect are:

- Does the law contain constraints on the parties' freedom to agree on termination rights and procedures?
- Does the law allow the term of the agreement to be extended in specific instances?
- Are there constraints on the ability of the parties to a contract to agree compensation payments in the event of termination?

Constraints on Exclusion/ Limitation of Liability

Many jurisdictions have express provisions at law limiting the extent to which a party to a contract can limit its liability for death, injury and damage to property. These provisions are seen as protecting the general public, in particular. Care needs to be taken when drafting project agreements that these constraints are understood as an agreement that seeks to go beyond the permitted limits may result in the whole agreement being void.

There may also be provisions that prohibit parties from seeking indemnities from other parties against certain liabilities, particularly criminal liability.

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