

Defects of Consent

8.1 THE GENERAL RULE

In the previous chapter, we examined the notion of capacity and legal personality under the Qatari civil and commercial law. In general, article 108 CC conflates capacity and consent by stating that consent (to contract) is only valid in respect of entities that possess capacity under the law. Overall, the law distinguishes between persons with full legal capacity and those with partial or no legal capacity. Persons with limited capacity may contract through a guardian and in limited circumstances not involving a significant financial commitment they are free to contract without guardianship.¹ Entities with full capacity may freely contract in their person.

The types of defects envisaged in articles 130–147 CC encompass circumstances that inhibit free and informed consent by the offeror or offeree. The CC follows the civil law tradition of grouping these grounds in one section. The existence of a threat, coercion, mistake or exploitation prevents the offeror or offeree from forming a valid intention to be bound by the offer or acceptance.² The offeror or offeree would have bargained differently or not at all had these circumstances not been present when the offer or acceptance was made. The CC sets out a fifth type of defect, in the form of injustice against the interests of the state or a state entity. The law renders contracts concluded under such defects of consent voidable,³ as opposed to void or null. This is a very importance consequence, whose effects will be explored at the end of this chapter.

¹ See Chapter 4 and Arts 118–126 CC.

² Hence, this chapter will not discuss the forgery of contracts or associated documents where they do not give rise to defects in forming intent. The Court of Cassation has long held that the invocation of forgery must be done according to the procedures and time limits afforded by law. See Court of Cassation Judgment 81/2010.

³ Arts 158–162 CC.

It should be stated that the types of defects analyzed in this chapter arise subsequent to the formation of the contract. Hence, if proven, any of these grounds serves to extinguish an existing contract. Defects of consent prior to the conclusion of a contract typically challenge the existence of mutual consent (so called *dissensus*), or even the identity of the parties themselves (i.e. who is the buyer and seller). A defective common consent under those circumstances prevents the formation of a contract in the first place.

8.2 MISTAKES

It would be unfair for a party to plead a mistake in the formation of its consent (even if true) in order to escape its obligations under the contract. It would be equally unfair, however, if a mistake that was not obvious from the outset causes significant harm to the party acting in ignorance of that mistake. Given that the concept of ‘mistake’ is key to this discussion, it is worthwhile explaining how this is conceptualised in the architecture of article 130 CC. It refers not to arithmetical or spelling mistakes,⁴ but fundamental mistakes of substance that are crucial for the formation of consent of either the offeror or the offeree. In one case, the buyer of two plots of land contracted with an intermediary to buy the land in its name and then transfer the two plots to the buyer once full payment had been made. The intermediary proceeded to buy the two plots but when he registered these in the land registry it transpired that he had in fact bought plots that were different to those inspected and approved by the buyer. Such a mistake was viewed by the Court of Cassation as being fundamental in nature, thus, justifying the annulment of the contracts between intermediary and buyer.⁵

Article 130(1) CC places greater emphasis on the impact of the mistake upon the ignorant party by stipulating that if said party would have not provided consent had it known about the mistake, it may subsequently demand avoidance of the contract. The mistaken party’s mistake may only be pleaded against its counterpart if the latter in ignorance committed the same mistake (so-called common mistake), or where it was aware of its occurrence, or if it could have easily detected such mistake.⁶ By implication, where the mistaken party entered into a contract requiring due diligence from both parties, it may not plead a mistake predicated on its own due diligence failures, as this would

⁴ Art 133 CC. See also Court of Cassation Judgment 113/2012 to this effect. The courts may correct such simple errors in accordance with Art 138 CCP.

⁵ Court of Cassation judgment 87/2011. See also Court of Cassation judgment 242/2016 to the same effect, although this case is mostly centered on fraud under Art 134 CC.

⁶ Art 130(1) CC.

constitute among others an abuse of right. Conversely, where the mistake arose out of the failure of the other party to provide or disclose information under its possession or knowledge,⁷ or where it was under a statutory obligation to provide information,⁸ the mistake may be pleaded against said party. This is further confirmed by paragraph 2 of article 130 CC, which provides that gifts (promises) based on a mistake are voidable without the need to establish whether or not the beneficiary participated in or was aware of the mistake.

The duty to disclose relevant information is particularly important in the consumer context. Article 7 of the 2008 Consumer Law⁹ provides that suppliers displaying goods for trading must clearly indicate on the packaging the type, nature, ingredients and other information relating to the good. Moreover, where the good involves a certain risk, the consumer shall be clearly warned against such risk. There equally exists an obligation to disclose to the consumer all the fees and expenses associated with payment of goods in instalments,¹⁰ as well as all relevant facts about the characteristics and price of goods or services.¹¹

Just like the civil law tradition with its emphasis on good faith, mistaken consent that is contrary to good faith does not serve to invalidate the contract.¹² Good faith is central to the CC¹³ and the parties to a contract may not plead a 'mistake' if they were either aware of the mistake (although undisclosed by the other party) or they would have provided consent anyway. The other

⁷ Withholding of information in one's possession is different from intentional misrepresentation of circumstances under the contract by one of the parties. Misrepresentation, which effectively amounts to fraud, is regulated under Arts 134ff CC. Despite the appearance of 'misrepresentation' in Art 134 CC, this should not be confused with its common law namesake. Under the leading case of *Smith v Hughes* (1871) LR 6 QB 597, it was famously held that there exists no general duty to disclose information and in principle mere silence is not a ground for avoiding a contract. The English Misrepresentation Act 1967 identifies three types of misrepresentation, namely: fraudulent, negligent and innocent.

⁸ Law No 13/2012 on Issuing the Law on Qatar Central Bank, provides in Art 142 that financial institutions shall not offer, provide, promote or advertise any financial service that is misleading or incorrect. Any advertisement shall be clear, unambiguous and in plain language that is neither misleading nor deceptive, and shall include the essential data, merits, characteristics and prices of the financial service advertised as well as the terms and conditions relating to accessing such services and educating consumers about the risks of the financial product or service offered.

⁹ Law No 8/2008 on Consumer Protection. See also Decree No. 68 of 2012 on the issuance of the Regulations on the implementation of the Consumer Protection Law No. 8 of 2008 (Consumer Protection Regulation).

¹⁰ Art 15 Consumer Law.

¹¹ Id, Art 11.

¹² Art 132 CC.

¹³ Besides Art 132 CC, this is chiefly prescribed as a foundational principle of Qatari contract law in 172(1) CC, whereby all contracts must be performed in accordance with good faith.

(non-mistaken) party may under such circumstances insist on the conclusion of the contract provided that substantial harm is not caused.¹⁴

In summary, the avoidance of a contract by reason of mistake requires a) the *existence of a contract*; b) a *misapprehension* of the correct situation, circumstance or quality of a good or service (actual mistake) by one or both parties, in respect of a fundamental characteristic of the good or service; c) a *causal link*, namely that the contract would not have been concluded under those conditions had these been known to the ignorant party; and d) *apparent importance*, in the sense that it must be clear to the non-mistaken party that had the other party been aware of the truth it would not have agreed to the contract or its terms.

8.3 FRAUD

The type of *fraud* envisaged under article 134 CC overlaps to some degree with the concept of fraud under articles 354–361 of the Qatari Criminal Code, but here its application concerns whether or not the defrauded party would have accepted the offer had it known about the issue concealed under the fraud.¹⁵ It is quite possible, therefore that a particular instance of fraud under the Criminal Code may not justify rendering the underlying contract void because the offeree would have accepted anyway.¹⁶ While a claim of fraud will typically also be accompanied by the pleading of a mistake (as overlapping grounds), the former, if successful, allows not only the avoidance of the contract but also a possible claim for damages arising out of the tort of fraud.¹⁷ This is particularly so where the defrauded party incurred costs in reliance on the other party's fraudulent representations.¹⁸ The Court of Cassation has stipulated that contractual fraud may be achieved by using fraudulent or negative methods, and thus, to deliberately mislead the other contracting party which is ignorant of the fraudulent act. This requires that the defrauding party, its deputy or one of its partners must have participated or furthered the mistake,

¹⁴ Art 132 CC.

¹⁵ Other special types of fraud affecting contractual relations exist. Art 61 of Law No 14 of 2004 on the Promulgation of Labor Law stipulates that dismissal (and effectively termination of contract) of the employee is permitted where the latter assumes a false identity, alleges a nationality other than his or submits false certificates or document. See also Court of Cassation Judgment 2/2011.

¹⁶ For the position in classical Islamic law, see A El-Khalek, 'The Regulatory Framework of the Defect of Fraud in Islamic Law', (1986) 3 Arab LQ 237.

¹⁷ This overlap between a tort and fraudulent contracting was noted in Court of Cassation Judgment 36/2016.

¹⁸ See Arts 199–219 CC.

which was difficult to discover and the fraud must relate to an essential element of the contract.¹⁹

Again, the starting point for an examination of fraud under article 134 CC is good faith. Good faith dictates that unless the law otherwise requires some element of due diligence (by the buyer), the seller is under an obligation to be truthful about the quality of the goods or services offered. Good faith under Qatari law (and its Islamic legal tradition)²⁰ equally commands that representation is fraudulent where the reasonable person in the position of the buyer would have been able to perceive the deception. An expert mechanic inspecting a car cannot claim to have been deceived as to the condition of the car's engine by the seller's representation. In a case where a car sold had been modified by the manufacturer for the GCC environment, the buyer argued that had he known about the modification he would not have agreed to buy the car. The Court of Cassation, after taking advice from an expert that the modifications were in conformity with GCC specifications, held that the seller had not defrauded the buyer.²¹ The Court of Cassation has emphasised that context and the parties' personal attributes are important. Hence, in a case where one party convinced others through advertisements to purchase a company depicted as successful, which was riddled with debts, such representation was found to encompass an intention to enter into a fraudulent transaction.²² Fraud under article 134(1) CC should be understood as the intentional misrepresentation of facts that are fundamental to the consent of the offeree.²³ Hence, so-called *promotional puffs* that are employed in order to accentuate or exaggerate the quality of a good or service do not constitute misrepresentation because they do not concern fundamental elements of the service or good.

While contractual misrepresentation typically concerns *active* deception on the part of the seller, paragraph 2 of article 134 CC equally encompasses *passive* deception. In the latter case, the seller either conceals or is otherwise silent about the fundamental qualities of a good or service, or is untruthful about such qualities when asked by the buyer. If the buyer does not possess sufficient expertise or is unable to inspect the goods or services and relies in

¹⁹ Court of Cassation Judgment 242/2016.

²⁰ See N Majeed, 'Good Faith and Due Process: Lessons from the Shari'ah', (2004) 20 Arbitration International 97.

²¹ Court of Cassation Judgment 242/2016.

²² Court of Cassation Judgment 42/2016.

²³ Art 7 of the Consumer Law specifies that the supplier shall be prohibited from describing, advertising or displaying the commodity in a manner that involves false or deceptive information.

good faith on the seller's representation, the latter's silence, even if not asked (by a non-expert buyer) is assumed to be fraudulent with the intention of deceiving the buyer (so called *subterfuge*). In such circumstances, the seller is acting in bad faith and hence may not contest that he would have truthfully responded to the buyer had the latter asked. In one case, the appellants sold a company under the claim that it generated significant returns. They provided false information about the number of employees and did not disclose that they were trading under the company's name. They equally omitted to disclose that the company had been fined as a result. One of the appellants, moreover, upon completion of the sale, removed the funds from the company's account and failed to pay outstanding company debts. The Court of Cassation had no problem finding fraud under article 134 CC. Deception, it held, was both active (lying, misrepresentation) and passive, namely through silence, when requested by the other party to provide specific information.²⁴

Article 135(1) CC requires that voidance of a contract on the basis of fraud demands proof that the deceit is attributable to the defrauding party or someone else validly acting on its behalf, or in whose interest the contract was concluded. If it is not satisfied that the deceit is not attributable to the defrauding party, the contract may not be voided.²⁵ Even so, if it is established that the defrauding party was, or should necessarily have been, aware of the fraudulent misrepresentation, the defrauded party may claim the voidance of the contract.²⁶ In one case the applicant alleged that the date on the contract, which itself was in the form of a photocopied document, was fraudulent. The Court of Cassation demanded that in order to successfully prove fraud the applicant was obliged to produce the non-fraudulent contract in writing, whether in the form of the original or a certified photocopy.²⁷

The prohibition of fraud constitutes a public policy norm. The parties to a contract do not possess authority to validate fraudulent conduct. Hence, while contracting parties may validly agree to exempt each other from contractual liability, this is not possible in two notable cases: fraud and severe fault, according to article 259 CC.²⁸

²⁴ Court of Cassation Judgment 29/2016.

²⁵ See to this effect, Court of Cassation Judgment 196/2010, which relied on Art 4 of Law No 14 Concerning the Land Registration System. The Court held that despite the existence of fraud on the part of the seller, the underlying purchase agreement between buyer and seller was not tainted by fraud and hence was not voidable.

²⁶ Art 135(2) CC. See also Art 136 CC, which stipulates that in respect of a contract or a gift, voidance thereof may be requested if consent to its terms was given as a result of fraud, even if caused by a third party.

²⁷ Court of Cassation Judgment 89/2011.

²⁸ See Court of Cassation Judgment 74/2011.

The existence of fraud has an impact on the parties' rights and obligations. In accordance with article 462 CC, the seller's obligation to guarantee hidden defects lapses with the passage of one year from the delivery of the thing sold, even if the defect is not discovered until after that, unless the seller accepts a longer warranty period. However, if the seller deliberately conceals fraud, the warranty does not lapse until 15 years have passed since the sale took place.²⁹

8.4 THREAT OR COERCION

The terms 'threat', 'duress' and 'coercion' are used inter-changeably and carry the same legal meaning for the purposes of article 137 CC. Article 137(1) CC defines these as the 'unlawful instillment of justifiable fear'. Fear is justified, in order to avoid the underlying contract, where the affected party was 'confronted by circumstances that led him reasonably to believe that a grievous and imminent danger to life, limb, honor or property threatened him or others'.³⁰ Even though coercion seems self-evident this is not the case. The coercive act must be *unlawful* in nature.³¹ This is clearly spelt out in article 137(1) CC. As a result, actions that might otherwise appear to be coercive, yet lack illegality, do not justify avoidance of the contract by the claimant.³² By way of illustration, if the seller threatens a prospective buyer that he will sell the house to another person unless the buyer accepts the offer in two days, this is not unlawful; a purchase under such a 'threat' would not subsequently justify the invalidity of the agreement.

Besides the unlawful character of the threat, paragraph 1 of article 137 CC requires that the threat, moreover, instil justifiable fear upon the threatened party. *Unlawfulness* and *justifiable fear* are not conjunctive but must exist simultaneously. As a result, an unlawful threat that does not instil unjustifiable fear on the threatened person, and who subsequently goes on to adopt the contract, may not invoke the threat to avoid the contract. It is, therefore, important to ascertain how and if the coerced party was subject to a justifiable

²⁹ Court of Appeal Judgment 339/2018.

³⁰ Art 137(2) CC.

³¹ That is exactly why the text in Arts 241, 245 and 251 CC indicates that forcing the debtor to carry out its obligation in kind does not entail coercion because this does not compromise the debtor's dignity nor does it stifle its freedom in contravention of the law. See to this effect, Court of Cassation Judgment 80/2015.

³² Exceptionally, where the law requires good faith for the validity of an act or transaction the existence of illegality is irrelevant. Art 946(2) CC makes it clear that acquisition of property by means of coercion [irrespective of illegality] is always presumed to be in bad faith and hence it is invalid. See Art 948 CC concerning the transfer of property in the event the possessor acquired it in bad faith.

fear. The test put forth by paragraph 3 of article 137 CC clearly seems to be a subjective one. It stipulates that in determining the effect of the threat, account shall be taken of the ‘gender, age, knowledge, ignorance, or health of the affected party, as well as any other circumstance that might have aggravated the duress’. The coerced party may invalidate the contract where the threat was such that he or she would not have agreed to the suggested terms had the threat not been present. The existence of such a causal link is paramount as is the case with all the other types of defective consent.

Finally, just like the other forms of defective consent, the threat must be attributable to the other party, or a representative thereof, or a person acting in its interest.³³ A threat is not typically attributable to the principal if undertaken by the agent in its personal capacity and acting *ultra vires* in respect of the powers and instructions provided by the principal.³⁴ The courts have absolute authority to examine all evidence alleging the existence of threats,³⁵ and in any event, the claimant must provide proof of its claim.³⁶

8.5 EXPLOITATION

Article 140 CC sets out a fourth ground that may give rise to defective consent, namely exploitation. This is a wide ground that is also known as ‘undue influence’ under civil law systems. Article 140 CC stipulates that exploitation arises where a contracting party exploits its counterpart out of ‘need, obvious frivolity, visible vulnerability, or sudden heat of passion, or his moral influence over the other person causes that other person to conclude a contract ... and such contract contains an excessive imbalance between the obligations he must perform and the material or moral benefits he shall obtain from the contract’. Given that disparity in the value of mutual performances is common in all types of transactions (e.g. consumer transactions), article 140 CC targets only those obligations that are *excessively imbalanced*. It is necessary, however, that such excessive contractual imbalance be the direct result of undue influence or exploitation, as defined in article 140 CC. This gives rise to a double test of both procedural and substantive fairness. The test for exploitation seems to be subjective and based on the circumstances of the exploited person. Given that the underlying principle aims to prevent and invalidate excessive (gross) disparities, the intention of the other party (the exploiter) is irrelevant. Hence,

³³ Art 138 CC.

³⁴ See Chapter 4 for an analysis of the law of agency.

³⁵ Court of Cassation Judgment 394/2015.

³⁶ Court of Cassation Judgment 260/2019, where the claimant failed to prove that its settlement agreement was the result of coercion.

if a party to a contract is subject to a grossly disparate set of obligations, even if this was not intended by its counterpart, the very fact of such disparity suffices to invalidate consent.

Where the courts encounter such disparity, they are entitled to modify or invalidate the contract altogether. If the court decides to intrude and modify the contract it shall adapt the parties' respective obligations in a manner whereby the gross disparity is alleviated.³⁷ This is an exceptional mechanism that is consistent with transnational practice³⁸ and finds support also in situations of *force majeure*.³⁹ The same principle applies *mutatis mutandis* in respect of donations made but in respect of which the donor was the subject of exploitation or undue influence.⁴⁰

Unlike the previous three types of defect (mistake, threat or coercion), whereupon general limitation periods apply, article 142 CC introduces a limitation period specifically designed to address exploitation. Paragraph 1 of article 142 CC contemplates that actions concerning exploitation expire a year after the conclusion of the impugned contract, save where the defect continues, in which case the one-year limitation period commences from the date such defect disappears.⁴¹

8.6 INJUSTICE

This is an innovation of the CC. Article 143 CC stipulates that injustice not resulting from mistake, fraud, duress or exploitation shall have no effect on the contract – that is, it may not be voided – except in special circumstances determined by the law. Although such *injustice* is not defined, we have a pretty good idea what it consists of.⁴² For one thing, it may not result from any of the aforementioned defects of consent. Second, article 144(1) CC makes it clear that what is at stake is *excessive* injustice harming a limited number of

³⁷ Art 140 CC.

³⁸ See Art 3.2.7 UNIDROIT Principles of International Commercial Contracts (PICC), which refers to the authority of courts to adapt obligations in contracts giving rise to 'gross disparity'.

³⁹ See Art 6.2.3(4)(b) PICC; Art 171(2) CC.

⁴⁰ Art 141 CC.

⁴¹ Art 142(2) CC. Under no circumstances can this period be longer than fifteen years, in accordance with Art 142(3) CC.

⁴² In other legal systems, injustice (in the sense of grossly imbalanced obligations) is usually classified as an unfair term, over which the courts are granted authority to either adapt or invalidate. See, for example, Art 3(1) of EU Directive 93/13 on Unfair Terms in Consumer Contracts, which stipulates that a standard term in a consumer contract causing a 'significant imbalance to the parties' rights and obligations' and which is to the detriment of the consumer is considered unfair. It is the opinion of the authors that in the Qatari CC this is treated as a defect of consent.

entities, namely the state, any public juridical entity, incompetent or partially incompetent persons,⁴³ or the Authority for Endowments (*Waqf*). Hence, with the exception of persons under guardianship, article 143 CC targets contracts involving a state entity. Contracts between a public and a private entity are known as administrative contracts⁴⁴ and are typically regulated by administrative law, with jurisdiction conferred to the administrative circuit of the court of first instance.⁴⁵ It must be emphasised that article 144 CC does not aim to regulate administrative contracts as a whole, but only those aspects of such contracts that produce excessive injustice. Paragraph 2 of article 144 CC quantifies injustice as excessive where ‘it exceeds one-fifth at the time of concluding the contract’. Just like the effects of exploitation on the exploited party, paragraph 1 of article 144 CC allows the courts to amend the injured or other party’s obligations in order to redress the injustice incurred. In addition to this remedy, the non-injured party may request termination of the contract with a view to avoiding amendment to its obligations.⁴⁶

While the device of injustice under articles 143ff CC is laudable it is not free from contention. For one thing, the Court of Cassation has emphasised that: ‘it is not permissible for a judge to rescind or amend a valid contract on the ground that the revocation or modification is required by the rules of justice. Justice completes the will of the contracting parties, but does not abrogate it’.⁴⁷ Moreover, the remedy envisaged in article 144(1) CC may amount to an expropriation under an applicable bilateral investment treaty (BIT),⁴⁸ or a breach of contract on the part of the state where the governing law of the underlying agreement is not Qatari law. It may also be in conflict with

⁴³ See Chapter 4.

⁴⁴ Administrative contracts are regulated by Law No 24/2015 on the Regulation of Tenders and Auctions, known as the Procurement Law.

The Court of Cassation in Judgment 49/2008 defined administrative contracts as ‘contracts concluded between a legal person of public law and related to the operation of a public service and which include exceptional and unusual conditions [clause *exorbitante*] that are distinct from the ambit of private law’; iterated in Court of Cassation Judgment 118/2008. See also Court of Cassation Judgment 100/2016, which further stipulated that a contract is not of an administrative nature, unless related to the management or organization of a public facility and the administration has demonstrated its intention to adopt public law by including in the contract exceptional and unusual conditions.

⁴⁵ Disputes arising from administrative contracts confer jurisdiction upon the administrative circuit, in accordance with Art 3(5) of Law No 7/2007 on the Settlement of Administrative Disputes; public housing disputes are not considered administrative disputes. See Court of Cassation Judgment 28/2010.

⁴⁶ Art 145 CC.

⁴⁷ Court of Cassation Judgment 122/2013; equally, Court of Cassation Judgment 109/2015.

⁴⁸ See, for example, Art 5 of the 2017 Qatar-Singapore BIT, which sets forth the classic formulation of expropriation.

other provisions of Qatari law, in which case the courts will have to undertake a conflict of rules determination. Given the limited range of circumstances that can potentially fall under articles 143 and 144 CC, it is advisable that such matters be dealt by administrative law and that if the civil law is to be applied, recourse should be had to the ordinary defects of consent. In trying to address some, but certainly not all, of these concerns, article 146 CC stipulates that contracts concluded by auction and tender may not be subject to injustice claims if concluded in accordance with the law. Equally, article 147(1) CC provides a limitation period of one year.

8.7 EFFECTS OF DEFECTIVE CONSENT

Defects of consent arising out of mistake, fraud, threats, exploitation and injustice should be distinguished from contracts suffering from illegality. Defective consent renders a contract *voidable*, as opposed to void.⁴⁹ The key difference is that a contract suffering from defective consent may be cured by the parties or the court (i.e. through adaptation of the parties' mutual obligations), whereas a void contract cannot be salvaged. This distinction is fundamental in the civil law tradition and is reflected in article 158 CC, which stipulates that voidable contracts are deemed to be effective unless revoked. When revoked they are deemed by the law to be void *ab initio*. The law rightly considers that the parties to contracts, or their guardians, possess sufficient acumen and judgment by which to decide if despite the existence of defective consent, the terms of the contract are still favorable to their personal interests; save where it is in the interests of justice not to do so, or if the law says otherwise.⁵⁰

Articles 159 and 160 CC recognise two particular rights available to injured parties, namely, a) the right to *revoke* the contract and b) the right to *authorise* the contract despite the defect. Both of these rights are conferred on the injured party. Article 160 CC makes it clear that where an injured party authorises the operationalisation of an otherwise voidable contract, the authorisation does not extend to the underlying defect.⁵¹ Hence, while the defect persists, the contract remains alive. Given the inclination to render voidable contracts functional (where this is agreeable to the injured party), as opposed to the mechanism concerning void contracts, article 162 CC is not oblivious to the expectations of the other party (concerned party). Paragraph 1 of article 162 CC allows the concerned party to notify the injured party to declare its intention to either

⁴⁹ On void contracts, see Art 163 CC.

⁵⁰ Art 159(2) CC.

⁵¹ See to this effect, Court of Appeal Judgment 166/2019.

authorise or revoke the contract. This should be done within three months from the date of the notice. Where the period of the notice expires without a declaration of authorisation or revocation of the contract by the injured party, such omission is deemed to constitute authorisation, provided notice is served to the injured party in person.⁵² In equal measure, article 161(1) CC reinforces the salvation of otherwise voidable contracts by prescribing a limitation period of one year from the date the defect arose within which to revoke the contract. If the injured party fails to do so, the general presumption applies and the contract is considered as being live.⁵³

According to article 166 CC, where any provision of the contract is voidable, such provision alone shall be revoked, unless it is evident that the contract would not have been concluded without such provision, in which event the contract shall be revoked in full. Moreover, article 167 CC goes on to say that where a voidable contract contains the elements of another contract, the voidable contract shall be deemed valid to the extent of the other contract, whose elements are available if the intention of the contracting parties indicates that they wish to conclude such other contract. In this manner, the CC attempts to salvage parts or the entirety of voidable agreements, although this may not always be feasible or desirable by one or more of the parties.

⁵² Art 162(3) CC.

⁵³ But see also possible extensions to this time limit in Art 161(2) and (3) CC.