

SOUTH AMERICA**Earthquake in Chile – legal responsibility of construction firms**

by Víctor Ríos | Molina Rios Abogados

On 27 February 2010 Chile was hit by an earthquake of great magnitude – 8.8 degrees on the Richter scale. It is the fifth most severe in recorded history, on a list topped by the 9.6 degree earthquake at Valdivia, which occurred in Chile in 1960.

The recent earthquake raised a series of legal questions on the applicability of *force majeure* and acts of nature as exemptions of responsibility. In that sense, one wonders if, in Chile, a seismic event can be qualified as 'unforeseeable'.

Considering Chile's seismic history, an earthquake of low or medium magnitude could be considered as foreseeable, given that it happens from time to time. However, an earthquake such as that of February 2010, in our opinion, is an unforeseeable act, for it could reasonably not be expected to occur. Undoubtedly, the quake, which shifted the coast of Chile by three metres, was in that sense unforeseeable, which makes the concept of *force majeure* applicable.

That said, the fact of *force majeure* does not necessarily exempt construction firms from responsibility, nor other professionals that took part in construction or other work affected by the earthquake. In fact, the building process must comply with the anti-seismic regulations in force. In Chile this is the official standard, NCh 433. This standard regulates the constructive parameters of the structure of a building, with the purpose of preventing its collapse and protecting lives in the face of seismic activity.

In this manner, even in the event of an earthquake of great magnitude, construction companies will respond to faults, errors or defects in construction, when they have translated into structural damage to the building or the collapse of its structure. In other words, the fact of the force majeure is not sufficient to exempt the constructor of responsibility, when whoever designed or constructed the building did not observe the regulations on design and/or construction applicable in anti-seismic matters.

The rest of the damages caused by such a seismic event – non-structural damages, damages in installations and damages in finishes – are not treated in the anti-seismic regulation. Therefore it must be concluded that they are not the responsibility of the professionals or construction companies that were part of the construction of the building.

But the responsibility for defects in construction does not end with the designers, architects and construction companies. It must not be forgotten that in every project technical inspection firms, independent reviewers and in some cases state officers also take part, depending on the kind of works. These people are also responsible for their actions or omissions when they result in faults, errors or defects in construction.

In our opinion, the mere fact of complying with the technical regulations of construction does not necessarily imply freedom from responsibility, but will serve as criteria for determining whether the corresponding professionals acted more or less diligently.

The above is not merely a theoretical discussion. It has relevance regarding coverage of insurances contracted containing the risk of seismic activity, considering that some policies establish an exclusion in the coverage in cases of 'errors in design'. And many others establish exclusion in the coverage for

damages that “directly or indirectly are a consequence of faults or defects existing at the time of contracting the insurance and that were known to the insured”.

For its part, the process of adjusting insurance policies for incidents caused by the earthquake, as well as determining the corresponding indemnifications, will impact the eventual responsibility of designers and construction companies in these matters. This is especially true for reimbursement actions they might face, if there are faults or defects in the construction.

The issues outlined above will remain the subject of an interesting legal discussion in Chile, since the adjustment process arising from the earthquake has only just begun.

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