Dubai Courts order new condition for construction claims mandating the filing of an authorized expert report (also for liquidation and intellectual property claims)

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Brief

The Dubai Courts issued Circular No. 9/2021 on 13 September 2021 mandating that an authorized expert prepared technical report be filed when submitting a statement of claim related to construction, liquidation, or intellectual property claims for acceptance of the claim.

The Circular instructs the case management office of the Dubai Courts to reject the registration of any claim related to construction, liquidation, or intellectual property unless the claim is supported by an expert report prepared by an authorized expert.

Authorized experts are identified as the experts registered with the Centre for Amicable Settlement of Disputes that is affiliated with the Dubai Courts and established pursuant to Dubai Law No. 16/2009.

The Circular clarifies this necessity being the result of the

complex nature of construction, liquidation, and intellectual property claims. And that supplementing the statement of claim with an authorized expert report would assist in the preparation and expediency of the trial procedures.

It is important to note that the Circular does not limit collaboration by an authorized expert with any other experts. There are no restrictions set in the Circular on reports being developed jointly by authorized experts and third-party or experts from other jurisdictions (such as the DIFC or other Emirates such as Abu Dhabi or otherwise).

Time bar considerations (general and appeals)

It is unclear from the Circular whether this new prerequisite applies only to filing claims with the Dubai Primary Court. The language of the Circular is broad and appears to apply to all court circuits and potentially the Dubai Appeals and Cassation Courts.

This new condition for acceptance of construction, liquidation, and intellectual property claims creates a significant consideration for litigants with respect to time bars being respected.

An expert report would naturally increase the preparation time required for the lodging of a claim with the respective court.

Time bars for general civil and commercial claims range between two to fifteen years inherently granting litigants sufficient time to prepare.

However, there are circumstances where current litigants will need to apply preemptive consideration to this new condition established under the Circular.

Appealing a Dubai Primary Court judgment before the Dubai Appeals Court must occur within thirty calendar days as of notification of the judgment.

And petitioning the Dubai Cassation Court for review of a Dubai Appeals Court judgment must occur within sixty days of notification of the judgment.

As it is unclear whether the condition applies only to filings with the Dubai Primary Court, it would be prudent for current litigants to account for the potential necessity of preparing an expert report by an authorized expert prior to trying their dispute before a higher level of court.

Time bar considerations (urgent petitions)

Another consideration is urgent matter petitions (such as freezing orders or travel bans).

Generally, when a dispute manifests in construction claims, contractors, subcontractors, suppliers, and otherwise take an initial step of requesting an urgent matters judge to issue a freezing order against performance guarantee/s respective of the project in dispute.

An urgent matters judge would grant the injunction against the liquidation of the performance guarantee/s, subject to a substantial claim being filed with the trial court within eight calendar days.

Under the new condition ordered by the Circular, litigants would need to prepare an expert report as required by an authorized expert ready to be filed with the trial court within this short time period of eight days.

Failing which the case management officer would refuse to register the case, and consequently, if the eight days expire, the injunction against the liquidation of the performance guarantee/s would be at risk of cancellation.

Powers of the case management office

The Circular refers to the requirements under the Civil Procedures Law (as amended by Decision 57/2018 and 75/2021),

and particularly Article 16(2)(e):

“The statement of claim shall contain the following date…the subject-matter of the lawsuit, the demands and grounds thereof.”

And Article 17(3):

“The case management office shall be responsible for the preparation and management of the case before referral of the lawsuit to the competent court, including its registration, announcement, exchange of memoranda and documents and expertise reports between the litigants.”

And Article 20(1):

“In the case of the use of remote communication technology or electronic registration…The plaintiff shall, upon registration of his statement of claim, submit a number of copies thereof equal to the number of defendants. A copy to the case management office shall be saved electronically or in a special file. Moreover, the plaintiff shall submit, along with the statement of claim, copies of all the supporting documents, in addition to expertise reports drafted by registered experts, if any.”

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