



Urgent, Immediate and Temporary Remedies and Summary Judgments under Construction Disputes

EXECUTIVE SUMMARY

The Arbitration proceedings in a construction dispute could be lengthy, and intricate.

At times, given the urgent nature of the actions/omissions required by the Defendant, it may not be possible for a Claimant to wait for the appointment of the Arbitration Tribunal, followed by procedural orders and rounds of written submissions and evidentiary hearing.

Under the Federal Laws of UAE, a Party can approach the court of the seat directly seeking resolution of issues wherein an urgency is warranted. The local courts can also be approached directly for seeking summary orders regarding the matters wherein liability is admitted, or where facts of the matter are not in dispute. This article deals with the issue of wide-ranging jurisdiction of the local courts of the UAE in resolving issues regarding urgent interim reliefs, precautionary attachments and summary judgments.

CIRCUMSTANCES REQUIRING URGENT INTERIM RELIEFS IN CONSTRUCTION

According to the UAE Arbitration Laws, urgent interim reliefs are allowed to:

- a) preserve evidence that may be relevant and material to the resolution of the dispute.
- b) Taking necessary measures to preserve goods which constitute part of the subject-matter of the dispute such as an order to deposit goods with a third party or to sell goods which are susceptible to damage.
- c) Preserving assets and funds out of which a subsequent award may be satisfied.
- d) Maintaining or restoring the status quo pending determination of the dispute.
- e) An order to take action that would prevent or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitration process itself.



ARBITRATION TRIBUNAL VIS-À-VIS LOCAL COURTS

The constitution of an Arbitration Tribunal could be a time taking process, especially where the Arbitration Agreement provides for the constitution of a three-member Tribunal. The process of appointment of the Tribunal could be protracted in view of the challenges of parties based on potential conflict of interest of an Arbitrator or because of the time taken by the party-appointed arbitrators to nominate the chairman.

Additionally, the appointment of Tribunal members is generally possible only once the parties have filed a Request for Arbitration and an Answer to the same and paid the required fees for the Arbitration Centre.

In these circumstances, if a party requires urgent interim relief, or a precautionary attachment or freezing injunctions (due to risk of dissipation of the disputed property or funds owned by the Defendant), waiting for the appointment of Tribunal and could be undesirable.

In these circumstances, a party seeking an urgent interim relief may rely on Article 18 (2) of the UAE Arbitration Law and Article 22 of UAE Civil Procedures Code to seek a speedy recourse.

THE EMPOWERING PROVISIONS OF LAW

Article 18 of the UAE Arbitration Law provides:

The chief justice of the Court may, at the request of a party, or at the request of the Arbitral Tribunal, order such interim or conservatory measures as he may consider necessary to be taken in respect of existing or potential arbitral proceedings, whether before the commencement or the arbitral proceedings or during their course.

Article 22 of the UAE Civil Procedure Code, states:

The courts shall have jurisdiction to settle the primary issues and the interlocutory requests on the original action falling under its jurisdiction, and they shall also have jurisdiction to decide on every request related to such actions and which the good course of justice requires its examination therewith. They shall also have jurisdiction to order summary and precautionary provisions which shall be executed in the state even if they were not related to the principal action.

In view of provisions Article 18 of the UAE Arbitration Law and Article 22 of the UAE Civil Procedure Code, courts of the seat of Arbitration have jurisdiction over the issues related to urgent Interim Measures that are to be executed in the UAE although the Courts have no authority over the original substantive action.

In view of Article 22 of the UAE Civil Procedure Code, the courts of seat of Arbitration have jurisdiction to determine applications for precautionary measures or injunction.

SUMMARY JUDGMENT & ARBITRATION AGREEMENTS

Summary Judgments can be obtained in form of payment orders from the local courts in cases wherein facts of the matters are not in dispute (such as an order directing payment of certified amounts). A summary judgment can be obtained from the local courts pursuant to Article 28 of the UAE Civil Procedure Code that provides:

Article (28)

- 1. There shall be appointed, at the location of the court of first instance, one of its judges to decide temporarily, and with no prejudice to the original right, in the summary issues, of which there is worry from the expiry of date.*
- 2. The court of merits shall have jurisdiction to examine such issues if they were prosecuted consequently thereto.*
- 3. As for in the out-sphere of the city, where the court of first instance is located, such jurisdiction shall belong to the court of summary justice.*

In the matters wherein facts of the matters are not as such in dispute, a party may rely on Article 28 as quoted above and file an application directly in the court of the seat of Arbitration and obtain a judgment on a summary basis. However, for seeking the determination of the substantive claim, the parties will still be required to approach the Arbitration Forum.

Hamdan Al Shamsi Lawyers and Legal Consultants have helped Main Contractors and Sub-contractor in obtaining urgent interim relief, precautionary measures and summary judgment from the local courts. As a part of our strategy, upon receiving a successful judgment on payment order applications, we seek a precautionary attachment on the assets of the judgment debtors in order to secure the rights of our clients.

Please do not hesitate to reach out to us for any assistance.

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