

Time Bars in Articles 880 and 883 of the UAE Civil Code (Regarding Construction Disputes)

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Time bars take the form of statutory rules that restrict the period of time within which a legal action can be brought successfully, and therefore restrict the rights of the disputing parties to bring legal proceedings to recover losses or obtain compensation. There are various time bar rules set out in UAE legislation, and each one varies depending on the subject matter of the dispute. However, this article will focus on two significant time bar rules with respect to construction-related disputes; specifically Articles 880 and 883 of UAE Law No. 5 of 1985 (the UAE Civil Code).

A legal claim that is brought by a plaintiff past the limitation period does not automatically fail. The existence of a time bar to the claim (generally, where the claim is brought outside the set limitation period) must be raised by the defendant as a legal/procedural defence. If the defence is successful, the plaintiff's claim will not be heard in the courts.

Therefore, when representing a client in a civil/commercial dispute, it is fundamental to consider first whether there is any applicable time bar. Before a plaintiff makes a decision on whether or not to bring a legal action in the courts, he should be informed by his legal attorney as to whether the claim is time barred. Conversely, the defendant's attorney should determine whether or not the claim is time barred and raise this as a legal defence in the court before addressing the subject matter of the case. Thus, ascertaining the existence of a time bar to a legal claim can potentially shorten the legal proceedings and help the parties to the dispute save time and legal costs.

Determining the existence of a time bar at the beginning of the legal dispute has another strategic importance. As a matter of procedure, the time bar must be raised as a legal defence at the beginning of the proceedings at the Court of First Instance. If a defendant fails to invoke this defence in the Court of First Instance, he will not be able to do so in proceedings at the Court of Appeal or the Court of Cassation.

With regard to construction related disputes, the most important (but not the only) time bar rules are found in Articles 880 and 883 of the UAE Civil Code which state:

"Article 880:

1. If the subject matter of the contract is the construction of buildings or other fixed installations, the plans for which are made by an architect, to be carried out by the contractor under his supervision, they shall both be jointly liable for a period of ten years to make compensation to the employer for any total or partial collapse of the building they have constructed or installation they have erected, and for any defect which threatens the stability or safety of the building, unless the contract specifies a longer period. The above shall apply unless the contracting parties intend that such installations should remain in place for a period of less than ten years.
2. The said obligation to make compensation shall remain notwithstanding that the defect or collapse arises out of a defect in the land itself or that the employer consented to the construction of the

defective buildings or installations.

3. The period of ten years shall commence as from the time of delivery of the work.

Article 883: No claim for compensation shall be heard after the expiration of three years from the collapse or the discovery of the defect.”

Each of Articles 880 and 883 sets out a distinct time bar to be applied in respect of claims brought by an employer against “an architect” (consultant) or a “contractor” for “any total or partial collapse of the building they have constructed or installation they have erected, and for any defect which threatens the stability or safety of the building”, provided the relevant contract does not specify a longer period.

Article 880 provides that a consultant and a contractor will remain jointly liable for a period of ten years to compensate the employer, beginning from the time the “work” is delivered. This gives the employer a right to compensation that lasts for ten years but then expires after the ten year period (decennial liability period). If a defect is discovered by the employer after the expiration of the ten year period, he will not have a right to claim compensation from the consultant and/or contractor; in other words, the employer’s claim is time barred. It must be stressed that this legal defence should be raised by the defendant in his first submission at the Court of First Instance. Otherwise, it will not be acceptable as a legal defence in the Court of Appeal or Court of Cassation, as it is not a matter of public order.

As for the limitation period in Article 883, this commences when the defect is discovered by the employer. Accordingly, the employer must commence a legal action by bringing a claim in arbitration or before the Court of First Instance (depending on the mode of dispute resolution stipulated in the contract) within three years from the date the defect was discovered.

The practical consequences of Article 883 is that it can effectively extend the decennial liability period set out in Article 880 if a defect is discovered within the last three years (or less) of the decennial liability period, or it can shorten the decennial liability period if the defect is discovered within the first seven years.

For example, in a fictional scenario (excluding the consideration of any other factors) where the work was delivered on 1 January 2010, the decennial liability period lasts until 1 January, 2020. If a defect is discovered on 1 January, 2019, the employer would have until 1 January, 2022 to bring a claim against the consultant or contractor. If he fails to do so, the employer’s claim would be time barred after 1 January, 2022. However, if a defect was discovered on 1 January, 2015, the employer would have only until 1 January, 2018 to bring a claim against the consultant or contractor. If he fails to do so, the employer’s claim would be time barred after 1 January, 2018.

The application of Articles 880 and 883 of the UAE Civil Code was addressed in the judgment of the UAE Federal Supreme Court (Court of Cassation) Case No. 267 of Year No. 17 in the Civil Circuit, dated 28 January 1996. The facts of the case are as follows: a contract was entered into between the appellant and the defendant, whereby the appellant engaged the defendant to construct a building project. The final handover of the building (works) was on 11 December 1982; and the appellant discovered a defect in the building (works) that threatened its safety and notified the defendant, on 8 December 1986 of the existence of such defect and requested the defendant to carry out the necessary repairs. The appellant brought a legal action against the defendant in the Court of First Instance on 13 November 1992.

Accordingly, the UAE Federal Supreme Court dismissed the appeal on the basis of its application of Article 883 of the UAE Civil Code. Its reasoning was that notwithstanding that the appellant discovered the defect within 10 years from the final handover date, the appellant only had until 8 December 1989 (three years from the date of the aforementioned notice of defect and repair to the defendant) to commence legal action against the defendant. However, since the appellant did not do so until 13 November 1992, which is a number of years after the expiration of the three year time limit set by Article 883, its claim was time barred and should therefore not be heard.

Another case that illustrates the UAE courts' application of Articles 880 and 883 is provided in the judgment of UAE Federal Supreme Court Case No. 211 of the Year No. 19 in the Civil Circuit, dated 14 February 1999. In this case, a contract was entered into between the appellant and the defendant on 11 February 1979, whereby the appellant engaged the defendant to construct a building project. The final handover of the building (works) was on 1 May 1982 and on 17 December 1986 the appellant notified the defendant of the existence of a defect in the building (works) and specified the defect. On 14 January 1987, the defendant responded to the notification and denied its liability in respect of any defect in the building (works). On 22 March 1988, the appellant notified the defendant that it was liable for the defect in the building (works) and that it would resort to legal action in the courts, and the appellant did so on 6 September 1994.

The defendant argued that since the legal claim was not brought until after more than three years had passed since the discovery of the defect on 22 March 1988, the claim should not be heard, in accordance with Article 883 of the UAE Civil Code. Accordingly, the UAE Federal Supreme Court decided that the case should not be heard on the basis of its application of Article 883 of the UAE Civil Code.

Overall, there are a number of different time bars in UAE legislation and the relevant time bar provisions should be considered by each party to a commercial dispute at the beginning of the dispute, and if relevant, raised as a defence at the beginning of the legal proceedings. If this is done then it will provide a good defence against the action. However, if the defendant's lawyer does not do so at the appropriate time the court will nevertheless hear the case, even though it is outside the time limits.