Assessing Quantum: A Guide to Valuation in Construction Contracts

In the complex field of construction contracts, determining the appropriate level of compensation, that is, quantum, stands as a critical task for parties seeking redress. This article explores the steps to be taken in the evaluation of quantum under construction contracts.

Quantum refers to the amount of loss or damage recoverable by a party in a claim. In construction contracts, quantum can be categorised into 3 main types: time (claims related to delays), quality (claims concerning defects or structural integrity, or whether the end result of the project is "fit for purpose"), and money (financial losses).

As is the case with most disputes, it is the claimant who bears the burden of proving on a balance of probabilities, their entitlement. This is evident from the principles of common law applicable in Zambia and other common law jurisdictions that successful quantum claims are those which are objective, fact-based and supported by evidence.

Quantum can be expressed as sums due under the contract or as damages, depending on the specifics of the claim. Recovery under construction contracts hinges on the claimant's role, i.e., whether as an employer, contractor, subcontractor, or other party. The contract will typically outline the types of recoverable costs, including thresholds and exclusions.

In construction contracts, there exist mainly 2 approaches on which claims may be made: the cost-based and the value-based approach. Cost relates to an expense which the contractor has either incurred or will incur in delivering the work contracted under the contract.

On the other hand, value refers to the contractor's "selling price" to the employer.

The cost-based approach or assessment is suited to claims related to breaches such as employer delays or disruptions where the goal is to restore the affected party to its pre-breach position. Claims that may be advanced using the cost-based approach include prolongation, acceleration and disruption. It is important to point out that although prolongation is usually calculated on actual costs, some contracts such as those modelled on the FIDIC Green Book 2nd Edition, 2021 may specify formulas or contract rates.

The value-based approach or assessment is suited to claims for disputed variations or termination where the contractor may seek a value-based payment for completed works. Claims hereunder would typically be valued in accordance with the provisions of the contract using pre-agreed rates in the contract price.

Note: cost is an expense while value is a combination of cost, profit and risk or contingencies

Case law on the point of assessment of damages and successful claims is categorical that claims that fall outside of the initial scope of the contract and are not covered by a variation clause are unlikely to succeed to prevent unjust enrichment. However, a claimant is not left without redress as they may claim on a quantum meruit basis.

The precedent set by the Courts in evaluating the quantum may be synthesised as requiring parties to appreciate and take the following steps:

1. **Identify and Understand the Claim**

The first step in evaluating quantum is identifying the claim type and understanding its basis. This includes clarifying the nature of the claim and determining the claimant's legal position. This is essential for accurate valuation. Here, a party must understand the cause-effect relationship, that is, to appreciate and clearly articulate where one event leads to another event as is the effect of delays or variations.

Concisely articulating the claim enhances clarity on the nature of a claim.

2. **Familiarity with the Project and Contract**

An in-depth understanding of the project's scope, current progress, and contract terms is crucial. A claimant will need to understand how the works under the contract were priced, how the contractor has organised its resources and how the contract deals with the issue under which they intend to claim.

3. **Identifying the correct valuation approach and setting out the quantum principles**

Once the basis of the claim is established, selecting the correct valuation approach is vital, while addressing entitlement and loss incurred. Quantum principles guide the assessment process, ensuring a consistent and fair evaluation based on the contract or industry standards.

4. **Identifying and evaluating the relevant evidence**

Effective quantum analysis relies on gathering evidence, such as progress reports and expense records, to support

the claims. Where evidence is lacking, reasoned assumptions may be used, but a nil valuation should generally be avoided to maintain credibility of claims.

5. **Apply the valuation approach to the evidence**

The final step involves applying the valuation approach to the collected evidence to produce an objective valuation that aligns with industry standards and contractual terms. Maintaining objectivity is critical, as an inflated or inaccurate valuation can undermine both the claim and the analyst's credibility.

Conclusion

Adhering to the outlined steps on quantum assessment establishes a structured and objective framework for evaluating claims in construction contracts, ensuring a consistent and fair approach that aligns with both contractual and legal standards. This process reinforces the credibility of claims and increases the likelihood that they will withstand scrutiny in court. Conversely, neglecting the outlined steps can lead to inflated valuations and unsuccessful claims, undermining the claimant's position in disputes.

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