

Drafting Extension of Time for Completion to Avoid Time at Large in Construction Contract

Irsan¹, Meria Utama², Rizka Nurliyantika³, Ricky Saputra⁴, Akhmad Idris⁵

¹ irsan@fh.unsri.ac.id

² meriautama@fh.unsri.ac.id

³ rizkanurliyantika@fh.unsri.ac.id

⁴ rickysaputra@fh.unsri.ac.id

⁵ akhmadidris@fh.unsri.ac.id

Universitas Sriwijaya

Abstract

In a construction contract, there are potential delays in the project, and both parties try to avoid this situation. For the reason, the customary in construction contracts to state a completion date by which the works must be completed. This is usually based on an estimate of how long the project will take or may be determined by the date when the employer wants the project to be completed. To answer the above problems, the method used is normative legal research. The objective of this research was to understand clearly and holistically the complexities of construction contracts. Some contractors request an extension of time to finish the duty because delay, which fails to complete on time, is generally referred to as a critical situation. The worst situation happens if it is not stipulated in a construction contract, and it can eliminate the contractor's obligation to complete the work promised or create a condition called "time at large." Of course, this is very undesirable for the owner. Especially if the contractor who carries out work is a foreign company, it certainly adds to the complexity of this condition. Therefore, to avoid this, it is essential to ultimately make an extension of time clause in an international construction contract.

Keywords: Construction Contract; Delay; Extension of Time Clauses.

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Introduction

Construction contract usually contains the provisions governing the construction work carried out according to mutual agreement. Contracts are part of business transactions whose function is very important in ensuring that all expectations formed from the parties' promises can be carried out and fulfilled. A contract or agreement begins with differences in interests between parties, accompanied by an offer and acceptance.¹ However, this construction contract, for some experts, is said to be the most complicated contract due to many aspects involved in it; there are often disputes between owner

¹ Ragil Kusnaning Rini, 'Urgensi Prinsip Kepatutan Dan Keadilan (Redelijkheid En Billijkheid) Dalam Pembuatan Perjanjian Pendahuluan' (2021) 4 Notaire 425.

and contractor or the third party due to unclear implied provisions in the contract that also made to anticipate the possible risks that may occur within the construction work period or the possibility of problems in the construction process. Edwin H. W. Chan and Raymond Y. C. Tse mention,

“International projects are normally fast paced but require a longer time span, and more parties are involved. Collaboration between the concerned parties requires clear project definition, and each set of objectives under the definition may be subject to changes as the project evolves”.

This means that the parties must stipulate their agreement clearly in their construction contract.^{2,3} Disputes referred to here include miscalculating prices, inaccurate calculation of the length of construction, errors in the initial design, and unanticipated construction risks.⁴

In addition to the cost and scope of the work, another major issue for an owner is the time required for completion. Unlike many other areas of the law, the construction industry deals with two types of completion. The first, called substantial completion, describes a time and a state of completion that is less than fully finished.

This situation poses a shared risk for both parties, underscoring the importance of collaboration. The inability to anticipate future disputes due to defects or failures in the construction project is a significant concern. These defects can be attributed to a range of factors, including site selection and site development errors, programming deficiencies, design errors, construction errors, material deficiencies, and operational errors.^{5,6}

Some problems in construction that often lead to disputes can be seen in Figure 1. which shows that the most frequent disputes are regarding design drawings, image specifications that are often different perceptions, and problems with field conditions,

² Fellow R.F and Hancock R., ‘Conflict Resulting from Cultural Differentiation: An Investigation of the New Engineering Contract’, *Council of International Construction Research and Documentation Proc. on Construction Conflict: Management and Resolution* (1994).

³ Seng Hansen, *Manajemen Kontrak Konstruksi, Pedoman Praktis Dalam Mengelola Proyek Konstruksi* (Gramedia Pustaka Utama 2015).

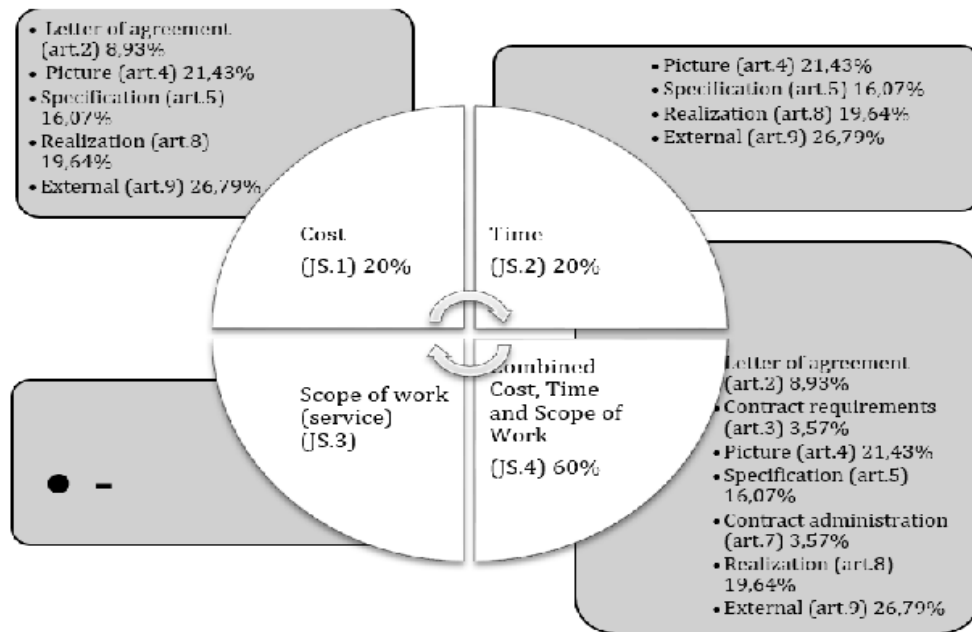
⁴ Seng Hansen, *Manajemen Kontrak Konstruksi, Pedoman Praktis Dalam Mengelola Proyek Konstruksi* (Gramedia Pustaka Utama 2015).

⁵ Bambang Pranoto, *Keberpihakan Kepada LPJK Preseden Buruk Politik Hukum Konstruksi* (LKJK Indonesia 2010).

⁶ Harianto Sunidja, ‘Disputes on Construction Contract’ [2017] *BANI Arbitration Quarterly Newsletter*.

for example, errors in the initial survey data on situations and conditions construction field to be carried out, another problem is the external conditions of. The percentage of the length of construction work or time is about 20 percent.

Figure 1. Kinds of disputes and its causes



Source: Author

Most construction contracts include a crucial clause called time is of the essence, underscoring the owner’s keenness for prompt completion. This clause is not just a formality but a pivotal element that sets the pace and expectations for the entire project. It provides further specificity by defining the period in days, weeks, months, or years during which the contractor must perform. This period, known as the contract time, typically starts when the owner issues a written notice to proceed. It generally ends with substantial completion of the project. ‘Substantial completion’ signifies the project’s readiness for its intended use by the owner, while ‘completion’ is marked by completing every element of the work, including all items.

Suppose the contractor substantially or entirely completes the project within the allotted days from the notice to proceed. In that case, many contracts provide that the contractor will be liable to the owner for a certain amount per day under a liquidated damages provision. This provision, often overlooked, can have significant financial

implications for the contractor, potentially leading to substantial financial losses. It's crucial for the contractor to be aware of this provision and manage the project timeline accordingly, as the financial risks are not to be taken lightly. On the other hand, occasionally, the contract will provide a bonus payment to a prime contractor for each day the project is completed ahead of the scheduled completion date, serving as a potential incentive for timely completion.

It is of utmost importance for the prime contractor to meticulously develop a schedule that plans to fulfill the project within the time allowed in the contract. This scheduling process, a cornerstone of successful project management, begins well before the contractor's bid is submitted to the owner. In preparing the bid, the contractor must actively seek and incorporate schedule input from significant or critical subcontractors or materials suppliers to allow sufficient time to perform their functions efficiently. This emphasis on a well-developed project schedule underscores the need for meticulous planning and coordination, which is critical to ensuring timely project completion.

Harianto Sunidja, a Badan Arbitrase Nasional Indonesia (BANI Arbitration Center) arbiter and construction expert in his writings, stated that disputes in Indonesia are generally caused by combining clauses from one standard contract with another.⁷ For example, some Fédération Internationale des Ingénieurs Conseils, or later, the International Federation of Consulting Engineers (FIDIC) clauses are combined with the Singapore Institute of Architects (SIA) Clauses, or standard construction contracts made by the Government as stipulated in Presidential Regulation No. 16 of 2018 on the procurement by the Government of the Republic of Indonesia. The delay in the construction project performance is caused by many aspects, such as late payment, late deliberating on the site, or late delivery of materials. As a resource of this dispute are:

1. Contractor's fault, for instance, late in order breakfast, unprofessional management.
Etc.
2. Employer's/consultant's fault.
3. Neutral delay, for instance, the environment.

⁷ *ibid.*

Generally, these three things are the cause of work delays. In the case of international construction contracts, the contract's complexity and the mechanism's complexity can also cause delays in the execution of the work, and what is generally blamed is the contractor.⁸

However, the two parties are harmed because there can also be a condition called "time at large," which is a condition where the contractor's obligations in completing work. Therefore, we need an extension of the time clause in the construction contract, and what format is the best and allowed by law and can be implemented by practice. The problems of this research are as follows: What conditions should the parties anticipate in an international construction contract so that the implementation of the work agreed upon is completed on time. Moreover, how do we extend the time clause to avoid the "time at large" condition in an international construction contract. This research aims to know the reason for delays and the drafted extension of time on construction projects.

Research Method

The method used to answer the above problems is normative legal research. The objective of this research was to understand clearly and holistically the complexities of construction contracts, with a particular emphasis on the crucial aspects of delay and extension of time clauses.

Using conceptual, comparative and futuristic approach, this research was meticulously conducted in two stages: Firstly, the identification of the problem background and a thorough literary study, and secondly, the collection of normative data through field observation and comprehensive data and information gathering. This study utilized legal materials encompassing primary, secondary, and tertiary research materials. The comparison of some standard contracts were employed to derive a comprehensive legal conclusion. The data was analyzed using descriptive qualitative methods to address the aforementioned issues.⁹

⁸ Wenzl, Martin and Suzannah Chapmen, 'Performance-Based Managed Entry Agreements for New Medicines in OECD Countries and EU Member States: How They Work and Possible Improvements Going Forward' (2019).

⁹ Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana Prenadamedia Group 2016).

Construction Contract and Delay in The Implementation of The Work

The employer and the contractor in a construction contract may contribute to delays in construction contracts. Employers may need to change the design constantly, and contractors may cause delays due to the lack of efficiency in planning. Some delays are caused by events neither party controls, e.g., force majeure and adverse weather.

In most construction contracts where the plans and specifications are reasonably complete, the contractor will agree to reach substantial completion of the entire project by a specific date. ‘Substantial completion’ refers to the stage where the project is sufficiently complete to be used for its intended purpose, or by which the owner can occupy or utilize the project for its intended use. The owner should ensure that the definition of substantial completion includes all of the elements necessary for the owner to use and receive the full benefit of the project. For example, the definition of substantial completion in most construction contracts is very general. If the owner, in order for rent to commence under a lease, needs to have the tenant sign off on the work and receive a certificate of occupancy or to have landscaping completed, the owner should include those items as part of the definition of substantial completion.¹⁰

The standard forms of contracts generally include provisions for time extensions to address construction issues. It has been assumed that these time extensions primarily benefit contractors.¹¹ However, in reality, the main purpose of time extension clauses in construction contracts is to protect the employer’s right to liquidated damages. In the absence of a time extension provision, the liquidated damages provision may be unenforceable under common law. It’s important to note that while time extensions can protect the employer, they can also lead to a “time at large” situation.¹² Therefore, it’s essential to be well-informed and prepared for the implications of time extensions.

¹⁰ Franklin L. Elmore, *Fundamentals of Construction Law* (2nd edn, ABA Publishing 2013).

¹¹ Thomas Reg and Mark Wright, *Construction Contract Claims* (Bloomsbury Publishing 2020).

¹² Ishola Haleemah Solihu, *Construction Contract Administration* (University of Ilorin 2017).

Form of Contract

Simple contracts may generally be in any form and are enforceable despite a complete absence of documentation. However, a few particular contract types are only enforceable if evidenced in writing. These are, principally, contracts for the sale or disposition of land or an interest in land, and others such as a contract of guarantee.¹³ Such a contract need not be made in writing. However, some written evidence is necessary, which must be signed by or on behalf of the defendant and which states the material terms. However, a contract that does not comply with these requirements may sometimes be enforceable in equity if there has been a part performance of the contract by the person seeking to enforce it. Part performance refers to a situation where one party has substantially performed their obligations under the contract, such as a buyer who has entered into possession of a house.

The final stage in forming a contract involves identifying the terms and understanding their impact. When a contract is entirely in writing, the main challenge is in interpreting its terms. Negotiations play a crucial role in forming a contract, as statements made by the parties during negotiations can have contractual consequences and lead to additional terms. There may also be terms implied in the contract. An express term that seeks to exclude or limit liability may raise specific interpretation issues.¹⁴ These points are further explored below. A statement made during contract negotiations may be considered a representation or may become a term with full contractual effect.¹⁵ There is no definitive test for this determination. However, a statement is more likely to become a binding term if it is made just before the agreement is reached, if the maker of the statement had special knowledge, or if the contract itself was not put in writing.

Contract Conditions

A contract is often finalized after a negotiation period in which offers are partially accepted, gradually agreeing on the applicable terms. In construction contracts, it

¹³ Haeruddin M.I.M, 'Keeping up with the CISG: A Case of Indonesia' (2020) 24 Iranian Economic Review 923.

¹⁴ Ajendra Srivastava, 'Modern Law of International Trade: Comparative Export Trade and International Harmonization', *Nature and Formation of Contract* (2020).

¹⁵ John Uff, *Construction Law* (Eight Edit, Sweet and Maxwell 2002).

is common for the parties to start performing the contract with the assumption that there is or will soon be a finalized agreement. Contractors and owners may engage construction management, architects, or lawyers to negotiate the contract as company representatives.¹⁶ This requires skill in drafting a construction contract. Later, the parties may argue that an important term has not yet been agreed upon, leading to the claim that there is no contract. It is the intention of the parties that a contract will be upheld if they have agreed upon the essential terms, such as the price, scope of work, commencement date, and duration.

When drafting a contract, it's common to incorporate conditions that lay down general application procedures for various work types. The use of standard conditions can be a convenient option, providing a flexible framework for the parties to work within.¹⁷ While there are no strict rules on what should be included in a contract's conditions, most sets of conditions follow a standard pattern, offering a balance between flexibility and consistency. Standard contract or "Tailor Made Contract" Generally, conditions deal with:¹⁸

1. Some obligations to perform the works;
2. provisions for instructions, including variations;
3. Valuation and payment;
4. Liabilities and insurance;
5. Provisions for quality and inspection;
6. completion, delay, and extensions of time;
7. Role and powers of the certifier or project manager;
8. Disputes.

One of the main objectives of the contract conditions is to facilitate the efficient control and administration of the work, while also providing certainty. For instance, they help to address queries on the nature of the work to be done in a timely manner. However, one of the recurring challenges under United Kingdom forms of contract is the extent to which the works are fully specified at the outset and the assumptions of

¹⁶ Chan and others, 'Sources of Ambiguity in Construction Contract Documents, Reflected by Litigation in Supreme Court Cases' (2021) 13 *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*.

¹⁷ *ibid.*

¹⁸ Uff (n 15).

the contract in this regard. Additional conditions, often referred to as special conditions or conditions of particular application, are frequently introduced. These conditions are generally construed equally with general conditions.¹⁹ However, there is a rule of construction that gives greater weight to conditions mainly drafted against those of a standard nature. This principle, sometimes expressed as type prevailing over print, underscores the importance of drafting extension clauses. This article will delve into this crucial aspect of construction contracts, a topic that will be elaborated on in the following sections.

Extention of Time Clause

In a situation of delay, it's important to understand the concepts of culpable and non-culpable delay. If the contractor is responsible for the delay, they are in breach of contract, and the employer can claim damages as compensation. This is known as culpable delay. On the other hand, if the contractor is not at fault (non-culpable delay), the completion date becomes irrelevant, and the contractor is expected to complete the work within a reasonable time, as they would have done if there was no completion date agreed upon. This situation, known as time being at large, is not ideal in a construction project as it can lead to economic loss for both parties.²⁰

Construction contracts often include an extension of time clause, which is beneficial for both the employer and the contractor. This clause allows the employer to adjust the completion date in the event of unavoidable non-culpable critical delays by the contractor, thus ensuring the completion date is maintained. It's important to note that a contractor's entitlement to claim loss and expense for delay is a separate issue, not addressed here, and may not always follow on from an extension of time. This should be clearly stated in the construction contract.

These clauses provide the parties with the flexibility to draft tailor-made contracts, which are based on the autonomy stipulated in their agreement. This approach allows for

¹⁹ McNamara, Alan and S Sepasgozar, 'Barriers and Drivers of Intelligent Contract Implementation in Construction' (2018).

²⁰ CMGuide, 'Delay and Extention of Time in Construction Contract Project' (2017).

a more comprehensive understanding of the project's unique circumstances, even when using standard forms. It's interesting to see how popular standards like Joint Contracts Tribunal (JCT), FIDIC and The American Institute of Architects (AIA) have incorporated these clauses into their drafts, further enhancing the flexibility and adaptability of construction contracts.

Joint Contract Tribunals Standard Form

Joint Contract Tribunals is the standard suite of contracts for construction works in the UK and offers the security of tried and tested wording developed over years of use.²¹ Below are the grounds for extension of time or Relevant Events under the latest JCT standard forms. Some of the common grounds for claims will be discussed in more detail:^{22 23}

- a. Variations;
- b. Deferment of Site Possession;
- c. Suspension of work by the Contractor;
- d. All-Inclusive clause;
- e. Civil Commotion;
- f. Statutory undertaker;
- g. Exceptionally adverse weather;
- h. Loss or damage by any of the specified perils;
- i. Force majeure.

One of the key grounds for extension of time in JCT standard forms is variations or instructed change. The variation clause in JCT encompasses addition, omission, or any changes to the Contractor's obligations, as long as it remains within the scope of the contract. The specific definition of variations in the JCT can be found in clause 5.1. Variations often originate from the employer or his team due to various events, including errors or unforeseen mistakes due to the time limit before a tender. By providing the provision of extending the date of completion due to variation, the employer should be able to accommodate changes for justified reasons without breaching the contract

²¹ 'About JCT'.

²² Joint Contract Tribunal, 'Standard Form of Construction Contract' (2024).

²³ Khariyah, Mat Yaman and Abd Ghadas Zuhairah Ariff, *Green Construction Contracts": An Appraisal of the PWD, PAM and CIDB Standard Form Building Contracts* (2018).

and allow the Contractor to be reimbursed for additional work. This clarifies the role of variations in the JCT standard forms as grounds for extension of time, helping the reader understand the context and relevance of this clause.²⁴

Specific steps must be followed when requesting a time extension; otherwise, the time extension might not be approved. Typically, the Contractor should notify the Project Manager when any issue might affect the project schedule. A formal letter must be addressed to the Contract Administrator requesting the time extension and why those days should be added to the construction schedule. The Contract Administrator should then remit the letter to the Project Manager for evaluation and approval or rejection.²⁵ If the time extension is granted, the Project Manager must answer in writing, and a change order will be issued. Some contracts specify that time extension requests should be made within a specific time frame; if not, the time extension claim will also be rejected. As an amendment to the Extension of Time provision of the JCT Design & Build standard form contract, the Concurrent Delay clause read: Any delay caused by a relevant event which is concurrent with another delay for which the Contractor is responsible shall not be taken into account.

Understanding the concept of 'Concurrent Delay' and its implications in the time extension process is crucial. In a scenario where such concurrent delay occurs and the EoT claim of the contractor is denied based on the Concurrent Delay clause, the employer is entitled to levy Delay Damages for the delay he had contributed to. This means that the prevention principle could not assist the contractor in having such a 'crystal clear' clause set aside. This knowledge is essential for construction professionals, project managers, and legal professionals involved in construction contracts, as it can help them navigate potential challenges and ensure the smooth progress of the project.²⁶

New FIDIC Red Book Form of Contract

FIDIC is known as the International Federation of Consulting Engineers. In construction world, this Organization provides some standards form of contract. Usually

²⁴ *ibid.*

²⁵ Solihu (n 12).

²⁶ Stephen Rayment, 'Contractor Beware of Concurrent Damage' (2018).

ention with FIDIC only, some standard construction contract is becoming a fundamental part of international construction projects since 1957, but it has undergone significant changes over the years. Originally, it closely resembled the contract conditions published by the Institution of Civil Engineers, but it has since diverged from that path. The differences became particularly clear with the publication of the ICE or Institution of Civil Engineering 7th edition and the subsequent development of the FIDIC Multilateral Development Bank harmonized edition in 2005, with further amendments in 2006. These changes have major implications for international construction contracts, because they need to be in line with the laws chosen by the international parties involved. Even though FIDIC is based in common law, it provides a contract that can be easily applied in legal systems based on a civil code or, for example, obligations under Islamic law.²⁷ In terms of Delay and extension of time, FIDIC MDB offers a standard form which includes any delay, impediment, or prevention caused by or attributable to the Employer, the Employee's Personnel, or the Employer's other contractors.

In the past, certain specific "onsite" terms limited the reasons for which the contractor could be eligible for a time extension. However, these onsite terms have been removed in this article, expanding the range of potential delays. This means that a delay caused by employees, for example, is not only limited to an action or failure on the site. This change has important practical implications for international construction contracts, so it's crucial for all stakeholders to keep up with the latest developments.²⁸ Continually the articles on this matter are if the following conditions apply, namely:

- a. The contractor has diligently followed the procedure laid down by the relevant legally constituted public authorities in the Country;
- b. These authorities delay or disrupt the contractor's work and
- c. Delay or disruption was unforeseeable.

Then, this Delay or disruption will be considered a cause of Delay under subparagraph (b) of sub-clause 8.4 (extension of time for completion). The constructor

²⁷ Jeremy Glover, *Understanding The New FIDIC Red Book: A Clause by Clause Commentary* (Thomson Reuters 2009).

²⁸ *ibid.*

must follow any applicable procedures required by the public authorities in the Country where the project occurs. If the parties have delayed by the local authorities, the contractors may be entitled to the extension of time (not cost) under subject 8.4 provided by this standard.²⁹

The American Institute of Architects Standard Form of Contract (AIA Form)

The advantage of using the AIA forms from a legal perspective is that, because of their popularity, they have received significant attention in published court opinions and legal articles as to their meaning, and parties are generally comfortable using them. However, each project is different, and not every party is well served by the language in form contracts.

Whether a standard form contract or one specifically tailored for a given project is used, most will include terms defining or addressing the scope of work, project start and completion dates, price, payment terms, termination conditions, change orders and extra work, delays, disputes and dispute resolution, insurance and bonding requirements, project safety, hazardous materials, testing/inspection, and correction of defective work. Within this broader umbrella of contract provisions, those most frequently litigated include. Notice provisions, which set forth time limits within which written notices of delay or claims for extra work must be submitted by the contractor to the owner to receive a time extension or an increase in the contract amount. Disputes over notice provisions invariably involve issues as to what constitutes sufficient written notice, whether such notice was timely provided, or whether written notice requirements were waived due to the actions or inactions of the owner or A/E.

Differing site condition clauses, allowing a contractor to recover additional costs or time due to concealed or subsurface conditions encountered at the site that are materially different from those represented in the contract documents (Type I) or of an unusual nature and materially different from those typically and customarily encountered in the type of work called for in the contract documents (Type II). No-damages-for-

²⁹ El-Adaway and others, 'Understanding Extension of Time Under Different Standard Design-Build Forms of Contract' (2020) 12 *Journal of legal affairs and dispute resolution in engineering and construction*.

delay clauses, which limit a contractor's right to recover for project delays beyond the contractor's control to an extension of time.³⁰

Tailor Made of The Extension of Time Clause

A crucial component of construction contracts, is customarily tailored to suit the specific project requirements. The parties may agree with their contract maker to adopt, for instance, JCT, AIA, or FIDIC; this means they agree on its rules and procedures. Some conditions they agreed on could be if the delay happened and an extended time is needed. The time extension, when properly presented, must contain the following supporting documents:³¹

- a. Indicate specific issues causing delays,
- b. List activities from the project schedule affected by the abovementioned issue;
- c. The amount of requested time specifying working days or calendar days,
- d. Sketches, photographs, or pictures,
- e. Recommendations are being given to the Contract Administrator.
- f. Indicate the Contractor's actions to avoid or minimize other delays,
- g. Alternative solutions were presented to the contract administrator.
- h. Communications between the construction team notifying of possible delays and problems related to a specific situation,
- i. Additional Items to Consider During the Time Extension Request.

While the parties want to make the clauses themselves, certain things must be considered by the parties carefully because they are part of a standard contract. Consider also a project schedule that provides the essential timeline blueprint for a construction project. Because the coordination of labor, equipment, supplies, and materials is always required, even the most minor, most basic construction project involves some schedule planning. On a larger project, the prime contractor's schedule establishes the overall sequencing of events that, if successfully followed, should ensure that the project is completed in a timely and efficient manner.

Delays that cause a schedule extension can be categorized into three types: those that are excusable without compensation, those with compensation, and those that

³⁰ Elmore (n 10).

³¹ Yates J.K. and Epstein A., 'Avoiding and Minimizing Construction Delay Claim Disputes in Relational Contracting' (2006) 132 *Journal of Professional Issues in Engineering Education and Practice* 168.

are non-excusable. Some contracts use schedules to evaluate delay, so selecting the appropriate delay analysis technique is vital. Sometimes, the contract will specifically dictate the method for calculating project delay and the time for performing analysis.

Therefore, the draft suggested in tailor made method is

“Notwithstanding any other clauses of this Contract, the Contractor will not be entitled to claim any Liabilities resulting from any delay or disruption (even if caused by an act, default or omission of the Company or the Company’s Personnel (not being employed by the Contractor) and a claim for the extension of time under Clause of this contract (article...) will be the Contractor’s sole remedy in respect of any delay or disruption, and the Contractor will not be entitled to make any other claim except.....”

Except in these articles based on the parties’ agreement, for instance, FIDIC stipulated caused by authority party or force Majeure situation. It depends on the municipal law of the law governing the contract. The Contractor may ask for an extension of time but may not ask for compensation remedies for the delay. It is no cost to the owner, but the Contractor should finish the project at his own expense. That can be stated clearly in verses a, b, or c in this article. And then how about if the delay is the result of the owner act, then the Contractor from recovering any losses resulting from delay or disruption, even if the owner caused the delay or disruption.

The term’ time at large’ in construction contracts refers to a situation where there is no specific completion date or the existing completion date has become invalid. This means that the Contractor is no longer bound by a specific deadline to complete the works, which can potentially lead to conflicts and disputes.

Time at large can occur due to an unclear completion date specified in the contract. It can also arise as a result of events, typically by agreement of the parties or by failure of the contract “machinery”, or if the contract does not allow the construction period to be extended. It is not uncommon on construction projects for the work to not be completed by the specified completion date. If this is due to delays for which the Contractor is responsible, the contract will generally include a provision for them to pay “liquidated damages” to the client. Liquidated damages refer to an amount that contracting parties,

at the time of contracting, agree shall be payable as compensation in case of a breach.³² The party owner or Contractor is liable if the delay happens. These are pre-determined damages based on a calculation of the actual loss the client will likely incur if the Contractor fails to meet the completion date. When “time is at large”, the roles and responsibilities of the Contractor and the owner can change.

Certain contracts may require the issuance of a certificate of non-completion before deducting liquidated damages. If the project is delayed due to client-responsible events (acts of prevention) or agreed neutral events, the contract typically allows for an extension of time, thereby changing the completion date (refer to relevant events).³³ However, if the contract does not permit an extension of the construction period under such circumstances, time becomes a crucial factor. In this case, the owner cannot claim liquidated damages from the contractor as there would be no specific date against which to calculate them. The contractor would then only be required to complete the work within a reasonable timeframe, and the owner would only be entitled to damages if they could prove that the contract was not completed within a reasonable time. This change in responsibilities underscores the significance of clear and comprehensive contract clauses that address all necessary scenarios, thus preventing situations where “time is at large”.

Conclusion

Drafting the contract using tailor-made contract drafting despite using a standard contract means that the parties must carefully consider everything related to their agreement by themselves. Time schedule, situation of site plan, man power must be the main aspects for the parties to consider. Without good contract drafting, future disputes may arise, especially in determining the clauses in the construction contract, which is known as a complicated contract for many documents attached, many parties, and stakeholders related to mechanical and engineering activities. Due to the complicated and many aspects involved, the contract performance could be delayed. In this case, the

³² Welde, Morten and Roy Endre Dahl, ‘Cost Performance in Construction Contracts’, *European Transport Conference* (Association for European Transport (AET) 2019).

³³ Seng Hansen, ‘Does the COVID-19 Outbreak Constitute a Force Majeure Event? A Pandemic Impact on Construction Contracts’ [2020] *Journal of the Civil Engineering Forum* - Petra Christian University 201.

clauses of delay and extension of time must be drafted. If the owner or the contractors cause the delay, then the rights and duties the parties must have must be stipulated, whether they can get compensation or not.

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