

The Concept of Time At Large in a Construction Contract



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TIME AT LARGE

At a glance

- What is it & how does it arise
- 'Prevention principle'
- Consequences
- Avoiding time at large issues
- Effective contract administration to avoid time at large issues

TIME AT LARGE - What is it?

- Generally, a contractor must complete works by the stipulated completion date.
- Time at large arises when :-
 - the date for completion has become invalid due to 'acts of prevention' by the employer and
 - for certain reasons, a new completion date has not, cannot, or was wrongly fixed.
- Consequently, contractor is released from the obligation to complete works by the fixed date.
- Need only complete within a reasonable time.
- Employer loses right to impose liquidated damages for delay.





HOW IT ARISES

- **Employer has committed an act of prevention**
 - 'Act of prevention'
 - when the employer has caused delay or
 - prevented contractor from completing on time
 - Could be a wrongful action - e.g., delay in issuing drawings
 - Or could be a valid action - e.g., instructing a variation or suspension, but there is no contract term allowing an EOT for this
 - Principle is employer is not allowed to benefit from own breach

AND

- **Employer does not grant an extension of time to contractor**
(*Kerajaan Malaysia v Ven-Coal Resources case [2014] 5 CLJ 186*)
- or
- **Contract does not have a mechanism allowing employer to grant an extension of time for that act**
(*Thamesa Designs case [1993] 3 MLJ 25*)

OTHER WAYS TIME AT LARGE MAY ARISE

- **Unreasonably delaying the award of extension of time**
 - Undue delay in granting EOT impacts contractor's right to plan the works and take delay mitigation measures.
 - SCL Delay Protocol recommends no later than one month of receiving EOT application - para 4.1 Part B
- **Granting an extension of time under the wrong ground**
 - Identifying the wrong ground could impact contractor's entitlement to loss and expense.
- **Granting the wrong amount of extension of time**
 - This is essentially a breach of contract by employer.
 - Right to impose LADs should not arise based on wrong completion date.
 - See also *Nam Fatt v JST Connectors* [2015] 10 MLJ 621



AVOIDING TIME AT LARGE ISSUES

For Employer

- Ensure a comprehensive and robust allocation of delay risks between employer and contractor in contract.
- Prevention principle does not bar employer from allocating delay risk of particular acts of prevention to contractor.
- Just ensure it is express in the contract.
- Failing which, include a catch-all clause that reserves power to award EOT for any employer acts of prevention - e.g., cl 23.8(n) PAM 2018 (Without Quantities)
- Purpose of EOT clause is protective of employer too.
- Expressly exclude right to EOT in the event of concurrent delay.



TIME AT LARGE & CONCURRENT DELAYS

- Law actively developing on position when there is concurrency of delay.
 - Contractor entitled to EOT even if he is in concurrent delay (*Maimaison Hotel case [1999] 70 Con. LR32A, Walter Lilly case [2012] EWHC 1773 (TCC)*)
 - Contractor entitled to EOT but not to loss and expense in the event of concurrent delay (*De Beers case [2010] EWHC 3276 (TCC)*)
 - Parties can contract out of right to EOT in the event of concurrent delay (*North Midland case [2018] EWCA Civ 1744*)
- Advisable for contract to expressly exclude right to EOT in the event of contractor being in concurrent delay.
- Ambiguity in EOT clause is often resolved in favour of contractor, so scrutinise clause closely to eliminate gaps and ambiguities.



EFFECTIVE CONTRACT ADMINISTRATION TO AVOID TIME AT LARGE ISSUES



- Hold contractor robustly to EOT notification procedures and quality of required information.
- Prompt notice gives employer opportunity to withdraw instructions when financial consequences become apparent (*Multiplex case [2007] EWHC 447 (TCC)*)
- Be careful not to waive time / notice requirements (*Foo Yee Construction case [2014] 5 MLJ 660*)
- Assess EOT applications promptly. Avoid wait-and-see attitude on impact of delay events.
- When needed, exercise Contract Administrator's residual power to review quantum of EOTs after Practical Completion - CI 23.10 PAM 2018 (Without Quantities).
- *Era Kemuncak v Tenaga Switchgear [2021] MLJU 1855*

FOR CONTRACTOR



- What is a reasonable time for completion depends on the circumstances. Not a blanket opportunity to take own time to complete.
- Employer may still be able to claim general damages from the contractor if the delay is found to be unreasonable.
- Understand the EOT clause in contract well and exercise it robustly.
- Comply strictly with EOT notification requirements.
- Keep good quality record of delays and causes, and ensure to include appropriate level of detail in the EOT application.



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