



Claim Management and Settlement (CMS)



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Contents



- Claim Management
- Fluctuations
- Delay
- Extension of Time
- Claims for Direct Loss and/or Expense
- Cross Claims

Claim Management



- Logical processes for claim management
 - Claim prevention (pre-tender stage)
 - Claim mitigation (contract formulation & construction)
 - Pursuing claims (construction & post completion)
 - Claim identification
 - Claim quantification
 - Claim resolution (construction & post completion)

Claim Management

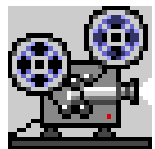


- The major issues in **claims and disputes** are identification of issues and the party responsible for the claim, and ascertaining the time and cost impact of the claim
 - The party raising the claim has to notify the claims once they have been identified
 - It is the responsibility of the party raising the claim to substantiate the facts
 - Depending on the decision of the other party against which the claim is made, the claim may be settled amicably or it may take the form of a dispute



Claim Management

- Types of claims:
 - 1. **Fluctuations** (adjustment)
 - 2. Claims for **direct loss and/or expense (L&E)**
 - 3. Claims for **extension of time (EOT)**
- Typical claim process:
 - (a) Main contractor submit claims
 - (b) Employer make payments



(Video: Construction Claims Management : Introduction to construction claims (4:20) <https://youtu.be/g2q3ebgZ9ao>)

Fluctuations



- Fluctuations
 - Clause 36 in Standard Form of Building Contract
 - Adjust the contract sum for subsequent increases or decreases in wage rates and/or materials
 - Average Wage Index (from Govt. statistics)*
 - Labourer (Male), concreter, bricklayer, drainlayer
 - Steel bender, blacksmith, carpenter & joiner
 - Plasterer, glazier, painter

Fluctuations



- Fluctuations (cont'd)
 - Labour content
 - Gross value of work: should deduct
 - Nominated sub-contractors
 - Nominated suppliers
 - Payments to third parties expended against provisional sums
 - Unfixed materials
 - Preliminaries
 - etc.

Delay



- Delays caused by the main contractor
 - Such as bad management of works
 - Liquidated & ascertained damages, or even determination (terminate the contract)
- Delay by sub-contractors
 - Domestic – treated as delay by main contractor
 - Nominated – may or may not have EOT
 - Main contractor has done all he can do to prevent the delay

Delay



- Delays caused the employer (employer breach)
 - Architect's instruction to award an EOT
 - If involve direct loss and/or expenses, the main contractor will recover such (Clause 24)
 - Such as
 - Architect's instructions
 - Lateness of drawings
 - Delay of artists or tradesmen
 - Inspection and testing of work

Delay



- Delays caused by neither party
 - Such as
 - *Force majeure* (beyond control, e.g. war, earthquake)
 - Inclement weather (e.g. typhoon)
 - Insurance (e.g. fire)
 - Strikes
 - Delay by nominated sub-contractors/suppliers
 - Unforeseeable shortage in materials & labour
 - Antiquities

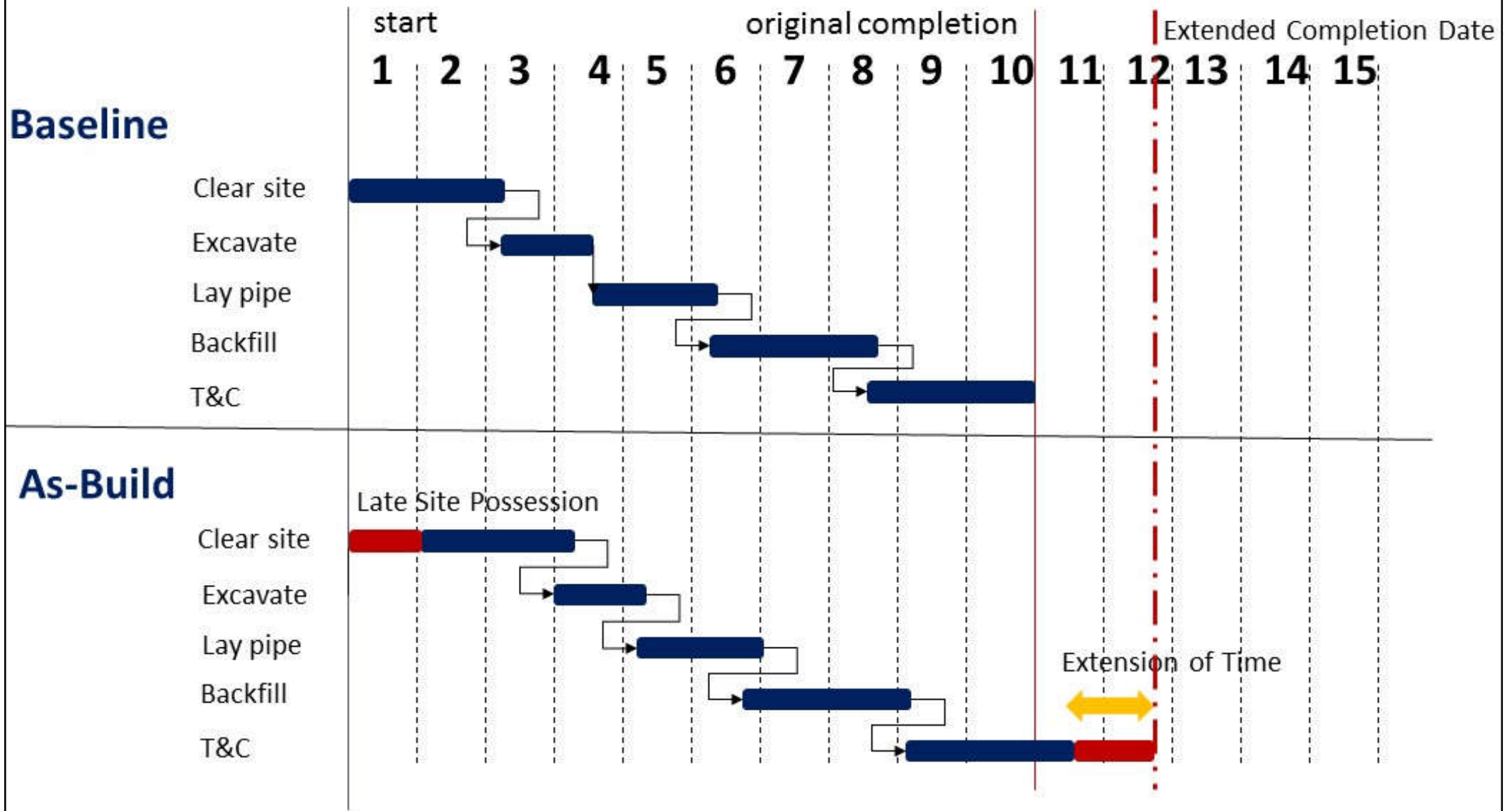
Extension of Time



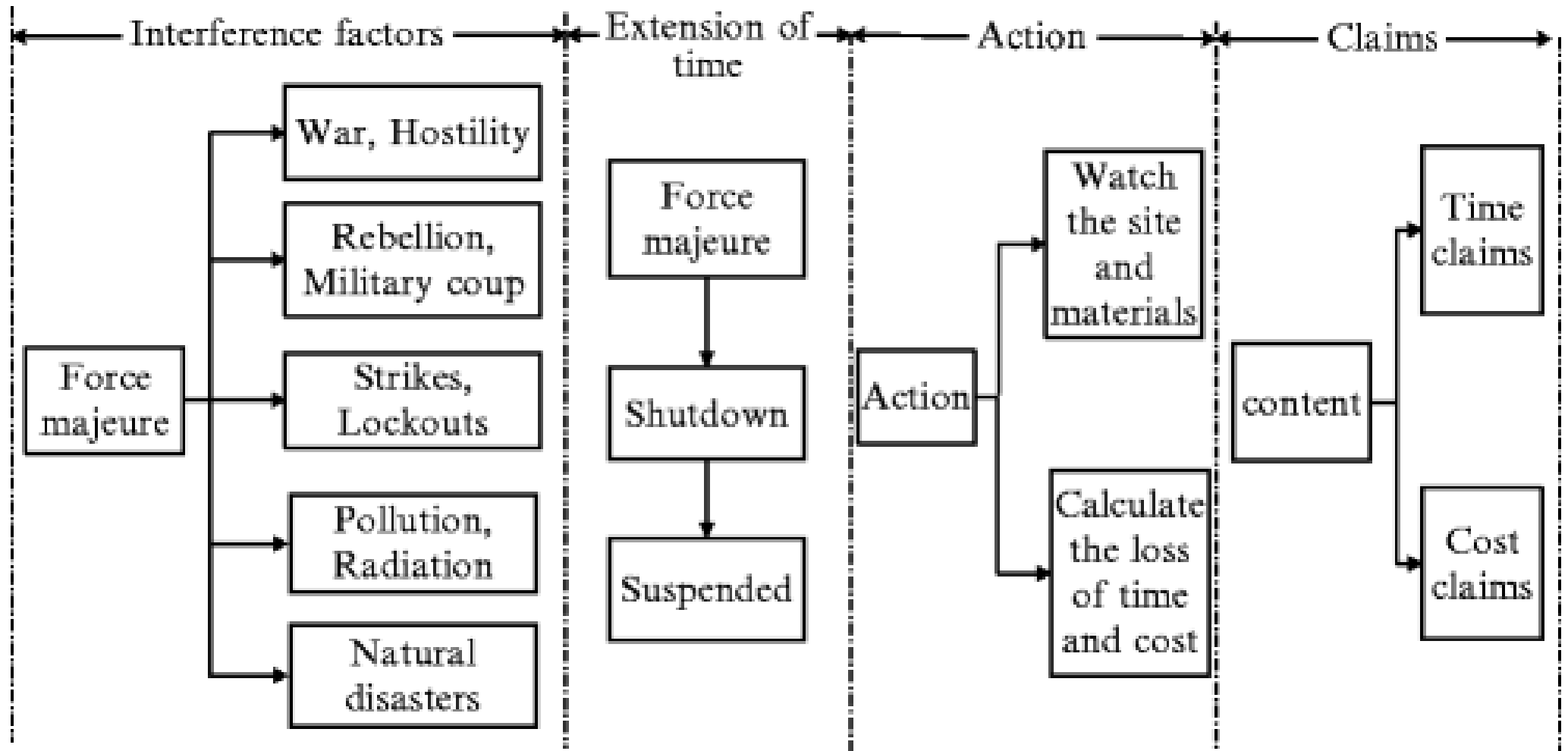
- Clause 23 – EOT
 - Delay is the fault of neither party
 - EOT but not direct loss and/or expense
 - Delay is the fault of employer or architect
 - Both EOT + direct loss and/or expense
 - Procedure for claiming EOT
 - Main contractor gives notice of delay & states the cause
 - Architect to decide if EOT is needed
 - Estimate the length of delay
 - Should be “fair and reasonable”



The foundation of Extension of Time (EOT)



Claims caused by Extension of Time (EOT)



Direct Loss and/or Expense



- Loss
 - Unexpected as a direct result of disruption, variation or the discovery of antiquities
- Expense
 - Increase the expected expenditure on an item of work to produce the same results, as a direct result of disruption, variation or antiquities
- “Direct” – directly related to the cause

Direct Loss and/or Expense

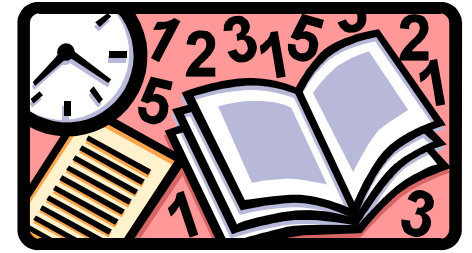


- Submission and payment
 - Written application within a *reasonable* time
 - Produce evident to support the claim
 - Claim will be assessed by the QS
- Evaluation of direct loss and/or expense
 - Materials
 - Labour disruption
 - Attraction money & bonus payments
 - Preliminaries & supervision
 - Inflation, head office overhead and profit, finance charges

Cross Claims

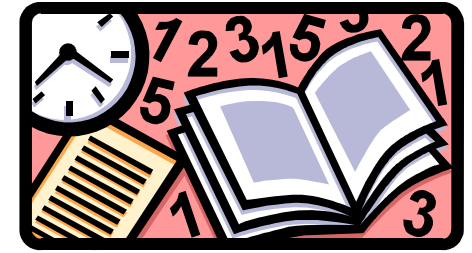


- Plaintiff vs Defendant
 - Set-off: cross claim to reduce a claim
 - As a shield, not a sword
 - Contra charge: employer is pleading a set-off
 - Counter claim: independent claim
 - Possible treatment
 - Claim under another contract
 - Liquidated damages
 - Defects
 - Costs



Further Reading

- Contract claims
 - www.designingbuildings.co.uk/wiki/Contract_claims
- Extension of time
 - www.designingbuildings.co.uk/wiki/Extension_of_time
- Liquidated damages
 - www.designingbuildings.co.uk/wiki/Liquidated_damages
- Loss and expense
 - www.designingbuildings.co.uk/wiki/Loss_and_expense



Further Reading

- Practice Notes for Quantity Surveyors, Hong Kong Institute of Surveyors (HKIS):
 - Contractual Claims
- KPKQS newsletter:
 - Claims - The Key Essentials [Part 1] (January 2011), <http://www.kpkqs.com/download/KPK-Research-Digest-Claims-The-Key-Essentials-Part-2-Apr-2011-KPK-Website.pdf>
 - Claims - The Key Essentials [Part 2] (April 2011), <http://www.kpkqs.com/download/2011Jan-ClaimsTheKeyEssentials.pdf>