

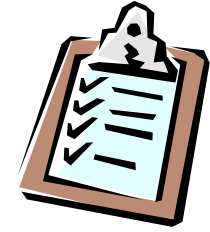


# Claim Management and Settlement (CMS)



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# Contents



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

# Claim Management



- Types
  - Fluctuations (adjustment)
  - Claims for direct loss and/or expense (L&E)
  - Claims for extension of time (EOT)
- Main contractor submit claims
- Employer make payments

# 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 Government 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”

# 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

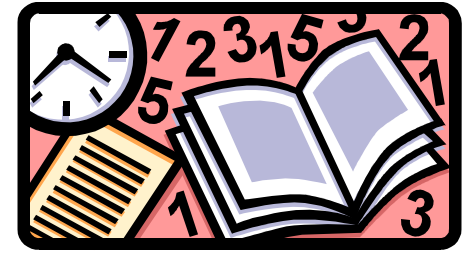


- Submission and payment
  - Written application within a *reasonable* time
  - Produce evident to support the claim
  - Claim will be assessed by the QS
- Evaluation of direct loss and/or expense
  - Materials
  - Labour disruption
  - Attraction money & bonus payments
  - Preliminaries & supervision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

# Cross Claims

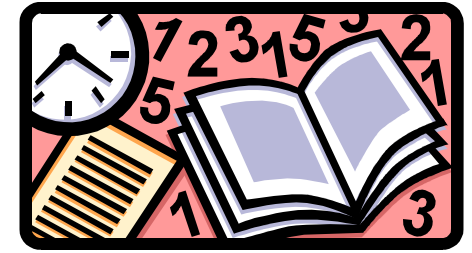


- Plaintiff vs Defendant
  - Set-off: cross claim to reduce a claim
    - As a shield, not a sword
  - Contra charge: employer is pleading a set-off
  - Counter claim: independent claim
  - Possible treatment
    - Claim under another contract
    - Liquidated damages
    - Defects
    - Costs



# Further Reading

- Contract claims,
  - [www.designingbuildings.co.uk/wiki/Contract\\_claims](http://www.designingbuildings.co.uk/wiki/Contract_claims)
- Extension of time,
  - [www.designingbuildings.co.uk/wiki/Extension\\_of\\_time](http://www.designingbuildings.co.uk/wiki/Extension_of_time)
- Liquidated damages,
  - [www.designingbuildings.co.uk/wiki/Liquidated\\_damages](http://www.designingbuildings.co.uk/wiki/Liquidated_damages)
- Loss and expense,
  - [www.designingbuildings.co.uk/wiki/Loss\\_and\\_expense](http://www.designingbuildings.co.uk/wiki/Loss_and_expense)



# Further Reading

- Practice Notes for Quantity Surveyors, Hong Kong Institute of Surveyors (HKIS):  
[www.hkis.org.hk/en/publication\\_sales.php](http://www.hkis.org.hk/en/publication_sales.php)
  - 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>