



Extension of Time Claim Assessment in Malaysian Construction Industry: Views from professionals

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Abstract

This paper aims to investigate the current practice of extension of time claim assessment by contract administrators and identify difficulties faced by them during the assessment process. Findings from the questionnaire survey revealed that poor factual evidence and flaws in claim presentation are the principal factors leading to delays in the assessment process. The findings imply that efficient contract administration and well-organised record keeping will lead not only to successful project management but also will increase the chances of a successful contractual claim. These findings are expected to offer a significant contribution to industry players, researchers and also academics, thus helping to identify areas for further improvement.

Keywords: *Construction industry; delay; extension of time claim; record keeping*

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1.0 Introduction

The definition for extension of time by The Society of Construction Law (SCL) as contained in the Delay and Disruption Protocol (SCL 2002), is “the additional time granted to the contractor to provide an extended contractual time period or date by which work is to be, or should be completed and to relieve it from liability for damages for delay (usually liquidated damages)”. The contractor must submit a complete Extension of Time (EoT) application claim to the employer, which requires all the relevant facts and documents related to the delays, including a thorough analysis of the delayed events. In preparing an application for EoT, the claimant must firstly determine the contract provision under which he/she is entitled to make such claims. A vital prerequisite in establishing entitlement for EoT is for the claimant to produce documentation to absolve them of responsibility for delays and that other parties are accountable.

2.0 Literature Review

Most standard forms of contract provide clauses for an extension of time due to excusable delay events in construction projects. In Malaysia, Pertubuhan Arkitek Malaysia (PAM) Standard Form of Contract, Public Works Department (PWD) Standard Form of Contract and Construction Industry Development Board (CIDB) Standard Form of Contract are among of the local standard forms of contract being used in local construction project. Provision for EoT in PWD 203 A is explained in Clause 43, and it has been clearly stated in this form of contract that the certifier for EoT is the Superintending Officer (S.O). On the other hand, provision for EoT in PAM Form is covered under Clause 23. As in the PWD form of contract, the PAM Form also clearly states the person who has a right to certify an EoT for the contractor, in this case, the architect. CIDB Form of Contract (for Building Works), published by CIDB Malaysia, contains a provision for delays and extensions of time under Clause 24. As PWD 203 A (2007) contract form, CIDB form also named the S.O as the certifier for EoT.

For speedy and amicable settlement of EoT claim, Jergeas and Hartman (1994) have outlined some guidelines for dealing with such claim:

Record keeping; Factual evidence including daily-progress report, photographs and video film, minutes of meeting, memos, transmittals, drawing and many others are among the most important pieces of evidence that should be well-kept, maintained and organised in a proper manner to facilitate contract and project administration tasks.

Knowledge of contract; Often this is neglected by contractors. The contractor should carefully read and understand their obligation and responsibilities as imposed by the contract. Adherence to the contract is vital, and the contractor must fully comply with all contract requirements, especially those that closely related to EoT such as variation clauses, claim clauses, and so on. Failure to do so might diminish chances for a successful claim.

Preservation of rights; In order to preserve their right to claim, written notice of potential claims should be served within the time stipulated in the contract. Among the situations or issues that require written notice to preserve the contractor's right are: any contradiction in contract clauses; instruction to perform work in a particular manner different from the

original agreement; any stop-work order; owner-supply material or equipment related matters; and many others.

Qualify change orders; Any change order that involves extra cost should be given proper attention prior to negotiation or signing off.

Planning and scheduling; This is the backbone of the project. Proper planning will ensure adequate resources are available at the time they are needed, adequate time for each activity, and all activities start at the appropriate times. As the critical path may change as the work progresses, the client and the consultants should be kept updated by regular or periodic updates to the work programme.

Proactive actions; A claim-conscious attitude is encouraged as it will facilitate the claim management process. Proactive measures include quick response to every client complaint, requesting written confirmation on any important verbal conversation or instruction, EoT requests on excusable delay events, records on any disagreement arises with the client or his representatives and clarify any instruction or change order prior to the commencement of such extra works.

On the other hand, Harbans Singh (2003) emphasised that the assessment process should not neglect several key principles that form as a basis for assessment, which are: EoT can only be validly granted if the procedures which the contract lays down are strictly followed

An extension of time can only be granted in respect of an event that is expressly included in the contract as a 'relevant event' and which has delayed or is likely to delay completion

The delay must be one affecting activity or activities that are on the critical path. i.e. one that has 'little or no float' and cannot be delayed without affecting the others

The 'nett effective' delay must be assessed based on the contractor's approved work programme

In the assessment, a logical analysis (not a merely impressionistic assessment) must be undertaken in a methodological way of the impact which the relevant matters had or were likely to have on contractor's planned programme

The overriding requirement is the satisfaction of the 'Fair and Reasonableness Test' on the part of the assessor

3.0 Methodology

A quantitative approach using a questionnaire survey was adopted to collect data with the intent of investigating current practices by contract administrators in assessing EoT claims and to identify difficulties faced by them during the process. Question B3 of the questionnaire were adopted from Kumaraswamy & Yogeswaran (2003) with some modifications to suit the Malaysian construction industry and form of contracts used in the local construction industry.

The questionnaires were distributed on a voluntary basis to only professional architects registered with Lembaga Arkitek Malaysia (LAM), based on the limitation that this study focused on construction projects using PAM 2006 contract forms which require the architect

to act as the assessor for EoT application. A total of 500 questionnaires were distributed to potential respondents via mail, email, or by-hand, in order to ensure that a satisfactory response was received from the respondents. A total of 111 responses were received. Of these, three were incomplete with a few sections left unanswered by the respondents. According to Sekaran & Bougie's (2010) rule of thumb; if 25% of a questionnaire is left unanswered, it should be excluded from the analysis. Unfortunately, all three questionnaires were found to exceed the rules; therefore it has been discarded from this research. This left only 108 questionnaires satisfactorily completed, yielding a response rate of 21.6%. This is consistent with the norm of 20%-30% response rate for postal questionnaire surveys of the construction industry (Akintoye, 2000).

The raw data obtained from returned questionnaire were inputted and analysed with the aid of the Statistical Package for Social Sciences (SPSS) version 20.00. As the data was in terms of ratings measured on a 5-point Likert scale, it was considered ordinal in nature. Therefore, a descriptive analysis by means of identifying the mean score of each issue was found to be the most appropriate analysis to analyse the data.

4.0 Results and Discussions

4.1 Profile of the respondents

A majority of the respondents have served the industry for more than ten years, with close to half of them possessing more than twenty years of industry experience. In term of years of experience dealing with EoT claim, a majority of the respondent (67%) claimed that they had dealt with this type of contractual claim for more than ten years. Only one-third of the respondents had dealt with EoT claims for less than ten years. Since the majority of the respondents were well-experienced in dealing with EoT claims, this implies that they were in the ideal position to comment and answer on any issues dealt with in this survey; thus, their opinions were expected to reflect the real industry situation and could yield a highly credible and quality result.

4.2 Current practice in assessing EoT claims

To investigate the respondent's practice in assessing EoT application, they were asked to indicate the level of frequency with the question: Do contractors submit EoT claims in time pursuant to PAM 2006. The results show that respondents are of the opinion that contractors occasionally submit their EoT claim in time as stipulated in Clause 23 PAM 2006 contract form. A study by Yoke-Lian et al. (2012) revealed that site staff inexperienced with contract procedure, prompt action taken for weather-related claim, and contract administrators requesting excessive detail were found to be the top three reasons for delays in submitting EoT claims by Malaysian contractor. The respondents of the survey were next requested to state the timing of assessment of EoT claims based on four distinguished timings with reference to PAM 2006 provisions. It appears that, in most cases, the architect carries out the assessment within a reasonable time from the date of submission of a detail claim by the

contractor (Table 1). The respondents were then asked to state their preferred method in evaluating EoT claims. As shown in Table 1, the 'As-planned vs. As-Built' method is the most preferred delay evaluation technique as affirmed by the respondents.

Table 1. Timing of assessment and approaches in evaluating EoT claim

Timing of assessment	Mean	SD	Rank
Within a reasonable time from the date of submission of details of claim by the contractor	3.69	1.220	1
28 days of the end of the cause of delay (Clause 23.1 (b) of PAM 2006)	3.04	1.282	2
Within 28days from the date of the delay events	2.63	1.250	3
At the end of the construction period	2.32	1.359	4
Approaches in evaluating EoT	Mean	SD	Rank
As Planned vs As Built	3.77	1.250	1
Time Impact Analysis	3.63	1.316	2
Impacted As Planned	2.72	1.373	3
Window Analysis	2.09	1.172	4
Collapsed As Built	1.99	1.140	5

Provision for timely submission and assessment of EoT claim has been recognized in most Standard Forms of Contract. As recommended by the Society of Construction Law; Delay and Disruption Protocol (SCL, 2002), EoT claims “should be made and dealt with as close in time as possible to the delay event that gives rise to the application.” In addition, Braimah (2008) emphasized that timely submission and prompt assessment of EoT claims are essential as this will reduce the difficulties of claim resolution since all claim-related facts will still be ‘fresh in mind’ of everybody involved. Thus, any disputes relating to claims may be eluded. However, assessing EoT claims is not easy as it sounds. Kumaraswamy and Yogeswaran (2003) argued that the claimant and the assessor often spend a considerable amount of time on substantiating and assessing EoT claims.

In recognition on the importance of the prompt claim assessment, the respondents were asked to state the level of frequency of 14 identified list of reasons that contribute to delay in the assessment process. Table 2 illustrates the ranking of the reasons for late assessment of EoT claim based on the survey outcome.

Table 2. Reasons for late assessment of EoT claim

Reasons for delay in assessing EoT claim	Mean	SD	Rank
Poorly submission by contractor/lack of details and particulars	4.16	.919	1
Late Submission of claim by the contractor	4.05	1.045	2
Collection of relevant facts from site records to establish the principle of the claim and quantification/time consuming to check records	3.20	1.074	3
Delay analysis methods used by contractor different with the method used by the Architect	2.81	1.247	4
Delay in approval by Employer	2.68	1.267	5
Contractor submit global claim	2.64	1.343	6
Wait until the end of job because actual delay could not be determined until end of delay or construction	2.54	1.293	7
Employers attitude/interference from employer	2.44	1.225	8

As motivational factors to contractor (absence of EOT may put pressure on contractor to perform more efficient)	2.37	1.116	9
The effect are not known/could not foresee that an event would cause a delay until the delay occurred	2.28	1.040	10
No clear guideline/pre-contract agreement for assessing EOT claim	2.10	1.215	11
Insufficient Personnel to assist in assessment process/lack of experiences	1.95	1.088	12
Architect unfamiliar with delay analysis methods	1.81	.958	13
Architect too busy with other tasks	1.56	.930	14

4.3 Discussion on reasons for late assessment

The first and second reasons of late assessment ranked in Hong Kong (*'Poor submission by contractor/lack of details and particulars'* and *'late submission of claim by the contractor'*) were also positioned first and second in the ranking for Malaysia. These rankings demonstrated that, both of these reasons were the main obstacles that plagued the construction industry towards the achievement of prompt claim settlement. Undeniably, a detail claim submission is vital for a speedy and amicable settlement of claim. Nonetheless, insufficient claim document is not uncommon in construction industry. This scenario has led to not only delay in claim assessment but may cause a rejection of claim that might in turn spark a dispute amongst the parties involved. As claim document is a compilation of the hard facts that give the chronology of the claim, it should contained relevant contract clauses, all facts and evidences that are observed, recorded and notified to the architect in which all of this should be put together in a logical manner (Enshassi et al., 2009; Oyegoke, 2006). However, inadequate information and poor documentation of claim does not relieve the architect from the duty to do his best in estimating the length of extension of time which may be due (Birkby et al., 2008). Since the assessment is based on the information available and knowledge and understanding of the architect on the progress of work, the contractor is not in the best position to complaint if the extension given does not live up to their expectations (Gibson, 2008).

Clause 23.1(b) of PAM 2006 states that "within 28 days of the end of the cause of delay, the Contractor shall send to the Architect his final claim for extension of time duly supported with all particulars to enable the Architect to assess any extension of time to be granted".

This provision of contract has clearly emphasised on the early submission of claim by the contractor to enable prompt action by the contract administrator. Birkby et al. (2008) profess that, the assessment process will be very much easier when the events are still fresh in everyone's memories rather than waiting until subsequent events could have clouded the issue. Hence, prompt submission of claim by the contractor is essential to ease the assessor in producing an accurate assessment which might in turn eliminate unproductive confrontation. The afore-mentioned two obstacles to prompt claim assessment can be avoided by a strict adherence to contract administration procedure from the beginning of the project (Gibson, 2008).

'Collection of relevant facts from site records' was ranked third by the respondents indicating that coordination and record-keeping management might affect the efficiency of

project administration, especially in claim management process. Kumaraswamy and Yogeswaran (2003) emphasised that project records should be well kept and maintain from the beginning of the project for efficient and expedient substantiation an assessment of claim. However, record keeping is often being cited as one of the most common problems affecting the smooth management of claim in the construction industry (Carmichael & Murray, 2006; Hassanein & Nemr, 2007; Ren et al., 2001). Poor record keeping will not only complicate the assessment process, but will also prolong the process, as the process of checking and investigating evidences and facts is time consuming. In addition to that, it is not uncommon in a construction project for the tasks of managing projects and handling contractual claims to be delegated to different people. In most cases, the documentation, assessment or project administration matters, especially a “paperwork-based” task, will be taken care by the head office staff. Often, miscommunication between site staff and head office staff will prolong the assessment process, especially when the delegated person to assess the claim is someone who has no previous knowledge about that particular project. As pointed out by Ismail et al. (2012), the establishment of clear and precise responsibility and authority will help each and every individual at various levels to perform his/her task unambiguously.

5.0 Conclusion

This paper aimed to investigate current practice in assessing EoT claim performed by the contract administrator and underlying reasons for late assessment of claim. With a total response rate of 21%, which is considered common for construction management research, it was successfully discovered that, poor submission of claims by contractor, late submission of claims, and collection of relevant facts from site records to establish the principle of the claim were ranked highest by the respondent as reasons for delay in the assessment of EoT claim. These results imply that major reasons which might prolong the assessment process are closely related with the management of a project’s records. It suggests that efficient contract administration with a well-organised record keeping will lead to not only a successful project management, but also will increase the chances of a successful contractual claim. Although there is no guarantee to get everything, at least proper factual evidence and adequate supporting documents will facilitate the claim management process, thus helping to diminish conflict and disputes resulting from unsatisfactory claim resolution.

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