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## Some Sharing of “Time at Large”

### 1. Introduction

In contract analysis related to the extension of time (EOT) by contract administrators, “**time at large**”<sup>1</sup> may come to their minds. The author wants to share some findings related to this issue.

### 2. Time at Large

The following are some interesting literature reviews related to “**time at large**”:

#### (a) Keating on Construction Contracts, 9<sup>th</sup> Edition (2012), page 276:

Paragraph 8-013: ...Absent an effective extension of time clause and unless the contract clearly provides otherwise...it releases the contractor from its obligation to complete the works within or by any fixed period or date.<sup>2</sup> The contractor's time obligation is then considered to be ‘at large’ and the original obligation to complete the works by a fixed date is replaced by an obligation to complete within a reasonable time.

This revealed that if there is no provision for an EOT for a valid event (e.g. in one of my recent projects, there was no inclement weather clause in the main contract's conditions as grounds for granting an EOT), then, if the contractor applies for an EOT in response to inclement weather, the project's completion time would likely be set to “**at large**,” which means the contractor is no longer obliged to complete the project under the original agreed-upon deadline. Instead, it would complete the works within a reasonable period of time.

#### (b) Expert's Corner Paper 2013-01: Time at Large and Extension of Time Principle, T Linares (2013):

*Parties choosing not to use standard contract forms are advised to be cautious of the treatment of time in their contract.*

*Time can be alleged to turn at large under two sets of distinct*

*circumstances, originating from (i) lack of clarity or outside events, or (ii) events created by one of the parties, and that the contract does not allow the time allowance to be extended.*

This indicated that when an employer or consultant for a contract does not select a commonly-adopted general conditions of contracts (e.g. “*Agreement & Schedule of Conditions of Building Contract for use in the HKSAR, Standard Form of Building Contract, With Quantities, 2005 Edition*”) in Hong Kong, it must be very careful, especially when it comes to “time” arrangements.

Again, time, in this case, was set to “at large”. If there is no provision in the contract for a valid EOT ground, it means that the deadline may be extended.

#### (c) ‘Time at Large’ and the Termination of Contracts for Delays, A Bell (2005):

*Where the contract is subsequently varied, the contract may not contain a mechanism to adjust the time to take account of the variations. In cases such as this, time is said to become ‘at large’. As there is no fixed time or date for completion, the obligation becomes one to complete within a reasonable time. A recent case in the Court of Appeal serves as a reminder that the ‘time of large’ concept is still alive...*

This showed that when a contract subsequently varies (e.g. any revision that concerns the physical working conditions on site) and there is no mechanism for adjusting the time needed to take account of the delay caused by such a variation, then the contract's deadline would be set to “**at large**” (to be completed within a reasonable period of time). This was fully supported by the Court of Appeal court case, **Shawton Engineering Limited v DGP International Limited (2005)**.

#### (d) Common Law ‘Time at Large’ Arguments in a Civil Law Context, J Bellhouse and P Cowan (2007):

*...it would be inequitable for the employer to enforce the contractor's*

<sup>1</sup> A contractor is not obliged to complete a contracted works project by its original deadline. Instead, it should promise to complete the project within a reasonable amount of time.

<sup>2</sup> *Holme v Guppy (1838), Dodd v Churton (1897)*.

*failure to meet the completion date when this was caused by reasons for which they are outside the contractor's control and liability, and where the contract either has no mechanism for extending the completion date, or that mechanism has become inoperable. In these circumstances, the contractor is relieved of his obligation to complete the works by the specified completion date. Instead, his obligation is to complete the works within a 'reasonable time'.*

This revealed that for any event outside the main contractor's control and liability and if the contract does not have a provision that extends such a deadline, the project shall be completed within a reasonable period of time and the contractor's obligation to complete the project by the original deadline will be totally relieved.

#### (e) **Chun Wo Foundation, Ltd v Dorro Properties, Ltd (2005)**

*53. It is factually correct that three events occurred, which were beyond Chun Wo's control....Although an extension of time application was made and granted, it was not made in accordance with any contractual provision...because of the terms of the particular contract it regarded time as being at large. I agree.*

This court case suggested that for any event outside the main contractor's control, as decided by a judge of the High Court, the project shall be completed within a reasonable period of time ("time at large"), even if EOT has been granted.

### 3. Conclusion

From the above, it can be concluded that:

- 3.1 If there is no provision for an EOT on valid grounds in a contract, but the main contractor has applied for it, the contract's deadline shall be set to "at large".
- 3.2 It is advisable to adopt some common, standard contracts in lieu of using a newly-tailored contract drafted in-house, particularly when it concerns the EOT issue.
- 3.3 When a contract varies (e.g. through additions/omissions/amendments, etc) and there is

no mechanism for covering an extension, its deadline may be set to "at large".

- 3.4 For any event outside a contractor's control and liability and if the contract does not provide a mechanism to tackle it, its deadline may be set to "at large".
- 3.5 Given the above, it is not difficult to reveal that while there are some valid ground(s) for granting an EOT, if there is no provision in a contract to tackle, the deadline may be set to "at large".
- 3.6 In my opinion, it is not practical to list all valid reasons for granting an EOT in a contract. As a result, it is advisable to insert a clause similar to, **"...other grounds (from all the above listed) that in the opinion of the Architect/Engineer, reasonable to grant EOT to the contractor..."** With such a clause, the contract administrator may have the right to grant an EOT to a contractor, even if no such provision in the contract exists. Thus, the deadline should not be "at large".

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