

## The Meaning of Completion

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The date of completion of the works is clearly a matter of great importance to both employers and contractors. For the former it indicates the time when they can enter into occupation and use of the building. For the latter the end of their responsibility to care for the works, the beginning of the defects liability period and importantly the end of any potential liability for liquidated damages.

However in the two principle forms of contract in use in Hong Kong, i.e. the Government forms and the RICS/RIBA form, there is no definition as to exactly what will constitute completion. This is not as simple a matter as may be expected because due to the nature of construction contracts most authorities are agreed that it is not possible to require that the works are 100% complete before a completion certificate is issued.

To complicate matters further, both the Government and RICS forms of contract use different terminology when referring to completion.

- The RICS form states that the Architect will issue a Practical Completion Certificate when the works are practically complete.
- The Hong Kong Government forms state that the Architect/Engineer will issue a Completion Certificate when the works are substantially complete.

But in neither form are the terms defined.

### Practical Completion

Authority suggests that Practical Completion means that the works are fully completed to a state to permit the Employer to enter into full beneficial occupation, i.e. no outstanding works remain to be carried

out save for very minor items of work being left incomplete on the 'de minimis non curat lex' (the law does not concern itself with trifles) principle.

However the difficult question is whether the phrase covers the situation where the works are finished (save for very minor items) but there are also a number of apparent defects. In this regard a potential problem arises due to the wording of the defects clause which provides that the Architect's power to order the remedying of defects during the defects liability period is limited to those defects 'which shall appear' during that period.

The matter has been considered by the courts on a number of occasions and the conclusion appears to be that whilst the Architect should not certify the Works as being practically complete when there are apparent defects:

**“I think that the word "practically" in clause 15(1) gave the architect a discretion to certify that William Press had fulfilled its obligation under clause 21(1) where very minor de minimis works had not been carried out, but if there were any patent defects in what William Press had done the architect could not have given a certificate of practical completion.”** H W Nevill (Sunblest) Ltd v. Wm. Press & Son Ltd (1981)

apparent defects of a very trivial nature can be treated in the same way as outstanding works, being similarly subject to the same 'de minimis' principle.

In 'Some Building Contract Problems' Vincent Powell Smith summarises the position as follows:

**In straight forward terms, ....., the architect is quite justified in issuing his certificate if he is reasonably satisfied that the works accord with the contract, notwithstanding that there are very minor defects which can be remedied during the defects liability period.**

### **Substantial Completion**

The phrase substantial completion which is adopted in the Government forms of contract derives from the United Kingdom ICE Contract for civil engineering works.

The word substantial when construed with the other provisions of the completion clause (GCC Clause 53) requiring the contractor to provide an undertaking to carry out outstanding works during the Maintenance Period, is considered to indicate completion to a less comprehensive nature than practical completion under the RICS form.

Substantial completion is therefore completion to a state which permits the employer to enter into functional or operation occupation, but when minor outstanding works, which may logically include remedying defects, remain to be completed in the Maintenance Period.

As stated above the phrase substantial completion derives from civil engineering contracts where functional or occupational occupation is the Employer's primary concern. The Employer may be happy to take over and use a sewage treatment plant whilst the Contractor is still finishing

painting the doors. However in a building contract an Employer requires a greater degree of completion, as tenants will not accept a Contractor still working in the premises when the property is taken over. Private building works are of course usually carried under the RICS form of contract where the more stringent term Practical Completion solves this problem. However public building works are carried out under the Government forms of contract and in such cases the less stringent substantial completion may lead to difficulties.

As a final point, some forms of contract in Hong Kong appear to adopt a combination of these terms. A private developer's contract which I saw recently, was based on the RICS form, but had an amended completion clause which provided that the Architect will issue a Practical Completion Certificate when the works are substantially complete. Careful reading of that clause, which contained provisions for outstanding works to be carried out in the Defects Liability Period, revealed that the requirement was one of substantial completion not practical completion despite the mixed wording.

Surveyors, when preparing contract documentation need to ensure that the level of completion specified meets the employer's occupational requirements to avoid potential difficulties in the future.

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