

Hong Kong Disneyland

Briefing Paper on Liquidated Damages for Construction Delays

For Government construction works contracts, the Engineer of the contract can grant extensions of time for delays not resulting from the fault of the contractor. It has been agreed between the Government and WD that the following reasons (for which the Engineer can grant extensions) will also give rise to a corresponding extension of time, and hence adjustment of all subsequent Milestone Dates - without penalty - for the purposes of the Master Project Agreement :

- (a) inclement weather and/or its consequences adversely affecting the progress of the Works;
- (b) civil commotion, local combination of workmen, strike or lock out affecting any of the trades employed upon the Government's Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods, materials;
- (c) non availability of any labour, goods or materials required for any of the Government's Works caused by circumstances beyond the control of the Government, the relevant Contractor or Government's engineer that were not reasonably foreseeable at the date of the relevant Contract;
- (d) the hoisting of tropical cyclone warning signal No. 8 or above;
- (e) a Black Rainstorm Warning issued by the Hong Kong Observatory; and
- (f) any special circumstances of any kind whatsoever.

2. Collectively these are the reasons most likely to apply in practice. It should also be borne in mind that most of the Milestone Dates themselves will be set by agreement at a later stage when the position can be forecast with greater confidence.

3. There are other reasons for which the Engineer can grant extensions of time to the contractor but which do not count for an extension of time (without penalty) for the progress of the MPA. They are :

- (i) an instruction issued by the Government's Engineer for the Contract;
- (ii) a variation order;
- (iii) a substantial increase in the quantity of any item of work included in the Contract not resulting from a variation order;
- (iv) the Contractor not being given possession of the site or any portion thereof in accordance with the Contract or being subsequently deprived of it by the Government;
- (v) a disturbance to the progress of the works for which the Government or the Government's Engineer or a specialist contractor for the Contract is responsible;
- (vi) the Engineer for the Contract suspending the works in accordance with the terms of the Contract;
- (vii) any utility undertaking failing to commence or to carry out in due time any work directly affecting the execution of the works, provided that the Contractor has taken all practical

steps to cause the utility undertaking to commence or to proceed with such work; and

(viii) delay on the part of any nominated sub-contractor for any reason specified in Paragraph 3 (i) to (vi) and which the Contractor has taken all reasonable steps to avoid or reduce.

4. Collectively these reasons are likely to result in less extension of time. Moreover, as further protection against the Government being out of pocket the MPA allows a three month buffer before liquidated damages become payable in respect of extensions allowed for these reasons.

5. Delays which are the fault of the Contractor attract liquidated damages (payable to the Government). In the event that the delays for these reasons, added to any delays described in Para. 3 above, caused the three month buffer to be exceeded, the Government would be liable to pay liquidated damages to HKITP. However, such damages, together with the losses on the part of the Government, will be fully claimed from the Contractors (in so far as the Contractors have not been given extensions of time by the Engineer), under the LD provisions in the contracts for the Government works.

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