



## ICCP CONSTRUCTION CLINIC 2<sup>nd</sup> June 2020

*This session was presented by Andy Hewitt (ICCP Executive Officer and Fellow) and Mark Watson (ICCP Steering Committee Member and Fellow). Due to poor sound quality when Mark answered his set of questions, Mark has compiled written responses to accompany the recording.*

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**From:** Ernst Erasmus

**Question:** *When it comes to Notice provisions and Time barring, we set the following scenario:*

- FIDIC Red Book 1999
- Commencement date stated in Contract data as 11 May 2020
- No letter of Acceptance
- Contract signed 22 May 2020
- Event started 3 May 2020

*In instances where events happened before Contract Finalisation as above, do you set the 'became aware' date as the Commencement date, Contract signing, or actual date when the event happened pre Contract?*

**Answer:** The important dates are the Commencement Date [SC8.1] and the Time for Completion date [SC 8.2]. The reason for this is that an Extension of Time for Completion [SC 8.4] is calculated from the Commencement Date. In the circumstances the event, even though it started 03 May 2020, would only be considered from 11 May 2020.

I would caution against using words that are not defined under the Contract, and for that reason, I will steer clear of using 'became aware date'. I would record the Commencement Date and include a Delay WBS to record the delays. Similarly, I would include a Contract Data WBS and record contract signature date, however, this contract signature date should not be used to drive the critical path of the Works.

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**From:** Ernst Erasmus

**Question:** *In this scenario, we're using a FIDIC Red Book 1999 contract executed in the DRC, due to start site establishment 20 June 2020. The employer initiated a compulsory 2 week self-quarantine on site for all personnel coming onto site. Under which sub-clause can the Contractor possibly claim costs?*

**Answer:** A two-week delay to site establishment may not delay the works. The reason for this is that the contractor can complete his health and safety plans, method statements and 8.3 programme before work can commence on a remote site. These and other mitigation actions should be considered before we rush to submit a claim for costs.



However, if your analysis establishes that the contractor is entitled to an extension of time and additional payment, then I would raise such claim under SC 8.6 [Rate of Progress], because the quarantine may affect the Contractor's ability to complete its work within the time for completion.

Alternatively, the two-week quarantine could be considered Suspension of Work under SC 8.8 and I would raise an extension of time and additional payment claim under SC 8.9 [Consequences of suspension]

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**From:** Mohammed Faisal

**Question:** *Under a FIDIC 1999 Red Book contract the employer delayed contractor interim payments, an extension of time for the period of delay granted, my questions are:*

*Q1: Does the contractor need to issue a notice for a prolongation cost claim under SC-20.1 after he become aware of this event as prescribed in SC? And if he fails to do so in the 28 days does that contractually affects the contractor's later entitlement?*

*Q2: When is the best time to submit a prolongation claim? Is it in the middle of the extension of time or should it be at the end of the project for the total prolongation cost? Or is it better to submit in monthly intervals?*

**Answer:** Before I proceed to answer your questions, I believe it necessary to first unpack the scenario. The first part of your scenario relates to payment under [SC 14.7 (a) to (c)]. In this circumstance, the remedy sits under SC 14.8 [delayed payment] and the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. The contractor shall be entitled to this payment without formal notice or certification.

The second part of your scenario relates to an extension of time for the period of delay granted. I am assuming that an extension of time for completion claim was raised under SC 8.4 (e) and relates to any delay, impediment or prevention caused by or attributable to the Employer.

The contractor's remedy under SC 14.8 is separate to its remedy to claim for an extension of time and additional payment under SC 20.1. Under common law jurisdictions, the contractor may be time barred, whereas under civil law jurisdictions, a different approach may be adopted.

The best time to submit a prolongation claim is under those requirements set out under the contract. i.e. SC 20.1 and any amendments provided under the particular conditions of contract. To the extent that the claim has a continuing effect, the Contractor is to provide its interim claims at monthly intervals.