



فرمول جامع برای تدوین لایحه تاخیرات (بر اساس دو قرارداد FIDIC و AIA)

بخش دوم: چهارچوب تدوین لایحه تاخیرات از منظر قرارداد A201 موسسه AIA

ارائه دهنده:

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What we will learn?

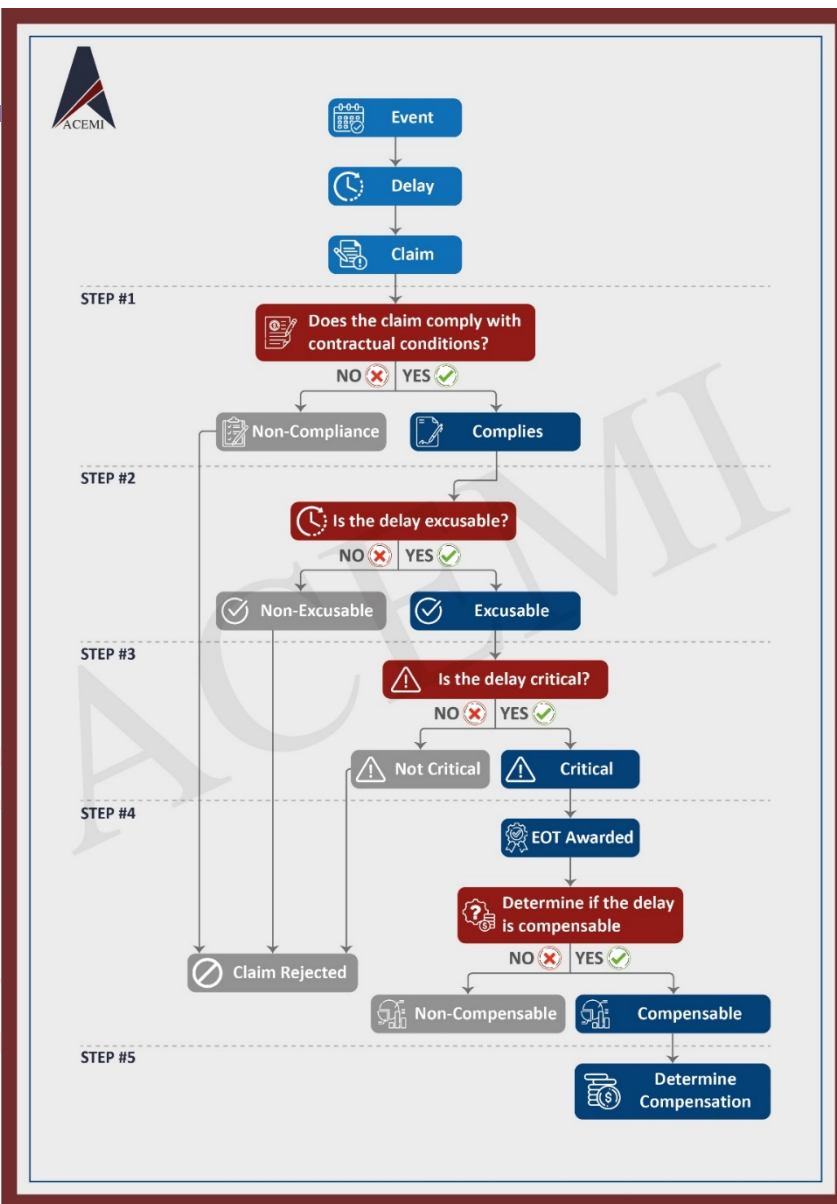
- ☐ Step 1 – Assess contractual compliance
- ☐ Step 2 – Is the delay excusable?
- ☐ Step 3 – Is the delay critical?
- ☐ Step 4 – Is the delay compensable
- ☐ Float Ownership
- ☐ Concurrency

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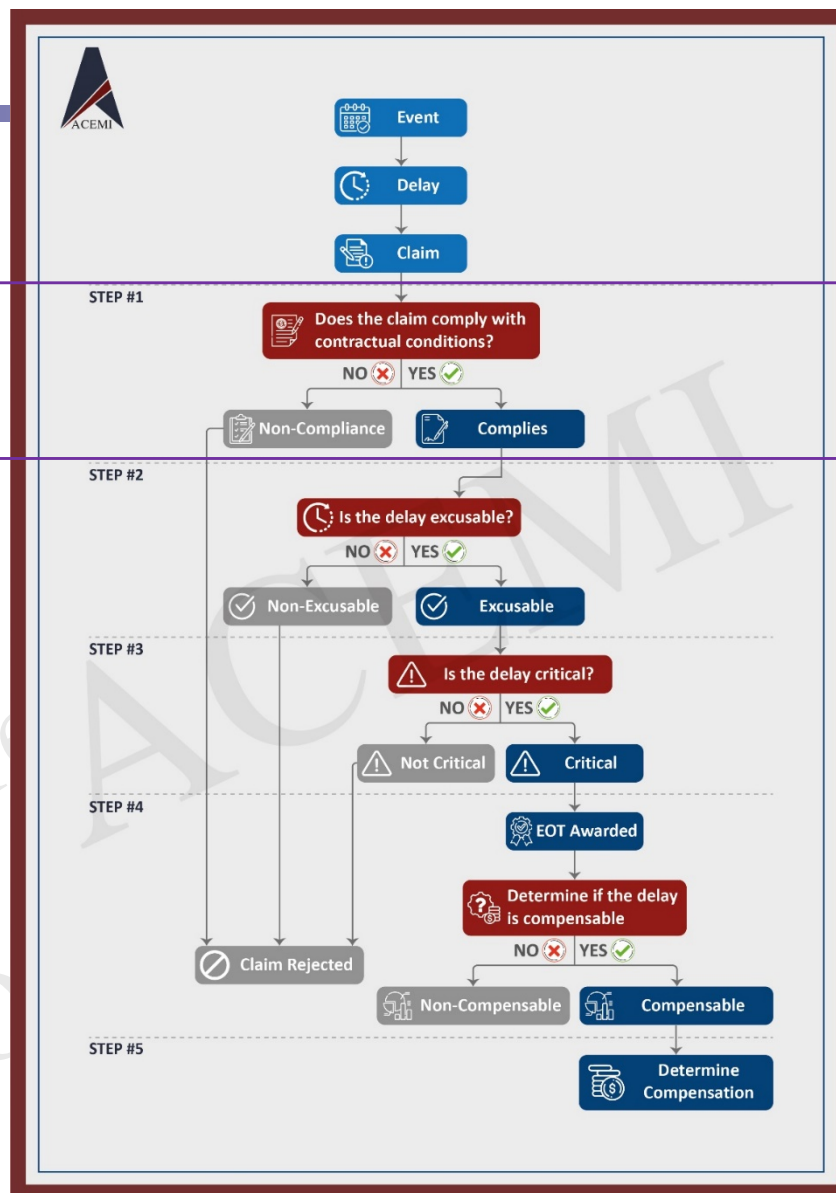
Introduction

Introduction

- ❑ The construction contract documentation produced by the American Institute of Architects (AIA) has been **widely utilized in the construction industry** for a very long time.
 - ❖ The **first** set of general conditions of contract was **published in 1911**.
- ❑ The AIA A201 General Conditions of Contract for Construction is **one of the most popular owner/contractor form** contracts utilized for **design-bid-build construction** projects today.
- ❑ This Section applies the **principles** of the **universal decision support framework** to provide guidance for **managing delay claims** when the AIA A201 (2017) General Conditions of Contract is being utilized.



Step 1 – Assess contractual compliance



Step 1 – Assess contractual compliance

- ☐ The AIA A201 (2017) procedure for delay claims is **not as intense** and **prescriptive** as some of the **other form contracts**.
- ☐ The **right to claim** for delays is established in clause 8.3.1. and the delay claim process is described in clause 15.1.6.

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Notification

Did the contractor comply with the notice requirement (15.1.3)?

15.1.3.1. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim whichever is later



Test compliance

1. determine the date of event- date of condition giving rise to the claim
2. determine the date when contractor submitted the notification
3. Establish whether it was within 21 days

NO ☒ YES ☒

The contractor has the opportunity to submit a claim



Was the claim for adverse weather?

NO ☒ YES ☒

Did the claim comply with the claim content requirements?

1. Did the claim include an estimate of cost? (15.1.6)
2. Did the claim show the probable effect on the progress of the work? (15.1.6)

NO ☒ YES ☒

Request outstanding
Content information

Did the contractor provide the outstanding content information within 10 days? (15.2.4)

NO ☒ YES ☒

Did the contractor advise when the outstanding content information will be issued?

NO ☒ YES ☒

Did the contractor provide the information by the issue date? (15.2.4)

NO ☒ YES ☒

Is the information submitted sufficient to assess the delay?

NO ☒ YES ☒

Claim rejected

Determine whether the delay is excusable

Did the contractor comply with the claim content requirements?

1. Did the claim include an estimate of cost? (15.1.6)
2. Did the claim show the probable effect on the progress of the work? (15.1.6)
3. Did the claim provide data to substantiate the weather conditions were abnormal? (15.1.6)
4. Did the claim provide information on whether it could not be reasonably anticipated?

NO ☒ YES ☒

Request outstanding
Content information

Did the contractor provide the outstanding content information within 10 days? (15.2.4)

NO ☒ YES ☒

Did the contractor advise when the outstanding content information will be issued?

NO ☒ YES ☒

Did the contractor provide the information by the issue date? (15.2.4)

NO ☒ YES ☒

Is the information submitted sufficient to assess the delay?

NO ☒ YES ☒

Claim rejected

Determine whether the delay is excusable

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ذکر مطالب فوق تنها در صورت ذکر منبع بلامانع است.

Step 1.1 – Did the contractor comply with the notice requirement?

- ❑ One of the **initial requirements** to start the claim process is for the contractor to **issue a notice of claim**.
- ❑ According to **clause 15.1.3**, the **notice of claim** should be provided within 21 days
 1. After the **occurrence** of the **event giving rise** to the claim or
 2. After the **contractor first recognizes** the condition giving rise to the claim.
- ❑ The **clause is silent** on the consequence should the **21 day requirement not be met**.
 - ❖ It **appears** that the **courts** have chosen to **enforce the 21 day notice period** strictly and **non-compliance** to this provision would result in the **contractor forfeiting** the entitlement to claim.

Step 1.1 – Did the contractor comply with the notice requirement?

- ❑ An **important change** to the way **notices should be submitted** was incorporated in the **2017 update** of the A201 with the introduction of clause 1.6.2, which **only allows** for notices to be delivered by certified or registered mail, or by courier providing proof of delivery.
- ❖ **Before 2017** the A201 was **silent** on how notices should be issued.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

Step 1.1 – Did the contractor comply with the notice requirement?

- ☐ **Prior to the introduction** of clause 1.6.2 the courts were reluctant to **enforce** the 21 day notice requirement in **cases where the owner** was **aware** of the delay **but the contractor did not issue** a notice of delay.
- ☐ With the introduction of clause 1.6.2, it is likely that this **leniency** would be a **thing of the past**.

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Step 1.1 – Did the contractor comply with the notice requirement?

- ☐ The **first step** in the decision tree would be to **determine whether** the contractor **complied** with the 21 day notice period.
- ☐ This can be done by **determining**
 1. the commencement date of the delay event or,
 2. if applicable, the date when the contractor recognizes (became aware of) the condition giving rise to the claim
- ☐ The **later of these two dates** should be utilized **when determining** whether the contractor **complied** with the 21 day notice period.
- ☐ Given the change in the way notifications should be issued and the court rulings on the notification requirement, it is **safe to assume** that the **owner can reject** the claim if **notice was not provided** within the 21 days.
- ☐ If the notice **requirement was adhered** to the next step will be to assess the **contractual requirements** of the claim.

Notification

Did the contractor comply with the notice requirement (15.1.3)?

15.1.3.1. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim whichever is later



Test compliance

1. determine the date of event- date of condition giving rise to the claim
2. determine the date when contractor submitted the notification
3. Establish whether it was within 21 days

NO ☒ YES ☒

The contractor has the opportunity to submit a claim



Was the claim for adverse weather?

NO ☒ YES ☒

Did the claim comply with the claim content requirements?

1. Did the claim include an estimate of cost? (15.1.6)
2. Did the claim show the probable effect on the progress of the work? (15.1.6)

NO ☒ YES ☒

Request outstanding Content information

Did the contractor provide the outstanding content information within 10 days? (15.2.4)

NO ☒ YES ☒

Did the contractor advise when the outstanding content information will be issued?

NO ☒ YES ☒

Did the contractor provide the information by the issue date? (15.2.4)

NO ☒ YES ☒

Is the information submitted sufficient to assess the delay?

NO ☒ YES ☒

Claim rejected

Determine whether the delay is excusable

Did the contractor comply with the claim content requirements?

1. Did the claim include an estimate of cost? (15.1.6)
2. Did the claim show the probable effect on the progress of the work? (15.1.6)
3. Did the claim provide data to substantiate the weather conditions were abnormal? (15.1.6)
4. Did the claim provide information on whether it could not be reasonably anticipated?

NO ☒ YES ☒

Request outstanding Content information

Did the contractor provide the outstanding content information within 10 days? (15.2.4)

NO ☒ YES ☒

Did the contractor advise when the outstanding content information will be issued?

NO ☒ YES ☒

Did the contractor provide the information by the issue date? (15.2.4)

NO ☒ YES ☒

Is the information submitted sufficient to assess the delay?

NO ☒ YES ☒

Claim rejected

Determine whether the delay is excusable

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Step 1.2 – Was the claim for adverse weather?

- ❑ Claims for **adverse weather conditions** have some **additional requirements**.
- ❖ For this reason, the decision tree poses the question of **whether the claim was for adverse weather**.

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Step 1.2 – Was the claim for adverse weather?

❑ Step 1.2a – Did the claim comply with the content requirements?

❖ If the claim was not for adverse weather it should be tested against the following **two requirements** set out in **clause 15.1.6**:

1. Did the claim include an **estimate of cost**? (15.1.6)
2. Did the claim show the **probable effect** on the **progress of the work**? (15.1.6)

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Step 1.2 – Was the claim for adverse weather?

❑ Step 1.2b – Did the claim comply with the weather-related content requirements?

❖ If the claim is for **adverse weather** clause 15.1.6.2 sets out that content information to address the **following additional requirements** should be provided:

1. **Information** to substantiate that the **weather conditions were abnormal** for the period of time.
2. **Information** to confirm that the **adverse weather could not have** been reasonably **anticipated**.

❑ It should be **verified** whether the **contractor complied** with the **content requirements** of the claim.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

Step 1.2 – Was the claim for adverse weather?

❑ Step 1.2a(ii) and 1.2b(ii) – The claim complies with the content requirements

- ❖ If the claim **submitted** contains **all the content requirements** requested by the contract the claim is compliant and the **next step** will be to **determine** whether the delay **event is excusable**.

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Step 1.2 – Was the claim for adverse weather?

❑ Step 1.2a(i) and 1.2b(i) – Request outstanding information

❖ If **all** the required information was **not submitted**

the information should be **requested** from the contractor.

✓ **Clause 15.2.4** makes provision for the contractor to:

1. **Submit** the information within **10 days**
2. **Provide** a **date when** the information can be **made available**
3. **Advise** the **initial decision maker** that the information will **not be provided**

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

Step 1.2 – Was the claim for adverse weather?

- ❑ The decision tree **asks the question** of whether the **information** was submitted **within the 10 days**.
- ❖ **If not**, the **next question** is whether the contractor **provided a date** when the information **will be provided**.
 - ✓ If this is the case the **next step** will be to determine whether the information was **provided** by the **promised issue date**.

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Step 1.2 – Was the claim for adverse weather?

☐ If the **information was not provided**,

it should be determined **whether** the **limited information** provided is **sufficient** to **assess** the claim.

❖ If the **information is insufficient**, the claim can be **rejected** due to a **lack of substantiating information**.

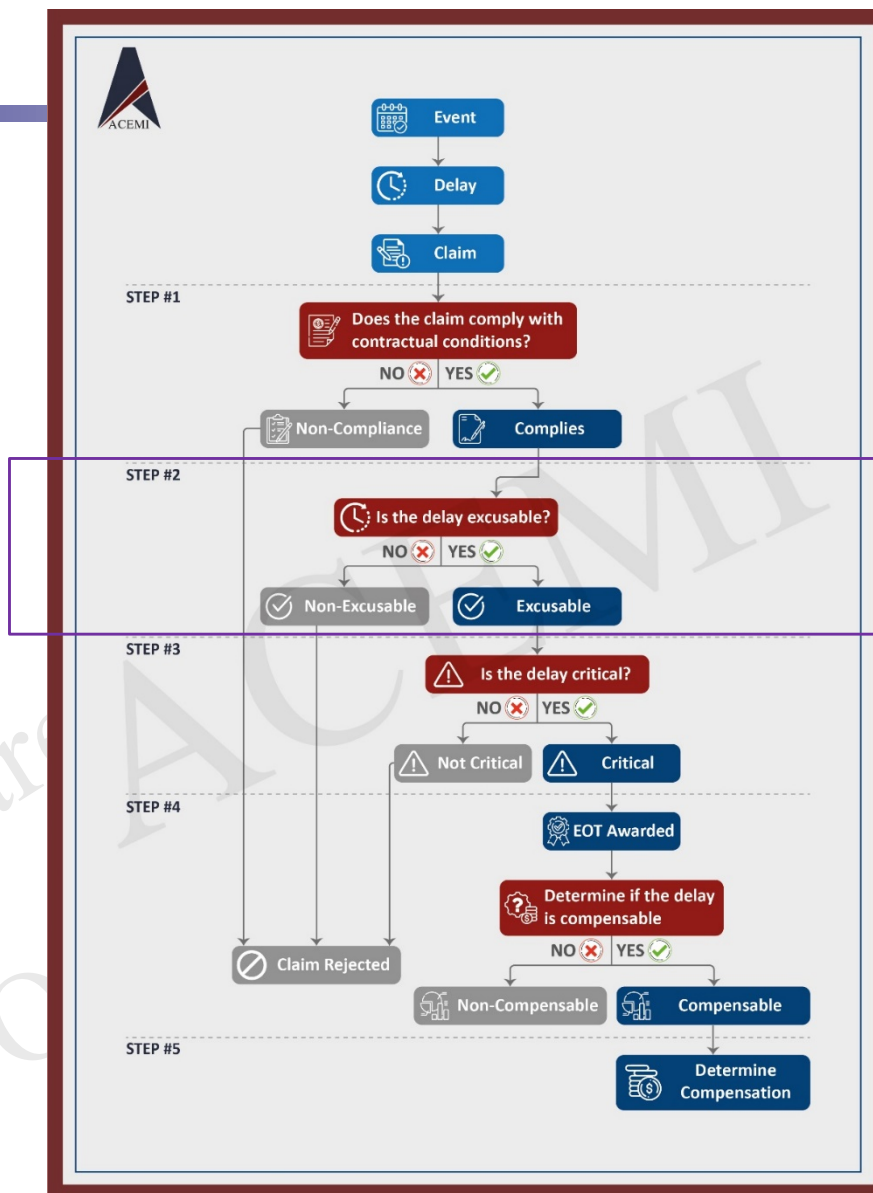
☐ When the **information is provided**

❖ a quick verification will then take place to ensure the information is indeed **sufficient to assess the delay**.

✓ If the information is **not sufficient to assess** the delay the claim can be **rejected**

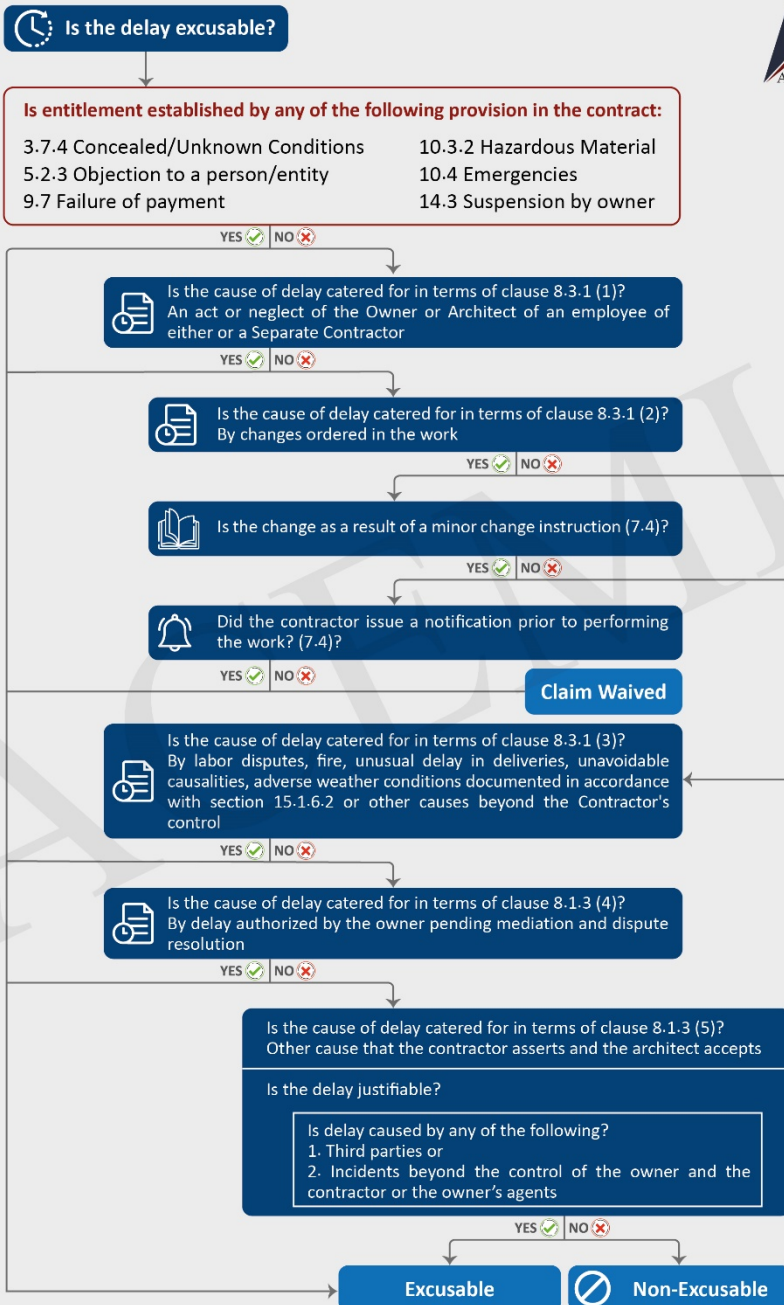
but if it is **found that all the requirements** were met the next step will be to **ascertain whether** the delay is excusable.

Step 2 – Is the delay excusable?



Introduction

- ❑ The term **excusable delay** is **not utilized** in the AIA A 201 (2017)
but a **number of contractual clauses** provide for **possible scenarios** that
would trigger the **right to claim** for additional time.
- ❑ The **bulk of the possible delay events** are described in **clause 8.3.1**.
- ❑ In addition, **several other clauses** dealing with specific events also provide for the
contractor to **claim for additional time**.



Step 2.1 – Is entitlement established by any of the provisions in the contract?

- ❑ The starting point of the decision tree is to **determine whether** the delay event is **described in any of these clauses:**

<i>Nr</i>	<i>Clauses</i>
3.7.4	Concealed /Unknown Conditions
5.2.3	Objection to a person/entity
9.7	Failure of payment
10.3.2	Hazardous material
10.4	Emergencies
14.3	Suspension by owner

- ❑ If the **delay event is mentioned** in any of the above contractual provisions, it is **deemed to be excusable.**

Step 2.1 – Is entitlement established by any of the provisions in the contract?

§5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

Step 2.1 – Is entitlement established by any of the provisions in the contract?

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

Read it yourself!

Step 2.1 – Is entitlement established by any of the provisions in the contract?

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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Step 2.2 – Is the cause of delay catered for in terms of clause 8.3.1 (1)?

- ☐ Should this **not be the case**, the **second question** of this decision tree is to **determine whether** a delay was caused as a result of an **act or neglect of** (clause 8.3.1.(1)):
 - ❖ the owner or architect
 - ❖ an employee of either
 - ❖ a separate contractor
- ☐ Both an **action taken**, or the **failure to act** by any of the above-mentioned persons that **caused a delay** will constitute an **excusable delay**.

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Is the delay excusable?

Is entitlement established by any of the following provision in the contract:

- | | |
|------------------------------------|---------------------------|
| 3.7.4 Concealed/Unknown Conditions | 10.3.2 Hazardous Material |
| 5.2.3 Objection to a person/entity | 10.4 Emergencies |
| 9.7 Failure of payment | 14.3 Suspension by owner |

YES ☒ NO ☒



Is the cause of delay catered for in terms of clause 8.3.1 (1)?
An act or neglect of the Owner or Architect of an employee of either or a Separate Contractor

YES ☒ NO ☒



Is the cause of delay catered for in terms of clause 8.3.1 (2)?
By changes ordered in the work

YES ☒ NO ☒



Is the change as a result of a minor change instruction (7.4)?

YES ☒ NO ☒



Did the contractor issue a notification prior to performing the work? (7.4)?

YES ☒ NO ☒

Claim Waived



Is the cause of delay catered for in terms of clause 8.3.1 (3)?
By labor disputes, fire, unusual delay in deliveries, unavoidable causalities, adverse weather conditions documented in accordance with section 15.1.6.2 or other causes beyond the Contractor's control

YES ☒ NO ☒



Is the cause of delay catered for in terms of clause 8.1.3 (4)?
By delay authorized by the owner pending mediation and dispute resolution

YES ☒ NO ☒

Is the cause of delay catered for in terms of clause 8.1.3 (5)?
Other cause that the contractor asserts and the architect accepts

Is the delay justifiable?

Is delay caused by any of the following?

1. Third parties or
2. Incidents beyond the control of the owner and the contractor or the owner's agents

YES ☒ NO ☒

Excusable



Non-Excusable

Step 2.3 – Is the cause of delay catered for in terms of clause 8.3.1 (2)?

☐ If the **delay is not caused** by what is described in **clause 8.3.1 (1)**

the **next decision** that will have to be considered is:

whether the delay in question is catered for in **terms of clause 8.3.1.(2)?**

☐ This clause makes reference to **changes ordered** in the work.

☐ Article 7 of the AIA A201 deals with **changes in the work**.

☐ **Three possibilities** exist to facilitate a change in work:

1. change orders,
2. change directive and
3. minor changes.

Step 2.3 – Is the cause of delay catered for in terms of clause 8.3.1 (2)?

- ❑ In the case of a **change order**, any addition of **contract time** is **agreed** with the contractor.
- ❑ A **change directive** is utilized when there are **no agreement of the terms** (cost and additional time) of a change in work.
 - ❖ If the **contractor agreed** to the terms of a change order a **claim** for additional time will **not be required** as any additional time would have been **included in the change order**.
- ❑ **Minor changes** can be affected by **written instruction** by the architect.
 - ❖ If the **contractor** is of the **view** that the **minor change will impact** the contract time a **notification** should be **issued prior** to the execution of the work.

Step 2.3 – Is the cause of delay catered for in terms of clause 8.3.1 (2)?

- ❑ Should the **contractor execute** the change **without issuing a notification** the **contractor waives any adjustment** to the contract time (clause 7.4).
 - ❖ If the **contractor commenced** with the work **without required notification** the **claim is forfeited** and should **not be further considered**.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

Step 2.4 – Is the cause of delay catered for in terms of clause 8.3.1 (3)?

❑ If the **delay is not as a result of changes ordered** in the work it should be **determined whether the delay was caused** by the following causes mentioned in clause 8.3.1.(3):

- ❖ labor disputes
- ❖ fire
- ❖ unusual delay in deliveries
- ❖ unavoidable casualties
- ❖ adverse weather conditions documented in accordance with section 15.1.6.2
- ❖ other causes beyond the Contractor's control

❑ If the **delay is as a result** of any of these **possible events** the delay is **deemed excusable**.

Step 2.5 – Is the cause of delay catered for in terms of clause 8.3.1 (4)?

☐ Should the cause of delay **not be recorded in clause 8.3.1 (3)**

it should be considered **whether the delay is authorized** by the owner
pending mediation and dispute resolution (clause 8.3.1 (4)).

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Step 2.6 – Is the cause of delay catered for in terms of clause 8.3.1 (5)?

- ☐ If the **cause of delay cannot** be **attributable** to the events listed in clause 8.3.1.(1) - 8.3.1.(4)
the **contract allows** in clause 8.3.1 (5) for **any other possible cause** of delay
the **architect determines** as excusable.
- ☐ It is **advisable** that the **cause of delay** should be **tested making use** of the **generally accepted definition** of excusable delays:

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Step 2.6 – Is the cause of delay catered for in terms of clause 8.3.1 (5)?

☐ Is the delay caused by:

- ❖ third parties; or
- ❖ incidents beyond the control of the owner and the contractor or the owner's agents.

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Step 2.6 – Is the cause of delay catered for in terms of clause 8.3.1 (5)?

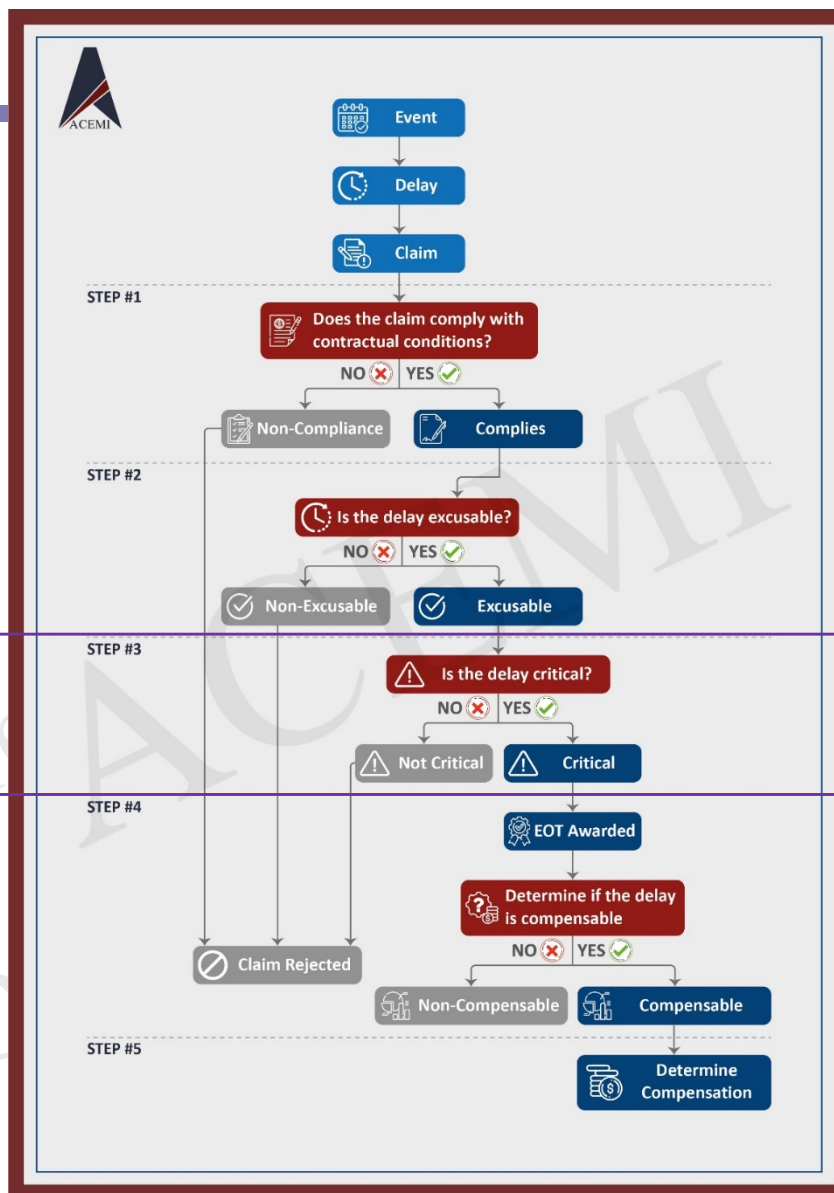
☐ If the **cause** of the delay **passes this test**,

it can be **accepted as excusable**

but if the **delay is not attributable** to third parties or incidents beyond the control of the owner and the contractor or anyone the owner is responsible for it

can be classified as **non-excusable**, and the claim will not be considered.

Step 3 – Is the delay critical?



Introduction

- ❑ The **entitlement** for the extension of the contract period is established in clause 8.3.1 of the AIA A201 (2017).
- ❑ Construction form contracts would **typically not include** the term:
“critical delay” in the wording of the extension of time clause
but would **refer** to a delay to the completion date.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

Introduction

❑ The AIA A201 (2017) **deviates** from **this convention** and **indicates** that **additional time** shall be considered

if the **contractor is delayed** at any time in the commencement or progress of the work.

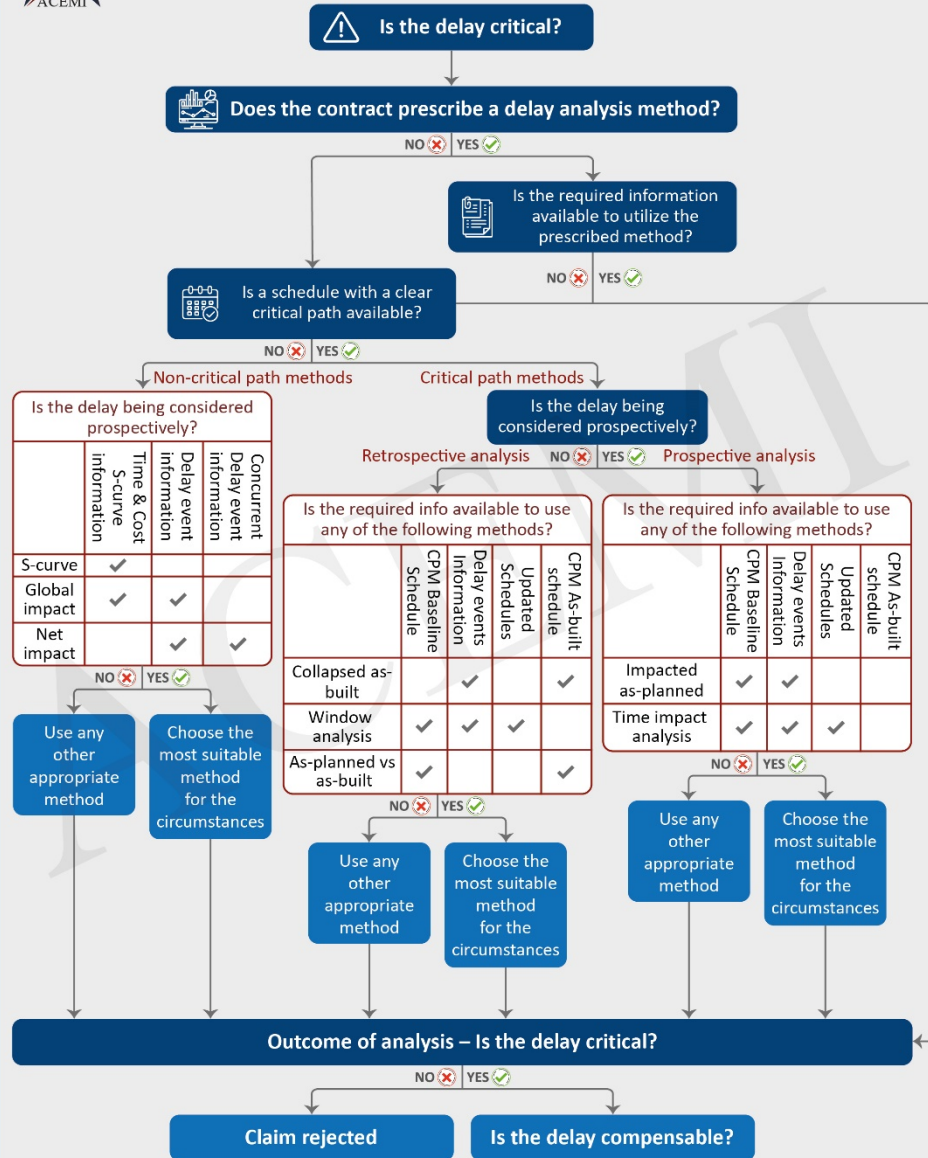
❖ The **lack of reference** to **“a delay to the completion date”** can be **problematic** in the sense that it can **possibly open the door** for **claims for additional time** for excusable delays that did **not impact** on the completion date.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

Introduction

- ❑ The **architect** acts as the **sole decision-maker** on the **validity** of a **delay claim** and has the **discretion** to **extend** the contract time for a time period he or she **deems reasonable** (clause 8.3.1).
- ❑ **Although not** pertinently **mentioned**, it can be assumed that **placing this responsibility** in the hands of the architect to decide on a **reasonable extension**, the intention is to **allow for additional time only** for delays that will impact the completion date, in other words: **critical delays**.
- ❑ The following decision tree can be utilized to establish the **impact on the completion date**.
§ 8.3 Delays and Extensions of Time
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.



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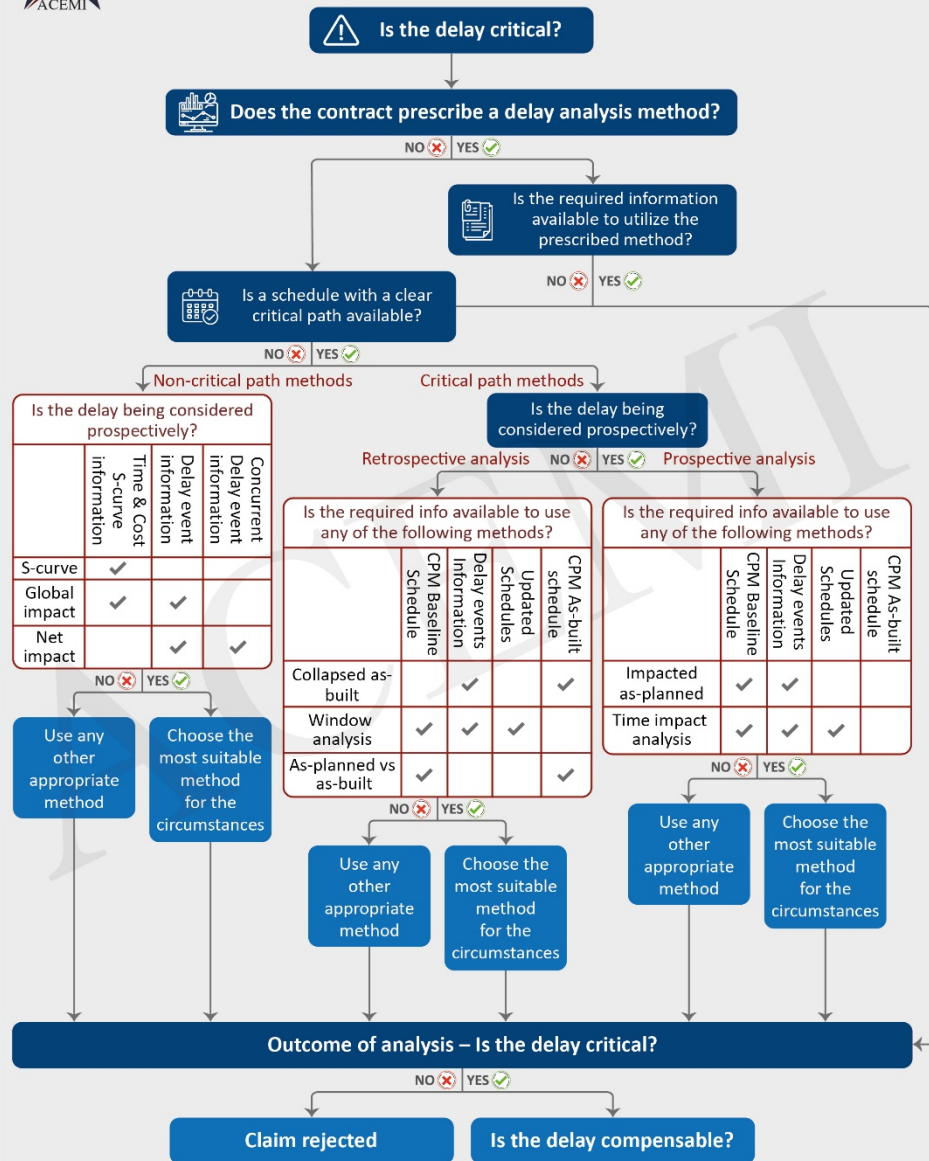
Step 3.1 – Does the contract describe a delay analysis method?

- ☐ To be able to determine whether the delay impacted the completion date a **delay analysis method** should be utilized.
- ☐ **Before commencing** the process to **choose a delay analysis method**, it should be **considered** whether the construction contract utilized, **prescribes a specific method**.

The AIA A201 (2017) form of contract does **not prescribe** a specific analysis method to be utilized.

Step 3.2 – Is a critical path schedule available?

- ❑ Delay analysis methods can be divided into **two main categories**:
 1. non-critical path methods and
 2. critical path methods.
- ❑ It would be **preferable** to utilize a **critical path method**; as this outcome would be **conclusive** whether the delay was critical or not.
- ❑ **Unfortunately**, it is possible, in **some instances** that
 1. a schedule with a **clear critical path is not available**; and
 2. a decision would **have to be made with the limited** information available.
 - ❖ In such cases; the **only alternative** would be to utilize **one of the non-critical path** methods.



فرمول جامع برای تدوین لایحه تاخیرات
بخش دوم: چهارچوب تدوین لایحه تاخیرات از منظر قرارداد 1

Step 3.3a – Choose a non-critical path method

❑ If a **critical path** schedule is not available the following possible analysis method can

be considered:

- ❖ S-curve
- ❖ Global Impact
- ❖ Net Impact

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Step 3.3a – Choose a non-critical path method

❑ S-Curve

- ❖ The S-curve method makes use of a **time-cost chart** where the **cumulative expenditure** during the construction period is expressed.
- ❖ The one axis of the chart depicts project expenditure and the other project duration.
- ❖ To apply this method a **baseline S-curve** and an **as-built S-curve** **without any additional cost** are required.
- ❖ This method is based on the **assumption** that **slow progress** would result in a **lower than planned** expenditure.
- ❖ By **comparing** the baseline S-curve with the as-built S-curve the impact of the delay can be determined.

Step 3.3a – Choose a non-critical path method

❑ Global Impact

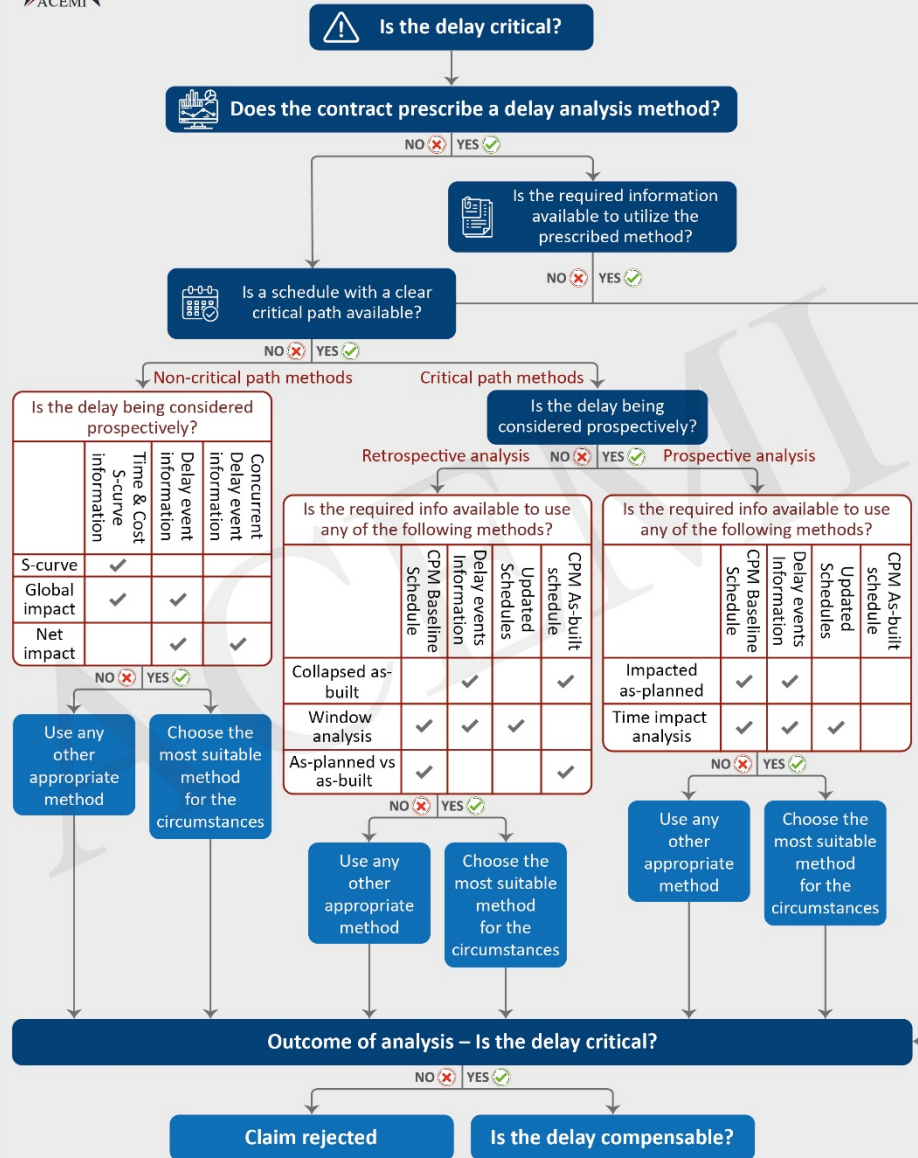
- ❖ When applying the global impact method the **duration of all the project delays** is **taken into account**.
- ❖ The **duration of the global (total) delay** is determined by **calculating the sum** of the **individual delays**.
- ❖ The **main problem** with this technique is that the effect of concurrent and overlapping delays is not taken into account.

Step 3.3a – Choose a non-critical path method

❑ Net Impact

- ❖ The **net impact method** addresses some of the **inadequacies** of the global impact method.
- ❖ The **first step** of the net impact method is to **depict all delays** as activities on a schedule.
- ❖ Overlaps and concurrent delays are **eliminated** and the **net impact** of the delays is **calculated**.

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Step 3.3b – Choose a critical path method

- ☐ The **next consideration** in the decision tree would be to determine whether a schedule with a **clear critical path is available**.
- ☐ The **timing of when the analysis** is taking place would have an **impact on the choice** of the method in cases where a **critical path schedule** is available.
- ☐ Prospective analyses are forward-looking, and strive to determine the **likely impact** of the delay event on the project completion date.
- ☐ Retrospective analyses are executed after the delay has occurred, and seek to determine the **actual impact** of the delay on the completion date.
- ☐ **Some delay analysis** methods are more suitable for prospective delay analysis and others are suited for retrospective delay analysis.

Step 3.3b – Choose a critical path method

- ☐ Before the decision tree considers the **choice of method** it **first determines** whether the delay is being **considered prospectively or retrospectively**.
- ☐ **Practice guides** and **research studies** provide guidance on the most significant factors influencing the choice of the appropriate method.

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Step 3.3b – Choose a critical path method

☐ In practice the following factors will influence the choice of method:

- 1) The information available (delay event, schedules, updates)
- 2) The estimated monetary amount associated with the delay
- 3) Time available to analyze the delay
- 4) The expertise of the person responsible for the delay analysis
- 5) The likelihood the outcome will be accepted

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Step 3.3b – Choose a critical path method

❑ Step 3.3b(i) & (ii) – Consider information available to eliminate methods

❖ A delay analysis method can only be utilized if the **required information** to execute the particular method is **available** or can be **compiled**.

✓ In Step 3.3b(i) & (ii)

the decision tree considers the information available in order to **eliminate methods** that **cannot be utilized**.

✓ The **review of the availability of information** can result in the following scenarios:

Step 3.3b – Choose a critical path method

<i>Nr</i>	<i>Outcome of the information required review</i>	<i>Action to be taken</i>
1	The information available is not sufficient to apply any of the recognized methods.	The cause and effect of the delay event should be established using other means.
2	Only one of the recognized methods can be utilized.	Use the method that the required information is available for.
3	More than one of the recognized methods can be utilized.	Use the descriptions of the methods to choose the most suitable method for the circumstances.

Step 3.3b – Choose a critical path method

- ❑ It is also possible that, **under some circumstances**, it would **not be necessary to utilize** one of the recognized **critical path methods**, or even one of the **non-critical path methods**.
- ❖ For example, if **possession of the site is given later than the agreed date**, one of the more sophisticated delay analysis methods would **not be required** to determine the effect of the delay.

A **simple calculation** to determine the number of days the possession of the site was given after the agreed date would **suffice**.

Step 3.3b – Choose a critical path method

- ☐ Once the delay analysis **method** has been **decided**, the delay would be **analyzed**.
- ☐ The **main outcome** of the analysis process would be to **determine whether** the delay is **critical or not** and
the **number of days** that the event delayed the **project completion date**.

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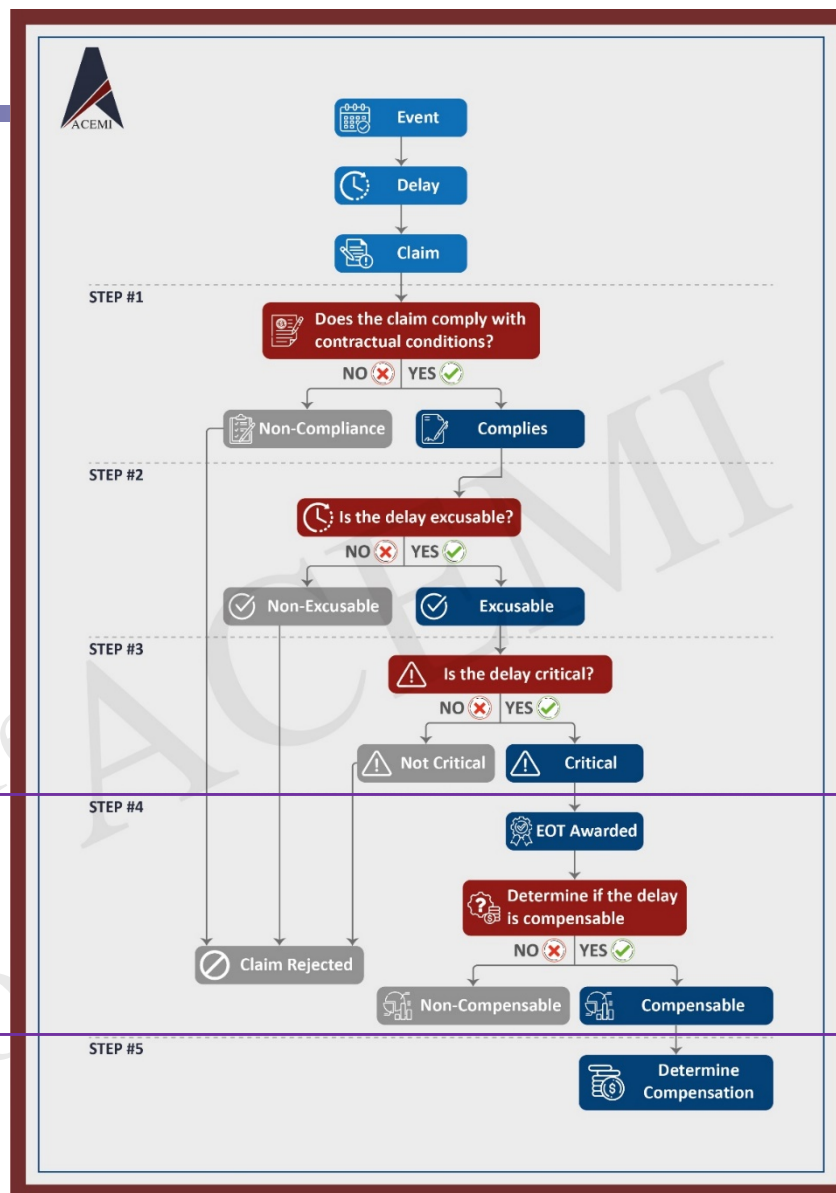
Step 3.3b – Choose a critical path method

☐ If the **event did not delay** the contractual completion date, the delay would be **rejected**;

but if **the delay event indeed impacted** on the completion date, the **next step** in the decision tree process would be to **investigate** whether the delay is **compensable**.

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Step 4 – Is the delay compensable



Introduction

- ❑ Some form contracts would incorporate the **generally accepted principle** that only excusable delays caused by the **owner** would be **compensable**.
- ❑ The AIA 201 (2017) is **not prescriptive** in terms of the **payment of compensation** for delays.
- ❑ The **entitlement to extend** the contract time in the event of a delay is established in **clause 8.3.1.**, but the entitlement provision does **not pronounce** on the **matter of compensation**.
- ❑ Considering this **provision in insolation** it appears that the contractor is **not entitled to compensation** for delay events.

Introduction

- ❑ Clause 8.3.1 is **not the only** provision in the contract that describes delay events that are **excusable** and that will create an **entitlement for an extension** of the project period.
- ❑ **Several other clauses** dealing with specific events also provide for the extension of the **contract period** when these **events occur**.
- ❑ In addition, **these clauses** also provide for an **increase in the contract sum** – see Table 10.

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AIA A201 - Delay Compensation Events

<i>Nr</i>	<i>Title</i>
3.7.4	Concealed or Unknown Conditions
5.2.3	Objection to a person/entity
7.2	Change orders
7.3	Change directives
9.7	Failure of payment
10.3.2	Hazardous material
10.4	Emergencies
14.3.2	Suspension by owner

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

1. that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract.

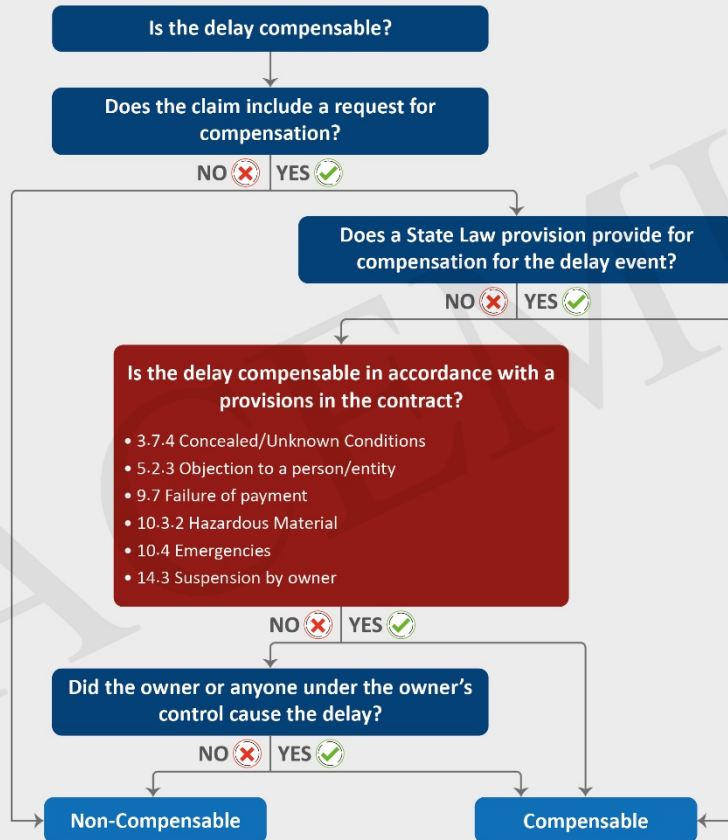
Introduction

- ❑ The section of the contract that deals with the **content requirements** of delay claims (15.1.6.1) **mentions** that a delay claim should include an **estimate of cost**.
- ❑ When **considering** this sentence and the **specific reference** to **compensation** in the other contract clauses (see Table), it is **clear that compensation** for delays is possible.

<i>Nr</i>	<i>Outcome of the information required review</i>	<i>Action to be taken</i>
1	The information available is not sufficient to apply any of the recognized methods.	The cause and effect of the delay event should be established using other means.
2	Only one of the recognized methods can be utilized.	Use the method that the required information is available for.
3	More than one of the recognized methods can be utilized.	Use the descriptions of the methods to choose the most suitable method for the circumstances.

Introduction

- ❑ **Without** any guidance in the AIA 201 (2017) of **when** a delay is deemed **compensable** the decision to authorize the payment of compensation is not simple.
- ❑ The **reason** why no specific instruction on compensable delays is included is **debatable**,
but reading **commentary** from the AIA on this matter it appears that it is to provide for instances where **state law** would dictate whether **compensation is payable**.



فرمول جامع برای تدوین لایحه تاخیرات
بخش دوم: چهارچوب تدوین لایحه تاخیرات از منظر قرارداد 1

Step 4.1 – Does the claim include a request for compensation?

- ❑ At this stage in the analysis process, the **test whether** the delay events are deemed **excusable** would have been addressed in **step 2**.
- ❑ The **focus** now shifts to the **question** of whether the delay **event is compensable**.
- ❑ The **first logical question** is to verify whether an estimate for the cost of the delay is **provided** in accordance with the **requirement in 15.1.3**.
 - ❖ Should **no** cost estimate be **included** it is safe to rule that the **claim is non-compensable**.
 - ✓ **Only claims** that include cost estimates for the delay will be **further considered**.

Step 4.2 – Does a State Law provision provide for compensation?

- ☐ In **some territories**, specific provisions in the **law governing construction** in that territory will pronounce on the **compensability of delays**.
- ☐ The decision tree asks the **question of whether the state law provides for compensation in the event of this specific delay**.
 - ❖ If the response is **affirmative** the delay is **compensable**.
 - ❖ Should this **not be the case**, further consideration of the **compensability** will be **required**.



Step 4.3 – Is the delay compensable in accordance with a provision in the contract?

- ☐ The AIA 201 provides for **compensation** as a result of delays caused by **specific events**.
- ☐ **Step 4.3** calls for the cause of delay to be **tested against** specific contract provisions that **allow for compensation**.
- ☐ The **specific clause** should be **consulted to determine** whether guidance is provided on **how compensation** should be determined.

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Step 4.4 – Did the owner or anyone under the owner’s control cause the delay?

❑ When the **delay event is not mentioned** in any of the contract provisions included in Table, the **AIA 201 does not provide specific guidance** whether the delay is deemed **compensable**.

❖ In **absence** of contractual guidance, the **generally accepted definition** of a **compensable delay** can be utilized to **determine compensability**:

an excusable delay caused by the owner or anyone the owner is responsible for.

- ✓ If the delay was caused by the owner or anyone under the control of the owner the claim will be deemed compensable.
- ✓ If not, the delay is non-compensable.

AIA A201 - Delay Compensation Events

Nr	Title
3.7.4	Concealed or Unknown Conditions
5.2.3	Objection to a person/entity
7.2	Change orders
7.3	Change directives
9.7	Failure of payment
10.3.2	Hazardous material
10.4	Emergencies
14.3.2	Suspension by owner

Float Ownership

Introduction

Nothing mentioned in original AIA regarding FLOAT OWNERSHIP

BUT

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Addition: § 3.10 Contractor's Schedules

□ § 3.10.1 Construction Schedule

- ❖ The Contractor shall maintain a **critical path construction schedule** for the Work that complies with all **scheduling requirements** set forth in the **Specifications**.

The schedule must:

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Addition: § 3.10 Contractor's Schedules

❑ § 3.10.4 Owner-Furnished Equipment Schedule

- ❖ The **Contractor** shall prepare an Owner-furnished equipment schedule for the approval of the Owner and Architect that lists the **projected dates of delivery** for all equipment and products to be **furnished by the Owner** in chronologic order of relevant **critical path dates**.
- ❖ The **Contractor** shall be responsible for coordinating the delivery of all equipment and products to be furnished by the Owner with the construction schedule in order to **avoid delays** in the progress of the Work.

Addition: § 3.10 Contractor's Schedules

□ § 3.10.3 Progress Schedules

- ❖ On a **monthly basis**, the Contractor shall issue, for the Owner's approval,
 1. an updated critical path construction schedule and
 2. submittal schedule(s)in a format that illustrates
 1. completed and
 2. projected progressionof the Work for the **relevant time periods**.
- ❖ The monthly schedules shall be issued as of the **end of each calendar month**.

Addition: § 3.10 Contractor's Schedules

□ § 3.10.3 Progress Schedules

- ❖ In **no event**, however, shall such revisions or updates be construed as **adjustments** to the Guaranteed Maximum Price or Contract Time **unless** such adjustments are incorporated into the Contract by **Change Order**.

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Addition: § 3.10 Contractor's Schedules

□ § 3.10.3 Progress Schedules

- ❖ These progress schedules shall be available and promptly posted in the Contractor's meeting rooms and offices at the **Project site** and **promptly distributed** to the Owner, the Architect and the Contractor Parties whom **must comply** with such schedules.
- ❖ The submittal of the monthly progress schedules is a **condition precedent** to the **Owner's obligation** to make progress payments and the **failure to submit** these schedules timely shall cause a **delay in the processing of monthly progress payments**.
- ❖ In addition, the Contractor shall maintain, and update **at least weekly**, a two week "look-ahead" schedule.

Addition: § 8.3.4 Contractor's Schedules

❑ § 3.10.4 Owner-Furnished Equipment Schedule

- ❖ The **Contractor** shall prepare an Owner-furnished equipment schedule for the approval of the Owner and Architect that lists the **projected dates of delivery** for all equipment and products to be **furnished by the Owner** in chronologic order of relevant **critical path dates**.
- ❖ The **Contractor** shall be responsible for coordinating the delivery of all equipment and products to **be furnished by the Owner** with the construction schedule in order to **avoid delays** in the progress of the Work.



Modified AIA

فرمول جامع برای تدوین لایحه تاخیرات
بخش دوم: چهارچوب تدوین لایحه تاخیرات از منظر قرارداد A201 موسسه AIA

General Conditions, dated 6/17/2022

As stated in the A101 and B101 agreements for this project.

THE OWNER:

**Board of Regents of the University of Wisconsin
c/o UW System Administration - CPB
780 Regent Street, Suite 239, Madison, WI 53715**

THE ARCHITECT:

Architect as defined in A101 and B101 agreements for this Project.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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Addition: § 3.10.3.2 Contractor's Construction and Submittal Schedules

□ § 3.10.3.2

❖ Where any **Work activity** required for completion of the Project is **completed** in less time than

1. required,
2. anticipated, or
3. otherwise allowed by the Project Schedule,

the **unused time**, hereinafter called **Float**, shall belong to the Project, to be used by the **Contractor as the Project needs** determine,

including but not limited to providing additional time for **completion of any other** Work activities **required** for completion of the Project.

Addition: § 3.10.3.2 Contractor's Construction and Submittal Schedules

□ § 3.10.3.2

- ❖ **Float** shall **not** be considered owned, subject to the exclusive use, or management by any of the interested participants.
- ❖ **No claim** against the Owner or the Contractor shall be made by any party for the **loss of Float time**.

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Addition: § 8.3.1 Delays and Extension of Time

□ § 8.3.1.1

❖ If any activity is delayed, or anticipated to be delayed, thereby delaying the **Substantial Completion** of the entire Project, the **Contractor** shall have the **right to take action** as may be necessary to **recapture any delay**. Such action shall include, but not be limited to:

1. increase in staffing;
2. increase in shifts, hours of Work, or number of days of Work;
3. use of available Float; or
4. changing the sequence of Work activities

Addition: § 8.3.1 Delays and Extension of Time

□ § 8.3.1.1

- ❖ **Costs** caused by delays or improperly timed activities shall be **borne by the party responsible** therefore, and
- ❖ **Change Orders**, as deemed appropriate, shall be **issued** in accordance with Article 7 of these General Conditions.

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Concurrency

§ 8.3 Delays and Extensions of Time

- § 8.3.1 If the Contractor is **delayed at any time** in the **commencement** of the **Work** following issuance of the **LNTP** or **progress of the Work** by
- (1) directly resulting from an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor;
 - (2) by changes ordered by the Owner in the Work;

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§ 8.3 Delays and Extensions of Time

- § 8.3.1 If the Contractor is **delayed at any time** in the **commencement** of the **Work** following issuance of the **LNTP** or **progress of the Work** by
- (3) by labor disputes not caused by unreasonable action of the Contractor, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; or
 - (4) by other causes that the Contractor asserts, and the Architect determines, justify delay (each, an "Excusable Delay") and provided Initial Written Notice was provided as set forth in Section 7.1.1.1, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3 Delays and Extensions of Time

☐ Notwithstanding any other provisions to the contrary,

any Excusable Delay (or other delay for which Contractor is entitled to an extension of the Contract Time)

that is **concurrent** with a delay **caused by** the Contractor, Subcontractor, or their employees or agents, or **any other reason not expressly set forth** in this Section 8.3.1,

shall **not** warrant an **extension of Contract Time**.

§ 8.3 Delays and Extensions of Time

- § 8.3.3 To the extent permitted under Paragraph 8.3.1, and provided Contractor has provided **Initial Written Notice** and the **documentation required** in Section 8.3, an **extension in the Contract Time** shall be the sole remedy of the Contractor **for any**
- (1) delay in the commencement, prosecution or completion of the Work,
 - (2) hindrance or obstruction in the performance of the Work,
 - (3) loss of productivity, or
 - (4) acceleration, stacking of trades, home office overhead, expectant underrun, season change, extended overhead, impact damages, profit upon damages for delay
 - (5) other similar claims (collectively referred to as “Delays”) whether or not such Delays are foreseeable, **unless** a Delay is caused by
 - (a) changes in the Work under Article 7 hereof, or
 - (b) acts of the Owner constituting **material interference** with the Contractor’s performance of the Work (“Owner-Caused Delays”).

§ 8.3 Delays and Extensions of Time

□ § 8.3.3 In **no event** shall the Contractor be **entitled to any compensation or recovery** of any damages in connection with any Delay, **including, without limitation,**

1. consequential damages,
2. lost opportunity costs,
3. lost productivity/efficiency costs,
4. impact damages or
5. other similar remuneration;

however, for Owner-Caused Delays Contractor may request direct costs for labor, materials, equipment, and jobsite overhead caused by Owner-Caused Delays.

§ 8.3 Delays and Extensions of Time

- § 8.3.3 The **Owner's exercise** of any of its **rights or remedies** under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), **regardless** of the extent or frequency of the Owner's exercise of such rights or remedies,
- shall **not be construed** as **material interference** with the Contractor's performance of the Work.



فرمول جامع برای تدوین لایحه تاخیرات (بر اساس دو قرارداد FIDIC و AIA)

بخش چهارم: چهارچوب تدوین لایحه تاخیرات از منظر قرارداد FIDIC

ارائه دهنده:

سید محمدرضا علوی پور

(PhD, PMP, CMIT)

CMAA Authorized Trainer

دانشگاه Illinois Tech آمریکا

What we will learn?

- ☐ Step 1 – Assess contractual compliance
- ☐ Step 2 – Is the delay excusable?
- ☐ Step 3 – Is the delay critical?
- ☐ Step 4 – Is the delay compensable
- ☐ Float Ownership
- ☐ Concurrency

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Introduction

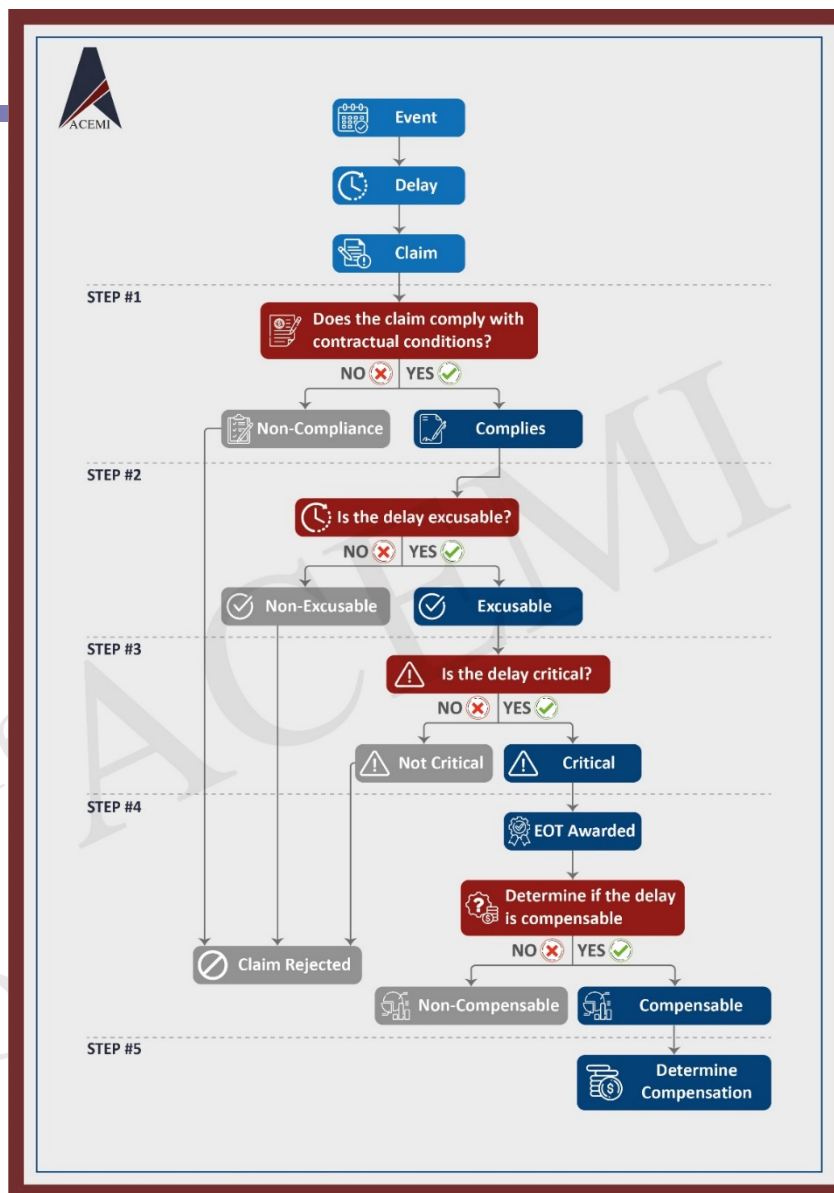
Introduction

- ❑ FIDIC, the International Federation of Consulting Engineers, was founded in **1913** as an **international standards organization**.
- ❑ Today, FIDIC has **more than a million professional members** in more than **100 countries**.
- ❑ The organization is best known for its suite of **versatile construction contracts**.
- ❑ The **FIDIC red book** (Conditions of Contract for Construction for Building and Engineering works designed by the employer) is one of the **most commonly utilized** construction contracts for **design-bid-build** construction projects in the world.

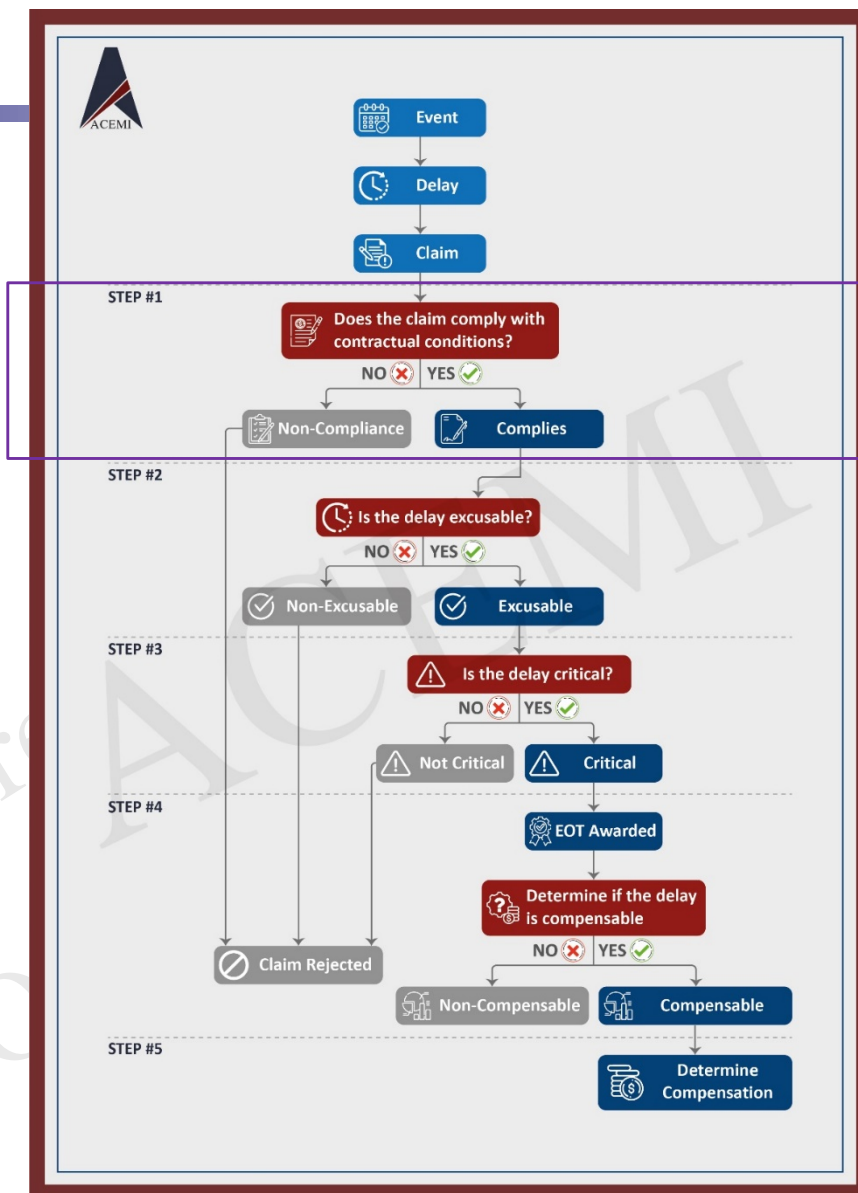
Introduction

- ❑ This Section applies the principles of the **universal decision support framework** to provide guidance for **managing delay claims** when the **2017 edition of FIDIC Red Book** (Conditions of Contract for Construction for Building and Engineering works designed by the employer General Conditions of Contract) is being utilized.

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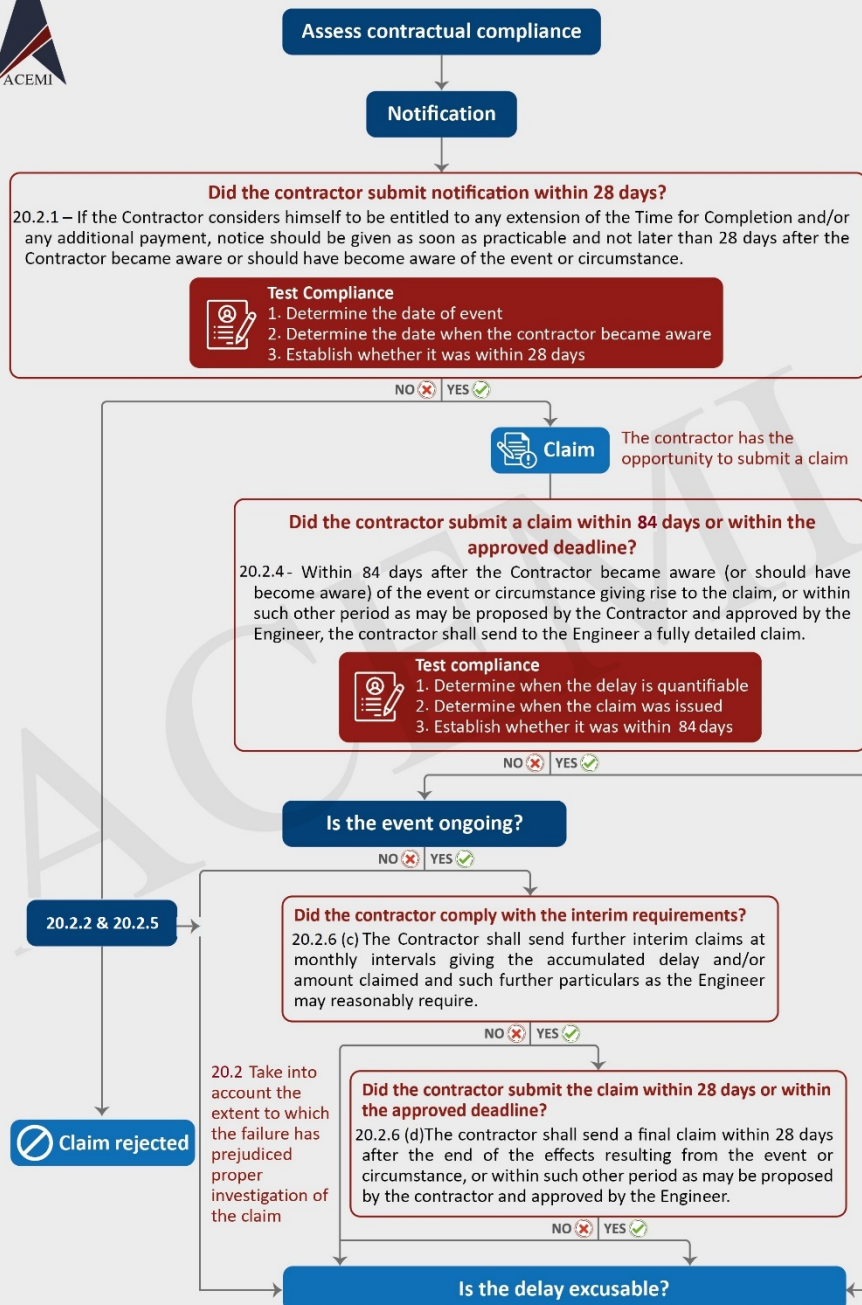


Step 1 – Assess contractual compliance



Introduction

- ❑ The delay claim process in the FIDIC contract is mainly governed by **clause 20.1**.
- ❑ Clause 20.1 is **comprehensive** and deals with a number of different aspects relating to the **notification** and the **claim**.
- ❑ The **first requirement** is that if the **contractor considers himself** to be entitled to additional time for completion and/or any additional payment, then **notice** should be given as soon as **practicable**, and
 1. not later than 28 days after the contractor became aware, or
 2. should have become aware, of the event or circumstance.



Step 1.1 – Did the contractor comply with the notice requirement?

❑ The starting point of this part of the decision tree is to determine whether the **Notice of Claim** was submitted within the **28-day period**.

❖ If it was **not submitted** within this period, **Sub-Clause 20.2.1 provides** that the claiming Party **shall not be entitled** to an extension of time or additional payment.

20.2.1 Notice of Claim

The claiming Party shall give a Notice to the Engineer, describing the event or circumstance giving rise to the cost, loss, delay or extension of DNP for which the Claim is made as soon as practicable, and no later than 28 days after the claiming Party became aware, or should have become aware, of the event or circumstance (the "Notice of Claim" in these Conditions).

If the claiming Party fails to give a Notice of Claim within this period of 28 days, the claiming Party shall not be entitled to any additional payment, the Contract Price shall not be reduced (in the case of the Employer as the claiming Party), the Time for Completion (in the case of the Contractor as the claiming Party) or the DNP (in the case of the Employer as the claiming Party) shall not be extended, and the other Party shall be discharged from any liability in connection with the event or circumstance giving rise to the Claim.

Step 1.1 – Did the contractor comply with the notice requirement?

- ❑ However, this is **subject to the procedures** under Sub-Clauses 20.2.2 and 20.2.5, which allow the **Engineer to consider** whether the late submission may be deemed valid or justified under **certain circumstances**.

20.2.2 Engineer's initial response

If the Engineer considers that the claiming Party has failed to give the Notice of Claim within the period of 28 days under Sub-Clause 20.2.1 [Notice of Claim] the Engineer shall, within 14 days after receiving the Notice of Claim, give a Notice to the claiming Party accordingly (with reasons).

If the Engineer does not give such a Notice within this period of 14 days, the Notice of Claim shall be deemed to be a valid Notice. If the other Party disagrees with such deemed valid Notice of Claim the other Party shall give a Notice to the Engineer which shall include details of the disagreement. Thereafter, the agreement or determination of the Claim under Sub-Clause 20.2.5 [Agreement or determination of the Claim] shall include a review by the Engineer of such disagreement.

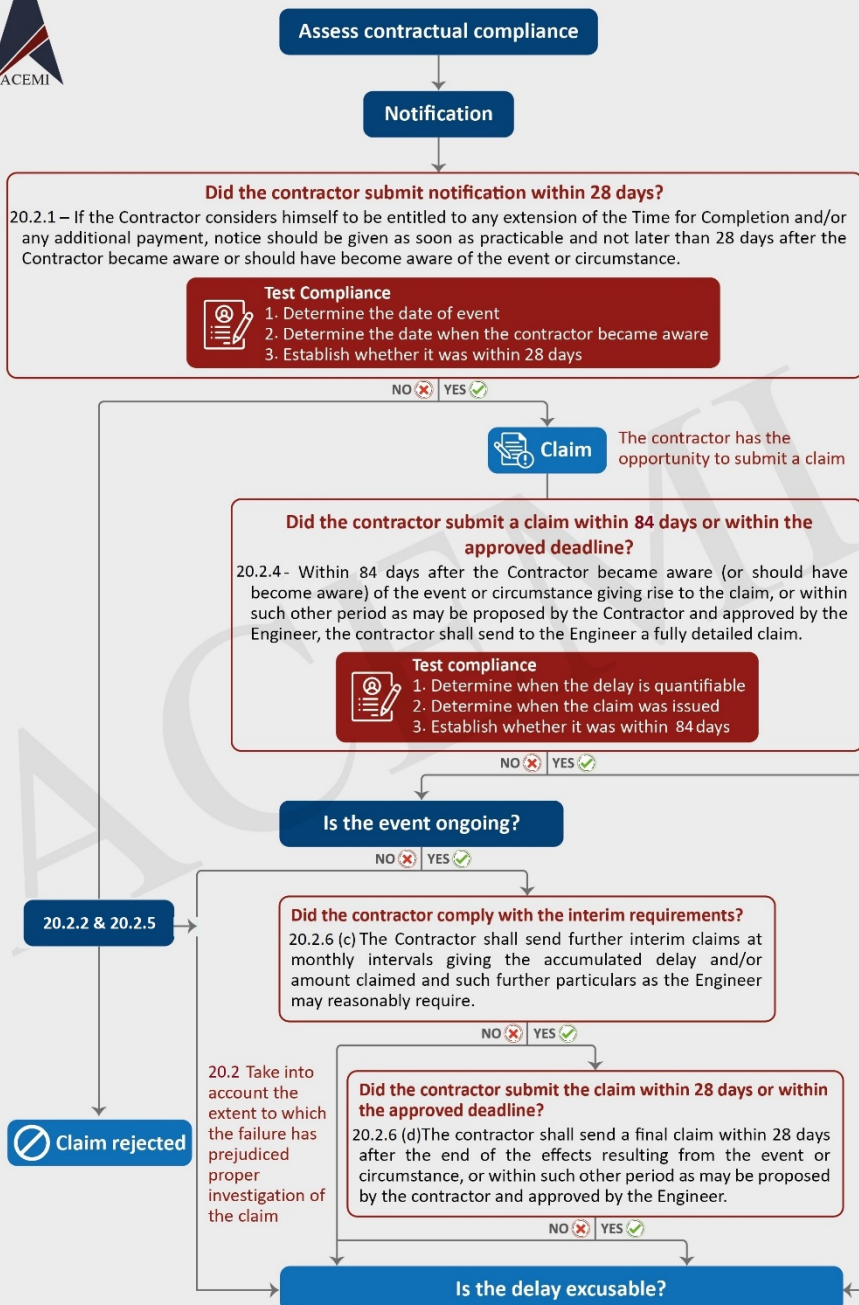
If the claiming Party receives a Notice from the Engineer under this Sub-Clause and disagrees with the Engineer or considers there are circumstances which justify late submission of the Notice of Claim, the claiming Party shall include in its fully detailed Claim under Sub-Clause 20.2.4 [Fully detailed claim] details of such disagreement or why such late submission is justified (as the case may be).

Step 1.1 – Did the contractor comply with the notice requirement?

- ❑ However, this is **subject to the procedures** under Sub-Clauses 20.2.2 and 20.2.5, which allow the **Engineer to consider** whether the late submission may be deemed valid or justified under **certain circumstances**.

If the Engineer has given a Notice under Sub-Clause 20.2.2 [*Engineer's initial response*] and/or under Sub-Clause 20.2.4 [*Fully detailed Claim*], the Claim shall nevertheless be agreed or determined in accordance with this Sub-Clause 20.2.5. The agreement or determination of the Claim shall include whether or not the Notice of Claim shall be treated as a valid Notice taking account of the details (if any) included in the fully detailed claim of the claiming Party's disagreement with such Notice(s) or why late submission is justified (as the case may be). The circumstances which may be taken into account (but shall not be binding) may include:

- whether or to what extent the other Party would be prejudiced by acceptance of the late submission;
- in the case of the time limit under Sub-Clause 20.2.1 [*Notice of Claim*], any evidence of the other Party's prior knowledge of the event or circumstance giving rise to the Claim, which the claiming Party may include in its supporting particulars; and/or
- in the case of the time limit under Sub-Clause 20.2.4 [*Fully detailed Claim*], any evidence of the other Party's prior knowledge of the contractual and/or other legal basis of the Claim, which the claiming Party may include in its supporting particulars.



Step 1.2 – Did the contractor submit a claim within 84 days or within the approved deadline?

- ☐ If the notification complies with this time-bar requirement; then the **next decision** would be to **determine whether the contractor submitted a detailed claim with **full supporting particulars** of**
 1. the basis of the claim and
 2. **additional time and/or additional payment claimed.**
- ☐ This should **happen within 84 days** after
 1. the **contractor became aware (or should have become aware)** of the event or circumstance giving **rise to the claim**, or
 2. within such other period as may be **proposed by the contractor and approved by the engineer.**

Step 1.2 – Did the contractor submit a claim within 84 days or within the approved deadline?

20.2.3 Contemporary records

In this Sub-Clause 20.2, "contemporary records" means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the Claim.

The claiming Party shall keep such contemporary records as may be necessary to substantiate the Claim.

Without admitting the Employer's liability, the Engineer may monitor the Contractor's contemporary records and/or instruct the Contractor to keep additional contemporary records. The Contractor shall permit the Engineer to inspect all these records during normal working hours (or at other times agreed by the Contractor), and shall if instructed submit copies to the Engineer. Such monitoring, inspection or instruction (if any) by the Engineer shall not imply acceptance of the accuracy or completeness of the Contractor's contemporary records.

Step 1.2 – Did the contractor submit a claim within 84 days or within the approved deadline?

20.2.4 Fully detailed Claim

In this Sub-Clause 20.2, "fully detailed Claim" means a submission which includes:

- (a) a detailed description of the event or circumstance giving rise to the Claim;
- (b) a statement of the contractual and/or other legal basis of the Claim;
- (c) all contemporary records on which the claiming Party relies; and
- (d) detailed supporting particulars of the amount of additional payment claimed (or amount of reduction of the Contract Price in the case of the Employer as the claiming Party), and/or EOT claimed (in the case of the Contractor) or extension of the DNP claimed (in the case of the Employer).

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Step 1.2 – Did the contractor submit a claim within 84 days or within the approved deadline?

Within either:

- (i) 84 days after the claiming Party became aware, or should have become aware, of the event or circumstance giving rise to the Claim, or
- (ii) such other period (if any) as may be proposed by the claiming Party and agreed by the Engineer

the claiming Party shall submit to the Engineer a fully detailed Claim.

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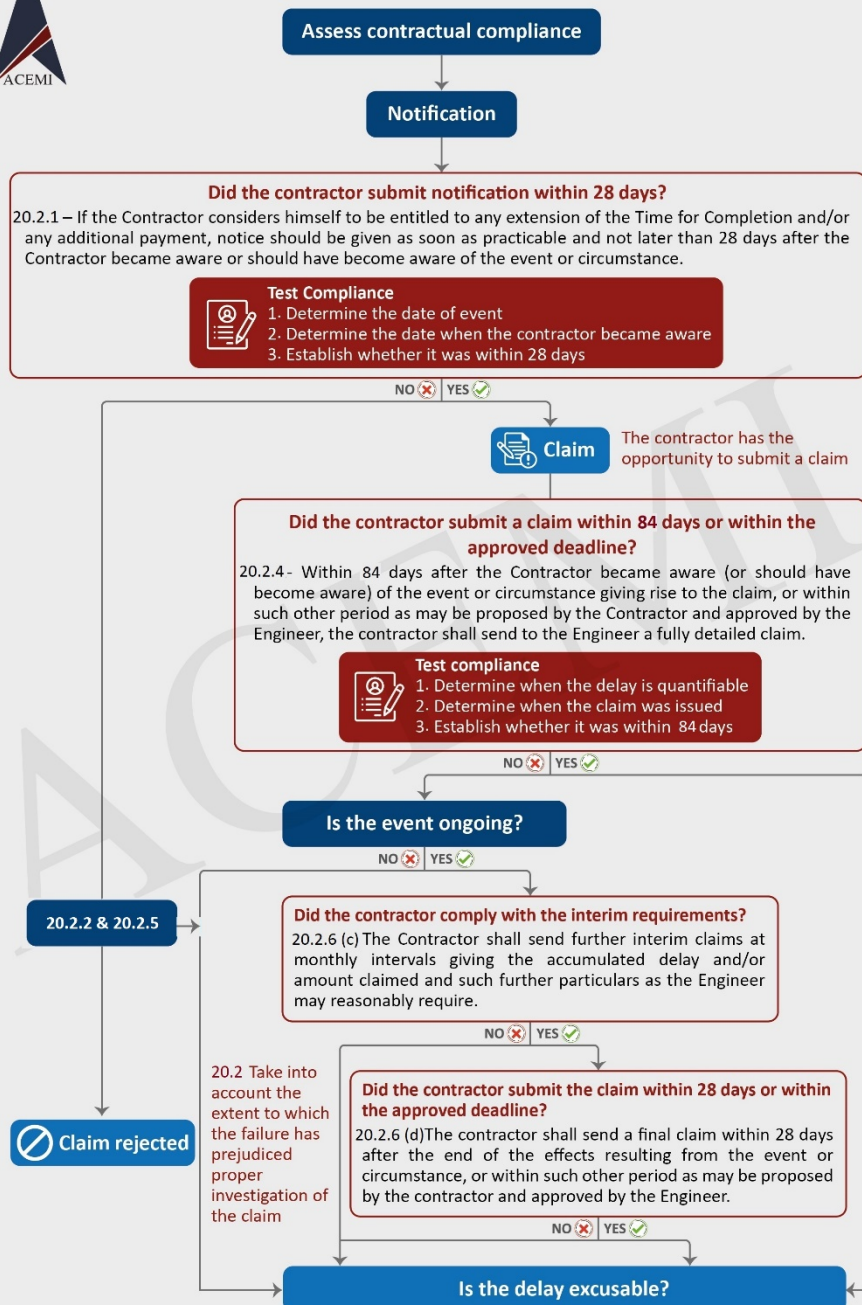
Step 1.2 – Did the contractor submit a claim within 84 days or within the approved deadline?

☐ If the claim was **submitted within the 84 days – or within another period approved** by the engineer –

the claim will be **deemed to be in compliance**; and

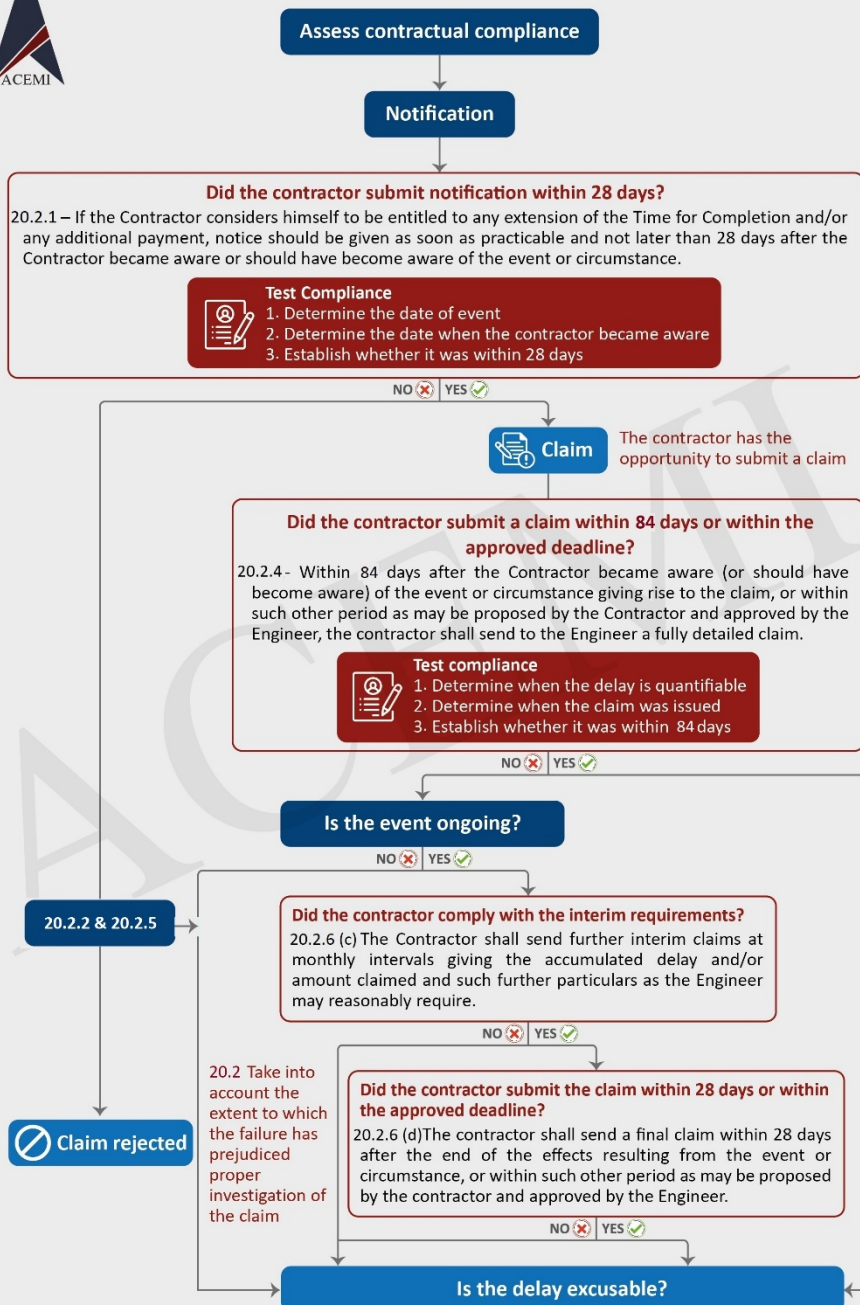
the **next step** in the decision tree process would be to **determine whether** the delay is **excusable**.

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Step 1.3 – Is the event ongoing?

- ❑ It is possible that the claim was **not submitted** within the **84-day period**, particularly if the event causing the delay was of a **continuing nature**.
- ❖ The **next decision** in the decision tree would be to determine **whether** the event has a **continuing effect**.
 - ✓ If the event is **not of a continuing nature**, and
 - ✓ the claim was **not submitted** within the **84 days**,
then the claim may be rejected
unless the
 1. **Engineer** considers that there are justified reasons for the late submission, or
 2. **Engineer fails to issue** a Notice within 14 days, in which case the claim would be **deemed valid**.



Step 1.4 – Did the contractor comply with the interim requirements?

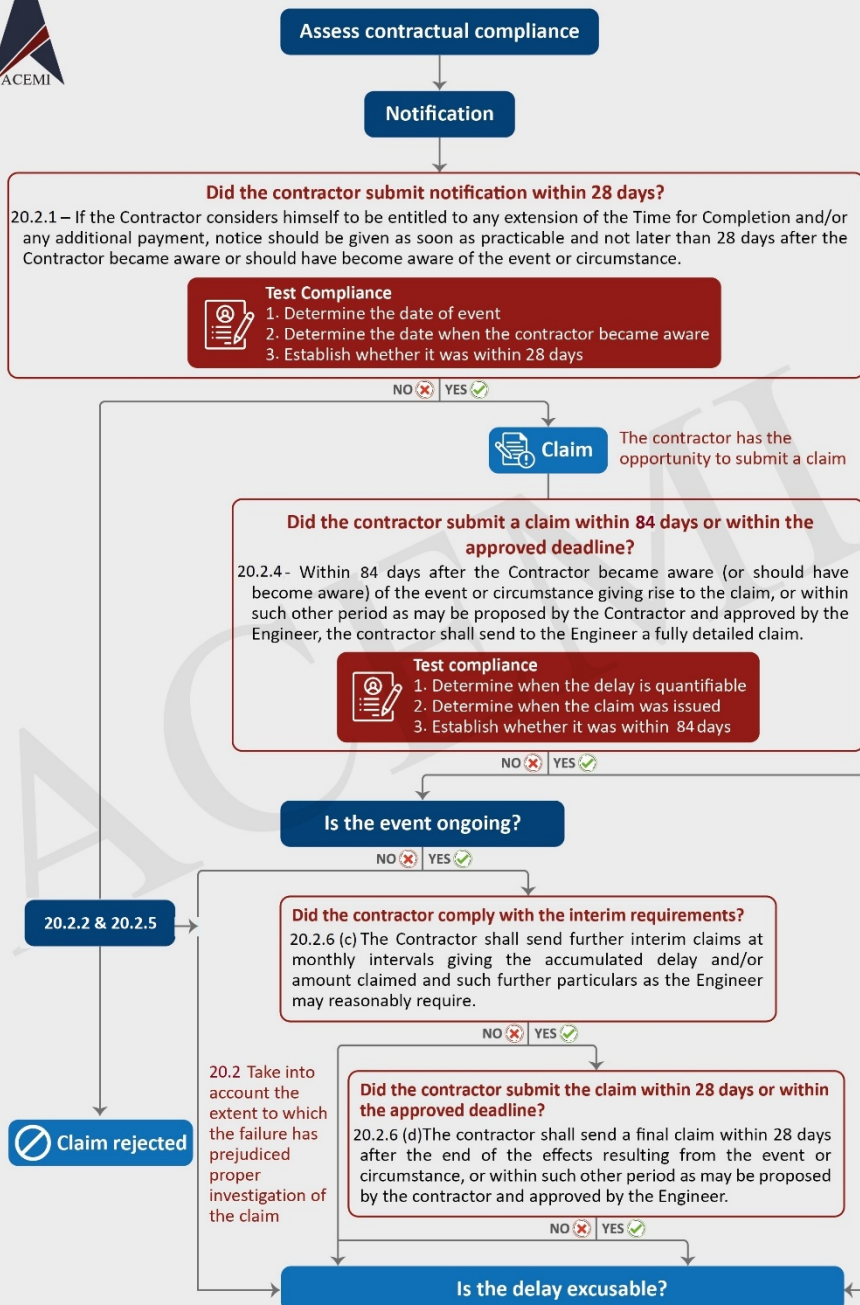
❑ If the event is of an **ongoing nature**, the contractor will have to **comply** with the following interim requirement:

❖ 20.2.6 (c) The Contractor shall **send further interim claims** at monthly intervals,

giving the **accumulated delay** and/or **amount claimed**, and such further particulars

as the Engineer may **reasonably require**;

(c) after submitting the first interim fully detailed Claim the claiming Party shall submit further interim fully detailed Claims at monthly intervals, giving the accumulated amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Employer as the claiming Party), and/or extension of time claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party); and



Step 1.5 – Did the contractor submit the claim within 28 days or within the approved deadline?

☐ If the **contractor adhered** to these interim requirements he will be **obligated to send** a final claim within

1. **28 days after the end** of the **effects resulting** from the event or circumstance, or
2. **such other period** as may be proposed by the contractor and approved by the engineer.

(d) the claiming Party shall submit a final fully detailed Claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the claiming Party and agreed by the Engineer. This final fully detailed Claim shall give the total amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Employer as the claiming Party), and/or extension of time claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party).

Step 1.5 – Did the contractor submit the claim within 28 days or within the approved deadline?

❑ The **28 day-notice period** (from when the contractor becomes aware of the delay) is the **only time-related requirement** where it is **explicitly mentioned** that the claim would not be considered if **this requirement is not met**.

❖ If the following time-related requirements:

1. a claim should be **submitted within 84 days**;
2. interim claims to be **submitted monthly** if the delay is **ongoing**; and
3. a final claim to be **submitted within 28 days** after the **event causing** the delay has **ceased**;

do **not automatically invalidate** the claim if **not complied** with

Step 1.5 – Did the contractor submit the claim within 28 days or within the approved deadline?

❑ If contractors are **not complied with**, the claim would **still be considered**; but the following provision in clause 20.2. **should then be applied**:

❖ 20.2 If the **Contractor fails** to comply with this or another Clause in relation to any claim,

any extension of time and/or **additional payment** shall take account of the **extent** (if any) to which the **failure** has **prevented or prejudiced** proper investigation of the claim,

unless the claim is excluded under the **second paragraph** of this Clause.

Step 1.5 – Did the contractor submit the claim within 28 days or within the approved deadline?

☐ In such cases, Sub-Clause 20.2.7 applies:

any extension of time and/or additional payment shall **take account** of the **extent (if any)** to which the **failure** has **prevented or prejudiced** proper investigation of the claim by the Engineer.

20.2.7 General requirements

After receiving the Notice of Claim, and until the Claim is agreed or determined under Sub-Clause 20.2.5 [*Agreement or determination of the Claim*], in each Payment Certificate the Engineer shall include such amounts for any Claim as have been reasonably substantiated as due to the claiming Party under the relevant provision of the Contract.

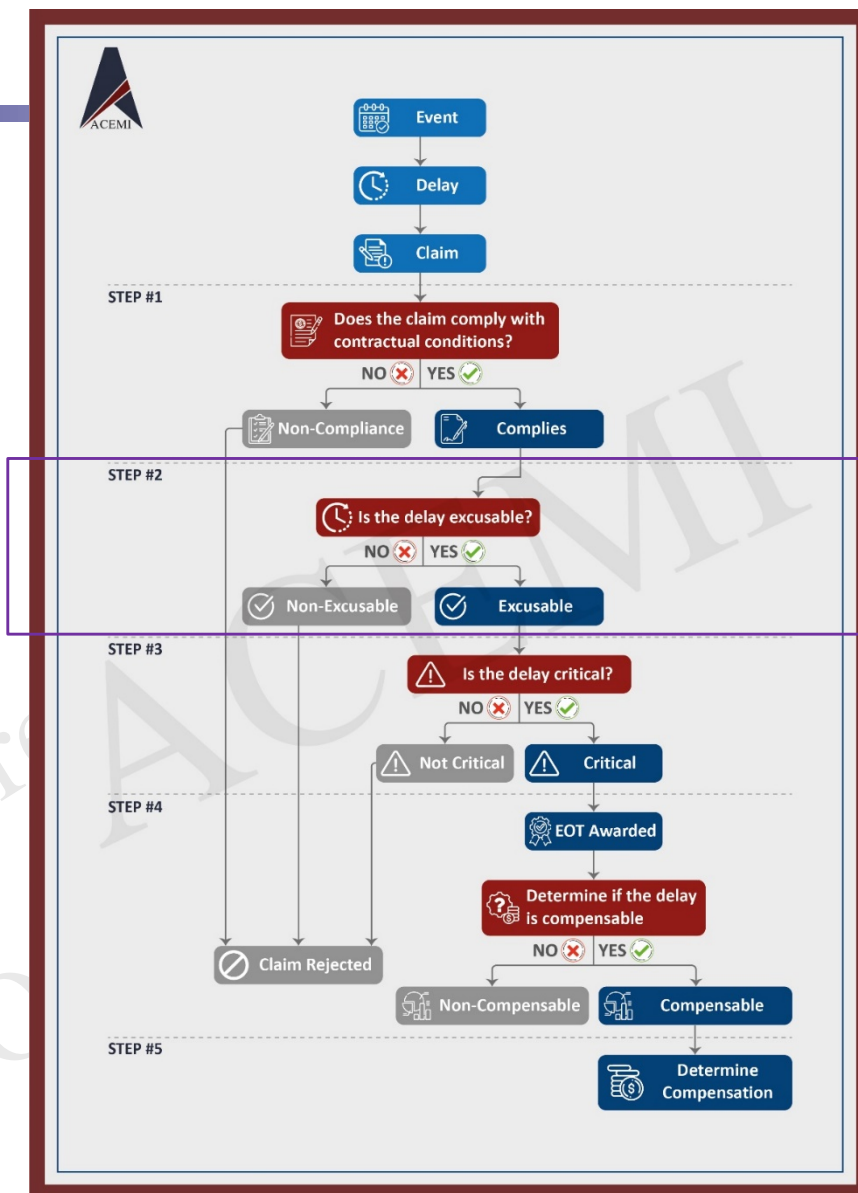
The Employer shall only be entitled to claim any payment from the Contractor and/or to extend the DNP, or set off against or make any deduction from any amount due to the Contractor, by complying with this Sub-Clause 20.2.

The requirements of this Sub-Clause 20.2 are in addition to those of any other Sub-Clause which may apply to the Claim. If the claiming Party fails to comply with this or any other Sub-Clause in relation to the Claim, any additional payment and/or any EOT (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party), shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the Claim by the Engineer.

Step 1.5 – Did the contractor submit the claim within 28 days or within the approved deadline?

- ❑ For example, **late submission** of information may have delayed steps to mitigate the delay.
- ❖ The **impact** of the **non-compliance** on the delay will be considered, and as a result,
 1. the extension of time awarded or additional payment may be **reduced**, or
 2. **no** extension or payment may be **granted**.
- ✓ This assessment of the impact of non-adherence to the time-related requirements forms **part of the overall process** to determine whether the **delay is critical**.
 - The next step is to consider whether the **delay is excusable**.

Step 2 – Is the delay excusable?



Introduction

- ❑ **Clause 8.5** provides a **list of circumstances**, for which the **contractor** would be entitled to an **extension** of the completion date:

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Clause 8.5

- ☐ The Contractor shall be **entitled subject** to Clause 20.2 [Contractor's Claims] to an extension of time for completion **if and to** the **extent** that **completion for the purposes** of Clause 10.1 [Taking Over of the Works and Sections] is or **will be delayed** by any of the following causes:

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Clause 8.4

(a) a Variation (except that there shall be no requirement to comply with Sub-Clause 20.2 [Claims For Payment and/or EOT]);

(b) a cause of delay giving an entitlement to EOT under a Sub-Clause of these Conditions;

(c) exceptionally adverse climatic conditions, which for the purpose of these Conditions shall mean adverse climatic conditions at the Site which are Unforeseeable having regard to climatic data made available by the Employer under Sub-Clause 2.5 [Site Data and Items of Reference] and/or climatic data published in the Country for the geographical location of the Site;

(d) Unforeseeable shortages in the availability of personnel or Goods (or Employer-Supplied Materials, if any) caused by epidemic or governmental actions; or

(e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

Is the delay excusable?

Is the delay catered for in clause 8.5(a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

A Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.

YES ☒ NO ☒

Has an adjustment to the Time for Completion been agreed under clause 13.3 [variation procedure]?

YES ☒ NO ☒

EOT to be dealt with in terms of clause 13.3 (variation procedure)

Is the delay catered for in clause 8.5 (b)?
b) a cause of delay giving entitlement to EOT of time under a clause of these Conditions

YES ☒ NO ☒

Does the clause require additional notification?

YES ☒ NO ☒

Did the contractor give the required notification?

YES ☒ NO ☒

Was the delay as a result of the contractor's failure?

YES ☒ NO ☒

Non-Excusable

Does the clause provide for other requirements to be met?

YES ☒ NO ☒

Did the contractor meet the requirements?

NO ☒ YES ☒

Non-Excusable

Excusable

Is the delay catered for in clause 8.5 (c)?
c) exceptionally adverse climatic conditions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (d)?
d) unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (e)?
e) any delay, impediment or prevention caused by or attributable to the Employer, the employer's personnel or the Employer's other contractors.

YES ☒ NO ☒

Non-Excusable

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Step 2.1 – Is the delay catered for in clause 8.5 (a)?

- ❑ **Clause 8.5 (a)** provides for variations or substantial changes in the **quantity** of an item of work.
- ❑ The **first question** in the decision tree would be to determine if the **additional time** was **dealt** with in the **variation order sub-clause (13.3)**.
 - ❖ If this is the case, it would **not be necessary** to **further consider the claim** as it would have been considered as part of the **variation order procedure**.
 - ❖ If it was **not considered** as part of the variation order procedure, it would be deemed an **excusable delay**; and it would be further **assessed as part of the variation** order process.

Is the delay excusable?

Is the delay catered for in clause 8.5(a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

A Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.

YES ☒ NO ☒

Has an adjustment to the Time for Completion been agreed under clause 13.3 [variation procedure]?

YES ☒ NO ☒

EOT to be dealt with in terms of clause 13.3 (variation procedure)

Is the delay catered for in clause 8.5 (b)?
b) a cause of delay giving entitlement to EOT of time under a clause of these Conditions

YES ☒ NO ☒

Does the clause require additional notification?

YES ☒ NO ☒

Did the contractor give the required notification?

YES ☒ NO ☒

Was the delay as a result of the contractor's failure?

YES ☒ NO ☒

Non-Excusable

Does the clause provide for other requirements to be met?

YES ☒ NO ☒

Did the contractor meet the requirements?

NO ☒ YES ☒

Non-Excusable

Excusable

Is the delay catered for in clause 8.5 (c)?
c) exceptionally adverse climatic conditions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (d)?
d) unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (e)?
e) any delay, impediment or prevention caused by or attributable to the Employer, the employer's personnel or the Employer's other contractors.

YES ☒ NO ☒

Non-Excusable

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

- ☐ In **terms of clause 8.5 (b)** additional time can be **claimed utilizing any clause** of the **contract** providing for such an entitlement.
- ☐ A **large number of clauses** explicitly state that the contractor is entitled to additional time for a delay related to the **event mentioned in the clause**.
- ☐ Should a claim **rely on any of these clauses**, it should be considered in the decision tree **whether** the provisions of the clauses **were complied with**.

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

Nr	Clause	Additional notification	As a result of contractor's failure	Specific requirement
1.9	Delayed drawings	✓	✓	✓
2.1	Right of access		✓	✓
4.7	Setting out		✓	
4.12	Unforeseeable conditions	✓		✓
4.23	Archaeological	✓		
7.4	Testing		✓	
8.6	Delays by authorities		✓	
8.10	Suspension of work		✓	
10.3	Interference with tests for completion			✓
13.6	Adjustments for changes			✓
16.1	Contractor's entitlement to suspend work	✓		✓
18	Exceptional Events	✓		✓

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

- ☐ As can be seen in **Table** the conditions included in these clauses can be categorized under the following general requirements.

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Is the delay excusable?

Is the delay catered for in clause 8.5(a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

A Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.

YES ☒ NO ☒

Has an adjustment to the Time for Completion been agreed under clause 13.3 [variation procedure]?

YES ☒ NO ☒

EOT to be dealt with in terms of clause 13.3 (variation procedure)

Is the delay catered for in clause 8.5 (b)?
b) a cause of delay giving entitlement to EOT of time under a clause of these Conditions

YES ☒ NO ☒

Does the clause require additional notification?

YES ☒ NO ☒

Did the contractor give the required notification?

YES ☒ NO ☒

Was the delay as a result of the contractor's failure?

YES ☒ NO ☒

Non-Excusable

Does the clause provide for other requirements to be met?

YES ☒ NO ☒

Did the contractor meet the requirements?

NO ☒ YES ☒

Non-Excusable

Excusable

Is the delay catered for in clause 8.5 (c)?
c) exceptionally adverse climatic conditions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (d)?
d) unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (e)?
e) any delay, impediment or prevention caused by or attributable to the Employer, the employer's personnel or the Employer's other contractors.

YES ☒ NO ☒

Non-Excusable

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Step 2.2a – Does the clause require additional notification?

- ❖ In **testing**, the requirements stated above the decision tree will first consider if **there is a requirement** in the clause for an additional notification over and above the notification required by clause 20.2.

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Step 2.2b – Did the contractor provide the required notification?

- ❖ If the **response is affirmative** it will be established if an additional notification was provided in line with the **specific requirements** contained in the specific clause.
- ❖ If the **additional notification provision** was **not complied** with it is advisable **not to immediately reject** the claim but **rather to apply the provision** in clause 20.2 to take account of the extent (if any) to which the **failure has prevented or prejudiced** proper investigation of the claim.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Step 2.2c – Was the delay as a result of the contractor's failure?

❖ The **next decision** will be to determine whether there was **any failure** on the **part of the contractor**.

- ✓ The failure may include an error, action or inaction.
- ✓ Failure on the part of the contractor will result in the **claim not being considered**.

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Step 2.2d – Does the clause provide for other requirements to be met?

- ❖ If there was **no failure or error** on the part of the contractor
the **decision tree** will consider **whether the clause** provides for **any other specific requirements** to be complied with.
 - ✓ If **no other specific requirements** need to be met the delay will be accepted as an **excusable delay**.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Step 2.2d – Does the clause provide for other requirements to be met?

- ❖ However, **if** the clause provides for any **specific requirements** the clause will have to be **consulted** to establish **whether** these requirements were **adhered** to.
 - ✓ If the **contractor** **complied** with the **specific requirement explained in detail** in the next **couple of pages** the delay will be accepted as **excusable**.
 - ✓ If **not**, the **clause will provide guidance** on **whether** the claim may be **rejected**.

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Is the delay excusable?

Is the delay catered for in clause 8.5(a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

A Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.

YES ☒ NO ☒

Has an adjustment to the Time for Completion been agreed under clause 13.3 [variation procedure]?

YES ☒ NO ☒

EOT to be dealt with in terms of clause 13.3 (variation procedure)

Is the delay catered for in clause 8.5 (b)?
b) a cause of delay giving entitlement to EOT of time under a clause of these Conditions

YES ☒ NO ☒

Does the clause require additional notification?

YES ☒ NO ☒

Did the contractor give the required notification?

YES ☒ NO ☒

Was the delay as a result of the contractor's failure?

YES ☒ NO ☒

Non-Excusable

Does the clause provide for other requirements to be met?

YES ☒ NO ☒

Did the contractor meet the requirements?

NO ☒ YES ☒

Non-Excusable

Excusable

Is the delay catered for in clause 8.5 (c)?
c) exceptionally adverse climatic conditions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (d)?
d) unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (e)?
e) any delay, impediment or prevention caused by or attributable to the Employer, the employer's personnel or the Employer's other contractors.

YES ☒ NO ☒

Non-Excusable

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

Nr	Clause	Additional notification	As a result of contractor's failure	Specific requirement
1.9	Delayed drawings	✓	✓	✓
2.1	Right of access		✓	✓
4.7	Setting out		✓	
4.12	Unforeseeable conditions	✓		✓
4.23	Archaeological	✓		
7.4	Testing		✓	
8.6	Delays by authorities		✓	
8.10	Suspension of work		✓	
10.3	Interference with tests for completion			✓
13.6	Adjustments for changes			✓
16.1	Contractor's entitlement to suspend work	✓		✓
18	Exceptional Events	✓		✓

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 1.9 – Delayed Drawings and Instructions

- ❖ If the contractor was **delayed** due to late drawings and instructions, a claim for additional time can be submitted in terms of **clause 1.9**.
- ❖ It would first be determined **whether** the contractor gave **notice** of a possible delay if the **required information** was **not issued** within a **reasonable time**.
- ❖ If the **notice** was **not given**
the **impact** will be considered in **terms of clause 20.1**, which provides for the **engineer** to take into account the **extent (if any)** to which the **failure has prevented or prejudiced** proper investigation of the claim.
 - ✓ If it is **found** that by **providing timeous notice** of the information required the **delay could have been prevented** it is likely that **no additional time** will be awarded.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

☐ Clause 1.9 – Delayed Drawings and Instructions

1.9

Delayed Drawings or Instructions

The Contractor shall give a Notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The Notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the Notice with supporting details, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such EOT and/or Cost Plus Profit.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 1.9 – Delayed Drawings and Instructions

❖ The **second step** will be to **determine whether** the **content requirements** of the **notice** were **complied** with.

✓ **Clause 1.9** states that the notice should include the following:

- Details of the necessary drawing or instruction,
- Details of why and by when it should be issued, and
- The nature and amount of the delay or disruption likely to be suffered if it is late.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 1.9 – Delayed Drawings and Instructions

- ❖ If the **notification did not** include the **above mentioned content requirements** the **impact** of the **non-adherence** would **again have** to be considered in terms of **clause 20.2**.
- ❖ The **final consideration** would be to **establish whether** the **engineer's failure** to provide the **drawing or instruction late** was **caused by an error or delay** by the **contractor**.
 - ✓ If this was the **case**, the contractor would **not be entitled** to an extension of time **(to the extent)**.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 2.1 – Right of Access to Site

2.1

Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Contract Data, the Employer shall give the Contractor right of access to, and possession of, those parts of the Site within such times as may be required to enable the Contractor to proceed in accordance with the Programme or, if there is no Programme at that time, the initial programme submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the applicable Contractor's Documents, the Contractor shall not be entitled to such EOT and/or Cost Plus Profit.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 2.1 – Right of Access to Site

❖ Clause 2.1 provides for the **contractor** to claim for additional time **if access to the site** was provided **later than the time** stated in the **contract data**.

❖ If the **right of access** was **delayed**,

it would be **necessary to determine**

whether the **delay** was **not caused** by the **late submission** of the **performance security** by the **contractor**.

✓ If this was the **case** the delay is **not excusable**;

as the **employer may**, according to clause 2.1 **withhold possession of the site** until the **performance security** has been received

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

☐ Clause 2.1 – Right of Access to Site

- ❖ If the **employer's failure** was as a result of an **error** or **delay** by the **contractor** the delay is not excusable **(to the extent)**.

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 4.7 – Setting Out

4.7

Setting Out

The Contractor shall set out the Works in relation to the items of reference under Sub-Clause 2.5 [*Site Data and Items of Reference*].

4.7.1 Accuracy

The Contractor shall:

- (a) verify the accuracy of all these items of reference before they are used for the Works;
- (b) promptly deliver the results of each verification to the Engineer;
- (c) rectify any error in the positions, levels, dimensions or alignment of the Works; and
- (d) be responsible for the correct positioning of all parts of the Works.

4.7.2 Errors

If the Contractor finds an error in any items of reference, the Contractor shall give a Notice to the Engineer describing it:

- (a) within the period stated in the Contract Data (if not stated, 28 days) calculated from the Commencement Date, if the items of reference are specified on the Drawings and/or in the Specification; or
- (b) as soon as practicable after receiving the items of reference, if they are issued by the Engineer under Sub-Clause 2.5 [*Site Data and Items of Reference*].

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 4.7 – Setting Out

4.7.3 Agreement or Determination of rectification measures, delay and/or Cost

After receiving a Notice from the Contractor under Sub-Clause 4.7.2 [Errors], the Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine:

- (a) whether or not there is an error in the items of reference;
- (b) whether or not (taking account of cost and time) an experienced contractor exercising due care would have discovered such an error
 - when examining the Site, the Drawings and the Specification before submitting the Tender; or
 - if the items of reference are specified on the Drawings and/or in the Specification and the Contractor's Notice is given after the expiry of the period stated in sub-paragraph (a) of Sub-Clause 4.7.2; and
- (c) what measures (if any) the Contractor is required to take to rectify the error

(and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives the Contractor's Notice under Sub-Clause 4.7.2 [Errors] shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

☐ Clause 4.7 – Setting Out

If, under sub-paragraph (b) above, an experienced contractor would not have discovered the error:

- (i) Sub-Clause 13.3.1 [*Variation by Instruction*] shall apply to the measures that the Contractor is required to take (if any); and
- (ii) if the Contractor suffers delay and/or incurs Cost as a result of the error, the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

☐ Clause 4.12 – Unforeseeable Physical Conditions

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 4.24 – Archaeological and Geological Findings

4.23

Archaeological and Geological Findings

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take all reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, as soon as practicable after discovery of any such finding, give a Notice to the Engineer in good time to give the Engineer opportunity to promptly inspect and/or investigate the finding before it is disturbed. This Notice shall describe the finding and the Engineer shall issue instructions for dealing with it.

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 7.4 – Testing by the Contractor

- ❖ According to clause 7.4, the **contractor** can ask for **additional time** if a delay was **suffered**, as a result of **testing required**, or as a result of a delay for which the **employer is responsible**.
- ❖ As a **starting point**, it should be considered **whether a delay was suffered** as a direct result of the **instruction for testing**.
 - ✓ However, if the **tests show** that the tested plant, material or workmanship was **not according** to the **contract**,
the **delay will not be considered excusable**; as this would **not be classified as an employer's responsibility**, as required by the clause.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 8.6 – Delays Caused By Authorities

❖ **Delays caused by authorities** would be considered according to **clause 8.5** as an excusable delay, provided the **following conditions** are met:

1. The contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the country;
2. The authorities delayed or disrupted the contractor's work; and
3. The delay or disruption was unforeseeable.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 8.10 – Consequences of Employer's Suspension

8.10

Consequences of Employer's Suspension

If the Contractor suffers delay and/or incurs Cost from complying with an Engineer's instruction under Sub-Clause 8.9 [*Employer's Suspension*] and/or from resuming the work under Sub-Clause 8.13 [*Resumption of Work*], the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to EOT and/or payment of such Cost Plus Profit.

The Contractor shall not be entitled to EOT, or to payment of the Cost incurred, in making good:

- (a) the consequences of the Contractor's faulty or defective (design, if any) workmanship, Plant or Materials; and/or
- (b) any deterioration, loss or damage caused by the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.9 [*Employer's Suspension*].

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 8.10 – Consequences of Employer's Suspension

- ❖ It should be considered **whether a delay** was suffered as a **result of the suspension and/or from the **resumption**** of the work after suspension.
- ❖ In addition, it should be established **whether the suspension was not a result of **any wrongdoing**** on the **part of the contractor**.
- ❖ If the **contractor was **not responsible**** for the suspension, then the **delay is excusable**.

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 10.3 – Interference With Tests On Completion

❖ According to clause 10.3, if the contractor is prevented, for more than 14 days,

from carrying out the tests on completion,

by a cause for which the employer is responsible, and

the contractor suffers a delay,

the contractor is entitled to an extension of the contract period.

If the Contractor is prevented, for more than 14 days (either a continuous period, or multiple periods which total more than 14 days), from carrying out the Tests on Completion by the Employer's Personnel or by a cause for which the Employer is responsible:

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

☐ Clause 10.3 – Interference With Tests On Completion

- ❖ The first consideration would be to **determine whether interference** with the **tests delayed** the contractor for **more than 14 days**.
 - ✓ If this was **indeed the case**, the **next decision** would be to determine **whether** the delay was as a result of a cause that the **employer was responsible** for.
 - ✓ If this answer is in the **affirmative**, the **delay can be accepted** as being an **excusable delay**.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 13.6 – Adjustment For Changes in Law

- ❖ If there are **changes in the laws of the country**, or in the **judicial or official governmental interpretation** of such laws,
that **delay the contractor**, clause 13.6 provides for **additional time** to be considered in this regard.

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Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 13.6 – Adjustment For Changes in Law

- ❖ It should first be determined **whether** the contractor suffered a delay as a result of a **change in law**.
- ❖ If the **contractor was delayed**, the **next consideration** would be to **determine whether** the change in law **took place** after the base date of the contract.
 1. If the change in legislation took **place before the commencement** of the project the contractor should have been **aware of the impact**.
 2. If the **change in legislation** took place **after the base date** the next decision will be to **determine whether** the relevant delay **had not already been taken** into account in the determination of a **previous extension** of time claims.
 3. If the delay had **not been previously taken** into account the delay can be considered as **excusable**.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 16.1 – Contractor’s Entitlement to Suspend Work

If:

- (a) the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of IPC];
- (b) the Employer fails to provide reasonable evidence in accordance with Sub-Clause 2.4 [Employer’s Financial Arrangements];
- (c) the Employer fails to comply with Sub-Clause 14.7 [Payment]; or
- (d) the Employer fails to comply with:
 - (i) a binding agreement, or final and binding determination under Sub-Clause 3.7 [Agreement or Determination]; or
 - (ii) a decision of the DAAB under 21.4 [Obtaining DAAB’s Decision] (whether binding or final and binding)

and such failure constitutes a material breach of the Employer’s obligations under the Contract,

the Contractor may, not less than 21 days after giving a Notice to the Employer (which Notice shall state that it is given under this Sub-Clause 16.1), suspend work (or reduce the rate of work) unless and until the Employer has remedied such a default.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

❑ Clause 16.1 – Contractor’s Entitlement to Suspend Work

- ❖ The clause also gives the contractor the **entitlement to claim** for additional time if the **suspension** of the works caused a **delay**.
- ❖ It should **first** be **determined whether** the **contractor suffered a delay** as a result of the suspension.
- ❖ The **second** consideration would be to **determine if the contractor was entitled to suspend the work** in terms of clause 14.6, clause 2.4 or clause 14.7.
 - ✓ If the **contractor was entitled** to suspend the work, the **third consideration** would be to **determine whether** the contractor provided **at least 21 days’ notice** of the planned suspension.
- ❖ If **all these conditions** were **met the provisions** of the clause were **complied with**; and the delay would be deemed **excusable**.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 18.1 – Exceptional Events

18.1

Exceptional Events

“**Exceptional Event**” means an event or circumstance which:

- (i) is beyond a Party's control;
- (ii) the Party could not reasonably have provided against before entering into the Contract;
- (iii) having arisen, such Party could not reasonably have avoided or overcome; and
- (iv) is not substantially attributable to the other Party.

An Exceptional Event may comprise but is not limited to any of the following events or circumstances provided that conditions (i) to (iv) above are satisfied:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (c) riot, commotion or disorder by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
- (d) strike or lockout not solely involving the Contractor's Personnel and other employees of the Contractor and Subcontractors;
- (e) encountering munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; or
- (f) natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon.

Step 2.2 – Is the delay catered for in clause 8.5 (b)?

□ Clause 18.1 – Exceptional Events

18.4

Consequences of an Exceptional Event

If the Contractor is the affected Party and suffers delay and/or incurs Cost by reason of the Exceptional Event of which he/she gave a Notice under Sub-Clause 18.2 [*Notice of an Exceptional Event*], the Contractor shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to:

- (a) EOT; and/or
- (b) if the Exceptional Event is of the kind described in sub-paragraphs (a) to (e) of Sub-Clause 18.1 [*Exceptional Events*] and, in the case of sub-paragraphs (b) to (e) of that Sub-Clause, occurs in the Country, payment of such Cost.

Is the delay excusable?

Is the delay catered for in clause 8.5(a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

A Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.

YES ☒ NO ☒

Has an adjustment to the Time for Completion been agreed under clause 13.3 [variation procedure]?

YES ☒ NO ☒

EOT to be dealt with in terms of clause 13.3 (variation procedure)

Is the delay catered for in clause 8.5 (b)?
b) a cause of delay giving entitlement to EOT of time under a clause of these Conditions

YES ☒ NO ☒

Does the clause require additional notification?

YES ☒ NO ☒

Did the contractor give the required notification?

YES ☒ NO ☒

Was the delay as a result of the contractor's failure?

YES ☒ NO ☒

Non-Excusable

Does the clause provide for other requirements to be met?

YES ☒ NO ☒

Did the contractor meet the requirements?

NO ☒ YES ☒

Non-Excusable

Excusable

Is the delay catered for in clause 8.5 (c)?
c) exceptionally adverse climatic conditions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (d)?
d) unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (e)?
e) any delay, impediment or prevention caused by or attributable to the Employer, the employer's personnel or the Employer's other contractors.

YES ☒ NO ☒

Non-Excusable

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Step 2.3. – Is the delay catered for in clause 8.4 (c)?

- ❑ If a delay was experienced as a result of **exceptional adverse climatic conditions**, **clause 8.5 (c)** allows for the contractor to **request an extension** of the contract period.
- ❑ With the **specific reference** to **exceptional adverse climatic conditions**, it is clear that **normal** adverse climatic conditions that can be **foreseen** by assessing **annual weather records** would **not be viewed** as an **excusable delay**.
 - ❖ However, should the **contractor be able to prove** that the climatic conditions were **exceptionally adverse**; the delay would be viewed as **excusable**.

Is the delay excusable?

Is the delay catered for in clause 8.5(a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

A Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.

YES ☒ NO ☒

Has an adjustment to the Time for Completion been agreed under clause 13.3 [variation procedure]?

YES ☒ NO ☒

EOT to be dealt with in terms of clause 13.3 (variation procedure)

Is the delay catered for in clause 8.5 (b)?
b) a cause of delay giving entitlement to EOT of time under a clause of these Conditions

YES ☒ NO ☒

Does the clause require additional notification?

YES ☒ NO ☒

Did the contractor give the required notification?

YES ☒ NO ☒

Was the delay as a result of the contractor's failure?

YES ☒ NO ☒

Non-Excusable

Does the clause provide for other requirements to be met?

YES ☒ NO ☒

Did the contractor meet the requirements?

NO ☒ YES ☒

Non-Excusable

Excusable

Is the delay catered for in clause 8.5 (c)?
c) exceptionally adverse climatic conditions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (d)?
d) unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (e)?
e) any delay, impediment or prevention caused by or attributable to the Employer, the employer's personnel or the Employer's other contractors.

YES ☒ NO ☒

Non-Excusable

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Step 2.4. – Is the delay catered for in clause 8.4 (d)?

- ☐ **Clause 8.5 (d)** provides for delays caused by **unforeseeable shortages** in the availability of **personnel or goods** caused by an epidemic or governmental actions.
- ☐ If the delay were a **result of these causes**, it would be accepted as an **excusable delay**.

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Is the delay excusable?

Is the delay catered for in clause 8.5(a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

A Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract.

YES ☒ NO ☒

Has an adjustment to the Time for Completion been agreed under clause 13.3 [variation procedure]?

YES ☒ NO ☒

EOT to be dealt with in terms of clause 13.3 (variation procedure)

Is the delay catered for in clause 8.5 (b)?
b) a cause of delay giving entitlement to EOT of time under a clause of these Conditions

YES ☒ NO ☒

Does the clause require additional notification?

YES ☒ NO ☒

Did the contractor give the required notification?

YES ☒ NO ☒

Was the delay as a result of the contractor's failure?

YES ☒ NO ☒

Non-Excusable

Does the clause provide for other requirements to be met?

YES ☒ NO ☒

Did the contractor meet the requirements?

NO ☒ YES ☒

Non-Excusable

Excusable

Is the delay catered for in clause 8.5 (c)?
c) exceptionally adverse climatic conditions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (d)?
d) unforeseeable shortages in the availability of personnel or goods caused by epidemic or governmental actions

YES ☒ NO ☒

Is the delay catered for in clause 8.5 (e)?
e) any delay, impediment or prevention caused by or attributable to the Employer, the employer's personnel or the Employer's other contractors.

YES ☒ NO ☒

Non-Excusable

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موسسه مهندسی و مدیریت ساخت علوی پور (ACEMI)

دفتر آموزش



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