

## Failed / Late Notice of Determination (Time at large) – SC03.5 to award for an adjusted Extension of Time for Completion – SC08.4

### A \_ What is an Extension of Time / Adjustment of Time for Completion?

An extension of time clause is an **express contractual provision that contemplates the adjustment of the contract completion date in defined circumstances** an Extension of Time (adjusted Time for Completion) is to be granted, when the progress of the work has been impacted due to an **excusable delaying event** has occurred. Entitlements for Employers and Contractors are published here: [www.ppe61.de/03.5+ClaimSC.pdf](http://www.ppe61.de/03.5+ClaimSC.pdf) (Source: FIDIC Contract Guide)

The extension of time clause in a contract serves a dual purpose.

**Contractor:** It grants additional time to complete the project in the event of a delay.

**Employer:** It protects the right to levy liquidated damages when the Contractor delays the adjusted Time for Completion.

### C \_ Effect / Failure to provide a formal Notice of Determination on time.

If the Engineer/Employer is responsible for an **act of prevention with all legal consequences** (doctrine of Prevention) and the “initial” or “adjusted” Time for Completion will lapse (> Time becomes at large) and the Employer can no longer deduct Liquidated Damages / Delay Damages. The “time at large” describes the situation, where there is no date for completion, or where the **date/time for completion has become invalid**. The Contractor is no longer bound by the obligation to complete the works by a certain date (initial / current approved adjusted Time for Completion). The TfC is not enforceable anymore. However, it is important to note that the **Contractor will still be obliged to complete** the works, within a “reasonable” time. What does the Contractor consider reasonable??? If the Employer will request an earlier completion date (ahead of this “reasonable time”) - after the lapsed time (time at large effect) - the Contractor will be allowed to claim **all compensatory damages for acceleration for the preparatory works / adjustment of the sequences of operations to complete the permanent works earlier**.

### D \_ Please validate the Effect of LATE issuance of the adjusted EoTfC behind the “initial” or “adjusted” Time for Completion?

D1 . Does the Concept of **Time at large** will apply for FIDIC Contracts?

D2 . Or, if the Engineer does NOT follow the **contractual procedure** to finalize the Claim for Extension of Time for Completion upon time, the Contractor shall **refer the Case to the Dispute Board** (DB / DAB, DAAB) to obtain a decision.

D3 . Does the Employer lose his right under these circumstances to apply Delay Damages / Liquidated Damages at all?

D4 . Has the Contractor the **retroactively right to adapt** “his” adjusted Time for Completion (submitted Claim Request) **towards a “Reasonable” Time (later finish)** due to the **organisational negligence of the Engineer / Employer** to issue a **punctual** EoTfC-decision, ahead of the deadline “time at large”-impact.

# Extension of Time for Completion

## 1 \_ Allowance of Extension of Time for Completion in compliance with FIDIC

The FIDIC Clauses provide plenty of causes, which entitles the Contractor to request Extension of Time for Completion EoTfC for failures of the Employer / Owner subject to SC08.4 FIDIC

Excerpt from FIDIC Contract Guide 1999 : [www.gub21.de/03.5+ClaimSC.pdf](http://www.gub21.de/03.5+ClaimSC.pdf)  
(download virus-free)

If the rate of progress falls behind the programme, two cases have to be considered:

1A \_ If the delay is caused **due to lack of Contractor's production** entitles the Engineer / Employer to accelerate the construction by increasing the Resources at his own costs.

1B \_ IF causes are **not attributable to the Contractor**, he is entitled to request EoTfC - usually requested by Interim Claims SC20.1 (a) and SC20.1 (b) and SC20.1 (c). Now, we have epidemic / governmental actions, so Contractor's use to submit Interim Claims, because he is entitled for EoTfC (SC08.4), if he substantiates the cause-effects – beyond his own responsibility of disruptions and delays - .

## 2 \_ Work Programm (revised – with adjusted Time for Completion)

Anyway, the Contractor submits his Work program with his **intentions to complete the Work** beyond the initial contract period / Time for Completion **in context with an Interim (?) Claim Request**.

The Engineer "approve" the program, the engineer would **issue an implied instruction** to follow exactly the sequence and time durations. In such a case, any deviations from the "approved" work program will give the Contractor the opportunity to claim for changes in the program logic linkages/sequences, dependencies, and durations. The Engineer duties suffice, checking the Program in Compliance with the Conditions of Contract and **consents the Program or provides his comments**, where the program does not comply.

## 3 \_ Notice of Determination / Dispute Board Decision

If the Engineer does not issue a Notice of Determination (SC03.5), based either on agreement or on ascertainment for a prolongation within the time bar, the Contractor submits his **referral to the Dispute Board Member**.