

Your contractual Expertise is highly appreciated now

Taking Over Certificate for part of the Road stretch put into use by Employer

Basis of Contract: Pink Book MDB2010, harmonized Red Book, edition 1 – 1999.

I Situation:

- 1 _ A **section** of the road has been substantially completed in December 2017.
- 2 _ This part of the works, 5000 meters has been **put de-facto into use** (to open for public traffic) on 01 January 2018.
- 3 _ The „partial“ Taking-over was done by a partial Taking-Over-Ceremony – organized by the Employer - , and published in the social media, too.
- 4 _ The Contractor requested the **issuance of a Taking-over-Certificate** for this PART, in order to get the de-jure confirmation of the Taking-over action subject to SC10.2
- 5 _ The Particular Conditions of Contract **did not define any SECTION**.
- 6 _ Additional the Contractor claimed Maintenance costs on 02 Jan 2018 subject to SC 10.2.
- 7 _ The Engineer proposed the following Text to Employer for the “partial Taking-Over Certificate” with the **content**: Highway No., Chainage – section, Taking-over Completion on 01. Jan 2018, Defect Notification Period (PCC 1.1.3.7) = 365 day, Expiration date (Clause 11) 01.Jan 2019, **Acceptance with Reservation** due to outstanding works + repairs, tests on completion, as-build drawings.
- 8 _ The Engineer and/or Employer did not issue a „partial“ Taking-Over Certificate within twenty-eight (28) days.

II Your point of View is demanded

- A _ Is the Contractor **entitled** for the Taking-Over-Certificate in general
- B _ Do you recognize some **mistakes** in the Procedure
- C _ Do you think the **Engineer is responsible** to issue the “partial” Taking-over Certificate?
- D _ The Employer / Engineer has not acted within 28 days. So he missed the chance to put forward his **reservations** for the TOC.
Does this idleness is considered as a breach of Contract.
- E _ The Taking-over is not in effect **de-facto** only, due to the 28 days reaction time.
The Taking-over is in effect **de-jure** due to the Clause 10 and SC 03.1 (d), because the Taking-Over-Certificate shall be deemed to have been issued on the last of day (28 days)
- F _ Do the legal **consequences** enter into force from day 29 January 2018:
The care of works shifts to the Employer, Maintenance costs, Payment of Retentions Monies, Delay Damage amount shall be reduce, DNP earlier, and do you see other obligations of the Parties are not mentioned here?

III Your contractual Expertise is highly appreciated now.

Thank you very much. Emma, Sierra Leone – Okt 2021.

10.2+PartialTOC.pdf