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FIDIC 2017 · SUB-CLAUSES 8.5 AND 20.2

# FIDIC Extension of Time Checklist

Under the 2017 Red and Yellow Books, Sub-Clause 8.5 gives the Contractor an extension when completion is or will be delayed by a listed cause, and Sub-Clause 20.2 sets the claim's dates. FIDIC prescribes no method, so the Engineer decides on the programme and the records.

## 1 The programme the claim will stand on (Sub-Clause 8.3)

- [ ] **Get the Programme through review**: a Notice of No-objection, or the Engineer's silence for 21 days (14 on a revision).
- [ ] **Revise it whenever it no longer matches actual progress** or conflicts with the Contractor's obligations, with the delays and the proposals to overcome them in its supporting report.
- [ ] **Keep the activities logically linked, with float and the critical path visible**, so an event can be traced to completion.
- [ ] **Remember its status.** The Programme is not a Contract document (1.5), but the Contractor proceeds in accordance with it.

***State it:*** *which revision is current, when the Engineer received it, and how it passed review.*

## 2 Warnings and records (Sub-Clauses 8.4, 20.2.3 and 4.20)

- [ ] **Advise the Employer and the Engineer of known or probable events** that may delay the Works (8.4), and keep each advance warning on file.
- [ ] **Keep contemporary records**: records made at the time of the event or immediately afterwards (20.2.3).
- [ ] **Keep any additional records the Engineer instructs.** Its monitoring does not mean it accepts them as accurate or complete.
- [ ] **Make each monthly progress report compare actual with planned progress** and record the events that may affect completion and the measures taken (4.20).

***State it:*** *where the records for each event are kept, and who keeps them.*

## 3 The Notice of Claim (Sub-Clauses 20.2.1, 20.2.2 and 1.3)

- [ ] **Give the Notice of Claim as soon as practicable, within 28 days** of when you knew, or ought to have known, of the event.
- [ ] **Serve it as a Notice under Sub-Clause 1.3**: in writing and identified as a Notice. A progress report or a revised programme does not count.
- [ ] **Describe the event.** The days and the money come later, in the fully detailed Claim.
- [ ] **Track the Engineer's 14 days.** With no Notice that it was late, the Notice of Claim is treated as valid, though the Employer can still dispute that (20.2.2).

***State it:*** *the awareness date for each event, and the date its Notice of Claim was served.*

**A claim for time turns on what you can show, not only on what happened.**

## 4 The fully detailed Claim (Sub-Clauses 20.2.4 and 20.2.6)

- [ ] **Submit it within 84 days** of the same awareness date, or within another period the Engineer agrees.
- [ ] **State the contractual or other legal basis.** If it is missing at the end of the period, the Notice of Claim lapses, unless the Engineer fails to say so within 14 days.
- [ ] **Attach the contemporary records relied on**, with detailed particulars of the extension and any payment claimed.
- [ ] **For an event with a continuing effect, treat the claim as interim**: further interim claims monthly, and the final claim within 28 days after the effects end.
- [ ] **On EU-funded work, build the file for the grant's auditors too.** On a CEF grant the beneficiary keeps its records for five years after the final payment, and the EU's auditors can check its contractors.

***State it:*** *the legal basis of each claim, and the date its fully detailed Claim is due.*

## 5 Assessment and concurrency (Sub-Clauses 8.5 and 3.7)

- [ ] **Tie each event to a ground in Sub-Clause 8.5** and to the Sub-Clause that gives it time, and note whether that Sub-Clause also gives Cost or Cost Plus Profit.
- [ ] **Measure the delay to completion under Sub-Clause 10.1 on the latest revised Programme**, with the event inserted as a fragnet linked to the activities it affects.
- [ ] **Read the Special Provisions for a concurrency rule**, and keep the Contractor's own delays in separate records and separate programme activities.
- [ ] **Diary the Engineer's periods**: 42 days from the fully detailed Claim to agree, 42 more to determine, then a Notice of Dissatisfaction within 28 days of a determination.

***State it:*** *the ground, the driving path and the days claimed for each event.*

### Before you serve a claim for time

Ready when all three hold.

- [ ] The event is on the latest revised Programme, linked to the activities it affects, with its effect on completion recorded.
- [ ] The Notice of Claim went in within 28 days, as a Notice, and the date it was served is on file.
- [ ] The fully detailed Claim states its legal basis and attaches the records it relies on.

**Preparing a FIDIC extension of time claim? Book a 30-minute call about delay and extension of time analysis.**

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