Unit 6: JCT SBC/Q Contract
Time, Certification and Payment under JCT 05 SBC/Q and PSSCOC

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Time related issues in a building project :-

- Commencement
- Progress
- Completion
Time is crucial in building projects

- Employer is concerned when and over what period of time, the work will be carried out and complete, in order to budget and plan ahead.

- Contractor is anxious to plan and carry out the works in order to meet his contractual obligations, to meet completion date.

- Changes in the design will normally have both cost and time implication to the contract.
Contracts

Commencement of the Works

- Commencement date – usually an express provision for a date for contractor’s possession of the site

- Completion date – usually a specified date that the contractor is to complete the works, or a specified period from the agreed date of commencement
Contracts

Progress of the Works

- “Time of the essence” – time is of crucial importance – failure in completing on time would render the project to be impossible to achieve its purpose – may result in rescinding the contract by the employer

- “Reasonable” time – if no specified completion date – who is to determine the reasonableness?

- “Time at large” – time is of no particular significance and completion shall be within reasonable time.
**Contracts**

**JCT 05 Defines how time is being managed:**

- Contract Particulars stated the Date of Possession and Date of Completion of the Works including Sectional Possession and Completion (if applicable)
- Clause 2.4: Date of possession
- Clause 2.5: Deferment of Possession
- Clause 2.9: Construction information & Contractor’s Master Programme
- Clause 2.26: Adjustment to Completion Date
- Clause 2.27: Notice by Contractor of delay to progress
- Clause 2.28: Fixing Completion Date
- Clause 2.29: Relevant Events
- Clause 2.30: Practical Completion & Certificates
- Clause 2.31: Non-completion certificates
- Clause 2.32: Payment or allowance of Liquidated Damages
Loss caused by delay or disruption

- In construction, delay or disruption to the progress of Works is common. The parties causing the delay could be the Employer, the Contractor or neither both of them but due to circumstances beyond the control of parties in the Contract.
- Both parties (the Employer and the Contractor) will suffer losses when there is a delay to the project.
- JCT 05 has provisions to define the rights and remedies of the Contractor and the Employer (represented by the Architect or Contract Administrator) in the event of failure or inability to complete the Works in the time stated.
- The provisions in JCT 05 for Extension of Time, Liquidated Damages and Loss and/or Expense will determine all of the associated losses to be incurred by the Contractor, all losses to be incurred by the Employer, or for the losses to be shared between the two.
Contracts

Loss caused by delay or disruption

- Situation 1: If the contract is delay by the Contractor, then the Contractor will bear his own operating costs and pay damages (Liquidated Damages) to the Employer.

- Situation 2: If the contract is delayed by the Employer or someone working as the Employer’s agent (i.e. the Architect/Contract Administrator), then the Employer will bear its own loss and will reimburse the Contractor for its loss.

- If the contract is delayed for a reason which is beyond the control of either party (such as adverse weather conditions), then each party will bear their own loss.
Extension of Time / Adjustment of Completion Date

- Two key dates of the project (in Contract Particulars):
  1) Date of Possession of the site
  2) Date of Completion of the Works

The difference between these dates is the Contract Period.

- If these dates are not set-out in the contract, the completion date of the project will be “at large” and the Contractor will be required to complete the work within a reasonable time. If the Contractor does not do so, the Employer will not be able to claim Liquidated damages and will therefore have to prove any recoverable damages through litigation.
Extension of Time / Adjustment of Completion Date

- When Extension of Time is granted, a revised Completion Date is set and it supersedes the Date of Completion in the Contract Particulars.

- A third date – Date of Practical Completion – is important as this represents when the work was actually completed. If the Practical Completion date is different to the Date for Completion, whether or not the Contractor will be liable for damages arising from any differences in these 2 dates will depend on how time is being managed.

- Previous JCT Contracts only due with delays and the extension of the contract duration (Extension of Time). However, this is no longer the case.
Extension of Time / Adjustment of Completion Date

- JCT 05 now allows the Contractor and the Employer to mutually agree on an accelerated programme of delivery during the Works under a ‘Schedule 2 quotation’ procedure (Clause 5.3)
- If the Completion Date is set earlier than the Date of Completion written into the contract using such a procedure is termed a ‘pre-agreed adjustment’
- Due to the possibility of agreeing to shorten the Contract Period, the previously widely-used phrase ‘Extension of Time’ is not used by JCT 05 SBC. Instead, the action of setting a new Completion Date to supersede the Date for Completion written in to the Contract Particulars is called ‘Adjustment of Completion Date’ (Clause 2.26 – 2.29)
Extension of Time / Adjustment of Completion Date

- If the date of Practical Completion is the same as the Date for Completion, then no contract administration actions is required since the project will complete based on the original contract completion date. However, if Practical Completion occurs after the Date of Completion, action is required as this situation would represent a material breach of the contract by the Contractor, giving the Employer grounds for determination and damages.

- Students are to take note of the significant change of name used in the process of setting a Completion Date from ‘Extension of Time’ to ‘Adjustment of the Completion Date’ in JCT 05 SBC/Q.
Contracts

Possession of the site

- The Employer has the right to defer granting possession of the site to the Contractor from the date of possession for up to six weeks (Clause 2.5)

- A non-agreed failure to grant possession of the site to the Contractor is a serious breach which may allow the Contractor to terminate its employment (Clause 8.9.2)

- The Employer must give site possession of the whole site to the Contractor for the duration of the project unless working in sections/phases has been agreed by the Contractor and the Sections/Phases defined in the Contract Particulars.
The Master Programme

- JCT 05 SBC/Q requires the Contractor to progress with the Works ‘regularly and diligently’. (Clause 2.4)
- The Contractor is free to organise the site activities so long as the Health and Safety Plan and all other statutory requirements are complied with. (Clause 2.1)
- This programme is not part of the contract documents but merely explains the Contractor’s intended and anticipated progression of the Works.
- The Contractor can change its approach (construction method/works sequence) at any time. If the Date for Completion is changed, the Contractor update the programme to take the new Contract Period into account.
- The programme can be used by the Contractor to support a claim for Loss and/or Expense if they can demonstrate that their intended work activities have been prevented from carrying out (and incurring loss and/or expense as a consequence)
Completion

- The Contractor is responsible for ensuring that the project is completed by the Date for Completion agreed in the Contract.
- Delays caused by the Contractor – The contractor may be liable to the Employer for damages under Clause 2.32 (Payment or allowance of Liquidated Damages)
- Delays caused by the Employer – The Contractor is entitled to additional time to complete the Works
Extension of time: Principles

Original Contract Completion Date = Date for Completion (In Contract Particulars)

Subsequently agreed Completion Date = Completion Date (Due to delay)

- Extension of time are to be formally managed by the Adjustment of the Complete Date (Clause 2.26 – 2.29) to document agreement between the Contractor and the Employer on the new Completion Date.
- This method would help to preserve the Employer’s right to ‘Liquidated Damages’ which are defined in the Contract Particulars as a sum to be paid by the Contractor for each period of time that the Works are delayed.
Extension of time: Principles

- This principle is to ensure that time of completion will not be ‘at large’ otherwise the Employer would be required to seek damages from the Contractor via litigation.

- These damages would be determined by the court sees fit and would be more than the amount stated in the Contract Particulars. This situation is therefore disadvantages to both the Employer and the Contractor.
Extension of time: Practice (Steps to be taken by the Contractor/Architect/Contract Administrator)

- When the progress of the Works is being or is likely to be delayed, under JCT 05 Clause 2.27 – The Contractor is required to notify the Employer. This notice must be given regardless whether the project may be delayed or actually runs into a delay.

- The Architect/Contract Administrator is not obliged to grant an Extension of Time until formal notice is submitted by the Contractor stating the cause of the delay and identifying contributory Relevant Events of the delay under JCT 05 Clause 2.27.1

- The Contractor is obliged, upon request by the Architect/Contract Administrator under Clause 2.27.3, to provide further additional information regarding the possible duration of the delay and any additional information to justify their claim for the Extension of Time.
Extension of time: Practice (Steps to be taken by the Contractor/Architect/Contract Administrator)

- JCT 05 Clause 2.28 requires the Architect/Contract Administrator to grant an Extension of Time, if the causes of the delay encountered by the Contractor are Relevant Events and extend the completion date of the contract beyond the Date for Completion stated in the Contract Particulars.

- Relevant Events
  - Delay caused by one of the contracted parties is classified under sub-clauses 2.29.1 to 2.29.6
  - Delay caused by circumstances beyond the control of all parties is classified under sub-clauses 2.29.7 to 2.29.13
Extension of time: Practice (Steps to be taken by the Contractor/Architect/Contract Administrator)

- After receiving a notice of delay by the Contractor, the Architect/Contract Administrator is required to issue a decision no later than 12 weeks after receipt.
- If the Completion Date (anticipated by the Contractor due to the delay) is less than 12 weeks after the notice of delay is received, the Architect/Contract Administrator shall issue a decision before the Completion Date.
- The decision issued by the Architect/Contract Administrator must:
  i) Set a new Completion Date in an appropriate certificate
  ii) Notify the Contractor that no Extension of Time is being granted and also state the amount of delay (in days or weeks) arises from each of the Relevant Events identified by the Contractor.
Extension of time: Practice (Steps to be taken by the Contractor/Architect/Contract Administrator)

- To determine the final payment of damages, the Architect/Contract Administrator may review all extension of time previously granted for up to 12 weeks after the Completion Date.
- These EOT previously granted can be revised and Completion Date amended.
- This is to facilitate all Relevant Events to be taken into account even if they were not raised by the Contractor as grounds for EOT, so that an accurate Completion Date can be set.
- After the above is done, the amount of damages payable either by the Contractor to the Employer (Liquidated Damages) or Employer to the Contractor (as payment for Contractor’s additional Loss and Expense for running the site longer than expected) can be determined.
Liquidated and Ascertained Damages

- Liquidated damages are monetary amount stated in a contract as damages payable by the Contractor to the Employer in the event that the Works are not completed by the Date of Completion or Completion Date.

- Clause 23 of JCT 05 allows the Employer to deduct these damages from the remaining monies due to the Contractor.

- The amount of LD must be a fair and accurate assessment of genuine loss resulting from the late completion of the Works.

- In this case, the usage of Liquidated Damages will limit the Contractor’s liability to the extent of the damages stated in the Contract and the Employer is not able to seek damages via litigation should its actual losses upon the late completion is greater than those available as Liquidated Damages in the contract.
Contracts

Liquidated and Ascertained Damages

Under certain circumstances, the employer can waive his right to Liquidated Damages by notifying the Contractor in writing. This may be done as a bargain in return for the Contractor withdrawing a claim for loss and expense.
Formal requirements of Certification

Express pre-conditions to the issue of a certificate must be complied with

Pre-conditions include:-

- When the certificate needs to be issued
- By what mechanism the certificate should be issued
- By whom the certificate should be issued
- To whom the certificate should be issued

*JCT 05 provides in Clause 1.9 stated that where the Architect/Contract Administrator issues any certificate, it should be issued to the Employer and a duplicate copy immediately sent to the Contractor.*
**Contracts**

**Interim Certificate**

- Often called Progress certificate
- The interval at which the certificates are issued are agreed between the parties
- JCT 05 Clause 4.9 administers the issue of interim certificate by the architect
- If there is no provision in the contract to specify interim payments, the contractor has no implied right to interim or installment payments under the common law
- It is the responsibility of the architect to issue interim certificate
- The work done to be valued by the QS
Interim Certificate

- The assessment of the work carried out is not conclusive as to the amount to be paid to the contractor or the work and quality completed by the contractor are of satisfactory quality.

- Clause 4.4 of JCT 05 dictates how the Contract Sum may be adjusted to reflect any variations to the Works.

- The employer must pay the contractor the amount certified within 14 days of the date of the certificate.

- The value of the work will reflect work on site up to a date not more than 7 days before the certificate date; i.e., the certificate must be issued within 7 days of the valuation date, e.g., valuation by 20 June, certificate by 27 June, payment by 11 July.
Compensation (set-off)

- Set-off occurs when the Employer withholds part of the payment due to the Contractor (in the Interim Certificate).
- This is done by the Employer who feel that they are:
  - Due compensation for Liquidated Damages
  - Value of defects, where the employer has the right to engage another Contractor to make good (Clause 2.38)
  - Cost of obtaining Insurance – if contractor has failed to do so under Clause 6.7 and Schedule 3
  - Determination of contractor’s employment
  - Retention as agreed in Part 1 of the Contract Particulars and Clause 4.20
Certificates that mark an event

Practical Completion Certificate

- Clause 2.3 of JCT05 – provides for Practical Completion Certificate to be issued by the Architect when he is of the view that the Works are “sufficiently” completed for the Employer to take possession of them

The Practical Completion Certificate causes:
1) The Contractor’s liability for Liquidated Damages to cease
2) Half of the Retention sum to be released by the Employer to the Contractor
3) Defects Liability Period / Rectification Period to commence
Certificates that mark an event

Non-Completion Certificate

- When the Contractor fails to complete the Works by the Completion Date, the Architect issues a Non-Completion Certificate in accordance with Clause 2.31 and the Contractor liable for payment of Liquidated Damages to the Employer
Contracts

Certificates that mark an event

Certificate of Making Good

When the Contractor has rectified all defects during the Rectification Period (Defects Liability Period), Clause 2.39 of JCT 05 requires the Architect to issue a Certificate of Making Good
Final Certificate

Clause 4.15 of JCT05 contains several pre-conditions to the issue of Final Certificate:

- The end of the defects liability period
- The issue of a certificate of completion of making good defects
- The architect sending the contractor an ascertainement of any loss and expense and a statement of all adjustments to be made to the contract sum (Clause 4.5.2)
Final Certificate

Clause 4.15.2 of JCT05 requires the Final Certificate to state:

- Final contract sum, adjusted as necessary (Clause 4.3)
- The amounts previously authorised for payment under all interim certificates including advance payments made by the Employer (Clause 4.8)
- The difference between the two sums expressed as a balance due by the employer to the contractor or vice versa
- A statement of how Final Certificate has been calculated
Final Certificate

The effect of the Final Certificate:

- The Works has been completed (i.e. end of the contract)
- Taken into accounts all additions and omissions to the contract sum
- All extension of time has been considered
- Reimbursement of direct loss and expenses has been considered
- Inclusive of all claims in settlement
Final Certificate as conclusive evidence

- where a final certificate is stated to be conclusive and binding and properly issued then its effect is final in respect of the matters covered by the certificate.

- Parties to the contract cannot challenge the certificate by adjudication, arbitration or in courts
Roles and duties of the certifier

- The certifier named in the contract must be the person who issues the relevant certificates
- He cannot delegate this function
- If a firm is named the certifier, a partner in the firm is the certifier
- Certifier is engaged by the employer and has no direct link with the contractor
Contracts

Payment

Express provision in the contract, both parties are free to agree between them:

- The sum to be paid for the works
- Whether installments are to be paid
- When payments are to be made
- Procedures to facilitate payments
**Contracts**

**Payment**

Traditionally under Scots Law:

- Contractor has no implied right to payment until completed all the works
- If no provisions in the contract for interim or installment payments, there is no obligation to make payment until the entire contract has been fulfilled
Contracts

Payment under HGCR 1996 Act
(Housing Grants, Construction & Regeneration Act 1996)

- A party to a relevant construction contract is entitled to payment by installment, stage payment or other periodic payments
Payment under JCT05

The payment provisions in JCT05 comply with the requirements of the 1996 Act

- Final day for payment is 14 days from certificate
- Failure of employer to make payment by this date entitles the contractor to simple interest on the unpaid amount to be calculated at the rate of 5% over the current base rate
- Clause 4.14 grants the Contractor the right to suspend the Works in the event of non-payment
- Clause 8.9 grants the Contractor right to terminate their employment & recover payment due via courts if the Employer fails to pay beyond 14 days of the last date for payment
Contracts

Pay when paid

- Prior to 1996 Act, payment to the sub-contractors is on a condition that the main contractor received payment from the employer.
- The provision of “Pay When Paid” is replaced by 1996 Act
- Section 113 of the Act provides that any provision which makes a payment (to Subcontractor) under a construction contract conditional on the payer (Main Contractor) receiving payment from a third person (the Employer) is ineffective, unless that third party is insolvent.
Adjustment of the Contract Sum

- By contractual variations (Clause 4.3)
- By fluctuations in material costs (Clause 4.21)
- Claims for direct loss and expense (Clause 4.23 to 4.26)
- Retention Sum (Clause 4.18 to 4.20)
The development of the PSSCOC has been documented in the Construction Industry Development Board (CIDB).

After much work and consultations with major government departments and statutory bodies, the new form was introduced in 1995 by the Public Works Department (PWD), and since September 1995 by the Housing & Development Board (HDB).
The initial framework of the Standard Conditions was developed with representations from:

- Construction Industry Development Board;
- Public Works Department;
- Mass Rapid Transit Corporation;
- Singapore Contractors Association Limited; and
- Wong Partnership
The final version as published was developed jointly by:
• Construction Industry Development Board;
• Public Works Department; and
• Housing & Development Board,
Definitions, Interpretations, etc

Considered desirable to introduce a definitions clause, with particular attention paid to definition of ‘defects’ and ‘cost’. (‘Cost’ not defined in final form but ‘defect’ defined in Clause 1.1(i).)
Superintending Officer and Superintending Officer’s Representative

Considered important that the proposed form should recognise that many duties of the SO would inevitably be delegated to more junior officers. Appointment of SO’s Representative and Assistants contemplated, together with specified limits of authority. (Adopted in Clause 2 - SO and SO’s Representative.)
Contract Documents
Provision that all the constituent contract documents should be taken as mutually explanatory. (Adopted in Clause 3.1 - Contract Documents to be Taken as Mutually Explanatory.)
All Inclusive Price Clause

Both the cases for and against such a clause were considered, especially in view of the provision of the Singapore Institute of Architects’ Articles and Conditions of Building Contract.
Contractor’s Responsibility for Design

The Contractor’s increasing contribution to design was recognised by the Working Committee and it was considered appropriate to include this responsibility for his design inputs in the core conditions. (Adopted in Clause 6 - Permanent Works Designed by the Contractor.)
Construction Programme

Given the importance of agreeing to a programme of works at the start of any contract, the Working Committee considered the imposition of a sanction by way of a 10% retention of monies due until the compliance. (Adopted in Clause 9.4 - Failure to Submit Adequate Programme.)
Financial Compensation for Late Possession

The Employer being in the best position to influence the starting date for a project, decision was made to grant both an extension of time and compensation for loss and expense incurred following default on Employer’s part in granting timely possession. (Adopted in Clause 12.3 - Failure to Give Possession.)
Notification for Extension of Time

To enable time extension applications to be settled expeditiously, explicit requirements relating to the notification procedure were considered desirable for inclusion. (Adopted in Clause 14.3 - Notice.)

To overcome the position where the Contractor may advance new grounds of claim for time extension during arbitration, the procedure would disallow such advancement of new or additional grounds. (Adopted in Clause 14.3(5).)
Causes of Defects

As certain remedial work may only treat the symptoms of the defect and not the root of the problem, it was considered useful to incorporate a provision to empower the SO to instruct the Contractor to search and identify the underlying causes of defects. (Adopted in Clause 18.4 - Contractor to Search.)
End of the Unit 6