 Presents

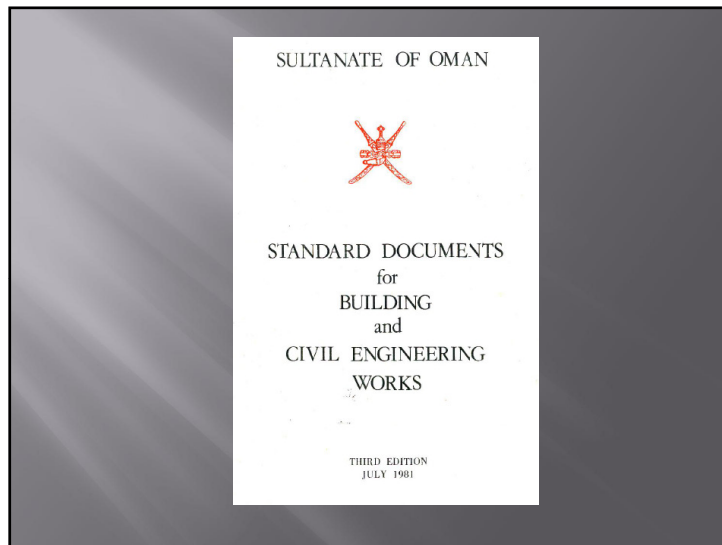
“Dealing with Disruption Claims”

by

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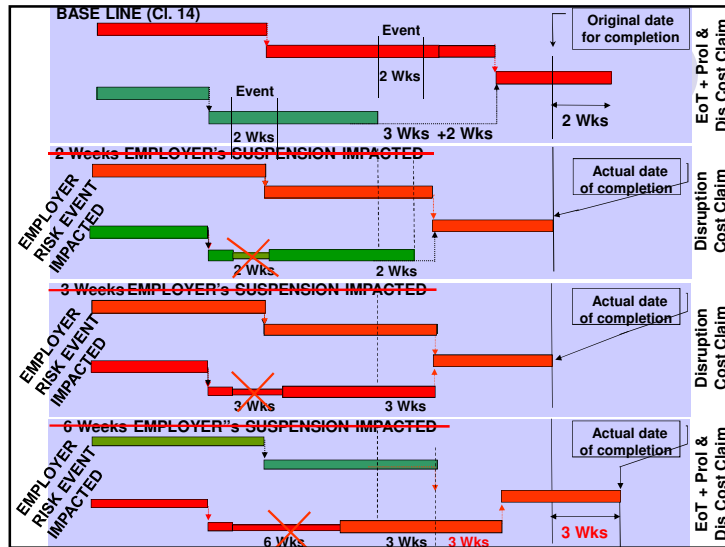
Ex Board Member - Construction Law & Dispute Resolution Advisory Board
 of the British University in Dubai
 Ex Middle East Representative - Australian Institute of Quantity Surveyors

Terminology	
delay	- lateness
disruption	- interference
Delay Claim	- Claim for EoT and Prolongation Costs & Disruption Costs
Disruption Claim	- Claim for Costs (to compensate loss of productivity / inefficient working)
Productivity	- Degree of output (Quantity produced :- resources input time)
Efficiency	- Degree of utilization of the resources



6.(4) - Delays and costs of delay of Drawings

If, by reason of any failure or inability of the Engineer to issue within a time reasonable in all the circumstances any drawing or order requested by the Contractor in accordance with sub-clause (3) of this Clause, the Contractor **suffers delay** and/or **incurs costs** then the Contractor shall notify the Employer of such events and the Engineer shall take such delay into account in determining **any extension of time** to which the Contractor is entitled under Clause 44 hereof and the Contractor shall be paid **the amount of such cost** as shall be reasonable.



6.(4) - Delays and costs of delay of Drawings

If, by reason of any failure or inability of the Engineer to issue within a time reasonable in all the circumstances any drawing or order requested by the Contractor in accordance with sub-clause (3) of this Clause the Contractor suffers delay and/or incurs costs then the Contractor shall notify the Employer of such events and the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under Clause 44 hereof and the Contractor shall be paid the amount of such cost as shall be reasonable.

6.(3) – Disruption of Progress

The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include the details of the drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

3rd Edition July 1981
 4th Edition September 1999 similar wording

New Edition – May 2019 (Rev 01) Sub - Clause 1.9 -Wording is some what similar (old 6.3 + 6.4)
 Sub-Clause 8.5
 - Authority Delays & Disruptions
 (Entitlement is only to EoT but not to cost).

Affected Costs :-		Prolongat'n Cost Claim	Disruption Cost Claim	Remarks:-
1. Contractual Requirements	- Performance Bond - Contract Insurance	- Yes - Yes	- No - No	
2. Specified Requirements	- Temporary Works - Eng's Facilities - Testing	- May be - Yes - No	- May be - No - No	yes, if affected proportional to qty
3. Contractor's Requirements (Method Related Charges - MRC)	- Site Cabins/Yards - Equipment :- - Prj. sp. (Tower Crane) - Trade sp. (e.g. JCB) - Scaffolding - Dewatering - Temporary Works - Services - Prj Mgt/admin/Sup'vision - Sp. Superv'n of activity - Testing - Other Insurance	- Yes - Yes - No - May be - May be - May be - Yes - Yes - No - No - No - Yes	- No - No - Yes - May be - May be - May be - Yes - No - No - No	only if affected yes, if affected yes, if affected yes, if affected only if affected proportional to qty
4. Labour	- Comm. Lab (cleaning) - Labour sp. to activity	- Yes - No	- No - Yes	only if affected
5. Miscellaneous	- Additional financing - Head Office O/H - Late retention release	- Yes - Yes - Yes	- Yes - No - No	
6. Additional Work	- Addit'l Equip / Lab / Sup'n	- No	- No	valuation of variations

Detailed Particulars – (Claim)

1. Facts:

- contemporary records.
- witness statements.
- other evidence (news releases/TV footage).

2. Law:

- contractual/legal provisions.
- arguments.

3. Liability:

- client's liability to provide relief.

4. Quantum:

- amount of additional payment.

6.(4) - Delays and costs of delay of Drawings

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Provisions in the Oman White Book – 3rd Ed. 1981

- 5.2 Engineer's instructions clarifying ambiguities & discrepancies
- 6.4 Delays caused by Engineer issuing late, further Drawings / orders
- 7 Delays caused by changes found in further Drawings & instructions
- 12.3 Delays due to physical conditions or artificial obstructions
- 13 Engineer's instructions on any matter
- 17.1 Correcting the setting-out errors due to incorrect data of the Engineer
- 18 Boreholes / exploratory excavations not specified
- 20.2 Remedying the damages caused by Excepted Risks
- 27 Delays when Fossils, antiquities etc. are found
- 31' Delays by other contractors
- 31 Delays due to providing facilities to other contractors
- 36.5 Tests not provided for
- 38.2 Uncover, make openings & reinstate
- 40.1 Suspension
- 42.1 Late possession of Site
- 50 Search for defects, imperfections etc.
- 51 Variations
- 59 Late nomination of S/c
- 65.2 Remedying the damages caused by Special Risks

- The word "cost" exist
- Damages for breach
- Variations

Royal Decree No. 29 of 2013 – The Civil Code

Book 1 – Personal Obligations or Rights

Part One – Sources of Obligation

Chapter 1

Contracts

Section 3

Effects of the Contract

Article 157:

In contracts binding upon both parties, if the cross obligations are due for performance, each of the parties may refuse to perform his obligation if the other contracting party does not perform his.

Provisions in the Oman White Book – 3 rd Ed. 1981	
5.2	Engineer's instructions clarifying ambiguities & discrepancies
6.4	Delays caused by Engineer issuing late, further Drawings / orders
7	Delays caused by change orders & instructions
12.3	Delays due to poor site access
13	Engineer's instructions
17.1	Correcting errors
18	Borehole
20.2	Remedying
27	Delays when
31'	Delays by other
31	Delays due to provisions
36.5	Tests not provided
38.2	Uncover, make good & reinstate
40.1	Suspension
42.1	Late possession of Site
50	Search for defects, imperfections etc.
51	Variations
59	Nomination of S/c
65.2	Remedying of damages caused by Special Risks
69	Suspension / deceleration of progress due to delayed payments – (Law)

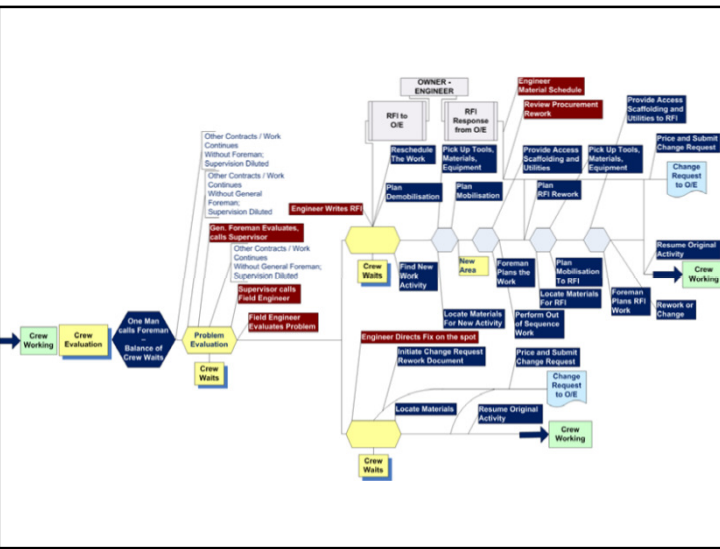
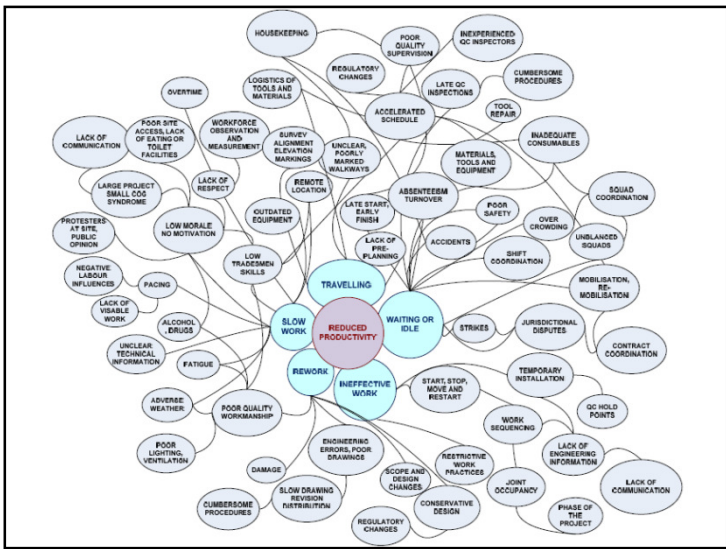
Oman 4th – Position is same as in Ed. 1999 Oman 3rd Ed. 1981

Oman New – Clause 16 provides for suspension / deceleration Ed. 2019

- The word "cost" exist
- Damages for breach
- Variations

Detailed Particulars – (Claim)

- Facts:**
 - contemporary project records.
 - witness statements.
 - other evidence (news releases/TV footage).
- Law:**
 - contractual/legal provisions.
 - arguments.
- Liability:**
 - client's liability to provide relief.
- Quantum:**
 - amount of additional payment.



Project Specific Studies

- Measured Mile Study
- Earned Value Analysis
- Work Sampling Method
- System Dynamic Modelling
- Craftsmen Questionnaire Sampling Method

Project Comparison Studies

- Comparable Work Study
- Comparable Project Study

Cost Basis

- Total Unit Cost Method
- Modified Total Labor Cost Method
- Total Labor Cost Method

Productivity Impact on Schedule

- Schedule Impact Analysis

Justification for Additional Costs :-

- reduced productivity / efficiency of labour (and also morale and attitude).
- reduced productivity / efficiency of equipment.
- adverse effects on labour rhythm and team effort.
- Ripple (adverse effect of disruption on part of the Works on other parts / other subcontractors).

Demonstration of Disruption

1. Starting point :-

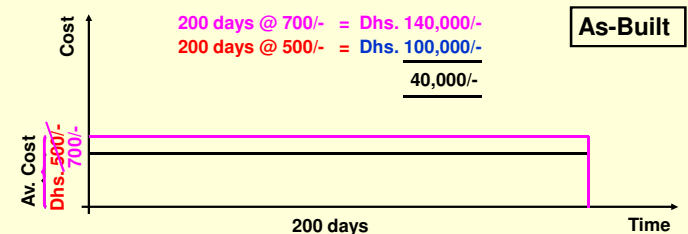
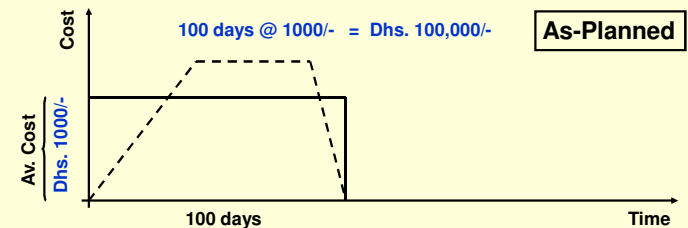
- Clause 14 Programme.
- Initial resource allocation.
- Assumed Norms.

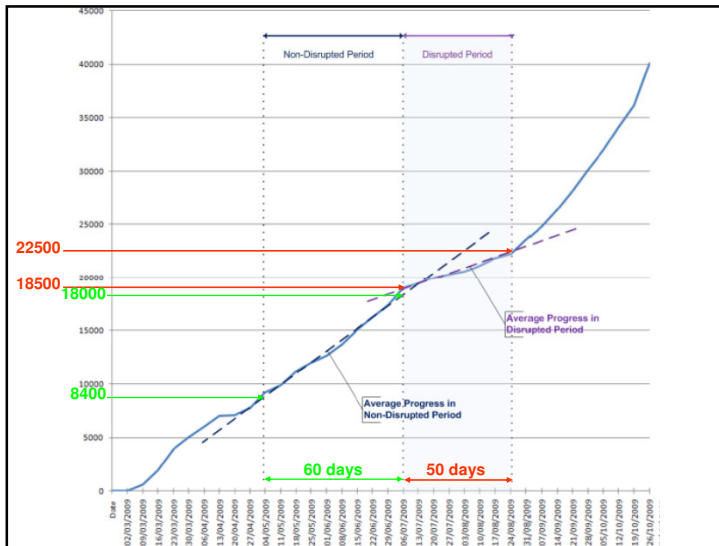
2. Acceptability of the baseline :-

- Norms are the industry standards.
- Resource allocation is realistic.
- Therefore the activity duration is realistic.

3. Evidence and results of the impact analysis:-

- Timing & duration of the disrupting cause.
- Timing & duration of the effect on the target activity and other activities.
- Effects of mitigating action.
- Discounting for any Contractor culpability.





Demonstration of Disruption (Cont'd

4. Methodology :-

- Suitability for the nature of the activity.
- Appropriate selection of windows.
- Records.

5. Quantum of Additional Payment :-

- Loss / decrease in the productivity / efficiency (productivity ratio).
- Total Cost of the Resources (labour and/or equipment) for the affected duration (and the loss based on the productivity ratio).
- Discounting for any :-
 - Culpabilities of the Contractor.
 - Mitigating action taken or could / should have taken.
 - Recoveries through valuation of variations.

In addition to cost, can the Contractor claim Profit as well ?

1.(4) - Cost

The word "cost" shall be deemed to include overhead costs whether on or off the Site.

Royal Decree No. 29 of 2013 – The Civil Code

Book 1 – Personal Obligations or Rights

Part One – Sources of Obligation

Chapter 1

Contracts

Section 4

Construction of the Contract

Article (166)

A doubt shall be construed in favour of the debtor.

<p>1.1 (g) (i) “cost” means all expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges properly allocable thereto but <u>does not include any allowance for profit.</u></p>	<p>FIDIC 4th Ed. 1987</p>
<hr/> <p>Clause One</p>	
<p>1. Cost: The word cost shall include overhead costs whether in or off the Site.</p>	<p>OMAN 4th Ed. 1999</p>
<p>1.1.4.4 [Cost] means all expenditure reasonably incurred or to be incurred by the Contractor, whether on or off the Site, including overhead and similar charges, <u>but not including profit.</u></p>	<p>OMAN (New) May 2019</p>

1.(4) - Cost

The word “cost” shall be deemed to include overhead costs whether on or off the Site.

Cost plus profit :-

- the Employer shall pay such additional sum
- ... expense of rectifying the same shall be borne by the Employer.
- at the cost of the Employer
- at the expense of the Employer
- Employer shall pay to the Contractor in respect of such use or service such sum or sums
- the value of such work shall be ascertained and paid
- the Contractor shall be entitled to payment of such cost plus profit

52.(2) - Power of Engineer to Fix Rates

Provided that if the nature or amount of any omission or addition relative to the nature or amount of the whole of the Works or to any part thereof shall be such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such omission or addition, rendered unreasonable or inapplicable, then a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as shall, in his opinion, be reasonable and proper having regard to the circumstances.

Provided also that no increase or decrease under sub-clause (1) of this Clause or variation rate or price under sub-clause (2) of this Clause shall be made unless, as soon after the date of the order as is practicable but not later than seven days and in the case of extra or additional work, before the commencement of the work or as soon thereafter as is practicable but not later than seven days notice shall have been given in writing:-

(a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price,

(b) by the Engineer to the Contractor of his intention to vary a rate or price.

Provisions in the Oman White Book – 3rd Ed. 1981

5.2	Engineer’s instructions clarifying ambiguities & discrepancies	
6.4	<u>Delays caused by Engineer issuing late, further Drawings / orders</u>	<div style="border: 1px solid black; padding: 5px; width: fit-content;"> <p> The word “cost” exist</p> <p> Damages for breach</p> <p> Variations</p> <p>(only for the disrupting effect, if any)</p> </div>
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Demonstration of Disruption (Cont'd)

4. Methodology :-

- Suitability for the nature of the activity.
- Appropriate selection of windows.
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5. Quantum of Additional Payment :-

- Degree of reduction in the productivity / efficiency (productivity ratio).
- Total Cost of the Resources (labour and/or equipment) for the affected duration (and the loss based on the productivity ratio).
- Discounting for any :-
 - Culpabilities of the Contractor.
 - Mitigating action taken or could / should have taken.

- Recoveries through valuation of variations (where the contemporary records have not already separated the resources time utilized for variations from those which have been affected by the variations).

6. Further Reading :-

<https://www.hillintl.com/PDFs/The%20Analysis%20and%20Valuation%20of%20Disruption%20-%20Derek%20Nelson.pdf>

Questions ?



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مؤسسة ذات مسؤولية محدودة تأسست طبقا للنظم المعمول بها بالمنطقة الحرة برأس الخيم

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