

## Condition Precedents to the Extension of Time (EOT) Claims in Building and Infrastructure Projects: A Review of the Malaysian Litigation Cases

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### Abstract

Delays in building and infrastructure construction projects are a persistent issue that significantly affects the project completion and often results in legal disputes, increased costs, and reduced productivity. Generally, building and infrastructure construction contracts include Extension of Time (EOT) provisions to address delays and to protect the contractor from liquidated damages and penalties due to neutral events and delays caused by the employers. However, EOT claims frequently entangled with disputes due to contractors' failure to fulfil the condition precedent required for such claims. This purpose of the study is to identify issues relating to the condition precedent for Extension of Time (EOT) claims based on the Malaysian litigation cases and to analyse the ground of judgment on Extension of Time (EOT) claim. The study examines building and infrastructure construction-related cases reported in the Malayan Law Journal (MLJ) from 2013 to 2023. A systematic methodology that incorporates a comprehensive literature review and data collection from court cases using PRISMA guidelines was employed in this research. The findings reveal several issues relating to condition precedent to EOT claims, which are notification requirements, causation, criticality of delay, substantiation of claims, and mitigation efforts. The analysis to the grounds of judgment on EOT claim litigation cases shows that courts often examine whether proper and timely notices were given as required by the contract, the need for clear and convincing evidence to establish the causation of delays, the criticality of the delay events and their impact on the project's critical path, the substantiation of claims with adequate documentation, and the contractor's efforts to mitigate delays. This study contributes to the understanding and raising awareness for contract parties to fulfil the condition precedent to EOT claims. The findings provide significant insights for the project stakeholders in improving claim management practices and reducing time-related disputes in the construction industry.

**Keywords:** Construction Delays, Extension of Time (EOT), Condition Precedents, Extension of Time Claims

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### 1.0 INTRODUCTION

Construction time is a critical measure of project success (Ismail et al., 2022). However, around 70% of construction projects experience delays due to various causes (Al-Azad et al., 2019). Meena & Suresh Babu (2015) defined construction delays as time overruns extending beyond the completion date stipulated in a contract or agreed upon by the parties. The occurrence of delays can lead to numerous adverse consequences, including legal disputes between homeowners and contractors, inflated costs, diminished productivity and revenue, and the possibility of contract termination (Romzi and Shu Ing, 2022). Contractors will incur revenue and output losses as a result of lost opportunity costs (Alsuliman, 2019).

According to Yusuwan et al. (2022), the prevalence of delays in the construction industry has led to the emergence of extension of time (EOT) claims as the primary source of claims in this sector. An EOT is an additional time granted to the Contractor to provide an extended contractual time or date by which work is to be completed and relieve them from liability for delay damages (SCL Protocol, 2017). The contractor's failure to comply with the contractual deadline for work completion constitutes a breach of contract under the common law, and this could lead to a claim for damages (Fawzy et al., 2015). Therefore, it is crucial for contractors to determine their eligibility for EOT and entitlement to appropriate EOT in their contractual finish-date. Otherwise, the contractors will be liable for Liquidated damages for circumstances beyond their control (Lew et al., 2012).

According to the Royal Institute of British Architects (RIBA) Construction Contracts and Law Report 2022, EOT is the main issue in dispute. Mashwama et al. (2016) claimed that construction disputes do not arise until an unsuccessful claim has been presented. Nonetheless, it is common for a contractor's EOT claim to fail in whole or in part. Yusuwan et al. (2022) identified six common factors contributing to the rejection of EOT claims in their study, which include failure to establish a cause-effect relationship, late submission, insufficient supporting document, non-entitlement in principle, insufficient breakdown of claim amount and failure to comply with

contractual requirements. These factors reflect the condition precedent to the EOT claim. Despite contractors being entitled to apply an extension of time for delay outside their control, these factors can pose challenges and lead to the rejection of such claims in practice.

Notably, eligibility for any entitlement under the contract is meaningless without compliance (Yusuwan et al., 2019). When an excusable delay event occurs, the contractors shall promptly inform the architects by means of notice of such delay with supporting documents submitted (Razak et al., 2021) and proactive actions taken to mitigate the effects of the delays as a precondition to his claim. Further to that, contractors are required to provide reasonable evidence to substantiate their EOT claim (Yusuwan et al., 2022). The contractors shall be able to prove that the occurrence of such an event directly causes the delays to a project and that they did not cause the delays (Yusuwan & Adnan, 2013).

Additionally, Lew et al. (2012) asserted that the practice and procedure for claiming and assessing extensions of time is ambiguous and lacking a standardised protocol. In addition to that, Suhaida and Wong (2017) affirmed that there are no specific methods and procedures stated for contractors in the PAM Contract 2006 regarding EOT claims. This lack of clarity could lead to numerous issues during EOT applications when contractors are unaware of the required documents and supporting details necessary for effective claims. Therefore, this study's objectives are to identify issues relating to the condition precedent for EOT claims based on litigation cases and to analyse the ground of judgment on EOT claim litigation cases.

## ■ 2.0 LITERATURE REVIEW

### 2.1 Construction Delay

Construction delays can be defined as time overruns that extend beyond the completion date stipulated in a contract or the date agreed upon by the parties for project delivery (Meena and Suresh Babu, 2015). Project delays can be caused by one or more factors, and these factors can be classified based on the source of the delay (Ogunde et al., 2017). According to Kamble and Kambekar (2013), delays can be classified into contractor's delay, employer's delay and delay caused by neutral events. The basis for claims regarding extension of time (EOT) must be limited to delays caused by the employers or their agents or delays resulting from acts of God (Lew et al, 2012). Fawzy et al. (2015) asserted that the contractor should be entitled to an Extension of Time and be exempt from paying damages for any delay in performance due to an external cause, which includes delays brought on by neutral events as well as delays caused by the employer that is beyond his control.

Delays caused by the employer is commonly known as an act of prevention (Fawzy et al., 2015). These acts of prevention may involve actions by the employer that constitute a breach of contract, such as a delay in providing crucial instructions to the contractor, the employer's failure to grant possession of the site, delays in providing plans, or failure to deliver the components that are obligated under the contract (Fawzy et al., 2015). Other forms of acts of prevention commonly provided in standard forms of contract that justify an EOT include delays in issuing progress payments, delays in site setup and handover, change orders by employers during construction, delays in design document revisions and approvals.

Moreover, a delay is said to be caused by a neutral event when the factor leading to the delay is unpredictable and it is not caused by the contractor or the employer. Most construction contracts such as PAM 2006, PWD 203A (Rev1/2010), CIDB 2000, FIDIC 2017 contain protocols for Force Majeure. A force majeure event is an event that is "external, unexpected, and unavoidable" (Azfar, 2012). Saul et al. (2016) explained that when an obligation is not performed because of circumstances outside the contracting party's control, force majeure may be invoked as a defence against a claim of contractual liability. Other than that, exceptionally inclement weather, civil commotion, strikes, war, changes to law or terms of authority, the discovery of antiques, and delays by authority and service providers are some common neutral events provided in standard forms of contract.

### 2.2 Extension of Time (EOT)

Contractors are liable to pay liquidated damages upon their failure to complete the project within the contractual time (Assaad et al., 2020). Fortunately, most standard forms of contract provide allowances for contractors that faced delay due to neutral events or acts of prevention to apply for an Extension of Time (EOT) (Da et al., 2006). The allowance for an EOT revises the completion date to a later date and thus relieves the contractors from the liability for delay damages until the revised completion date. It enables the contractor to reprogram the work schedule and provides the employer with a revised date for taking possession of the site (Tan, 2010). However, it is common for contractors to have their EOT claims entirely or partially rejected in the construction industry due to a failure to comply with the conditions precedent to the EOT claim (Yusuwan et al., 2022).

EOT is a critical aspect of construction project management, allowing for adjustment to the project timeline due to unforeseen delays. The mechanism is essential for mitigating disputes and ensuring project completion despite disruptions. EOT clauses are typically included in standard form of construction contracts to address delays beyond the contractor's control. These provisions outline the types of events that may justify an extension, such as inclement weather, design changes or force majeure events (El-Adaway, et al., 2016; Singh et al., 2023; Hansen et al., 2022). Contractors must follow specific procedural requirements to submit EOT claims, including detailed documentation and adherence to timelines. The assessment of these claims often involves substantial time and effort from both contractors and supervising consultants. (Yogeswaran et al., 1998; Kumaraswamy and Yogeswaran, 2003; Yoke-Lian et al., 2012).

Frequent causes of delays include design and material changes, inclement weather, and unforeseen site conditions. These factors have been identified across various regions, including Turkey and Malaysia, highlighting their universal impact on construction timelines (Ting et al., 2021; Kazaz et al., 2012; Yoke-Lian et al., 2012). Events beyond the control of the contracting parties, such as government mandates during the COVID-19 pandemic, can also necessitate EOT. A practical decision-making framework can help contractors evaluate and submit claims for such events efficiently (Hansen et al., 2022). The timing and management of EOT claims can also affect the

overall quality and performance of construction projects. Proper administration and timely submission of claims are crucial to minimizing negative impacts (Mishra et al., 2022; Aryal and Dhakal, 2022).

A systematic approach to formulating and assessing EOT claims can help to mitigate disputes and ensure fair adjustments to project timelines. This includes clear guidelines, toolkits, and improved contractual procedures (Singh et al., 2023; Kumaraswamy and Yogeswaran, 2003; Yoke-Lian et al., 2012). Effective communication and collaboration among all stakeholders, including contractors, engineers, and clients, are essential for the successful administration of EOT provisions. This can lead to more consistent and fair assessments of claims (Yogeswaran et al., 1998; Kumaraswamy and Yogeswaran, 2003; Yoke-Lian et al., 2012).

### 2.2.1 Prevention to Delay

As a general principle in construction contracts, the contractor is required to take reasonable measures to lessen the effect of a delay, even if the delay is solely the fault of the employer (Dumitru and Tarmigan, 2020). Failing to take such mitigation steps could potentially break the causal link and impact or diminish the Contractor's ability to claim additional costs and profit (Dumitru and Tarmigan, 2020). The contractor is required to proceed diligently and regularly with the works using his best endeavours under the construction contract. This is essential to proactively avoid or prevent disruptions or delays in the progress of the works and any negative effects on the project's completion date (Okereke et al., 2021).

Wilkinson (2022) suggested that a contractor's efforts to minimize the impact of delays shall be concerned with managing the project rather than spending on additional resources. The study further highlighted that the appropriateness of the measures depends on specific circumstances, but they are unlikely to necessitate significant financial expenditure. As stated in the Society of Construction Law (SCL) Delay and Disruption Protocol (2017): *"The Contractor has a general duty to mitigate the effect on its works of Employer Risk Events. Subject to express contract wording or agreement to the contrary, the duty to mitigate does not extend to requiring the Contractor to add extra resources or to work outside its planned working hours. The Contractor's duty to mitigate its loss has two aspects: first, the Contractor must take reasonable steps to minimise its loss; and secondly, the Contractor must not take unreasonable steps that increase its loss."*

In accordance with the Society of Construction Law (SCL) Protocol (2017), mitigation measures should be taken by the contractor but not to the extent that he or she incurs additional costs or require the mobilisation of additional resources. Contractors are not expected to undertake activities outside the scope of their ordinary business operations. To this end, Miller (2021) proposed practical methods of mitigating delays, such as sustaining off-site operations when the main site is inaccessible, adjusting work programmes, and finding substitutes for workers who cannot be present on-site.

Contractors are not obliged to allocate more working hours, work phases, or resources to accelerate the completion of the works to recover from delays when exercising their duty to mitigate delays brought on by the employer risk event unless such action is instructed by the employer as allowed under the contract or mutually agreed upon by the parties. In cases where a contract does not expressly include provisions for acceleration, but both the parties decide to pursue acceleration measures, an agreement on payment terms should be reached before any actions are undertaken (Wilkinson, 2022). In the absence of a prior agreement or specific instruction regarding acceleration, the contractor exposes itself to risk by implementing such measures (Morris, 2023).

Dumitru and Tarmigan (2020) emphasised that if the contract does not include any mitigating measures, the contractor shall evaluate his responsibilities by reviewing the general duties of cooperation and good faith as well as any applicable legal requirements. Maintaining thorough records of any actions is prudent, and contractors should anticipate the need to provide evidence of the mitigation measures taken (Wilkinson, 2022).

### 2.2.2 Procedures for Claiming EOT

In construction contracts, unforeseen delays often necessitate an extension of time (EOT) to complete the project. The procedure to claim an EOT is crucial for contractors to avoid penalties and manage project timelines effectively. This synthesis explores the procedural requirements, common challenges, and best practices for claiming an EOT in construction contracts. Contractors must identify specific events that justify an EOT, such as force majeure, exceptionally bad weather, or changes in project scope (Singham et al., 2023; Zain-alabdeen & Rasheed, 2022). The procedural requirements typically include timely notification of delays, detailed documentation, and adherence to contract-specific guidelines (Singh et al., 2023; Zain-alabdeen & Rasheed, 2022; Danuri et al., 2006).

Various techniques are used to substantiate and assess EOT claims, including critical path method (CPM) analysis and other delay analysis methodologies (Kumaraswamy and Yogeswaran, 2003; Loke-Yian et al., 2012). Effective substantiation requires clear evidence and a well-organized claim document to facilitate assessment (Sweet, 1963; Yusuwan et al., 2013). Common challenges include delays in submission, difficulty in demonstrating entitlement, and inflated claims by contractors (Yoke-Lian et al., 2012; Danuri et al., 2006). Misunderstanding or misapplication of EOT provisions can lead to disputes and financial losses (El-adaway et al., 2016; Danuri et al., 2006).

Adherence to explicit policies, clear guidelines, and standardized procedures can improve the management of EOT claims (Kumaraswamy and Yogeswaran, 2003; Yoke-Lian et al., 2012). Contractors should ensure timely notification and provide comprehensive documentation to support their claims (Zain-alabdeen & Rasheed, 2022; Danuri et al., 2006). Utilizing agreed-upon delay analysis methods and maintaining transparent communication with project stakeholders can minimize disputes (Yoke-Lian et al., 2012; Yusuwan et al., 2013). To successfully claim an extension of time in construction contracts, contractors must follow a structured approach that includes identifying qualifying events, adhering to procedural requirements, and providing clear substantiation. Overcoming common challenges through best practices and standardized procedures can lead to more consistent and amicable settlements of EOT claims.

The process of claiming an Extension of Time (EOT) depends on the contract type used between the contractors and clients (Lew et al., 2012). Generally, construction contracts require contractors to notify employers or contract administrators of delays likely to affect the completion date as soon as the delays occur or within a reasonable time (Da et al., 2006). The contractors should submit the delay notice within the time bar as specified in the contract as the first step in applying an EOT. Table 1 shows the notification requirement in different types of standard forms of contract.

**Table 1** Notification Requirement in Different Types of Standard Forms of Contract

Standard Forms of Contract	Clause	Notification Requirement
PAM 2006 Standard Form of Contract (With Quantities)	Clause 23.1 (a)	The Contractor must inform Architect his decision to claim EOT in the form of written notice within 28 days of Architect's Instruction (AI) or commencement of the delay event together with a preliminary estimation of the time extension required and other supporting documents pertaining the cause of delay, as a "condition precedent to an entitlement of extension of time"
	Clause 23.1 (b)	The Contractor must submit an official claim for time extension to Architect along with sufficient particulars within 28 days of the end of the delay event.
PWD Form 203A (Rev1/2010)	Clause 43.1	The contractor is required to promptly provide written notice regarding the cause of delay and other relevant details to SO once it becomes reasonably evident that there is a delay in the progress of the Works.
CIDB Standard Form of Contract for Building Works 2000 Edition	Clause 24.2 (a)	The Contractor shall inform the SO of the delay within 30 days of its occurrence, and to provides the contract references, the anticipated duration of the delay, and the details regarding the impact of the delay on the works program.
FIDIC Conditions of Contract for Construction 2017 Red Book	Clause 20.2.1	The Contractor shall provide a "Notice of Claim" to the Engineer together with a description of the delay event within 28 days of becoming aware or ought to become aware of the occurrence of delay.
	Clause 20.2.4	The Contractor is required to submit a "Fully detailed Claim" to the Engineer within 84 days of becoming aware or ought to become aware of the arise of delay.

Notably, in PAM 2006 and FIDIC 2017 Red Book, contractors are required to submit the notice in two stages, one should be served by the contractors prior to the occurrence of the delay and the latter shall be submitted when the delay has come to an end. Failure to serve these two notices will result in the forfeiture of the entitlement to an EOT (Alwee et al., 2014).

Contractors must precisely identify and state the specific contract provision that entitles them to make such claims (Yusuwan & Adnan, 2018) in the notice and are required to prepare the relevant supporting documentation to be submitted together with the notice to the contract administrators for evaluation (Da et al., 2006). A study conducted by Okereke et al. (2021) revealed that "delay analysis, change of work notices, claim register, programme updates, minutes of the daily, weekly, and meetings, and daily progress reports" are some of the most important records and documents to be submitted by the contractors for substantiating their EOT claim. Record keeping and proper documentation are critical to the success of EOT requests (Okereke et al., 2021). Upon reception of the contractor's notice, the certifier, usually the contract administrator will start to assess the application. During this stage, the EOT certifier may, within a specified timeframe of receiving the Contractor's particulars, require the contractor to submit additional information to allow them to form an opinion regarding the contractor's Extension of Time (EOT) application. The Contractor is then required to supply additional information within a period specified by the EOT certifier.

For contractors' EOT claims to be successful, Alnaas et al. (2014) suggested that a time extension or disruption claim must adequately establish causation and liability and assist in demonstrating the extent of time-related damages directly resulting from the delay events.

Contractors must also show that they have adhered to the administrative procedures outlined in the contract, whereby failure to do so will usually negate their claim (Chappell, 2011). It is also important for the contractors to submit sufficient documents to the EOT assessors, as they will carry out their assessment based on the documents provided by the contractors.

After assessing the EOT application, the EOT certifier is obliged to decide either to grant or to reject the Contractor's EOT application within a timeframe provided in the contract. If the EOT certifier accepts the contractor's EOT application, it should issue a Certificate of Extension of Time to the contractor.

### 3.0 RESEARCH METHODOLOGY

For this study, the methodology of doctrinal legal research was employed, in which a qualitative study on litigation cases related to Extension of Time (EOT) claims in the Malaysian construction industry will be conducted through document analysis to achieve the research objectives. The PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) guidelines and flow diagram were employed to systematically select the cases (Page et al., 2021). The selected cases were analysed by undertaking content analysis. The analysis phase in this research involves examining and understanding the various aspects of the selected litigation cases, which include the facts, issues, and judgment by the court. Each case was scrutinized to comprehend the essential facts, identify the legal questions at hand, and discern the judicial decision-making process to understand the legal reasoning underpinning the judgments.

#### 3.1 Process of Selection of Cases

The case selection process starts with the identification of search database and search terms. LexisNexis Advance is chosen as the search database as it offers a comprehensive database of legal cases along with detailed reports and analyses. Based on the research questions, the key words identified for searching in LexisNexis Advance are: ("Delay") AND ("Extension of Time") AND ("Construction").

Upon applying these search terms to the LexisNexis Advance Legal Database, an initial total of 1250 cases came up in the search results. These search results were subjected to further screening to ensure only high quality and relevant cases were selected. The inclusion and exclusion criteria to be applied for screening and validating cases are indicated in Table 2.

**Table 2** Inclusion and Exclusion Criteria

Criteria	Decision	Code
Cases that arose between the year 2013 to 2023	Inclusion	I1
Cases that were treated in Superior Courts	Inclusion	I2
Cases that were published in the Malayan Law Journal (MLJ)	Inclusion	I3
Cases that contain issues related to condition precedent in Extension of Time (EOT) claims	Inclusion	I4
Cases that appear beyond the top 150 of the relevance ranking in LexisNexis search results	Exclusion	E1
Duplicated Cases	Exclusion	E2
Cases that do not involve disputes related to EOT	Exclusion	E3
EOT claim disputes that do not happen in Malaysian construction projects	Exclusion	E4
Cases seeking enforcement or setting aside of arbitration decisions	Exclusion	E5
Cases involving parties in a Sale and Purchase Agreement (SPA)	Exclusion	E6
Cases that do not address issues related to condition precedent in Extension of Time (EOT) claims	Exclusion	E7
Cases with missing details or incomplete judgements regarding EOT claim issues	Exclusion	E8

These criteria can be classified into three categories namely: criteria based on research scope, criteria considering quality and validity of research, criteria related to manageability of research. The description of the criteria is stated in Table 3 below.

**Table 3** Description of the Inclusion and Exclusion Criteria

Criteria based on research scope	I1	The research's scope is limited to cases that have arisen within the past ten years to reflect the most recent legal trends in the Malaysian construction industry.
	E3, E4	These criteria help to ensure that the selected cases are relevant to the research focus on disputes related to EOT claims within Malaysian construction projects.
	I4, E7	Issues related to condition precedent in EOT claim were set as the focus in this research given that condition precedent are the critical factors that determine the legitimacy and outcomes of EOT claims.
Criteria	I2	The research focuses on cases handled by the Superior Courts as Superior Courts often

considering quality and validity of research		provide detailed reasoning and interpretations of the law in their judgements which are useful for in-depth legal analyses.
	I3	The Malayan Law Journal (MLJ) publication was chosen because it is a reputable source for Malaysian legal cases that provide reliable and comprehensive case law.
	E2	Cases that are duplicated in the search result were excluded.
	E5	Cases seeking enforcement or setting aside arbitration decisions were excluded as they often deal with the procedural aspects of arbitration law rather than the substantive legal issues central to EOT claims.
	E6	Cases involving parties in a Sale and Purchase Agreement (SPA) were eliminated to ensure the research remains focused on the contractual and legal aspects specific to Extension of Time (EOT) claims in construction projects.
	E8	Cases with missing details or incomplete judgments were excluded to guarantee the quality and reliability of the analysis.
Criteria related to manageability of research	E1	This criterion is intended to control the volume of cases in order to keep the research manageable. From the search results obtained via LexisNexis, cases will be ranked according to their relevance that were determined based on the keywords match. Considering the time constraints, it is more feasible to focus on the top 150 cases based on the settings of relevancy in the journal.

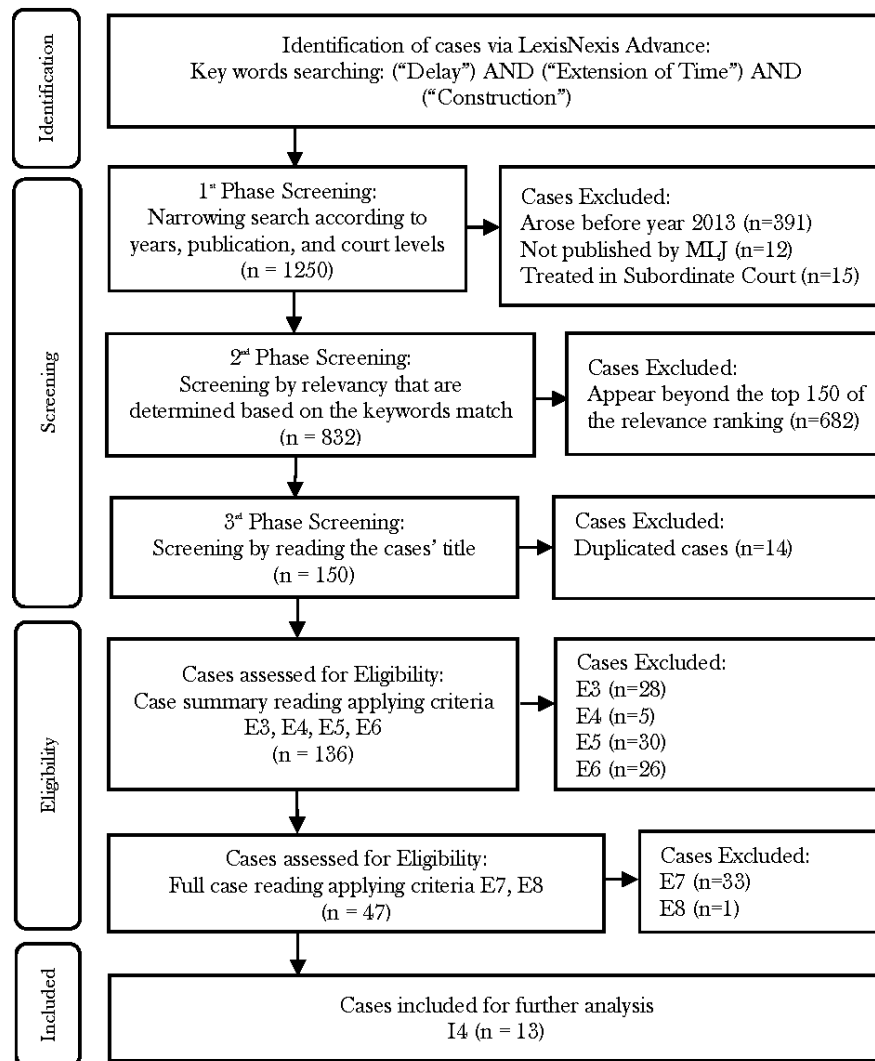
The initial search results were screened by utilising the filter function in LexisNexis to narrow down the search to the year between 2013 to 2023 (I1), published in MLJ (I2), and treated in Superior Courts (I3). The results showed that 832 cases were retained. After that, criteria E1 was applied, where the top 150 most relevant cases from the search results, as sorted by LexisNexis based on the keyword match were chosen for further screening. Duplicated cases (E2) were then removed by reading the titles of the cases, and 136 cases remained for case summary reading.

Following that, the remaining criteria (I4, E3, E4, E5, E6, E7, E8) were employed to evaluate the eligibility of the cases. After reading the case summary, 47 cases that passed the exclusion criteria E3 (Cases that do not involve disputes related to EOT), E4 (EOT claim disputes that do not happen in Malaysian construction projects), E5 (Cases seeking enforcement or setting aside of arbitration decisions) and E6 (Cases involving parties in a Sale and Purchase Agreement (SPA)) were subjected to full case reading.

During the full case reading, the background, issues, and judgements of the cases were carefully reviewed and checked to ensure only cases that contained issues relating to condition precedent in EOT claims (E7) with complete details and judgements (E8) were selected. In the end, only 13 cases that fulfilled all the selected criteria were qualified for further analysis. Figure 1 indicates the screening processes and the sequence of selecting relevant cases. Table 4 below lists the thirteen (13) cases qualified for further analysis.

**Table 4** List of Cases Qualified for Further Analysis

No.	Cases	Year	Court
1	TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor	2023	High Court
2	ETEC E & C (M) Sdn Bhd v Dindings Poultry Processing Sdn Bhd	2021	High Court
3	KL Eco City Sdn Bhd v Tuck Sin Engineering & Construction Sdn Bhd & Anor	2020	High Court
4	Yuk Tung Construction Sdn Bhd v Daya Cmt Sdn Bhd and another appeal	2020	Court of Appeal
5	Chengaljati SDN BHD v Turnpike Synergy SDN BHD & Anor	2019	High Court
6	PKNS Engineering & Construction Bhd v Global Inter-Dream (M) Sdn Bhd and another appeal	2014	Court of Appeal
7	Budaya Restu Sdn Bhd v Kerajaan Malaysia	2022	High Court
8	Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd	2014	High Court
9	Sunshine Fleet Sdn Bhd v Jabatan Kerja Raya Malaysia & Anor (GM Healthcare Sdn Bhd & Anor, third parties)	2018	High Court
10	Hartajaya-Benteng Timur-Amr Jeli JV Sdn Bhd v Kerajaan Malaysia and another appeal	2018	High Court
11	Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd	2022	High Court
12	Prinsiptek (M) Sdn Bhd v Naza TTDI Sentralis Sdn Bhd	2020	High Court
13	Poratha Corp Sdn Bhd v Technofit Sdn Bhd	2018	Court of Appeal



**Figure 1** PRISMA flow diagram

I4 = Cases that contain issues related to condition precedent in Extension of Time (EOT) claims

E2 = Duplicated Cases

E3 = Cases that do not involve dispute related to EOT

E4 = EOT claim disputes that do not happen in construction project

E5 = Cases seeking enforcement or setting aside of arbitration decisions

E6 = Cases involving parties in a Sale and Purchase Agreement (SPA)

E7 = Cases that do not address issues related to condition precedent in EOT claim

E8 = Cases with missing details or incomplete judgements regarding EOT claim issues

## 4.0 FINDINGS AND DISCUSSIONS

### 4.1 Parties in the EOT Claim Disputes

By referring to Table 5, among the 13 cases that contain issues related to condition precedent in Extension of Time (EOT) claims, 9 cases involve disputes between the employer and the main contractor, while 4 cases concern disputes between the main contractor and the subcontractor. A larger proportion of disputes occur between the employer and main contractor, with 69% compared to 31% involving disputes between the main contractor and subcontractor. This suggests that the more significant challenges in managing EOT claims tend to occur at the higher levels of contractual relationships.

**Table 5** Parties Involved in EOT Claim Dispute

No.	Cases	Employer - Contractor	Contractor - Subcontractor
1	TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor	✓	
2	ETEC E & C (M) Sdn Bhd v Dindings Poultry Processing Sdn Bhd	✓	
3	KL Eco City Sdn Bhd v Tuck Sin Engineering & Construction Sdn Bhd & Anor	✓	
4	Yuk Tung Construction Sdn Bhd v Daya Cmt Sdn Bhd and another appeal		✓
5	Chengaljati SDN BHD v Turnpike Synergy SDN BHD & Anor		✓
6	PKNS Engineering & Construction Bhd v Global Inter-Dream (M) Sdn Bhd and another appeal		✓
7	Budaya Restu Sdn Bhd v Kerajaan Malaysia	✓	
8	Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd	✓	
9	Sunshine Fleet Sdn Bhd v Jabatan Kerja Raya Malaysia & Anor (GM Healthcare Sdn Bhd & Anor, third parties)	✓	
10	Hartajaya-Benteng Timur-Amr Jeli JV Sdn Bhd v Kerajaan Malaysia and another appeal	✓	
11	Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd	✓	
12	Prinsiptek (M) Sdn Bhd v Naza TTDI Sentralis Sdn Bhd (formerly known as Ikhlas Murni Sdn Bhd)	✓	
13	Poratha Corp Sdn Bhd v Technofit Sdn Bhd		✓
<b>Total</b>		<b>9</b>	<b>4</b>

#### 4.2 Results of the EOT Claims

**Table 6** Results of EOT Claims

No.	Cases	Successful	Unsuccessful
1	TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor		✓
2	ETEC E & C (M) Sdn Bhd v Dindings Poultry Processing Sdn Bhd		✓
3	KL Eco City Sdn Bhd v Tuck Sin Engineering & Construction Sdn Bhd & Anor		✓
4	Yuk Tung Construction Sdn Bhd v Daya Cmt Sdn Bhd and another appeal		✓
5	Chengaljati SDN BHD v Turnpike Synergy SDN BHD & Anor		✓
6	PKNS Engineering & Construction Bhd v Global Inter-Dream (M) Sdn Bhd and another appeal		✓
7	Budaya Restu Sdn Bhd v Kerajaan Malaysia		✓
8	Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd	✓	
9	Sunshine Fleet Sdn Bhd v Jabatan Kerja Raya Malaysia & Anor (GM Healthcare Sdn Bhd & Anor, third parties)		✓

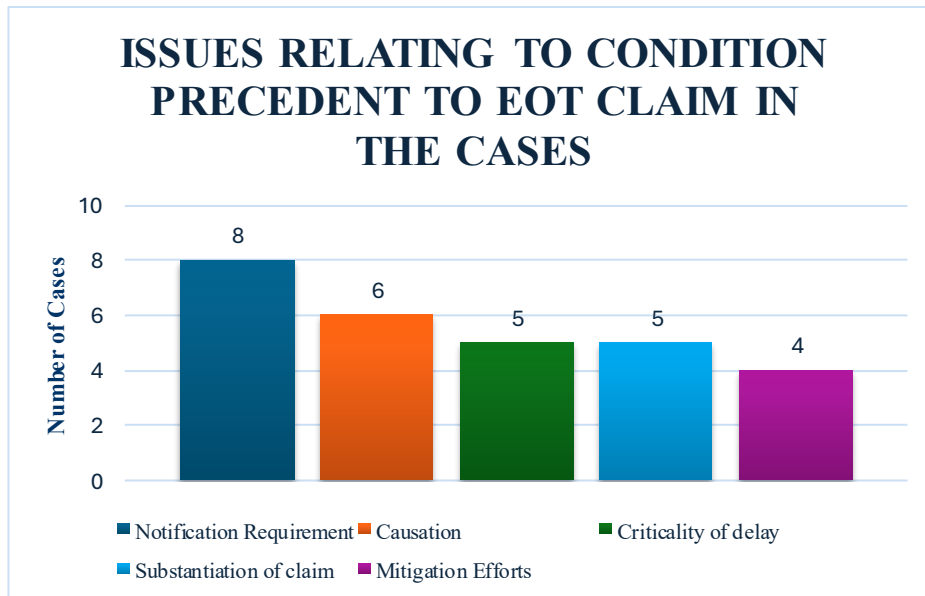


10	Hartajaya-Benteng Timur-Amr Jeli JV Sdn Bhd v Kerajaan Malaysia and another appeal	✓	
11	Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd	✓	
12	Prinsiptek (M) Sdn Bhd v Naza TTDI Sentralis Sdn Bhd (formerly known as Ikhlas Murni Sdn Bhd)		✓
13	Poratha Corp Sdn Bhd v Technofit Sdn Bhd		✓
<b>Total</b>		<b>3</b>	<b>10</b>

Table 6 above presents the results of EOT claims as determined by the court. According to the figure, most EOT claims were rejected, with 10 out of 13 cases being unsuccessful. Only 3 cases resulted in successful EOT claims. This indicates a low success rate for EOT claim cases involving issues related to the condition precedent to EOT claims. The frequent rejection of these claims could point to a common difficulty among contractors in either understanding or demonstrating compliance with the condition precedent to EOT claims.

**4.3 Issues Relating to Condition Precedents for EOT Claim in the Cases**

The issues relating to condition precedent for EOT claims found in the cases were categorized into five areas: notification requirements, causation, criticality of delay, substantiation of claim, and mitigation efforts. Most of the cases contained more than one issue relating to the condition precedent to EOT claims.



**Figure 4** Issues relating Condition Precedent for EOT claim in the Cases

Figure 4 shows that notification requirements had the highest occurrence among these five categories of issues, being recorded in eight cases. This was followed by causation in 6 cases, criticality of delay and substantiation of claim both in 5 cases, and mitigation efforts in 4 cases. Table 7 provides the summary of analysed cases.

**Table 7** Summary of Analysed Cases

No.	Cases	Court	Issues	Judgement	Principles
1	TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor	High Court	Whether the Plaintiff had complied with Clause 49 of the Conditions of the Contract entitling the Plaintiff to an EOT?	The Court dismissed the Plaintiff's EOT claims on the grounds that the Plaintiff did not provide the necessary written notice of this purported delay event in	Contractors must submit notice in writing to meet the contractual provision, and the causes of delay must be events covered under the

				accordance with Clause 49.1 of the Contract and the causes of delay did not conform to the provisions stated in Clause 49 of the Contract. The Court also noted that the Plaintiff failed to adopt any effective measures to mitigate the delays and did not present any evidence regarding the start and end dates of the alleged delay due to design changes, nor any analysis to substantiate its claim for an EOT.	contract. They are required to take effective measures to mitigate the delays and provide necessary evidence of the start and end dates of the alleged delay, along with analysis to substantiate their claim.
2	ETEC E & C (M) Sdn Bhd v Dindings Poultry Processing Sdn Bhd	High Court	Whether the Plaintiff is entitled to further EOT than what was granted by the Engineer?	The Court found that the Plaintiff submitted the 1st EOT Application 9 months after the completion date for V5 whereas Clause 43 of the CoC mandates the contractor to forthwith submit written notice to the Engineer upon realizing the progress of the Works is delayed. Moreover, the Plaintiff did not fulfil the conditions outlined in Clause 43 of the CoC that requires the Plaintiff to exert its best efforts to prevent delays and undertake all reasonable measures to the satisfaction of the Engineer to proceed with the Works.	Contractors are required to submit notice within the time limit specified in the contract. They must meet the duty of mitigation to the satisfaction of the Engineer as mandated under the contract.
3	KL Eco City Sdn Bhd v Tuck Sin Engineering & Construction Sdn Bhd & Anor	High Court	Whether the Defendant fulfilled the condition precedent for EOT claims as stipulated under clause 23.1(a) of the PAM Conditions?	The Court determined that the Defendant failed to meet the mandatory condition precedent for EOT grant under clause 23.1(a) of the PAM Conditions that required the contractor to provide written notice of intention within a specified 28-day period. The judge stated that even if the EOT Applications were considered as notices of intention to claim, they did not meet the time limits set out in clause 23.1(a). The Defendant's non-compliance with this clause renders their EOT applications ineligible.	Contractors must meet the contractual notification requirements. They must submit notices of intention to claim in writing and within the timeframe stipulated in the contract as a condition precedent to any EOT claim.
4	Yuk Tung Construction Sdn Bhd v Daya Cmt Sdn Bhd and	Court of Appeal	1. Whether the grounds given by DAYA in the 3 EOT applications constitute causal events, thus entitling Daya to	Regarding the 1 <sup>st</sup> issue, the Court of Appeal determined that Daya failed to prove the occurrence of the relevant events that justified the EOTs. For the first ground in	Contractors must submit notice in a timely manner, referring to the timeframe provided in the contract. Their basis of claim must be a

	another appeal		<p>further EOT beyond the 43 days granted by YTC?</p> <p>2. Whether Daya's failure to apply for an EOT for the delay events mentioned in Annexure B in a timely manner affect their entitlement to such an extension?</p>	<p>EOT No.2, the judge determined that the delay in issuing construction drawings was a result of Daya's delay in completing utility mapping, and the late drawings did not adversely affect the project's progress since the related work was scheduled for a later date. Consequently, there was deemed no basis for an extension on this ground.</p> <p>As to the 2<sup>nd</sup> issue, the Court of Appeal, endorsing the High Court's observations, noted that Daya did not apply for any EOT for these events in a timely manner, only doing so with the filing of the court claim. The Court of Appeal underscored that written notice is a mandatory prerequisite for EOT consideration under Clause 43 of the Principal Subcontract. Failure to comply with this requirement negates DAYA's right to claim an EOT.</p>	<p>relevant event that justifies an EOT under the contract, and they must prove that the alleged delay events critically caused a delay to the project completion date.</p>
5	Chengaljati SDN BHD v Turnpike Synergy SDN BHD & Anor	High Court	<p>Whether there was a delay caused by D1 in the limited working hours at the railway crossing, thus entitling the Plaintiff to an EOT?</p>	<p>The court found that the Plaintiff's overall poor performance and progress in the project could not be solely attributed to the work limit. It was noted that the limitation detailed in Delay Event No. 6 (DE06) affected only a small, specific portion of the project, not the majority of the work. Therefore, the court agreed with D1 that the Plaintiff should have continued work on other sections of the project while awaiting the resolution of DE06.</p>	<p>Contractors are required to take reasonable measures to mitigate delays. When only a specific portion of the project is affected by the delay event, contractors are expected to reschedule their work to continue on other sections of the project to minimize delay.</p>
6	PKNS Engineering & Construction Bhd v Global Inter-Dream (M) Sdn Bhd and another appeal	Court of Appeal	<p>Whether the Respondent's applications for EOT to complete the construction project made in compliance with the conditions stipulated in Clause 43 of P.W.D Form 203A?</p>	<p>The Court of Appeal determined that the Respondent does not meet the requirements of the proviso of clause 43 as the applications for extension were not made in a timely manner relative to the completion dates and lacked the necessary documentary evidence to support the</p>	<p>Contractors must submit written notice on time together with all necessary supporting documents as mandated under the contract.</p>

				requests for more time.	
7	Budaya Restu v Kerajaan Malaysia	High Court	<p>1. Whether the Plaintiff fulfilled contractual obligations regarding notification of delays?</p> <p>2. Whether the causation of such delays justified an extension of time under the conditions set forth in clause 43 of the Contract Conditions?</p>	<p>For the 1<sup>st</sup> issue, the Court identified that the plaintiff's applications for the third and fourth extensions were deemed too late to meet the contract's notification requirements.</p> <p>In regard to the 2<sup>nd</sup> issue, the Court determined that the plaintiff failed to match its delay complaints with specific events outlined in clause 43 of the Conditions of Contract. The court noted the utility relocation delays were due to errors in utility investigation conducted by Prisma Makmur (M) Sdn Bhd, which was appointed by the plaintiff. These errors led to the court concluding that any resulting delays did not entitle the plaintiff to an EOT, based on a provision in clause 43 that disqualifies delays caused by the contractor's actions, negligence, or default.</p> <p>Additionally, even if the plaintiff had been eligible for an extension due to utility relocation and late approvals, the court found the plaintiff did not conduct a thorough delay analysis to demonstrate the impact of specific delays on the project's completion timeline.</p>	<p>Contractors must submit notice in a timely manner according to the contract and shall match its alleged delay events with specific events outlined in the contract. They must also ensure the delay events are not due to their own actions, negligence, or default. Moreover, they must submit a comprehensive and systematic delay analysis to prove the impact of specific delays on the project's completion timeline.</p>
8	Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd	High Court	<p>Whether the SO's refusal to grant the defendant's request for an extension of time was reasonable under the contract terms and circumstances of the case?</p>	<p>The court found that the Plaintiff's delay in delivering the store's construction drawings justified a 90-day extension of time (EOT) under clause 43(f) of the contract, which allows for EOT claims due to delays in receiving necessary instructions or drawings from the SO due to their negligence or default. Furthermore, the court examined the sequential nature of project tasks and precluded the possibility of concurrent work in determining the reasonableness of the defendant's EOT request.</p>	<p>Contractors are entitled to claim an EOT when the basis of the claim is contractually covered events, provided no concurrent work can be done to avoid or mitigate the delay.</p>

				Hence, the court held that the plaintiff's refusal to grant the requested EOTs was unconscionable under the circumstances.	
9	Sunshine Fleet Sdn Bhd v Jabatan Kerja Raya Malaysia & Anor (GM Healthcare Sdn Bhd & Anor, third parties)	High Court	Whether the Plaintiff entitled to an extension of time for completing the project under the contract's clause 45?	The court found that the Plaintiff did not make any formal application for an extension. Moreover, the court pointed out that the reasons cited by the Plaintiff did not fall within the stipulated grounds for granting an extension as per clause 45. Consequently, the court found the plaintiff's claim for an EOT to complete the project lacked merit.	Contractors must submit written notice to formally apply for an EOT. They must have a contractual basis to claim an EOT.
10	Hartajaya-Benteng Timur-Amr Jeli JV Sdn Bhd v Kerajaan Malaysia and another appeal	High Court	Whether the Plaintiff entitled to a fourth EOT under the contract due to delays caused by the Defendant's actions or inactions, including the late handover of essential land and failure to realign utility pipes?	The court ruled that the Plaintiff's entitlement to an EOT falls under Clause 45.1(i), which covers delays caused by third parties engaged by the Defendant. Moreover, the delay in handing over site possession necessitated an extension of time as per clauses 39.4 and 45.1(g) of the PWD Contract. Concluding, the court ruled that the rejection of the fourth EOT by the Defendant was incorrect	Contractors are entitled to an EOT when their basis of claim aligns with the event specified in the contract as a ground for an EOT.
11	Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd	High Court	Whether the plaintiff is entitled to an EOT for failing to complete the Central Utilities Building (CUB) works by the new deadline of July 29, 2011, due to delays caused by the defendant's direct contractors, Letrik P.J. Union Sdn Bhd and Sunway Engineering Sdn Bhd?	The Court determined that the delays caused by Sunway Engineering and Letrik PJ Union were critical to the plaintiff's completion of the Central Utilities Building (CUB) works. Given the nature of these delays, the court referenced clause 43(i) of the contract conditions, affirming that delays caused by the employer's direct contractors are considered excusable delay events under the contract. Consequently, the court concluded that the plaintiff was rightfully entitled to an EOT for the completion of the CUB works.	Contractors could be granted an EOT for delays that are deemed excusable under the contract's specific clauses, provided these delays critically affect the project's completion date.
12	Prinsiptek (M) Sdn Bhd v Naza TTDI Sentralis Sdn Bhd (formerly known as Ikhlas Murni Sdn	High Court	1. Whether the absence of written notice disentitle the Plaintiff from entitlement to an EOT?	For the 1 <sup>st</sup> issue, the court affirmed that according to Clause 23.1 of the PAM 2006 Contract, providing written notice of the intention to claim an EOT is a mandatory	Providing written notice is a condition precedent to any EOT claim. Contractors must adhere to the contractual notification requirement.

	Bhd)		2. Whether the additional works for TNB Manholes and ECT to be considered critical to the project's completion timeline, thereby justifying Prinsiptek's application for an EOT (EOT No.2A)?	prerequisite. The absence of such notice disqualifies the plaintiff from entitlement to an EOT.  Regarding the 2 <sup>nd</sup> issue, the court determined that the project was already delayed for reasons separate from the additional works. Consequently, the court deemed the rejection of the EOT No. 2A application as reasonable.	Furthermore, they must prove that the cited delay is critical to the project's completion timeline to justify an EOT.
13	Poratha Corp Sdn Bhd v Technofit Sdn Bhd	Court of Appeal	1. Whether the delay in material delivery by Defendant was critical to the project's timeline? 2. Whether the Plaintiff meet the requirements of Clause 7.3 to be entitled to an Extension of Time (EOT)?	For Issue No.1, the court determined that the Plaintiff had received sufficient materials to commence work immediately and concluded that the absence of some materials did not significantly impact the project's critical path.  Regarding the Issue No,2, the Court stipulated that an updated and detailed Revised Master Work Schedule and manpower plan should be integral to the EOT application. However, it was found that the Plaintiff failed to provide a revised schedule or a manpower plan with their EOT application as mandated by Clause 7.3. Therefore, the court dismissed the Plaintiff's claim for an EOT.	Contractors shall demonstrate the cited delay impacted the project's critical path to justify an EOT. Additionally, for an EOT application to be considered valid, it must fulfill the conditions outlined in the contract. Contractors must submit necessary supporting documents together with their notice when applying for an EOT to substantiate their claim.

#### 4.4 Issues relating Condition Precedent for EOT claims

##### 4.4.1 Notification Requirement

Strict adherence to notification requirements is essential for the approval of extension of time (EOT) claims. There are 8 cases in which the contractors' EOT claims were rejected due to their failure to comply with the notification requirements stipulated in the contract.

A formal application for EOT through the prompt submission of a written notice is mandatory in any construction contract (Da et al., 2006). In *TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor*, *Sunshine Fleet Sdn Bhd v Jabatan Kerja Raya Malaysia & Anor*, *Prinsiptek (M) Sdn Bhd v Naza TTDI Sentralis Sdn Bhd* and *Yuk Tung Construction Sdn Bhd v Daya Cmt Sdn Bhd*, the courts emphasised that the absence of a written notice disqualified the claimants from being eligible for an EOT, as they did not meet the contractual requirement for timely and formal application.

Other than that, *ETEC E & C (M) Sdn Bhd v Dindings Poultry Processing Sdn Bhd*, *KL Eco City Sdn Bhd v Tuck Sin Engineering & Construction Sdn Bhd & Anor*, *PKNS Engineering & Construction Bhd v Global Inter-Dream (M) Sdn Bhd* and *Budaya Restu v Kerajaan Malaysia* each reflect issues with late submissions of EOT requests. In these instances, the claimants submitted their EOT applications well after the onset of the delays and beyond the contractual deadlines, resulting in the dismissal of their claims due to non-compliance with the stipulated notification periods.

In these cases, the courts determined that adhering to contractual notification requirements is the primary condition precedent to an EOT claim. Contractors must submit the delay notice in writing to the contract administrators to formally apply for an EOT. The notice must be submitted within the time limit specified in the contract; any submissions made after the allocated time will be rejected. As

highlighted by the judge in *Yuk Tung Construction Sdn Bhd v Daya Cmt Sdn Bhd*, contractors hold the fundamental duty to apply for an EOT by providing timely written notice; non-compliance with this requirement voids the contractor's right to claim an EOT on the basis of the prevention principle or to retrospectively apply for one after a significant delay.

#### 4.4.2 Causation

Causation is a critical factor in determining whether an Extension of Time (EOT) claim will be granted or rejected. In *TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor*, *Budaya Restu Sdn Bhd v Kerajaan Malaysia* and *Sunshine Fleet Sdn Bhd v Jabatan Kerja Raya Malaysia & Anor*, the courts rejected the EOT claims because the causes of delay cited by the claimants did not align with the events specified in the contract as grounds for an EOT. These cases highlight the strict interpretation by courts that only delays which can be proven to have a direct caused by the specified events in a construction contract can justify an EOT.

On the other hand, *Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd*, *Hartajaya-Benteng Timur-Amr Jeli JV Sdn Bhd v Kerajaan Malaysia* and another appeal, and *Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd* showcase situations where the courts granted EOTs because the alleged delays events were contractually covered events. In *Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd*, variation orders that changed the scope of work provided clear contractual grounds for an EOT. Similarly, in *Hartajaya-Benteng Timur-Amr Jeli JV Sdn Bhd v Kerajaan Malaysia*, delays caused by third parties engaged by the employer were recognized under the contract, leading to an approved EOT. *Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd* also saw an EOT granted because the delays were caused by the employer's direct contractors, which were covered under the contractual provisions.

Establishing causation in EOT claims hinges on the ability of contractors to align delay events with specific contractual provisions that justify such extensions. Contractors must precisely determine the contractual basis for their EOT claims, identifying the specific contract clauses that justify the extension (Suhaida & Wong, 2017; Yusuwan & Adnan, 2018). Without this clear causation, contractors are at risk of having their EOT claims denied by the courts. Additionally, contractors need to ensure that they themselves did not contribute to the delays. As demonstrated in the case of *Budaya Restu Sdn Bhd v Kerajaan Malaysia*, the court referred to clause 43 in the PWD 203A contract and concluded that contractors are not entitled to extensions for delays caused by their own actions, negligence, or default.

#### 4.4.3 Criticality of Delay

A delay is considered critical only if it occurs on the project's critical path (Ndekugri et al., 2008). Judicial decisions have consistently denied Extension of Time (EOT) claims where delays were not considered critical to the project's timeline. In *Yuk Tung Construction Sdn Bhd v Daya Cmt Sdn Bhd*, the court found that the delay in issuing construction drawings did not critically impact the project as the affected tasks were scheduled for a later phase, which did not alter the overall project timeline, leading to the rejection of the EOT claim. Similarly, in *Poratha Corp Sdn Bhd v Technofit Sdn Bhd*, the absence of some materials was not found to affect the project's critical path significantly, thus not justifying an EOT. Moreover, in *Prinsiptek (M) Sdn Bhd v Naza TTDI Sentralis Sdn Bhd*, the project was already delayed for unrelated reasons, weakening the case for their criticality in altering the completion date.

Contrastingly, when delays are proven to affect critical tasks essential for the project's completion, courts have shown a willingness to grant EOT. A pertinent example is *Sykt Pembinaan Anggerik Sdn Bhd v Malaysia Airports Holdings Bhd*, where delays caused by the defendant's subcontractors were deemed critical as they affected late-stage tasks crucial for mechanical and electrical installation. These delays necessitated postponing critical final activities, directly extending the project's practical completion by over two months, thus justifying the EOT.

The necessity of a detailed and systematic delay analysis was underscored by the failure in *Budaya Restu Sdn Bhd v Kerajaan Malaysia*, where the inability to conclusively demonstrate that the cited delays were critical resulted in the rejection of the EOT claim. The court highlighted that a thorough delay analysis, employing recognized methodologies such as the "asplanned impacted" or "collapsed as-built" methodology, is essential to prove the impact of delays on project timelines. The "as-planned impacted" methodology involves integrating the delay events into the original project schedule to demonstrate how these events affect the completion date. Conversely, the "collapsed as-built" methodology involves removing the delay events from the actual completed project schedule to illustrate how the project would have progressed without the delays. Both methodologies provide a clear, structured approach to analysing delays and their impacts, offering a factual basis for EOT claims.

Contractors are required to demonstrate how the delay events affected the critical path of the project and thus postponed the project's overall completion date (Chong & Leong, 2012; Dumitru & Tarmigan, 2020). When a delay occurs, contractors should immediately assess its impact on critical project stages and prepare a detailed delay analysis based on the recognized methodologies to establish the critical nature of delays. Contractors must clearly isolate and prove that claimed delays are directly responsible for impacting the project's timeline. They must differentiate critical delays from other project inefficiencies and ensure their claims are not diluted by unrelated issues.

#### 4.4.4 Substantiation of Claim

The courts often reject Extension of Time (EOT) claims when contractors fail to provide adequate evidence and documentation to support their requests. In *TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor*, the court rejected the EOT claim because the contractor failed to present evidence regarding the specific start and end dates of the alleged delay, nor was there any supporting analysis and that the Revised Work Program No. 3 contained incomplete and incorrect information. Likewise, *Poratha Corp Sdn Bhd v Technofit Sdn Bhd* faced rejection for failing to include an updated and detailed Revised Master Work Schedule and manpower plan in their EOT application as required by the contractual clause.

Furthermore, in *PKNS Engineering & Construction Bhd v Global Inter-Dream (M) Sdn Bhd*, the EOT claim was denied because the subcontractor did not provide the necessary documentary evidence as stipulated under clause 43 of P.W.D Form 203A. In *Yuk Tung*

Construction Sdn Bhd v Daya Cmt Sdn Bhd, the request for further EOT was rejected because the subcontractor failed to produce evidence to prove that the obstructions in piling works caused by existing structures were a causal event to justify further extensions.

Budaya Restu Sdn Bhd v Kerajaan Malaysia further emphasises the requirement for detailed delay analysis in substantiating an EOT claim. The court noted the contractor's failure to demonstrate how the delays critically impacted the project's timeline through a thorough and systematic delay analysis, leading to the rejection of the EOT claim.

As Yusuwan et al. (2021) suggest, crafting a logically sound, factually persuasive argument that clearly delineates responsibility for delays is essential to establishing a contractor's entitlement to EOT. These cases collectively highlight the importance of detailed, complete, and comprehensive documentation in substantiating EOT claims. The courts require precise evidence to justify EOT claims, including evidence regarding the start and end dates of the relevant event, revised work schedule and programme, and comprehensive delay analysis. Contractors must submit all related supporting documentation as required under the contract when applying for an EOT and are advised to maintain precise records to substantiate any claims for delays effectively.

#### 4.4.5 Mitigation Effort

A recurring principle found in the cases regarding mitigation efforts is the expectation for contractors to actively mitigate delays. In TN Synergy Sdn Bhd v Prasarana Malaysia Bhd & Anor and ETEC E & C (M) Sdn Bhd v Dindings Poultry Processing Sdn Bhd, the courts rejected the Extension of Time (EOT) claims due to the contractors' failure to demonstrate effective mitigation efforts or fulfill contractual obligations aimed at preventing delays. The judgments stressed that merely being subject to a delay caused by the employer does not absolve the contractor from the responsibility to mitigate its effects.

Notably, the feasibility of continuing other project components independently is a key consideration. For example, the court in Kerajaan Malaysia v Ven-Coal Resources Sdn Bhd approved the EOT because it was established that no concurrent work was feasible due to the sequential nature of the required tasks. This contrasts with the case of Chengaljati SDN BHD v Turnpike Synergy SDN BHD & Anor, where the court found that the subcontractor could have continued work on other sections of the project unaffected by the delay, which impacted the decision on the EOT claim.

These cases underscore the principle that a proactive approach to reducing delays is a condition precedent for a successful EOT claim. Contractors should maintain regular and diligent progress on the work to avoid or mitigate delays in the progress of the works, even when the delay is solely the fault of the employer (Dumitru & Tarmigan, 2020; Okereke et al., 2021; Wilkinson, 2022). They must meet the duty of mitigation to the satisfaction of the architect or engineer according to the contract, as in the case of ETEC E & C (M) Sdn Bhd v. Dindings Poultry Processing Sdn Bhd, where the engineer was not satisfied with the contractor's efforts in mitigating delay, leading to the rejection of EOT claims.

Additionally, when only a specific portion of the project is affected by a relevant event, contractors are expected to continue work on other sections of the project to mitigate or avoid delays. As in the case of Chengaljati SDN BHD v Turnpike Synergy SDN BHD & Anor, the court noted that the limitation detailed in Delay Event No. 6 (DE06) affected only a small, specific portion of the project, the Plaintiff should have continued work on other sections of the project while awaiting the resolution of DE06. As highlighted by Wilkinson (2022), the appropriateness of such measures depends on specific circumstances. Contractors shall evaluate their responsibilities by reviewing their contractual obligation, general duties of cooperation and good faith, as well as any applicable legal requirements (Dumitru & Tarmigan, 2020). Failing to do so could potentially break the causal link, making the contractor responsible for the delay.

## 5.0 CONCLUSION

This research has comprehensively explored the issues relating to condition precedent for Extension of Time (EOT) claims in litigation cases within the Malaysian construction industry. Through a comprehensive analysis of 13 litigation cases, several key issues were identified, which are categorized into notification requirements, causation, the criticality of delay, substantiation of claim, and mitigation efforts. It was observed that the majority of EOT claims were unsuccessful due to non-compliance with these conditions' precedent.

Moreover, the research provided a detailed analysis of the judicial grounds for judgment in EOT claim litigation cases. Courts consistently emphasized the necessity for contractors to comply strictly with the contractual provisions, especially in submitting timely and proper written notifications of delays. The failure to comply with notification requirements was the most common ground for the rejection of EOT claims. Contractors often fail to provide timely and proper written notices as mandated by their contracts, resulting in their claims being dismissed.

Additionally, the need for contractors to establish clear causation and the critical impact of delays on the overall project timeline was underscored. Many claims were rejected due to contractors' failure to demonstrate that delays were caused by events recognized under the contract as valid grounds for EOT and not due to their own shortcomings. Furthermore, they failed to establish that the delays were critical to the project's practical completion date. The analysis also highlighted that issues such as inadequate mitigation efforts and the failure to provide substantial evidence of delay impacts were common pitfalls leading to the rejection of EOT claims. This research concludes that while the legal framework provides mechanisms for EOT claims, successful claims depend heavily on contractors' adherence to contractual requirements and their ability to provide comprehensive documentation and justification for the delays.

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