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**TYPES OF CONSTRUCTION CLAIMS:  
EXPLORING VARIOUS DIMENSIONS  
TO THEIR MANAGEMENT**

By

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# Presentation Outline

- 1. Introduction**
- 2. Understanding Claims in Construction Contracts**
- 3. Types of claims in Construction Contracts**
- 4. Strategies for Management of Claims in Construction Projects**
- 5. Steps in Preparation of Construction Claims**
- 6. Conclusion**

## 1.00 INTRODUCTION

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**Construction projects are generally complex, mostly involve a great deal of third parties' participation, and the operational outcomes usually very unpredictable. These and many other related issues exposed the sector to a wide range of risks, which make conflicts inevitable in construction contracts. If the conflicts are not properly and timely managed, it turns to claims.**

**So, risks give rise to claims which often leads to dispute, or a lengthy litigation process, or even bankruptcy or project abandonment if not well managed. Thus, claims are common and inevitable in construction projects.**



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**The Global Construction Dispute Reports in 2021** reveals that there is a major increase in both the number and the value of claims across the global market, and more frequently, those claims lead to disputes.

The report particularly shows that the main causes of these expensive and time-wasting disputes are the poorly expressed claims that leads to dispute.

Revelation from this report underscore the needs for effective management of construction claims.





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**So, managing and resolving construction claims effectively is a critical aspect of construction project management, and should begin with robust strategies for risk management, good conflict management policies, and an effective claims management plan.**

**This will go a long way in early resolution of disagreements between parties to construction contracts thereby avoid unnecessary litigation and minimize potential project disruptions.**

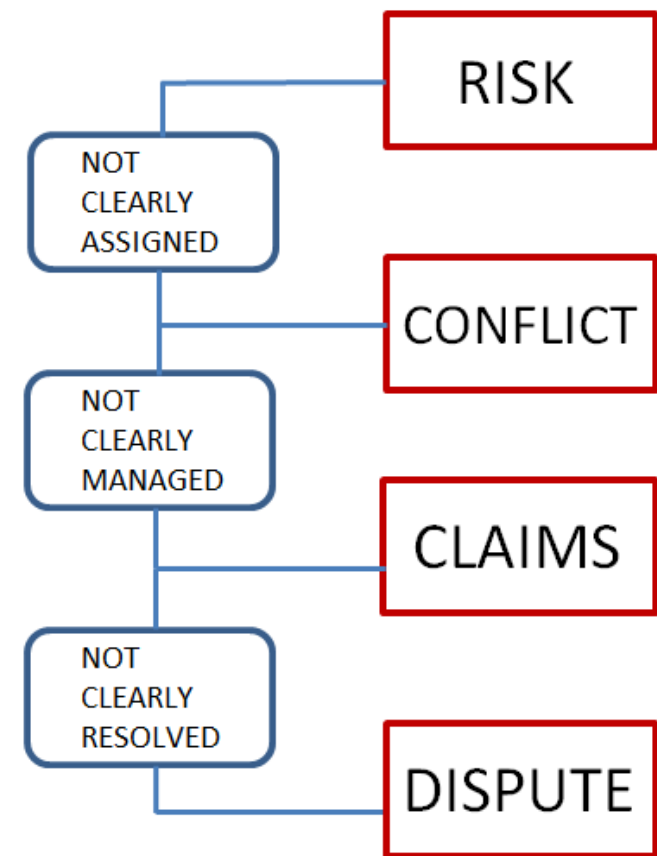
## 2.00 UNDERSTANDING CLAIMS IN CONSTRUCTION CONTRACTS



Construction contracts agreements are made by construction project owners (*clients*) and the construction companies (*contractors*) in line with certain basic industry procedures, to undertake a specific construction project, with well-defined rights and obligations of both parties.

During the execution of a construction project, there are usually several unavoidable issues (*risks*) militating against the project that may arise and could not be resolved.

Such issues can typically result into contractor requesting for either time extension or reimbursement of an additional costs incurred, or sometimes both. These requests are referred to as “**claim**”. If the project owner accedes to the contractor’s claim and grants him extension of time or reimbursement of additional costs, or both, the issue is sorted out. However, if the owner does not agree to the claim put out by the contractor and there are differences in the interpretations or in understanding, the issue takes the form of a dispute.





Claim implies a demand or an assertion or a request for something considered due or believed to be entitled to. The word 'claim' is commonly used in many works of life, in construction, insurance, law, etc.

In construction, claim refers to a formal request by one party (**Contractor or Client**) for compensation or other relief, as a matter of right, due to change in circumstances that arose during the work. For example, claim can be initiated by a contractor requesting additional compensation due to changes in the contract or a client seeking additional work from a contractor who has not met the terms of the agreement.

Claims in construction projects are unique by their nature and generally have varying characteristics to look out for when evaluating them. These **characteristics** are described as follows:

## Claim of Fact

Claim should be a quantifiable statement that focus on the accuracy, correctness and validity of such statements should be able to be verified using some objective evidence. This takes a position on questions like **Is it true? Does it exist?** The center of controversy here should not be something what ought to have happen but the reasonableness of the fact in question.

## Claim of Definition

Claim should be an assertion that can be clearly define and easily be recognized. It takes a position on questions like **'What is it? How should it be classified? or What is it look like?** The nature of work that is being claimed should be something well known or clearly defined.





## Claim of Value

Claim should be able to justify loss of valuables or proof of existence of extra expenses or time. This is required to justified amount of compensation or relief. Claim of value should take a position on questions like **'of what worth is the request'?**

## Claim of Cause

Claim should be able to clearly identify reason(s) for its occurrence. This takes a position on questions like **what caused it? why did it happened? where did it come from?** This will help in identifying source of compensation.

## Claims of comparison

Claim request should be able to establish comparison between results of occurrence of an event and its non-occurrence. The success/failure from occurrence of an event and success/failure of its non-occurrence. This takes a position of questions like: **How can we better understanding of position one thing by looking at another?** For example, claims for delays from unforeseeable weather delays.

## Claim of policy

Claim of policy argues that certain conditions should exist or something should have been done or not, in order to solve a problem. This takes a position on questions like **What course of action should we pursue or was taken?** Claim of Policy proposes that some specific course of action should have been taken toward addressing challenges. Claims of policy are statements that focus on actions that should have been taken to change the status quo.



## 3.00 Types of Claims in Construction Contracts

Because of the multidimensional nature of construction contracts which often creates many instances that could give rise to conflicts, claims can be grouped in many ways.

But below, claims are grouped into five major sub-headings using the legal disposition of the underlying events (Vindana, 2023):

- 1      **Contractual Claims**
- 2      **Extra-contractual Claims**
- 3      **Ex-gratia claims**
- 4      **Quantum Meruit Claims**
- 5      **Counter Claims**



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## Contractual Claims

A contractual claim is a formal request for compensation or remedies made by one party to the contract when there is a perceived breach of the contract obligations. These types of claims are grounded in the terms and conditions set out on the contract, that stipulate the rights and responsibilities of contract parties.

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**Delay claims** arising from unforeseeable weather, late issuance of design/approvals, unexpected site conditions, changes in scope of work, problems with licence and permits, etc.

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**Change order claims** arising from design or specification modifications, changes in scope of work, price inflation, design deficiency, etc.

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**Termination claims** arising from unilateral termination by the owner, termination for expediency/convenience, termination for default by the contractor, etc.

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**Liquidated Damages Claims** resulting from days beyond contract completion date, Calculation disputes over liquidated damages, etc.

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## Extra- contractual Claims

It is also referred to as non-contractual claims, they are claims that do not find their basis within the explicit terms and conditions of the contract. Instead, their entitlement arises from common law principles or other legal standards. These claims involve compensation for damages or losses that occur due to events or actions not covered by the contract but that are considered unjust or negligent on the part of any of the party to the contract.

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**Defective work claims** arising from design or material defects, substandard workmanship, warranty issues, etc.

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**Acceleration claims** arising from owner-mandated acceleration, uncompensated acceleration efforts, Impact of acceleration on the project, etc.

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**Disruption claims** arising from site inefficiencies and hindrances, Interference from other trades, productivity losses due to third parties.

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**Design errors and omissions claims** arising from design inaccuracies or errors, omissions in design documents, additional costs incurred due to design issues

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## Ex-gratia Claims

An ex-gratia payment is a financial or compensatory gesture made voluntarily by one party to another, often in response to damages, losses, or claims, without acknowledging a legal obligation to do so. The term "ex gratia" is derived from Latin, meaning "by favor" or "by virtue of grace," emphasizing that such payments are made as a goodwill gesture or out of a sense of moral responsibility rather than being compelled by a legal contract or obligation.

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**Force Majeure claims** arising from natural disasters, Acts of God, political events, unforeseeable events beyond the control of the parties.

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## Quantum Meruit Claims

Quantum meruit, a Latin that means "as much as is deserved," is a legal doctrine that allows builders and contractors to recover the reasonable value of work they have performed, even when there is no explicit contract or agreement specifying the terms and compensation for that work.

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**Unjust enrichment claims** resulting from work or services provided without a contract, the benefit received by the other party, request for equitable compensation

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**Unilateral acts claims** resulting from extra work performed at the request of the owner, unilateral changes in work method leading to additional work, compensation for work done in good faith

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**Goods and services claims** resulting from supply of goods or services outside the contract, disputes over the value of goods or services rendered, uncompensated work or materials provided.

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## **Counter Claims**

**These are claims raised by the opposite party to counter the claimant's request.**

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## 4.00 STRATEGIES FOR MANAGEMENT OF CLAIMS IN CONSTRUCTION PROJECTS

Claims are increasingly becoming prevalent in modern construction. This is because construction operations are increasingly involving cutting-edge technologies, evolving more sophisticated work specifications and high expectations from the owners like never before.

These have made the sector a more risk-attracted zone, and has resulted into significant rise in the number of construction claims. Therefore, extensive construction claims management practices are essential to enrich the chances of successful project delivery.

A practical approach to strategic management in construction claims focuses on two objectives; reduction in occurrence of claims and degrading its effect in the event it happened, and categorized as **Preventive and Control Strategies**.



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## Preventive Strategies

These are measures deployed to principally minimize the occurrence of claims at the early stage of the project i.e. before the contract is placed

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**Pre-empt Claims:** Pre-empting claims during the early stages of a project will possibly help eliminate underlying causes of potential claims prior to their manifestations.

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**Prioritizing risk management:** Prioritize risk management by identifying potential risks, carry out likely impacts, and develop strategies to mitigate or eliminate them. This will go a long way in addressing unwarranted claims.

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**Invest in Front-end Surveys:** Ground investigation and topographical surveys should be carried out at early stage of the project, and ensure that all geotechnical data are made available to all concerned before the designs and costing is completed.

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**Avoid Changes to Standard form of Contract:** Avoid changes to standard forms of contracts, while attempting to re-allocate risk. It can easily lead to ambiguity in contract terms. The 'contra proferentum' rule may be applied against the interest of the party who provided the wording when interpreting the ambiguities.

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# Preventive Strategies

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**Ensure Ironclad Contracts:** Invest in well-drafted contracts that clearly define the scope of work, the responsibilities of each party, payment terms, and dispute

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**Choice of Suitable Procurement Method:** It is important to pick the most suitable method of procurement method in relation to risk allocation and appropriate contract conditions.

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**Proper Examination of Contractor's Master Programme before adoption:** Master programme submitted by the contractor should be adequately be examined and any aspect with ambiguity should be challenged for proper adjustment before adoption as the programme is the basis upon which all future claims for delays, extensions of time, disruption, loss and expense are based and judgments made.

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**Avoid the use of unclear statement:** Avoid using evasive statements such as 'to be agreed' can lead to dispute, phrases such as 'to suit the contractor's programme' is open ended, setting a conditional date or result such as, 'in accordance with the architect's instruction' creates uncertainty.

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**Consider Insurance/safety measures:** Explore construction claims insurance options to protect oneself from financial losses due to claims. Though not a substitute for proactive management, it only provides an extra layer of security.

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## Control Strategies

These are measures deployed to principally degrade the effects of claims after it has happened during the construction phase of project.

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**Claims Management Team:** Maintain a qualified claims management team to ensure proactiveness in risks management, disputes prevention, and quickly resolution of issues that may arise during the project. They also provide guidance and support throughout the claims process.

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**Establish clear and open Communication channel:** Establish communication protocols that ensure a timely and accurate exchange of information between project team. These protocols should include regular project meetings, progress reports, and change order requests. This can help prevent misunderstandings, disputes, and claims.

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**Understand Legal Framework Governing Construction Claims:** Understanding the legal framework, including international standards such as FIDIC, JCT, and NEC, along with national laws, is essential for managing claims effectively.

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**Change Order Control:** Implement a strict change order process that requires written documentation, approvals, and impact assessments before any changes are made. Uncontrolled changes are a major source of claims.

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# Control Strategies

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**Involvement of third-party experts:** Construction companies can also consider involving third-party experts, such as mediators or arbitrators, to assist in resolving disputes and claims to minimize their impact on project success and maintain positive relationships with all parties involved

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**Record Keeping:** Detailed records of all project activities, including communication between parties, including daily reports, change orders, meeting minutes, approvals, and other relevant documents should be maintained. These serves as crucial evidence in case of any disputes.

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**Use of Technology:** Technology can be used to streamline communication, document management, and data analysis, which can help minimize disputes and maximize project success. For example, BIM make it possible for all stakeholders to view from the same set of digital plans. Drones can be used to conduct site inspections, which can help identify potential issues. 3D printing can be used to create physical models of buildings, which can help stakeholders visualize a project before it is built. Virtual reality can be used to create immersive simulations of a construction project, which can help stakeholders in visual appreciation of the project at early stage.

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**Engage in Fair Payment Practices:** Pay your contractors promptly and according to the agreed terms. Delays in payment can be grounds for claims, so avoid creating unnecessary friction.

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## 5.00 STEPS IN PREPARATION OF CONSTRUCTION CLAIMS



**When disagreement arise during construction, the Contractor/Client will prepare claim document and submit to the Client/Contractor. If the respondent accedes to the claimant's request and grants him extension of time and/or reimbursement of additional costs as requested, the issue is sorted out. However, if the respondent does not agree to the claimant's request and there are differences in the interpretations of the basis of the request, the issue takes the form of a dispute.**

**But when claims are prepared with sufficient details that include facts and supporting evidences to prove delays and/or additional costs, it will be easy for both parties to reach an agreement at an early stage, and there will be no need going to arbitration and litigation.**

**The following are the common list of sections in the preparation of claims with key steps to be followed depending on the size/nature of project.**

## **Executive Summary**

- a summary of the claims is provided

## **Table of Contents**

- an index of general topics regarding the claim is provided

## **Introduction**

- **Because there is likelihood that the officer who is responsible for the final assessment of the submission may not be completely familiar with the contract, so it is important to give background details in this section. Such details should include the following:**
  - Names of the parties to the contract and the advisers/consultants
  - Description or nature of works to be constructed.
  - Details of the conditions of contract governing the contract
  - The main reasons/disagreements that give rise to claim preparation
  - The tender date
  - Original contract sum
  - Dates of possession and completion
  - Details of extensions of time claimed and/or details and amounts of money claimed
  - Details of extensions of time awarded, Details of amounts certified

## **Contractual Framework**

- **State precisely the specific clauses of the contract conditions that give the entitlement to make a claim. The claim may fall under one or both of the following categories:**
  - **Claim for loss and expense or extra costs or expense flowing from a remedy contained within the conditions themselves**
  - **Claim for damages resultant upon a breach of the express or implied terms of the contract or the law**
- **Proper legal entitlement must be established.**
- **Cause and effect must be clearly demonstrated by contemporaneous records**
- **Additional costs must be backed up by full supporting documents**
- **State clearly the event or events pertaining to the claim. It is also good practice in this section of the claim to make reference to notifications which have been made during the contract.**

## **Actual Conditions and Impacts**

- **The changes in the original conditions and the impacts of these changes on the project are described in detail. This section should provide complete details as much as possible of all delays with reasons, responsibility and effect on progress as a whole. Assistance can be gained to prove this cause and effect by the use of critical path method (CPM) or any other graphical method.**

## **Contractual/Legal Entitlement**

- **The right for receiving a time extension or recovering additional financial compensation under the contract or common law is identified. This section should meet the procedural requirements such as notice, timely presentation of the claim, etc.**

## **Quantification of Claim**

- **The delay that is experienced due to the additional work should be valued. All the evaluations, analyses, methods, and assumptions regarding the evaluation must be transparent and clearly explained.**

## **Formal Statement of Claim**

- **The formal request should be presented.**

## **Appendix**

- **Usually claim required a adequate volume of backup documentation to substantiate the case such as correspondence, records, photographs, video and programs. Inclusion of all the details in the main body will make the presentation bulky and distract the reader. Hence it is advisable to attach them as appendices.**

## Examples of backup documentation as Appendix

- **Contract Programmes (i.e., *Original & updated programmes*)**
- **Cost Information (i.e., *Price Calculations, Quantities, Schedules*)**
- **Monthly Progress Reports, Minutes of Meeting, Legal Briefs**
- **Photographs (i.e., *Progress Photos, Event Specific Photos*)**
- **Relevant Drawings**
- **Technical Assessments**
- **Engineering Calculations**
- **Lists of the Relevant Notices issued**
- **Geotechnical Reports**
- **Requests for Information (RFIs)/ Technical Queries**
- **Detailed cost Estimates of the Request**
- **Delay Analysis and the Methods Used**

# Conclusion

**The careful implementation of claim management strategies can significantly reduce the risk of construction claims, minimize disputes and maximize project success. Remember, prevention is always better than cure, so be proactive, communicate effectively, document properly use technology and always seek professional help when required.**

