

**BEST ENDEAVOURS FOR GRANTING AN EXTENSION OF TIME IN  
CONSTRUCTION CONTRACT**

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## DEDICATION

*For my beloved father, mum, sisters and brother*

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In this holy month of Ramadhan, I wish may Allah always bless you all.

Amin.

## ABSTRACT

Extension of time is a remedy for contractor due to delay caused by employer or neutral event. One of the normal conditions that a contractor needs to fulfil in an application for the extension of time is that he must have used his best endeavours to reduce or prevent the delay. It is in fact a condition precedent for the granting of extension of time. Best endeavours can be defined as best efforts. This phrase is not a particularly unique and exclusively found in construction contracts. It is also being included in other types of contracts. However, in practice, there is no evidence at all that contract administrator addresses this requirement when considering contractor's application for extension of time. This is evidenced by the non-availability of Malaysian case law on this issue. In the United Kingdom, there is only one case that is relevant on this point. Therefore this research is carried out to identify the extent of the contractor's duty to prevent or reduce delay under the best endeavours standard of duty. This is basically a descriptive research and the methodology used is essentially based on case law analysis and review. The cases are retrieved from the Lexis Malaysia online database. Many of them are not construction contract cases but the principles are equally applicable to extension of time. The analysis revealed that, for the purpose of fulfilling the best endeavours requirement, the contractor principally needs to carry out all possible steps to reduce delay and comply with all contract administrator's instructions relating to it. However, the contractor is not required to incur substantial amount of money for that purpose and need not sacrifice his own interest.

## ABSTRAK

Lanjutan masa adalah remedi bagi pihak kontraktor jika terdapat kelewatan yang disebabkan oleh pihak klien atau keadaan semulajadi. Salah satu syarat dalam membenarkan kontraktor untuk diberikan lanjutan masa adalah kontraktor tersebut perlu membuktikan bahawa beliau telah melakukan *best endeavours* untuk menghalang atau mengurangkan implikasi daripada kelewatan tersebut. Malah, ia merupakan satu syarat sebelum lanjutan masa diberikan. *Best endeavours* boleh didefinisikan sebagai usaha yang terbaik. Istilah ini bukan sesuatu yang unik di dalam kontrak pembinaan. Ia juga sering digunakan di dalam pelbagai jenis kontrak yang lain. Walau bagaimanapun, secara praktiknya, tiada bukti yang menyatakan pentadbir kontrak mengutarakan isu ini dalam menguruskan permohonan lanjutan masa. Ia dikukuhkan lagi dengan ketiadaan kes undang-undang dari Malaysia berkaitan isu tersebut. Di United Kingdom, hanya terdapat satu kes sahaja yang relevan bagi isu ini. Oleh yang demikian, kajian ini dijalankan bagi mengenal pasti sejauh mana tugas seorang kontraktor dalam mengurangkan atau menghindar kelewatan di bawah tanggungjawab bagi melaksanakan *best endeavours*. Kajian ini adalah analisis deskriptif dan metodologi yang digunakan ialah berdasarkan analisis kes undang-undang. Semua kes tersebut diperolehi daripada pangkalan data Lexis Malaysia. Kebanyakan daripada kes ini bukan terdiri daripada kontrak pembinaan, tetapi prinsipnya telah diterapkan dan boleh diaplikasi dalam isu lanjutan masa. Hasil kajian mendapati bahawa bagi memenuhi tugas *best endeavours*, kontraktor hendaklah mengambil semua langkah yang sewajarnya untuk mengatasi kelewatan tersebut, dan perlu patuh kepada semua arahan pentadbir kontrak. Walau bagaimanapun, kontraktor tersebut tidak perlu untuk menanggung sejumlah wang yang besar dan tidak perlu mengorbankan kehendak mereka dalam melaksanakan tanggungjawab tersebut.