



The transition to practical completion in construction projects

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In construction project management generally, the period of practical completion is a critical point when the project transitions from the construction phase to the operational phase. This article discusses that transitional phase which is often the cause of [unnecessary disputes between the principal and the contractor](#).

What is practical completion?

Practical completion is widely agreed and defined to be the time at which the construction works are complete except for minor [defects or omissions](#).

Depending on the complexity of the project, the definition of practical completion will typically include a list of set criteria for when the works are practically complete. The definition of practical completion in the contract requires careful drafting and [negotiation by the parties](#).

Transitioning from the construction phase to the operational phase

In the construction phase of the project, the contractor typically bears the [construction risk](#) for areas such as:

- defects in workmanship;
- delays in delivery; and
- poor processes.

After the practical completion stage, risk in construction transfers from the contractor to the principal who then bears operational risks such as ensuring that an infrastructure project can generate income.

The period when project testing and commissioning occurs often signals the transitional phase from construction risk to operational risk. It is therefore critical for the parties to agree on the requirements for that transition.

It is important to seek legal advice to ensure that these transitional activities are clearly defined in your contract and that they are suitable for your specific project.

Transitional activities – project testing, commissioning and handover

Project testing

During the construction phase of the project, the contractor is responsible for carrying out defined tests and if required, must give the principal or their representative an opportunity to witness the testing being done. The contractor absorbs the costs of this testing.

This testing may include nominal amounts of fuel, electricity, oil, or other consumables. The parties will need to agree in advance whether these consumables will be free-issued by the principal – which is usually the case in large projects.

The labour cost to conduct the testing will generally be part of the agreed price in the contract.

If any testing is required during the operational phase after practical completion, the party responsible for the cost of this testing must be agreed in the contract.

Typically, the cost of the testing will be borne by the contractor if there is a defect during the warranty period that requires repairs and testing. In such cases, the contractor will typically be responsible for the cost of consumables such as fuel, oil, or electricity as well as the labour expenses.

Commissioning

Commissioning can be defined as the phase when all the work and activities undertaken or to be undertaken by the contractor have been completed. This would include all the work required to assemble, install and test the work in accordance with the requirements of the relevant contract.

Commissioning is part of the construction phase of the project and the principal will typically dictate the detailed commissioning requirements and acceptance criteria that they want for their intended project. The contractor must carefully review and negotiate the acceptance criteria before

the project can proceed and the contract is signed.

The contractor is then responsible for developing a commissioning plan and ensuring that they communicate this plan to the relevant stakeholders in the project.

Commissioning will sometimes include the handing over of operation and maintenance manuals, as-constructed drawings and warranties, or suitable training and training documents required to operate and maintain the new facility as intended.

In some contracts, this step may be separately defined as the “handover” stage (or practical completion handover), as discussed below.

Practical completion handover

Even if all testing has been successful and all commissioning activities have been done, and a practical completion inspection has been completed, the construction risk will still remain with the contractor until handover is done.

Handover usually signals the point in time when practical completion is achieved (often using a practical completion checklist) and is usually documented by a “Certificate of Practical Completion”.

Until such time that the certificate is received from the principal, the contractor will still be responsible for the site and have a presence on site. Once handover is complete, demobilisation of any remaining personnel and equipment should be swift as the risk for the facility is now with the principal.

Depending on the agreed contract, the principal will return some, if not all, the security being held during the construction phase, including bank guarantees or retention monies. In some complex projects, some security or retention money is held until the end of the warranty period.

It is important to note that even after practical completion handover, there may be minor defects or omissions in the works, but these should not prevent the intended facility from being reasonably capable of being used for the intended purpose. The generally accepted description of minor defect is one that can be corrected with minimal interruption to the principal or owner’s operations.

Causes of disputes during practical completion

As mentioned earlier, the definitions used in the contract require negotiation and agreement between the parties. All clarifications should be done before the contract is signed to avoid misunderstandings and delays at the critical point of finalising and handing over the project to the principal.

Another cause of disputes during the practical completion phase is minor defects.

As mentioned earlier, minor defects are acceptable when handover is done but they should not significantly inconvenience the principal. This can be a subjective assessment because it is a matter of opinion whether a defect is going to inconvenience the owner's operations or the facility.

It is recommended that a defects list is created as one of the commissioning documents where the defect and repair method can be detailed by the contractor and updated on a regular basis. The parties should agree on this list as early as possible before handover and it should continue to be a "live" document until defects are finalised.

Get help

Wambeti Legal can assist you with:

- support and advice on the issues to consider [during the tender phase](#);
- reviewing and providing legal and practical contract drafting advice to ensure the definitions of the different phases of practical completion are specific to your project needs;
- amending standard form contracts in a practical manner to suit your project needs;
- legal and drafting advice to ensure that there are no conflicting definitions.

Contacting Wambeti Legal

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