

# **ARCHITECT'S CERTIFICATION UNDER THE PAM CONTRACT 2006**

Prepared by Ar. Joseph Tan.

Sept 2014.

# INTRODUCTION.

**Q.** : What is “Architect's Certification”?

**A.** : Some have defined it as an “expression of the Architect's judgement, opinion or skill in a definite and tangible form, pertaining to matters he is empowered to certify under the terms and conditions of the building contract”<sup>1</sup>.

To this, this writer would also add that the expression of this judgement or opinion must be ;

1) grounded in fact and

2) be exercised independantly or impartially with respect to all Contractual Parties.

The end result of the Architect's Certification is an “**ARCHITECT'S CERTIFICATE**”.

<sup>1</sup> Please refer to Ar. Jerry Sum's Paper - “Architect's certificate under the PAM From of Contract, July 1999.

## INTRODUCTION, Cont.....

- Just as there is nothing to stop anyone from issuing “Certificates”, there is also nothing to stop an Architect from issuing innumerable types of different certificates for different circumstances.

Nevertheless, if an Architect expects any certificate issued by him to have any effect on either of the Contractual parties, i.e.; the Contractor and the Employer, during the course of the Contract, then the Architect has to ensure that ;

- a. he issues certificates only under circumstances where the Contract specifically empowers him to do so and
- b. the issuance of such a certificate is wholly in accordance with the Terms and Conditions of the Contract.

# FEATURES OF AN ARCHITECT'S CERTIFICATE

**Q.** : What are the essential features of an Architect's Certificate?

- A.** :
1. Must be tangible, or in other words, be in writing and in the form of a physical document.
  2. Must be dated – very often the certificate is issued to record an event or contractual status at a specific point in time.
  3. Must refer to the Contract or works to which the Architect is empowered issue a certificate.
  4. Must be directed / addressed and issued towards the relevant party.
  5. Must be sent, served or delivered in accordance with **Clause 36**.
  6. Must refer to a specific issue, i.e.; Extension of Time, Interim Payment, etc.,... for which the Architect is empowered to issue certificates.
  7. Must have a specific declaration (by the Architect), i.e.: “I hereby certify .....”.
  8. Must be signed by the “Architect” as named in the **Articles of Agreement**.

# TYPES OF ARCHITECT'S CERTIFICATES

Generally, the types of Certificates fall into 2 main categories :

1. Certificates which record status relative to the Building Contract, i.e.; a Certificate of Non-Completion.
2. Certificates which record status and grant :
  - a. financial benefits or direct payment from one party to another, i.e.; an Interim Certificate or
  - b. non-financial benefits, i.e.; a Certificate for Extension of Time.

**Q.** : How many different types of Architect's Certificates are there?

**A.** : By this writer's count, there are **16** specific Architect's Certificates under the PAM Contract 2006 (and the PAM Sub-Contract 2006).

Nevertheless, it is hoped that all Architects (and aspiring architects) shall take the time to run through the whole Contract (and accompanying sub-contract form) to verify this figure.

# LIST OF ARCHITECT'S CERTIFICATES

## Certificates which record status.

1. Certificate of Practical Completion (Clause 15.2).
2. Certificate of Partial Completion (Clause 16.1a).
3. Certificate of Sectional Completion (Clause 21.3).
4. Certificate of Non-Completion (Clause 22.1).
5. Certificate of Making Good Defects (Clause 15.6 & 30.6).
6. Certificate of Practical Completion of a Nominated Sub-Contractor's Work (Clause 27.2(f) & Clause 15.2 & 17.2 of the NSC Form).
7. Certificate of Sectional Completion of a Nominated Sub-Contractor's Work (Clause 27.2(f) & Clause 15.2 of the NSC Form).

# LIST OF ARCHITECT'S CERTIFICATES, Cont.

## Certificates which record status and grant financial benefit .

1. Interim Certificate (Clause 30.1).
2. Certificate for the disbursement of the proceeds from an insurance claim (Clause 20.A.4, 20.B.5 or 20.C.5).
3. Certificate for final payment to a NSC before final payment to a Contractor (Clause 27.7 & Clause 26.9 of the NSC Form).
4. Certificate of the amounts for which the Contractor has failed to provide proof of payment to a NSC (Clause 27.6 & Clause 26.5 of the NSC Form).
5. Penultimate Certificate (Clause 30.13).
6. Certificate for the release of the 1<sup>st</sup> half of the Retention Fund (Clause 30.6(c)).
7. Certificate for the release of the 2<sup>nd</sup> half of the Retention Fund (Clause 30.6(d)).
8. Final Certificate (Clause 30.14 & 30.15).

## Certificates which record status and grant benefit .

1. Certificate of Extension of Time (Clause 23.4).

## CERTIFICATE OF PRACTICAL COMPLETION (CLAUSE 15.2).

- Under the PAM Form 2006, there is now, a definition of when the works may be deemed as being practically completed (clause 15.1) and a specific procedure under which the Contractor is required to give WRITTEN NOTICE that the works are practically completed.
- Within 14 days of such a notice, the Architect has to carry out either of the following :
  - a. If it his opinion that the works are NOT practically completed, the Architect has to reply by WRITTEN NOTICE, informing of the reasons why the works are not practically completed.

O R

- b. If it his opinion that the works are practically completed, the Architect SHALL ISSUE the Certificate of Practical Completion (CPC).
- In any event, ALL Nominated Sub-Contractors are required to be notified by the Architect.
  - PAM Form 2006 now allows for Practical Completion with MINOR DEFECTS to the works subject to the Employer having full use of the completed works for their intended purpose and the Contractor having given their WRITTEN UNDERTAKING to complete and make good all defects within a reasonable time as specified by the Architect.
  - The DATE of the CPC shall be either ;
    - a. the date of receipt of the Contractor's written undertaking where there are minor defects OR
    - b. the date of receipt of the Contractor's written notice, where there are no minor defects.

## CERTIFICATE OF PRACTICAL COMPLETION, Cont.....

- Although not a requirement, it is the writer's opinion that issuance of the CPC should always be preceded by the following :
  - a. A reminder to the Employer that once Practical Completion is achieved and the CPC is issued, possession of the site and works, reverts back to the Employer.
  - b. Receipt of Written Confirmation from ALL the Consultants that the works under their respective scopes have been completed to their satisfaction.
  - c. A PHYSICAL INSPECTION of the Works.

## CERTIFICATE OF PRACTICAL COMPLETION, Cont.....

- Upon issuance of the CPC, the Contractor shall no longer be liable for Liquidated Damages (Clause 22.1) for any delays occurring within any period commencing from the date of Practical Completion.
- Upon issuance of the CPC, possession of the site and the works reverts back to the Employer along with the responsibility to provide security, to insure, maintain and clean the site and premises and to pay for all utility bills accruing to the site.
- The Contractor shall no longer have unimpeded access to the site and works and strictly speaking, would now require the Employer's consent to enter into the site.
- Commencing from the date of Practical Completion, the Architect is also, no longer empowered to issue Architect's Instructions for any Variation Orders (Clause 11.3) UNLESS the variation is required by any "Appropriate Authority or Service Provider", i.e.; the local authority or TNB, etc.,...
- The Defects Liability Period (DLP) commences from the Date of Practical Completion (Clause 15.4).
- The time frame for the completion of the Final Account commences from the Date of Practical Completion (Clause 30.10).
- The validity of the Performance Bond is required to extend up to 3 months from the Date of Practical Completion (Clause 37.3).

## CERTIFICATE FOR THE RELEASE OF THE 1<sup>st</sup> HALF OF THE RETENTION FUND (CLAUSE 30.6(c)).

- Upon issuance of the CPC, the Architect has 14 days to issue a Certificate for the release of the 1<sup>st</sup> half of the Retention Fund, from the Employer to the Contractor .
- The “Handbook for PAM 2006 Contract (First Edition)” notes that the Architect is to issue an Interim Certificate for the release of this 1<sup>st</sup> half of the Retention Fund.

This writer disagrees with the above based on the following :

- a. The relevant Clause in the Contract just mentions “a certificate for the release of one half of the Retention Fund” and not an “Interim Certificate”.
- b. **Clause 30.2** notes that the amount stated as due in an Interim Certificate is to comprise of the total value of work properly executed and the percentage of value of materials and goods (stated in the appendix) up to the date of the Contractor's payment application *LESS* any amount which may be retained by the Employer and any amounts previously certified.

It is the writer's opinion that all of the above are superfluous for the release of the 1<sup>st</sup> half of the retention fund as ;

- a. it is a known sum of money (which is not affected by the amount of work properly executed at the time of the issuance of the said certificate),
- b. is part of the works previously certified &
- c. already belongs to the Contractor (as it was previously, only being held in trust by the Employer).

## CERTIFICATE OF PARTIAL COMPLETION (CLAUSE 16.1(a)) & CERTIFICATE OF SECTIONAL COMPLETION (CLAUSE 21.3).

- Intrinsically, both are the same as the CPC.
- The Certificate of Partial Completion is issued when, before Practical Completion of the Works, the Employer wishes to possess and occupy part of the works (known as “the Occupied Part”). This possession and occupation though is SUBJECT to the CONTRACTOR'S CONSENT (Clause 16.1).
- Unlike for the Certificate of Practical Completion, there is no specific procedure under the PAM Form 2006 for the issuance of the Certificate of Partial Completion.

Upon obtaining the Contractor's consent, it is implied that the Employer may take possession of the Occupied Part. Within 14 days of such occupation, the Architect is obliged to issue the Certificate of Partial Completion for the relevant part. Within the Certificate, the Architect has to state the estimated value of the Occupied Part (Clause 16.1(a)).

- The DLP for the Occupied Part shall commence from the date of the Certificate of Partial Completion and the Liquidated Damages (as stated in the Appendix) has to be reduced by the ratio of the estimated value of the Occupied Part, to the Contract Sum (Clause 16.1(b) & 16.1(c)).
- Correspondingly, the Retention Fund has to be adjusted and reduced by the above ratio and within 14 days of issuance of the Certificate of Partial Completion, the Architect has to issue a certificate for the release of the 1<sup>st</sup> half of the adjusted / reduced Retention Fund (Clause 16.1(d)).

## CERTIFICATE OF PARTIAL COMPLETION (CLAUSE 16.1(a)) & CERTIFICATE OF SECTIONAL COMPLETION (CLAUSE 21.3).

- Intrinsically, both are the same as the CPC.
- The Certificate of Partial Completion is issued when, before Practical Completion of the Works, the Employer wishes to possess and occupy part of the works (known as “the Occupied Part”). This possession and occupation though is SUBJECT to the CONTRACTOR'S CONSENT (Clause 16.1).
- Unlike for the Certificate of Practical Completion, there is no specific procedure under the PAM Form 2006 for the issuance of the Certificate of Partial Completion.

Upon obtaining the Contractor's consent, it is implied that the Employer may take possession of the Occupied Part. Within 14 days of such occupation, the Architect is obliged to issue the Certificate of Partial Completion for the relevant part. Within the Certificate, the Architect has to state the estimated value of the Occupied Part (Clause 16.1(a)).

- The DLP for the Occupied Part shall commence from the date of the Certificate of Partial Completion and the Liquidated Damages (as stated in the Appendix) has to be reduced by the ratio of the estimated value of the Occupied Part, to the Contract Sum (Clause 16.1(b) & 16.1(c)).
- Correspondingly, the Retention Fund has to be adjusted and reduced by the above ratio and within 14 days of issuance of the Certificate of Partial Completion, the Architect has to issue a certificate for the release of the 1<sup>st</sup> half of the adjusted / reduced Retention Fund (Clause 16.1(d)).

## CERTIFICATE OF PARTIAL COMPLETION (CLAUSE 16.1(a)) & CERTIFICATE OF SECTIONAL COMPLETION (CLAUSE 21.3) Cont....

- Where the Works have been divided up in the Contract Documents into Sections (with possibly, different dates of Site Possession and Completion Dates for the various sections), the CERTIFICATE OF SECTIONAL COMPLETION shall be used for the Practical Completion of each respective section.
- The procedure under the PAM Form 2006 for the issuance of this Certificate of Sectional Completion is the same as for the application and issuance of the Certificate of Practical Completion.
- As for the Certificate of Partial Completion, the DLP for each section commences from the Date of issuance of the corresponding Certificate of Sectional Completion. Similarly, the Liquidated Damages and Retention Fund have to be adjusted to suit the Sectional Completion of each and every Section.

## CERTIFICATE OF PARTIAL COMPLETION (CLAUSE 16.1(a)) & CERTIFICATE OF SECTIONAL COMPLETION (CLAUSE 21.3) Cont....

**Q.** : In summary what's the difference between SECTIONAL COMPLETION and PARTIAL COMPLETION?

**A.** : Sectional Completion is PLANNED for even BEFORE the Contract is signed, as evidenced by the provision of different dates of commencement and Completion Dates in the Appendix.

In simple terms, Partial Completion is NOT planned for Before the Contract is signed.

**Q.:** Can the Employer enter an occupy part of the works without the consent of the Contractor and if a Certificate of Practical Completion has yet to be issued for the part occupied?

**A.:** YES, BUT only if the works have been delayed and a Certificate of Non-completion has been issued by the Architect AND such entry and occupation does not cause any unreasonable disturbance to the Contractor's progress for the remaining works (Clause 16.2).

## PENULTIMATE CERTIFICATE (CLAUSE 30.13).

- Upon issuance of the Certificate of Making Good Defects (CMGD) and NO LATER than 14 days after the date of the CMGD, the Architect MAY issue a Penultimate Certificate.
- Under PAM Form 2006, the Penultimate Certificate is purely for the release of the Retention Sums and any other outstanding sums from the Contractor to the Nominated Sub-Contractors and Nominated Suppliers (if any).
- Please note that the Penultimate Certificate under the PAM Form 2006 IS NOT THE SAME as the Penultimate Certificate under the PAM Form 1998.
- Although not stated in explicit terms, it is the writer's opinion that this penultimate certificate is similar to the certificate for the Final Payment to Nominated Sub-Contractors as referred to under **Clause 27.7**, the difference being that the penultimate certificate is dependant upon the issuance of the CMGD.

## CERTIFICATE FOR THE RELEASE OF THE 2<sup>nd</sup> HALF OF THE RETENTION FUND (CLAUSE 30.6(c)).

- Upon issuance of the CMGD, the Architect has 14 days to issue a Certificate for the release of the residue of the Retention Fund, from the Employer to the Contractor .
- The writer's comments regarding the use of an Interim Certificate for the release of the 1<sup>st</sup> half of the Retention Fund also apply for this certificate.

## CERTIFICATE OF NON-COMPLETION (CLAUSE 22.1).

- If the works remain uncompleted on the Completion Date (as stated in the Appendix) or any new new completion date as fixed by the Architect and the Architect is “of the opinion that the same ought reasonably so to have been completed”, the Architect is obliged to issue a Certificate of Non-Completion (CNC) (Clause 22.1).
- Issuance of the CNC is required ;
  - a. before the Employer can claim Liquidated Damages from the Contractor for any delay in completing the works (Clause 22,1) and
  - b. if the Employer intends taking partial possession of any part of the works WITHOUT the Contractor's Consent (Clause 16.2).
- The Liquidated damages which the Employer is entitled to claim shall be calculated at the rate set out in the Appendix for the period between the date of the CNC and the date of the CPC.
- Although the PAM Form 2006 is silent on the issue, it is the writer's opinion that verification of the status of the works on the Completion Date should entail a recorded site visit of the works on the appointed date. Although not required, a record of the outstanding works would reinforce the issuance of the CNC.
- FAILURE to issue the CNC on time or in a timely manner may render Time to be set at large for the Contract and the Employer may lose his right to claim for Liquidated Damages for Non-Completion.
- Where there is partial or sectional completion, it is the Architect's responsibility to adjust the Liquidated Damages for any remaining portion of the works which remain uncompleted.

## CERTIFICATE OF NON-COMPLETION Cont.... .

- Although not a requirement when issuing the CNC, the writer is of the opinion that the following should also be carried out :
  - a. To remind the Contractor that time is still of the essence.
  - b. To request the Contractor to prepare a programme for the speedy completion of all remaining works along with an estimated date as to when Practical Completion can be achieved.
  - c. To remind the Contractor to extend all insurance policies related to **Clauses 19 & 20**.
  - d. To remind the Contractor to extend the Performance Bond (if so required).
  - e. To notify all Nominated Sub-Contractors of the issuance of the CNC.

## CERTIFICATE OF NON-COMPLETION Cont.... .

- Although not a requirement when issuing the CNC, the writer is of the opinion that the following should also be carried out :
  - a. To remind the Contractor that time is still of the essence.
  - b. To request the Contractor to prepare a programme for the speedy completion of all remaining works along with an estimated date as to when Practical Completion can be achieved.
  - c. To remind the Contractor to extend all insurance policies related to **Clauses 19 & 20**.
  - d. To remind the Contractor to extend the Performance Bond (if so required).
  - e. To notify all Nominated Sub-Contractors of the issuance of the CNC.

## CERTIFICATE OF NON-COMPLETION Cont.... .

**Q.** : Can a CNC be revoked?

**A.** : YES. If the Architect subsequently issues a Certificate of Extension of Time which has the effect of fixing a new Completion Date LATER than the date stated in a CNC previously issued, this Certificate of Extension of Time would automatically REVOKE the CNC issued earlier.

The Employer would be required to adjust the Liquidated Damages to suit this new Completion Date. If the new Completion Date results in the Employer deducting MORE Liquidated Damages than he is now entitled to, then the balance would have to be re-paid to the Contractor within the Period of Honouring Certificates (as stated in the Appendix), commencing from the date of the Certificate of Extension of Time.

**Q.** : During the course of Construction under PAM Form 2006, can there be more than 1 no. CNC's?

**A.** : YES, as seen from above. If a Certificate of Extension of Time is issued AFTER the issuance of a CNC and ;

a. the Contractor still fails to complete the works within the new Completion Date and

b. there are no further extensions of time,

then the Architect is again obliged to issue a further CNC.

## CERTIFICATE OF EXTENSION OF TIME (CLAUSE 23.4).

- Unlike PAM Form 1998, where Extension of Time was GRANTED by the Architect, in PAM Form 2006, Extension of Time is CERTIFIED by the Architect (Clause 23.4).
- Also unlike PAM Form 1998, there is now a specific procedure (and time frame) for the application of Extension of Time (Clause 23.1).

If a Contractor FAILS to follow the procedure and the time frame, he may lose his rights to claim for an Extension of Time.

If an Architect FAILS to follow the procedure and act within the specified time frame, time may be rendered at large.

- If a Certificate of Extension of Time is issued and a new Completion Date is fixed, the Architect is obliged to notify all Nominated Sub-Contractors (if any) (Clause 23.7).
- If a Relevant Event occurs after the issuance of the CNC, delaying the works, the Architect shall still assess any application submitted in the prescribed form and any extension of time so certified is to be added on to the original Completion Date (Clause 23.9).
- At any time, WITHIN a period of 12 weeks from the Date of Practical Completion, the Architect MAY review and revise any Completion Date previously fixed as long as the adjustment does not result in a decrease in the extension of time previously certified (Clause 23.10).
- **As the subject of Extension of Time is both extensive and problematic, the writer is of the opinion that it is deserving of a separate session.**

## INTERIM CERTIFICATE (CLAUSE 30.1 & 30.2).

- Possibly the most important certificate as ;
  - a. it involves the payment of money (which is always, a potential source of disagreement) and
  - b. it is the “most issued” certificate – for most jobs, at least once a month.
- Under the PAM Form 2006, there is now a SPECIFIC REQUIREMENT for the Contractor to submit a PAYMENT APPLICATION at the Interim Claim Interval stated in the Appendix, to the Architect (and Quantity Surveyor) (Clause 30.1).
- Upon receipt of the Application (and FULL DETAILS), the Architect (with the Quantity Surveyor assisting), has a MAXIMUM of 21 days to issue a corresponding INTERIM CERTIFICATE to the EMPLOYER (with a copy to the Contractor).

Unlike the PAM Form 1998, the onus of issuing and presenting the certificate now rests with the Architect.

- In addition to issuing the Interim Certificate, the Architect is also required to ;
  - a. DIRECT the Contractor as to the amounts payable to any of the Nominated Sub-Contractors and Nominated Suppliers under the Interim Certificate and
  - b. INFORM / NOTIFY the relevant Nominated Sub-Contractor and Nominated Supplier as to the amounts due to them under the Interim Certificate.

## INTERIM CERTIFICATE Cont....

- It is this writer's practice prepare a covering letter for each interim certificate to record the delivery of the original copy to the Employer and a further copy to the Contractor.
- Upon receipt of the Interim Certificate, the Employer is required to PAY THE AMOUNTS CERTIFIED to the Contractor within the Period of Honouring Certificates as stated in the Appendix.
- If the Contractor FAILS to submit a Payment Application, it can be deemed that he has waived his rights for the issuance of an Interim Certificate (and corresponding payment) for the relevant interval. In such an instance, the decision as to whether an Interim certificate shall be issued rest solely with the Architect.
- If an Employer FAILS to honour the Certificate (less any Liquidated Damages or set-off to which he is entitled to), the Contractor may ;
  - a. (subject to the giving of notice), SUSPEND the work (Clause 30.7) OR
  - b. charge INTEREST based on a rate of 1% + Maybank BLR on the outstanding amount till the date payment is made (Clause 30.17) OR
  - c. DETERMINE (Terminate) his own employment (Clause 26.1(a)).

## INTERIM CERTIFICATE Cont....

**Q.** : What figures go into the Interim Certificate?

**A.** : Obviously, the Amount Payable to the Contractor but the PAM Form 2006 requires us to arrive at this figure, based on the following :

1. Total Value of Work Properly Executed up to the date of the Payment Application

+

2. The Percentage Value (As stated in the Appendix) of materials and goods as delivered to site, up to the date of the Payment Application subject to these materials and goods NOT being brought prematurely

*L E S S*

3. The Retention which the Employer is entitled to retain (“Retention Fund”) (Clause 30.5)

*L E S S*

4. Any Amounts previously certified for payment

5. = **AMOUNT PAYABLE.**

## INTERIM CERTIFICATE Cont....

**Q.** : Do we deduct for the Liquidated Damages in the Interim Certificate?

**A.** : NO. Any amounts which the Employer is entitled or claim as Liquidated Damages (**Clause 22.2**) or set-off (**Clause 30.4**) ARE NOT TO BE incorporated or included into the Interim Certificate.

### NOTE.

- For Liquidated Damages arising from Non-Completion, PAM Form 2006 states that “The Employer MAY recover such sum as a debt. ....”, i.e.; the imposition of Liquidated Damages is the Employer's prerogative.
- For Set-Off by the Employer, this is only allowed for under very specific clauses and is subject to the Architect giving “Complete Details of their assessment of such set-off” to the Contractor.
- The GIVING OF A WRITTEN NOTICE (according to the prescribed procedure) is always required prior to any deduction for Liquidated Damages or Setting-Off.

**Q.** : Who does the Retention Fund belong to?

**A.** : The Contractor, Nominated Sub-Contractors and Nominated Suppliers BUT the monies in this Fund are to be held in trust by the Employer until their release is certified by the Architect (**Clause 30.6(a)**).

Although held in trust by the Employer, the Employer has NO OBLIGATION to invest the money.

PAM Form 2006 would also seem to allow for the setting up of a SEPARATE TRUST Account but case law would seem to suggest that this is only required where there is a threat of insolvency on the part of the Employer.

## INTERIM CERTIFICATE Cont....

**Q.** : If there is an ERROR in the Interim Certificate, can the Architect REVOKE or REVISE the Certificate?

**A.** : DEPENDS.

If the error is clerical, computational or typographical, i.e., **typing in RM14,449.00 instead of RM14,994.00**, then YES, the Architect is entitled to revise and correct the certificate **(Clause 30.3)**.

For all other types of errors, i.e.; mistakes in valuation, etc.,..., then NO. Any corrections or modifications must be made in a subsequent (or “later”) certificate.

# INTERIM CERTIFICATE Cont....

## SUMMARY OF ITEMS REQUIRED FOR AN INTERIM CERTIFICATE (WRITER'S OPINION).

1. Indication of the *type* of certificate being issued.
2. Certificate No. .
3. Date.
4. Project title or reference.
5. The Contractual Parties to whom the Certificate is to be presented or copied to.
6. The Architect's declaration, i.e.; "I / We hereby certify that the following amounts are due from the Employer to the Contractor,.....".
7. Total value of the work properly executed at the time of the payment application or valuation.
8. The percentage value of the materials and goods delivered to site but which have yet to be incorporated and which have not been delivered prematurely at the time of the payment application or valuation.
9. The sum which the Employer is entitled to retain ("Retention Fund").
10. The amounts previously certified by the Architect for payment.
11. The Amount Payable
12. The Architect's signature.

Although strictly speaking, not a requirement, it is also advised that the following should also be indicated :

- a. The Contract Sum (or *Adjusted* Contract Sum).
- b. The Limit of Retention Sum (Clause 30.5).



# INTERIM CERTIFICATE Cont....

## SAMPLE OF AN INTERIM CERTIFICATE – TOP HALF.

### **Papasayapemaju Arkitek**

*No.101, Jalan Se-Hala, Taman Budak Bodoh,  
Kuala Lumpur  
Tel. : 03 00000001  
Fax. : 03 00000002*

### **INTERIM CERTIFICATE**

Certificate No. : 007/018  
Date : 01.01.2099

1. Type of Certificate

2. Certificate No.

3. Date

Project Title : PROPOSED 108 STOREY APARTMENT TOWER ON LOT 007, MUKIM OF GEPONG, KUALA LUMPUR, .....

4. Project Title  
Or Project No.

Project No. : 007

Main Contractor : **Abangsayapemaju Construction Sdn. Bhd.,**  
No.102, Jalan Se-Hala, Taman Budak Bodoh, Kuala Lumpur

5. Contractual Parties to whom the  
Certificate is to be  
presented / copied to

Employer : **Pemajugajahputih Sdn. Bhd.,**  
No. 103, Jalan Se-Hala, Taman Budak Bodoh, Kuala Lumpur

Contract Date : 01.01.2090

Contract Sum : RM 1,000,000.00

Contract Sum (OPTIONAL)

Approved Variations : -

Adjusted Contract Sum : -

Limit of Retention Sum : RM 50,000.00 (5 % of Contract Sum)

Limit of Retention Sum (OPTIONAL)

# INTERIM CERTIFICATE Cont....

## SAMPLE OF AN INTERIM CERTIFICATE – BOTTOM HALF.

Under the terms and conditions of the Main Contract, we hereby certify that payment as shown is due from the Employer to the Contractor. \_\_\_\_\_

- **Gross Value of Works Executed** incl. works by Nominated Sub-Contractors : RM 200,000.00  
comprising of the following Nominated Sub-Contracts ;
  - Lift Installation : RM 5,000.00
  - Electrical Works : RM 5,000.00
  - Plumbing Works : RM 2,000.00
  - Fire-Fighting Services : -
  - \_\_\_\_\_ : \_\_\_\_\_
  - \_\_\_\_\_ : \_\_\_\_\_

6. Architect's Declaration

7. Value of Work Properly Executed

8. % Value of materials and goods on site

- **Gross Value of Materials on Site (at 75%)** : RM 5,000.00

**Total Value of Works & Materials** : RM 205,000.00

- **Less Retention as may be retained by the Employer** <sup>1</sup> : (RM 20,500.00 )
- **Less total amount stated as payable** under the Interim Certificates previously issued, up to and including Interim Certificate No. 007/017 : (RM 180,000.00 )

9. Retention

10. Amounts previously Certified

**Amount for payment due under this Certificate** : RM 4,500.00

(in words) : Ringgit : Four Thousand And Five Hundred Only \_\_\_\_\_

11. Amount Payable

Signed by  
(for Papisayapemaju Arkitek)

Nama Bin Kontrak  
Ar. Nama Bin Kontrak

12. Architect's Signature

## FINAL CERTIFICATE (CLAUSE 30.14).

- The Architect has to issue this certificate ;

a. within 21 DAYS after the Period of Honouring Certificates for the payment of the Penultimate Certificate, i.e.; AFTER directing the Contractor to pay all outstanding amounts to Nominated Sub-Contractors and Nominated Suppliers

OR

b. within 28 DAYS after the CMGD has been issued, in the event that NO Penultimate Certificates are issued.

- The Final Certificate is to state :

i. THE FINAL ACCOUNT

*L E S S*

ii. The Total Sums certified under previous payment certificates

iii. = The Amount Payable.

If  $i. > ii.$ , then the amount payable is from the Employer to the Contractor.

If  $i. < ii.$ , then the amount payable is a debt which is to be recovered from the Employer from the Contractor.

## FINAL CERTIFICATE Cont....

- ALL of the above, pre-supposes that the FINAL ACCOUNT has been agreed to by all parties. Indeed, it would seem that WITHOUT the Final Account, there can be no Final Certificate.
- Please NOTE that there is a strict time limit for the submission of (along with all supporting documents), the checking of, the disputing of and agreement to the Final Account.
- The Final Account is required to show all of the following (Clause 30.11):
  - a. Adjustments made to the CONTRACT SUM,
  - b. Amounts to which the Architect considers the Contractor is entitled to under “express provisions of the Contract”, i.e.; loss and/or expense caused under matters affecting the regular progress of works (Clause 24.0),
  - c. The Omission of all P.C. Sums (and profit & attendance) in the Contract Documents and the Addition of all amounts payable to Nominated Sub-Contractors and Nominated Suppliers (together with the pro-rated profit & attendance) &
  - d. The adjustment of Provisional Sums or omission of Provisional Sums which were not expended.
- The following ARE NOT TO BE included in the Final Account :
  - a. Liquidated damages imposed by the Employer,
  - b. any set-off by the Employer as allowed for under the Contract &
  - c. Any interest which is required to be charged on either of the Contractual Parties.

## FINAL CERTIFICATE Cont....

- EXCEPT for issues such as the Liquidated Damages, Set-off and Chargeable Interest AND UNLESS a WRITTEN NOTICE for ARBITRATION has been lodged, the FINAL ACCOUNT, once agreed upon shall be deemed to be CONCLUSIVE unless there is evidence of :
  - a. fraud, dishonesty or fraudulent concealment OR
  - b. any arithmetical errors in the computation.
- Under PAM Form 2006, there does not seem to be an explicit mechanism to pay the Contractor for any increase in Contract Sum NOR the recovery of debt by the Employer if there is a decrease in the Contract Sum UNTIL AFTER the issuance of the CMGD, unlike the PAM Form 1998 which allowed for a penultimate certificate.

Whilst **Clause 30.15** would imply that the Architect has the choice of issuing the Final Certificate before the issuance of the CMGD (“The Architect shall NOT BE OBLIGED to issue the Final Certificate before the issuance of the Certificate of Making Good Defects”), **Clause 30.14** makes it clear that the Final Certificate shall be issued only AFTER the issuance of the CMGD.

This may present an UNFAIR situation when there are large adjustments to the Contract Sum but the Final Account is settled very soon after the issuance of the CPC, i.e.; one of the parties may have to wait a long time to be paid substantial amounts.

- Similarly, PAM Form 2006 also does not indicate what should happen if the Final Account remains unsettled between all parties even after 28 days from the issuance of the CMGD.

## FINAL CERTIFICATE Cont.....

- The Final Certificate once issued, normally signifies the DISCHARGE by the Contractor of ALL his CONTRACTUAL OBLIGATIONS.
  
- The Final Certificate, once issued ;
  - i. shall be CONCLUSIVE on the FINAL VALUE OF THE WORKS,  

BUT
  - ii. it shall NOT BE CONCLUSIVE EVIDENCE that any work, material and goods in in accordance with the Contract **(Clause 30.16)**.

## FINAL NOTE.

- Always remember what the ultimate intention is behind the issuance of any certificate.
  - Always verify the facts 1<sup>st</sup>, prior to issuing any certificate.
  - Always check against the relevant Clauses of the Contract, prior to issuing any certificate.
  - Please remind ALL Employers of the following :
    - a. If an Employer FAILS OR NEGLECTS to PAY a Contractor the amount due under any Certificate within the Period of Honouring Certificates
    - OR
    - b. if an Employer INTERFERES WITH or OBSTRUCTS the issuance of any certificate by the Architect,
- The Contractor MAY DETERMINE his own Employment (Clause 26.1(a) & 26.1(b)).

**THANK YOU.**