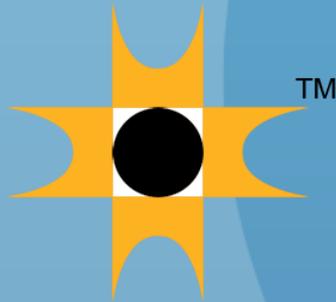


PAM CONTRACT 2018

BRIEFING ON KEY CHANGES

23rd February 2019

Kuala Lumpur,



TM

PAM **PERTUBUHAN AKITEK MALAYSIA**
MALYSIAN INSTITUTE OF ARCHITECTS

BACKGROUND

In view that the **PAM 2006 Forms of Contract** were launched in **2007** and has been in used for more than 8 years, PAM as a matter of good practice, decided to set up a Contract Review Committee in **August 2015** to review the PAM 2006 Forms. The objective was to improve the Forms taking into consideration of the feedback from the stakeholders and changes in the industry.

*It must be noted that the intention of this committee was not to rewrite the whole Contract but rather to update or improve whichever parts that were considered necessary.

Stakeholders and sub-committee members were approached for their feedback. The followings were some issues that were raised.

- CIPAA • Performance bond
- EOT • Payment on determination
- Document transmission • Retention sum
- GST • ADR

BACKGROUND

After taking into consideration of the initial feedback from the stakeholders and suggestions by the committee members, the draft amendments were ready since **September 2016**, after a series of meetings.

Due to an ongoing court case (IRDK Ventures Sdn Bhd vs Econpile) which may have an impact on the key conditions of contract, the committee decided to wait for the court decision before finalising the draft. The progress of the sub-committee was put on hold for almost a year. The committee decided to proceed to finalise the amendment in **August 2017** in view that the case is expected to take much longer time to conclude (Note: The case is still not concluded as at the date of this presentation)

BACKGROUND

The draft revised Form completed in **December 2017** was sent to stakeholders and PAM members for their review. A dialogue was held in PAM on **17 January 2018** to brief on the key changes and also to solicit further feedback.



BACKGROUND

Feedback was received from various stakeholders on the draft.

The committee considered all the comments and held a workshop with the key stakeholders on **10th February 2018 to deliberate on the comments. Based on the discussions, the committee made further amendments to the draft.**



BACKGROUND

Another roundtable with the key stakeholders was held on **17th March 2018** to brief them on changes made after the workshop and reasons for not considering some of the comments.

The meeting agreed on the direction forward and also a few additional conditions that warranted consideration. The final draft was prepared and the **PAM 2018 Forms of Contract (With & Without Quantity and SubContract)** were launched on **11th April 2018** in the presence of the leaders of the industry, including CIDB, MBAM & REDHA



Stakeholders that Responded & Participated

- **Association of Consulting Engineers, Malaysia (ACEM)**
- **Royal Institute of Surveyors, Malaysia (RISM)**
- **Real Estate Development and Housing Association Malaysia (REHDA)**
- **Master Builders Association, Malaysia (MBAM)**
- **BK Entrusty**
- **Al-Ambia Sdn Bhd**

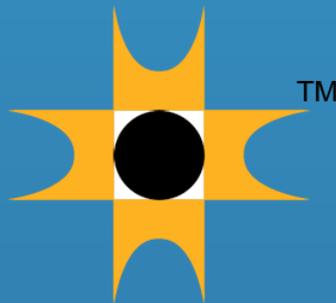
Chronology

The following are the chronology leading to the drafting of the PAM 2018 Form of Contract:-

- 10-09-2015 (1st Kick Off Meeting)
- 22-10-2015
- 19-11-2015
- 21-01-2016
- 05-03-2016
- 18-06-2016 (Reappointment Under New Council)
- 20-08-2016 Draft Ready (20-09-2016)
- Meeting on Hold due to court case (1 year)
- 19-08-2017 (Meeting recommenced)
- 14-09-2017 (Committee to also review KLRCA Forms of Contract that was launched in mid August 2017)
- 30-09-2017
- 05-12-2017
- 19-12-2017
- 16-01-2018
- 17-01-2018 (Soft Launching & Dialogue with Stakeholders & Members)
- 10-02-2018 (Workshop with Stakeholders)
- 28-02-2018
- 17-03-2018 (Roundtable with Stakeholders)
- 11-04-2018 (Official Launching of PAM 2018 Form)

PAM Contract 2018

**Summary of Key Revisions and
Changes between the PAM Contract
2018 and the PAM Contract 2006
(With and Without Quantity)**



PAM PERTUBUHAN AKITEK MALAYSIA
MALAYSIAN INSTITUTE OF ARCHITECTS

Summary of Key Revisions and Changes between The PAM 2018 Forms of Contract and the PAM 2006 Form of Contract (With and Without Quantity)

PAM Contract 2006 : 38 Clauses

PAM Contract 2018 : 40 Clauses

Summary of Key Revisions and Changes between The PAM 2018 Forms of Contract and the PAM 2006 Form of Contract (With and Without Quantity)

No.	CLAUSE No.	REVISIONS TO THE PAM 2018 (relative to the PAM 2006) MAIN FORM OF CONTRACT	
		WITH QUANTITIES (WQ)	WITHOUT QUANTITIES (WoQ)
01.	Article 7 Definitions	Omission of "Limit of Retention Fund " from the list of definitions.	As for WQ
02	Article 7 Definitions	For "Service Provider", replace "telephone" with "telecommunication"	As for WQ.
03.	Cl. 3.3 Copies of Documents	<p>Issuance of Contract Drawings and unpriced Contract Bills to now take place within 14 days of Award of Contract.</p> <p>Issuance of signed Contract Documents to the Contractor to take place within 14 days of execution of the Contract.</p> <p>Major Change</p>	As for WQ.
04.	Cl. 11.1 Definition of Variation	New addition (cl. 11.1(d)(v)) includes "execution of temporary works" under cl. 11.1(d). Major Change	As for WQ
05.	Cl. 11.5 Valuation of Variation and Provisional Sums	<p>Upon completion of the Variation, Contractor now required to submit complete details and particulars to Architect and Q.S. for valuation.</p> <p>If the details are insufficient, revision now gives a time frame for Q.S. (28 days) to inform of the deficiency and ask for the submission of additional info. (within 28 days).</p> <p>If there are sufficient details, revision now sets a time frame (30 days) for the Q.S. to value the Variation.</p>	<p>As for WQ but submission is only to Architect.</p> <p>As for WQ but action is by Architect.</p> <p>As for WQ but valuation is by Architect.</p>

No.	CLAUSE No.	REVISIONS TO THE PAM 2018 (relative to the PAM 2006) MAIN FORM OF CONTRACT	
		WITH QUANTITIES (WQ)	WITHOUT QUANTITIES (WoQ)
06.	Cl. 11.6(f) Valuation Rules.	Revision now sets a time frame (60 days) for the valuation of work based on Provisional Quantities.	As for WQ
07.	Cl. 11.9 Variation and Additional Expenses added to the contract Sum.	Revision notes that valuation of additional expenses to be carried out by the Architect and Q.S.	No Change compared to PAM 2006.
08.	Cl. 15.2 Certificate of Practical completion	When giving notice that the Works are not practically completed, the Architect is now required to specify the incomplete works or the conditions which have not been met. Major Change	As for WQ.
09.	Cl. 16.1(d) Possession of Occupied Part With Consent	Revision omits reference to the "Limit of Retention Fund".	As for WQ
10.	Cl. 21.3 Sectional Completion dates	Revision confirms the provision in the Contract which apply for Sectional Completion.	As for WQ
11.	Cl. 23.4 Certificate of Extension of Time	Revision requires the Architect to either give reasons for rejecting a Contractors application for EoT OR give details to accompany the Cert. of EoT. Major Change	As for WQ
12.	Cl. 23.6 Contractor to Prevent Delay	Revision no longer requires that any/all measures that a Contractor may reasonably take to prevent or reduce delay, have to be to the Architect's satisfaction.	As for WQ
13.	Cl. 23.8(e) Relevant Event	New event added for when a Contractor does not receive documents under Cl. 3.3(a) and 3.3(b) (Contract Drawings and Bills) in time. Major Change	As for WQ

No.	CLAUSE No.	REVISIONS TO THE PAM 2018 (relative to the PAM 2006) MAIN FORM OF CONTRACT	
		WITH QUANTITIES (WQ)	WITHOUT QUANTITIES (WoQ)
14.	Cl. 23.9 Extension of Time after issuance of Certificate of Non-Completion	Confirmation of the conditions for granting of EoT when a relevant event occurs after the issuance of the CNC.	As for WQ
15.	Cl. 23.10 Architect's review of Extension of Time after Practical Completion.	Revision strikes out the explicit qualification that the Architect is not obliged to review any EoT previously granted.	As for WQ.
16.	Cl. 24.3(a) Matters materially affecting the regular Progress of the Works.	Revisions adds in to the list of matters, the Contractor not having received the documents under Cl. 3.3(a) and 3.3(b) (Contract Drawings and Bills) in time. Major Change	As for WQ
17.	Cl. 25.4(d) Rights and Duties of Employer and Contractor,	Clarifies the payment which an Employer is required/entitled to pay/withhold in the event of the employment of the Contractor being determined.	As for WQ.
18.	Cl. 25.6 Final Account Upon determination	Revises the time frame for the submission of the Final account of the Determined Contract (3 months from the availability of the final cost). Major Change	As for WQ
19.	Cl. 27.7 Final Payment to Nominated Sub-Contractor	Omits reference to "Limit of Retention Fund"	As for WQ.
20.	Cl. 27.14 Contractor permitted to tender for P.C. Sums	Requires that the omission of any P.C. Sum from the Contract AND the awarding of any works related to such P.C. Sums be subject to the Contractor's consent. Major Change	As for WQ

No.	CLAUSE No.	REVISIONS TO THE PAM 2018 (relative to the PAM 2006) MAIN FORM OF CONTRACT	
		WITH QUANTITIES (WQ)	WITHOUT QUANTITIES (WoQ)
21.	Cl. 30.4 Set-off by Employer	Revision to recognize that only part of the amount which ins to be set-off may be in dispute and allows for the employer to set-off the parts which are no under dispute. Major Change	As for WQ
22.	Cl. 30.5 Retention Fund	Removes the "Limit of Retention Fund" and replaces it with a straight percentage of the value of work and materials, certified as completed/incorporated/delivered. Major Change	As for WQ
23.	Cl. 34 Mediation	Re-arrangement and numbering of existing ADR provision.	As for WQ
24.	Cl. 35 Expert Determination	Wholly new clause and provision for ADR. Major Change.	As for WQ.
25.	Cl. 36 Adjudication	Re-arrangement and numbering of existing ADR provision	As for WQ
26.	Cl. 36.1 Set-off Dispute referred to Adjudication	Revision restricts adjudication to only disputes arising from set-off under Cl. 30.4. Major Change	As for WQ
27.	Cl. 37 Arbitration	Re-arrangement and re-numbering of existing ADR provision.	As for WQ
28.	Cl. 38 Notice	Allows for the use of "electronic transmission". Major Change	As for WQ

No.	CLAUSE No.	REVISIONS TO THE PAM 2018 (relative to the PAM 2006) MAIN FORM OF CONTRACT	
		WITH QUANTITIES (WQ)	WITHOUT QUANTITIES (WoQ)
29.	Cl. 39.5 Payment from the Performance Bond	Revision requires the Architect to certify the Contractor's breach before the employer may call on the Performance Bond. Major Change	As for WQ
30.	Cl. 39.6 Return of Performance Bond	Revision revises the time frame for the return of the Performance Bond to the Contractor when he determines his own employment from 28 to 14 days.	As for WQ.

Note.

- The above revisions does not include any re-numbering of clauses, correction of any previous typographical errors or updating of references to the current Contract/Sub-contract Form.

Other Issues Considered but not Incorporated in the Amendments

CIPAA (Construction Industry Payment & Adjudication Act)

The Construction Industry Payment & Adjudication Act 2012 is a piece of legislation which was introduced into the Malaysian Construction Industry in 2014. The purpose of this Act was for the resolution of disputes relating to payments within the Construction Industry,

Although some other forms of Malaysian Building Contracts have made mention of the Act, the PAM Contract 2018 remains silent with regards to the Act. It must be emphasized clearly though that this silence should not be interpreted as either ignorance or a disregard of the Act as the following points should also be taken into account :

CIPAA is NOT the only method of resolving disputes regarding payment which is available to any of the Contractual Parties.

The PAM Forms of Contract (both 2006 and 2018) also have Alternative Dispute Resolution Procedures (ADR) which may be employed and it is up to the discretion of the disputing parties to choose the method (either through CIPAA or within the Form of Contract) which they feel, suits them best.

Other Issues Considered but not Incorporated in the Amendments

CIPAA (Construction Industry Payment & Adjudication Act)(cont'd)

The PAM Forms of Contract do NOT PRECLUDE the use of CIPAA in resolving disputes related to payment. It must be remembered that CIPAA is an Act of Parliament which is incorporated into the Malaysia legal system and using the PAM Contract 2006 as an example, Clause 38.1 – Governing Law, clearly states that the law governing the Contract shall be the *Laws of Malaysia*. As long as the Act is not repealed, the provisions under CIPAA are still available, irrespective of whether it is mentioned specifically or not in any of the PAM Forms of Contract.

ADR was historically conceived as a cheaper, speedier form of resolving disputes without having to involve lawyers, the courts/legal system whilst affording a degree of finality to the resolution for the benefit of the Contractual Parties.

With the ever increasing presence of lawyers and claims consultants even in minor disputes along with disputes being moved up the legal chain all the way into the Federal Court over very lengthy periods, the writer leaves it up to the audience to decide on the efficacy of the current ADR provisions as allowed for under legislation (CIPAA) or under the contract.

Nevertheless, given that there are DISPUTES arising with the Dispute Resolution Process, there is a possibility that there will be changes to the process and it may be less than prudent to tie any Standard Building Contract Form to any specific process which may be subject to these changes.

Other Issues Considered but not Incorporated in the Amendments

GST (Goods & Services Tax)

When GST was implemented on 1st April 2015, many wrote to PAM to enquire how this would affect the PAM Form of Contract.

Quite a few stakeholders and members also suggested for PAM to review the PAM Forms of Contract to include the provision of GST. This issue was hotly debated within the committee and there were differing views.

A tax consultant was also brought in to advise the committee on this (5th March 2016).

Other Issues Considered but not Incorporated in the Amendments

GST (Goods & Services Tax)

The Committee concluded that GST to be excluded based on the following grounds:-

- 1. GST is a separate statutory obligation by the various parties. It would not be advisable for PAM Form, which is a Standard Form to be amended to cater for GST, as not all the contracting parties are eligible to claim. This is to be treated separately by the contracting parties based on their respective statutory obligation similar to tax etc. (i.e. The Contractor is empowered by the ACT to collect tax on behalf of the Royal Malaysian Customs Department and the Employer is required to make the tax as a consumer who received the goods or services).**
- 2. The certification under the contract is to be limited to only works executed etc. In addition to that, failure to pay GST portion of the payment is not a breach under the contract but a breach under the law.**
- 3. The Architect and the consultants should not be burdened with administering the computation of GST as they may not be privy to all the necessary information and it is also not their duty under the law.**

The decision by the committee is proven to be correct as GST is now abolished and replaced with SST.

Other Issues Considered but not Incorporated in the Amendments

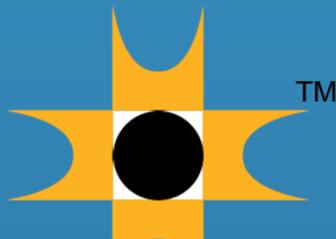
Administrative Procedures

There were quite a few comments received from MBAM and REDHA which are administrative in nature.

PAM Forms of Building Contract are standard forms and should not include detail prescriptive procedures that may vary from project to project, depending on the size and complexity. As such, all the comments on administrative and procedural matters were not considered in the amendment as they would make the standard forms very cumbersome. Conditions for specific projects should be incorporated as special conditions in the tender.

PAM Contract 2018

**Detail Explanation on the Key Revision
of The PAM Contract 2018
(With Quantity)**

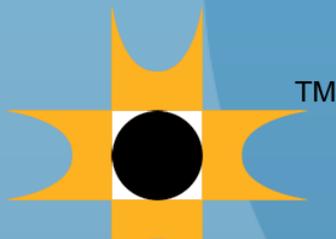


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QUESTION & ANSWER



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