

Construction Contract and Management Issues

In this 4th quarter issue of Master Builders Journal for 2017, BK Burns & Ong Sdn Bhd, a subsidiary of **BK Asia Pacific**, an international construction consultancy group providing project, commercial and contractual management services joins with **Entrusty Group**, a multi-disciplinary group, collectively named **BK Entrusty**, to present **a new series of construction contract and management articles** in areas related to project, commercial, contracts, risks, quality, value and the like. This Article on **“Subcontracting – Issues and Implications”**, in three parts, Part 1 of 3 in the 2nd Quarter, Part 2 of 3 in 3rd Quarter and Final Part 3 of 3 in this last Quarter of 2017.

1. INTRODUCTION

In this three parts article, BK Entrusty aims to provide readers with a better understanding of subcontracting in the Malaysian Construction Industry and its pertinent issues and implications, by the following article contents;

1. Introduction
2. What is Subcontracting?
3. Why Subcontracting?
4. Subcontract provisions
5. Pertinent issues and their implications
6. Conclusion

This final part on Subcontracting deals with the last two pertinent issues and their implications, which are Payments and Set-offs and Defective Works.

[CONTINUES WITH PART 3 OF 3 BELOW]

vii. Payments and Set-offs

Amongst the pertinent subcontracting issues, non or lack of progressive payments, has been a rampant practice despite cash flow being life blood of the construction industry.

Employers usually make progressive or interim payments to contractors for their works, which the latter likewise then make payment to their subcontractors and suppliers according to the monthly or stage valuation and certification by the project consultants. A written payment application or claim by the subcontractor concern is usually a prerequisite prior to certification and payment, accordingly.

Under the Malaysian standard subcontract forms, payment by a contractor to its subcontractors is made in the following manner:

- PAM NSC s/cl 26.3 ~ payment within 7 days upon expiry of Period of Honouring Certificate;
- JKR NSC s/cl 35 ~ payment within 14 days of any payment from the Government under the Main Contract;
- IEM NSC s/cl 31 (c) ~ payment within 30 days from date of certification by the Engineer;
- CIDB.B (NSC) s/cl 28.3 (b) ~ payment within 7 days upon expiry of Period of Honouring Certificate or upon Contractor having received payment from Employer; whichever is earlier.

Under PAM 06 Main Contract, Cl. 27.5 provides for Nominated Subcontractor (“NSC”) to be paid by the Contractor within 7 days after Period of Honouring Certificate, in failing which under Cl. 27.6 and NSC cl. 26.6, the Employer can pay directly to NSC. However any direct payment do not create a privity of contract between the Employer and NSC. Similarly, under JKR NSC form, Cl. 35, CIDB MC Cl. C3 and IEM MC Cl. 57.3(11), the provisions allow for such direct payment to the NSCs by the Employer.

There are possible implications or problems that may arise from direct payment, which can include (Harbans -2002);

- May compromise effectiveness of any disclaimer provision in contract on denying any privity of contract between contracting parties;

- May create/reinforce the existence of collateral contract between employer and subcontractor (*Shanklin Pier Ltd v Detel Products Ltd (1951)*);
- May give rise on creation of proximity thus permitting actionable claims in tort (*Junior Books Ltd v The Veitchi Co. Ltd (1982)*).

In respect of payment relating to the release of retention, most standard subcontract forms allow for release of first moiety retention upon issuance of certificate of practical completion and the remaining moiety upon issuance of certificate of making good defects or after expiry of defects liability period. The retention sum or amount is usually ten (10) % of the gross value up to a limit of 5% of the subcontract sum.

Under the subcontract forms, PAM Cl. 26.6 and CIDB Cl. 28.4(b) state that the first half or moiety shall be released upon issuance of Certificate of Practical Completion and the second half or remaining moiety shall be released upon issuance of Certificate of Making Good Defects.

After Practical Completion of Subcontract Works (issued by the Architect) under PAM Cl. 17.2(b), the NSC, under PAM Subcontract cl. 26.7, is obliged to submit his statement of final claim supported by all particulars, details or information so as to enable the Contractor to prepare the Subcontract Final Account within 3 months after its issuance. Cl. 27.7 provides for the Architect to certify for final payment to the NSC even before the Contractor's final payment is due under the Main Contract.

In addressing the various payment issues and problems in the Malaysian construction industry, it is therefore not surprising that, similar to other construction industries such as in the UK, Australia and Singapore, the Malaysian construction industry had adopted the Construction Industry Payment and Adjudication Act 2012 ("CIPAA"), implemented since 15 April 2014, to specifically address the payment related issues.

CIPAA implementation has since substantially changed the payment practices in the construction industry. Amongst the many pertinent CIPAA implications, the most significant one is the effective removal of conditional payment provisions, as provided under its Section 35(1), which states:

"Any conditional payment provision in a construction contract in relation to payment under the construction contract is void."

Subcontract conditional payment provisions or clauses such as 'back-to-back', 'pay-when-paid' and 'paid-if-paid' have been outlawed since its implementation. Prior to CIPAA, with such provision in the subcontract, a contractor can be excused from paying its subcontractors for their subcontract works, on the basis that the employer have not or yet to pay the contractor. Effectively, by disallowing conditional payment provisions, it has buried and reversed several judicial decision in conditional payment cases such as:

- Pernas Otis Elevator Co. Sdn. Bhd. v Syarikat Pembinaan Yeoh Tiong Lay Sdn Bhd & Anor [2004] 5 CLJ 34, High Court;*
- Asiapools (M) Sdn Bhd v IJM Construction Sdn Bhd & Ors [2010] 3 MLJ 7, C.A*

- Rira Bina Sdn Bhd v GBC Construction Sdn Bhd [2011] 2 MLJ*

Other pertinent CIPAA implications, includes Section 29, which in a subcontract payment dispute, allows a subcontractor to reduce performance or suspends its works if the contractor fails to pay the adjudicated amount decided by the Adjudicator in favour of the subcontractor. Further, the subcontractor is entitled for extension of time and loss and/or expense incurred by the contractor's payment default. The subsequent section, Section 30 even allows the Contract Principal (i.e. employer) to pay directly to the subcontractor if the contractor fails to pay the said adjudicated amount.

Whilst there are many positives or benefits of CIPAA implementation in subcontracting, it also has several shortcomings, which can have adverse consequences to the project and industry at large, hence require cautionary and preventive measures to be taken by the contracting parties and industry players, respectively.

Amongst the CIPAA shortcomings, the most pertinent one is its consequences on subcontracting, especially in nominated subcontracts. Nominated subcontractors (NSCs) can be paid directly by the employer, if the contractor fails to pay, both pre and post CIPAA implementation. However, CIPAA can further benefit NSCs in securing their payments from the contractor when the employer is unable to pay the contractor nor pay direct to the NSCs.

The inability of an employer to pay both the contractor and NSCs can have serious consequences to the contracting parties and the project. This is because, for construction projects, the total value of NSC works can far outweigh the Builder's works. In some cases, NSC works can exceed over two third of the contractor's contract sum for the construction works. Consequently, inability of an employer to pay the contracting parties, can adversely affect both the contractor and the construction project, especially when the affected NSC/s decide to take CIPAA action against the contractor, unless it is able to pay the affected NSC/s, notwithstanding non or lack of payment by the employer. In failing which, the contractor can end up in financial difficulties, even bankruptcy eventually, should the successful NSC in the adjudication proceeds to enforce and wind up the contractor for non-payment following an adjudication decision in its favour.

Therefore in order to counter such CIPAA action by the NSC/s, the contractor concern may likewise take CIPAA action against the employer in parallel, if the employer fails in paying both the parties. Interestingly, CIPAA allows for consolidated adjudication actions, with consent of the disputing parties.

In attempting to address the CIPAA shortcomings when action is taken by NSCs against the contractor, NSCs should be made to enter into collateral warranty or direct arrangement for payment with the employer at the outset, provided if and to ensure that the employer can pay its contracting parties, accordingly. In any case, for existing contracts, contractors may have to enter into separate direct payment arrangement, possibly via tripartite agreement, for payments to be made directly by the employer and that the contractor is not liable for making such payment to NSCs.

In moving forward for the betterment of the construction industry and to resolve such disparity or imbalance and to avoid NSCs taking CIPAA action against the contractor for lack or non-payment, the contracting parties should consider doing away with nominated subcontracting and replacing with direct contracting between the employer and direct specialist contractors, instead of NSCs. This arrangement is akin to artists and tradesmen employed directly by the employer under most standard construction forms. In moving away from nominated subcontracting, contractors should, in this transition period, be given the opportunity to tender for all nominated subcontracts or specialist works, and when they are successful, to award such works direct as variation under the main contract.

Notwithstanding, employers must be financially capable and sound for such subcontract procurement change from nominated subcontracting to direct contracting with them. This practice of no nominated subcontracting, but allowing for named or designated subcontractors, particularly for specialist works, is common under the Joint Contracts Tribunal (“JCT”) and New Engineering Contract (“NEC”) suites, which introduced such practice successfully in the UK many years ago and have since spread to many countries, including Hong Kong. By introducing named or designated subcontracting, whilst employers can still choose and shortlist their preferred specialists, it ensures that privity of contract is clear and unambiguous at subcontract level between the contractor and its selected specialist/s without any possible or implied contractual linkage with the employer, unlike in nominated subcontracting, which have been tainted with its issues and problems in the construction industry.

In so far as domestic subcontracting is concern, such domestic contractual arrangement between a contractor and its domestic subcontractors is likely to remain as contractors are unlikely to be able to do away with the traditional subcontracting practice, in particular for the various trades and labour, which often are referred to as builder’s works.

With the CIPAA implementation and its implications, contractors will need to ensure that domestic subcontract values are at more manageable financial amounts so as to ensure ability to pay subcontractors progressively and accordingly.

In ensuring security for progressive payments for subcontractors in the event of delay or default in payment by the contractor, payment bond, similar to that provided in the CIDB form of construction contract, should be considered and introduced at subcontract level so as to ensure a fair bargain to counter any performance bond requirement in the event of default by the subcontractor.

viii. Defects

In the construction industry, defects in construction works are common occurrences during the progress and upon completion of building and/or civil engineering projects. This is compounded by the practice of subcontracting, whereby improperly procured subcontractors and/or supervision of subcontract works often lead to poor or substandard quality of works.

The term defects or defective works as referred to in many standard main and subcontract forms usually mean imperfections, shrinkages or any other faults in the works. Essentially, defects is about works failing or being deficient in standard and quality of workmanship, materials and/or design as specified in the contract. In subcontracts, this usually happens when a subcontractor fails to conform or comply with the subcontract provisions and/or requirements as shown in drawings and/or stipulated in bills of quantities, specifications, etc. Therefore if a subcontractor breaches either the express or implied subcontract obligations, he is responsible and liable to rectify the defects, accordingly.

Whilst patent defects usually appear during construction and over the defects liability period (“DLP”) under the contract, there are still defects, which can be latent in nature that may occur after such period or after the certificate of making good

Outstanding/Non-compliant works	Patent Defects	Latent Defects
<ul style="list-style-type: none"> • Incomplete excavation for pad footings • Deviated piles installed • Sand blinding not laid. • Column sizes incorrect • Uneven suspended slab. • Several curtain wall glass panel not fixed • Broken facing bricks to external wall. • Plastering without base coat as specified. • Walls not flat – out of tolerance. • Ceiling tiles not fully installed. • Wrong type of timber trusses used. • Sisalation not installed. • Window opening not to size. • Incorrect window location. • Incomplete electrical wiring works. • Wiring installed not as specified. • Fittings installed not to specification. 	<ul style="list-style-type: none"> • Slight pad footings misalignment. • Honeycombing in concrete stumps. • Concrete surface cracks. • Honeycombing in Columns & beams. • Efflorescence in walls. • Uneven floor tiling. • Cracked tiled floor. • Uneven plastered surfaces. • Discoloured roof finishing. • Broken roof tiles. • Roof trusses not connected and bolted in properly. • Warped timber door. • Too large gap at door edges. • Lockset not functioning. • Faulty switches. • Malfunctioned electrical fittings. • Water leakages from water pipes. 	<ul style="list-style-type: none"> • Sinking foundation. • Broken installed piles. • Poor hardcore compaction. • Structural cracks on floor slabs, causing tiled floor to crack. • Concrete spalling caused by corroded steel bar due to insufficient concrete cover. • Structural cracks in beams & columns. • Water seeping through tiled floor due to no waterproofing. • Painting discolouration after handover. • Rainwater penetration thro’ roof. • Roof tiles dislodged during high winds. • Undersized roof trusses leading to roof sagging. • Gutters do not drain, causing rainwater overflow. • Broken window rubber seals causing rainwater entry. • Warping of timber door panels. • Frequent electrical short circuiting/tripping. • Breakage in underground sewage pipes. • Waste water leakage from kitchen sink into cabinet.

defects has been issued. Patent defects are defective works which can be discovered by testing, inspection and/or examination but latent defects are defects which often cannot be seen nor not easily discoverable but can manifest itself usually long after the said period.

Notwithstanding, defects should not be confused with outstanding and non-compliant works. The following tabulation provides typical distinction between outstanding/non-compliant works against patent and latent defects in building construction works (adapted from MBAM Article on “*What is the Difference between Patent and Latent Defects*” in MBAM Journal, Vol.3, 2009).

As can be seen from the comparison (*refer table from previous page*), outstanding and non-compliant works are works that are part of the contract, which the subcontractor has undertaken to carry out and complete accordingly. If the subcontractor has done so, but there are non-compliant or defect, then the subcontractor is responsible and liable to rectify or remedy them accordingly.

Unless there is a clear distinction made between outstanding/non-compliant works and defective works which can be applied in practice effectively, unnecessary delays in certifying practical completion, which can be mitigated or overcome, will continue to occur in our construction industry.

Under most standard subcontract forms, the subcontractor is liable to make good, remedy or rectify any defective works in compliance with the subcontract requirements.

The subcontract provision for retention fund over the construction and defects liability period is to ensure that the contractor can recover the cost for rectifying defects in the event the subcontractor refuses to do so. Procedurally, most standard subcontracts require the contractor and/or superintending officer to notify the subcontractor to remedy/rectify its defective works. In failing which, the employer/contractor may or employ others to remedy/rectify the defective works and deduct (or recover) the rectification costs from any monies due to the subcontractor or set-off against the retention sum for the rectification of defective works. Alternative, the contractor/employer may accept the defective works with a diminution in value in the subcontract sum or call in the performance bond deposited by the subcontractor to cover for the rectification costs, if necessary or sue for damages under common law, particularly in cases of latent defects, when final certificate has been issued.

It is a common contractual practice for the contractor to withhold the remaining moiety of retention fund for the subcontractor to complete its making good of defects, which is usually signified by the issuance of certificate of making good defects. In some cases, the issuance of practical completion certificate can be withheld pending satisfactory rectification of defects by the subcontractor, which will mean that the first moiety retention may also be withheld.

The subcontractor’s liability in damages for defects is not relieved by defects liability clause (in the absence of clear words to contrary) – (*Hancock v Brazier (1966)*; *Gilbert-Ash (Northern) Ltd. v Modern Engineering (Bristol) Ltd (1974)*).

Under the standard nominated subcontracts, PAM cl.17, PWD (2010) cl.22, IEM cl.18 and CIDB cl. 21, all refer to defect liability provisions. PAM s/cl 17.5, PWD s/cl 22.1, IEM s/cl 18(a) and CIDB s/cl 21.1, require the Architect/S.O./Engineer/Contractor to issue to the NSC instruction to make good any defects, shrinkages or other faults during Defects Liability Period (“DLP”) due to materials/workmanship not in accordance with the subcontract within a reasonable time (PAM - within 28 days and PWD 203N – within 3 months) entirely at his own costs, unless instructed otherwise. PAM S/Cl.17.7, PWD S/cl. 22.2, IEM cl.18(b) and CIDB cl. 21.2, enables the contractor to set-off, if he remedy any defects of subcontractor works, the cost can be set off from the NSC. If NSC executes any remedial works in connection with the subcontract works as required by Architect/S.O./Engineer/Contractor due to defects in the main contract works, the Contractor shall pay the rectification cost to the NSC as provided under the respective standard subcontracts (PAM s/cl.17.8, PWD s/cl. 22.3, IEM Cl s/cl.21.3 and CIDB s/cl. 21.3(a)).

The NSC’s liability under the aforesaid subcontracts for any patent defects would have lapsed when DLP expires or upon issuance of Certificate of Making Good Defects (“CMGD”) as it signifies that all patent defects discovered during the DLP, had been made good by the NSC to the satisfaction of the Architect/S.O./Engineer/Contractor. A schedule of defects is usually required to be issued within 14 days of DLP expiry for the subcontractor to rectify the defects.

A contractor is thus contractually not entitled to pursue his remedies in respect of further defects thereafter and/or when Final Certificate had been issued, unless the defects had been previously rectified, re-occurred or were unsatisfactorily rectified or are latent defects, which the subcontractor is still liable for.

Under such circumstances, it is common that the contractor and subcontractor may attempt to push the responsibility of rectifying the defects to each other. The employer/contractor may claim that the defects are latent, whereas the subcontractor can contend that the defects liability period is over or the defects are due to normal use and fair wear and tear, whereby the subcontractor is not responsible or liable for. Consequently, disputes often arise over the category of defects and the party/ies responsible.

In the event that latent defects are encountered after the contractual defects liability period, the Law of Malaysia, Act 254, Limitation Act 1953, applicable to Peninsular Malaysia, states that claims founded on a contract or in tort must be brought within six years from the date on which the cause of action accrues. However the time limits can be extended by factors such as mistake, fraud, fraudulent concealment or disability. Beyond which any entitlement to seek redress for latent defects may be lost.

In the case of *Teh Khem On & Anor v Yeoh & Wu Development Sdn Bhd & Ors [1995] 2 MLJ 663*, the plaintiffs who were the purchasers entered into a sale and purchase agreement with the first defendant, the builder, to purchase houses which were found later to be defective. The builder admitted his liability

and carried out repairs to remedy the problems, but was ineffective.

It was held that the builder was in breach of an express condition in the agreement which provided that the house must be constructed in a good and workmanlike manner. The builder was also in breach of the three implied conditions of the agreement, i.e. that it would do its work in a good and workmanlike manner, supply good and proper materials, and the house would be reasonably fit for human habitation. The expiry of the 12-month defect liability period provided in the contract, would not take away the right of the purchasers to sue for defects i.e. latent which were not discoverable within that period.

Summary/Conclusion

The nature and characteristics of the building or production process, which involves diverse work activities and tasks, requires various resources and technical capabilities, often beyond most contractors, who have an overall contractual responsibility and liability to their employers for the proper execution and completion of the construction projects, accordingly. Consequently, contractors normally subcontract part/s of their building or construction works to subcontractors, to reduce project risks and enhance its overall performance and profitability.

Whilst subcontracting offers many advantages or benefits, its practice is also tainted with many issues and implications, eight of the pertinent ones are described and discussed in this three parts article, as summarised and concluded below.

Firstly on **Obligations and Liabilities**, subcontractors are responsible and liable to the contractor, who engage and appoint them via subcontract arrangement but they are not contractually nor legally responsible or liable to the employer, except when there is a separate or parallel contract in addition to the subcontract between the subcontracting parties. Subcontractors who breach their subcontract are liable to the contractor for its loss and/or damages, which may include those that the contractor has to bear and pay the employer.

Second, on **Commencement and Completion Period** of subcontract works. In order to overcome delay risk in its completion, the subcontracting parties must ensure a reasonable subcontract completion duration, which needs to include mobilization and demobilisation periods with early commencement date.

Third, on **Instructions and Variations**, verbal or invalid instructions without reference to contractual provisions can often lead to disputes. Consequently, instructions must be in writing and validly issued under the subcontract. The definition, grounds and rules or methods for valuation of variations such as to vary the subcontract works, be it modification or alteration to its design, quality and/or quantity, including changes to its intended use, are normally similar to that provided under the main contract.

Time, the **Extension of Time**, the procedures and grounds for extension of time are usually provided under the subcontracts. A subcontractor is entitled to a fair and reasonable extension of

time for those non culpable delays, provided prior written notification and application, with relevant particulars, are submitted, accordingly. Otherwise, no extension of time can be considered nor granted. However, if the subcontractor is prevented from completing its subcontract works accordingly, any act/s of prevention, unless is provided for as ground/reason for extension of time and granted, can set "time at large", which then entitles the subcontractor to complete within a reasonable time. That being the case, the contractor can end up losing its right to impose liquidated damages on the defaulting subcontractor.

Fifth relates to **Practical Completion and Non-Completion**. For the former to take place, which is often with difficulties, it is usually subject to the contractor and/or SO/Architect's opinion that the subcontract works is practically completed for its intended purposes, notwithstanding that there may be works and defects of a minor nature remaining to be remedied. On non-completion, if the subcontractor fails to complete its subcontract works within the subcontract completion date or extended date/s, the contractor is entitled to recover liquidated damages subject to a certification to that effect and proof of actual loss and/or damage is required, when challenged.

The sixth pertinent issue on **Loss and/or Expense**, are usually direct costs which arise when the subcontract works is disrupted, affected and/or delayed due to certain specific cause or event expressly allowed under the subcontract or as allowed/referred to in the main contract. They cannot be those arising from indirect, remote, consequential or contributory causes. The difficulty is when the claims cannot be passed on to the employer by the contractor due to its own defaults. Under most subcontract forms, loss and expense claim by a subcontractor is subject to submission of written notification, grounds and compliance with condition precedent procedures, prior to its ascertainment by the contractor for payment, accordingly. Failure in compliance, can be deemed as a waiver of rights to such loss and expense entitlement under certain subcontracts.

Seventh, on **Payments and Set-offs**, is the most profound amongst the eight pertinent issues and implications. The non or lack of progressive payments, has been a rampant practice despite cash flow being life blood of the construction industry. Consequently, similar to the UK, Australia and Singapore, Malaysia has introduced and implemented its own Construction Industry Payment and Adjudication Act 2012 ("CIPAA") on 15 April 2014 specifically to address the payment related issues. The most significant one being the effective removal or outlawing conditional payment provisions. However, there are also shortcomings in CIPAA. One pertinent issue relates to nominated subcontracts, where NSCs can benefit by securing their payments, often substantial, from the contractor notwithstanding the employer unable to pay through the contractor. A collateral warranty or indemnity or direct payment arrangement with the employer, possibly via tripartite agreement is needed, for payment to NSCs be made directly by the employer without the contractor being made liable for payments to NSCs.

The way forward for the construction industry to resolve such disparity or inequity and to avoid NSCs taking CIPAA action against the contractor is for the contracting parties, especially the employer to consider doing away nominated subcontracts and replacing with direct contracting between the employer and direct specialist contractors. Such practice of no nominated subcontracting, but allowing for named or designated subcontractors, particularly for specialist works, has been a standard practice under the Joint Contracts Tribunal (“JCT”) and New Engineering Contract (“NEC”) suites, to overcome the issues and problems relating to NSCs. It ensures that privity of contract is clear and unambiguous at subcontract level between the contractor and its selected specialist/s. To do so, employers need to be financially sound and astute for such change in contract procurement.

In the light of CIPAA implication, contractors will need to ensure that domestic subcontract values are at more manageable financial amounts so as to ensure payment due to the domestic subcontractors are made regularly and promptly. In doing so there may be a need to introduce payment bond at the subcontract level, similar to the CIDB Form of Contract in the event the employer default in payment, as a fair balance and bargain to counter performance bond requirement for default by the subcontractors.

The eight and final pertinent issue is **Defects**, which are imperfections, shrinkages, deficiency or any other faults in standard and quality of workmanship, materials and/or design as specified in the subcontract, for which the subcontractor is responsible and liable to make good over the defects liability period. Defective works, patent and/or latent, can arise due to improper procurement of subcontractors and/or supervision of subcontract works.

Further, there is a need to clearly distinguish between outstanding/non-compliant works and defective works to

avoid unnecessary delays in certifying practical completion, which unfortunately is often the case in the Malaysian construction industry. In the event the subcontractor fails or is reluctant to undertake the such rectification works, the contractor can employ others to do so and set-off any costs associated with such remedial works from the subcontractor’s payment account or recover as a debt due, thereafter. Alternatively, the contractor/employer may accept the defective works with a diminution in value in the subcontract sum.

In **conclusion**, whilst subcontracting offers many advantages or benefits, its practice has been tainted with many issues and implications, eight pertinent ones have been discussed and summarised in this three parts article. With CIPAA implementation, conditional payment practice of “pay-when-paid” or “pay-if-paid” between the subcontracting parties is over. Increasingly, the contractors must be financially sound or have secured the necessary financing to ensure smooth cash flow and regular payments to subcontractors (and suppliers) in order to complete the construction works, accordingly.

In turn, the contractors will need to identify and work with employers with good reputé, sound financial and payment records. They will also need to be effective and efficient in resource management and ensure appointment of suitable and competent subcontractors in order to carry out and complete the construction projects accordingly so as to achieve the project objectives, successfully. ■

In the next issue of the MBAM Journal, BK Entrusty article will deal with another pertinent contractual issue affecting the Malaysian construction industry, on “Time at Large – Issues and Implications”

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 - e) IEM Form of Contract for Civil Engineering Works (2nd Edition 2011);
 - f) IEM Standard Conditions of Sub-Contract (1990);
 - g) CIDB Form of Contract for Building Works (2000 Edition).
 - h) CIDB Standard Form of Sub-Contract for Nominated Sub-Contractor (FORM CIDB.B(NSC)/2002)



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