

Construction Contract and Management Issues

In this 4th quarter issue of Master Builders Journal for 2018, BKAsiaPacific (Malaysia) Sdn Bhd (formerly known as 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 on **"PAM Contract 2018 - Changes and Implications"**

BACKGROUND / INTRODUCTION

Historically, the Pertubuhan Akitek Malaysia Form of Building Contract, acronym as "PAM Form" can be traced back to the 1960s, as it was originally based on the RIBA 63 Form of Contract used extensively in the United Kingdom then. Likewise in Singapore, the same form was used and both forms were popularly known as the PAM/ISM 69 and SIA70 Forms, respectively.

In the 1980s, the forms of contract in the UK underwent substantial changes, resulting in the Joint Contracts Tribunal ("JCT") forms of contract, popularly known as the JCT 1980 Forms. Likewise, the Singapore Institute of Architects (SIA) earlier form was redrafted, by a reputed Queen Counsel, Sir Duncan Wallace, resulted in the SIA 80 Forms, which underwent several amendments, subsequently.

In Malaysia, the changes to the said PAM/ISM 69 Forms only came about in the 1990s, with PAM 98 Forms, officially launched in October 1998, eventually. Following the extensive use of the said forms in the Malaysian construction industry, estimated around 90 percent in the private construction sector, PAM proceeded to review the said Forms via its Contract Review Committee, by consultations with members and players in the industry for several years. The result was the introduction of PAM 2006 Forms, with and without quantities contracts, which included the nominated subcontract form, known as PAM Sub-Contract 2006, in 2007/2008.

PAM 2006 Forms have significantly moved away from its predecessor forms, including JCT and SIA Forms, with many constructive amendments and changes in terms of time, cost, quality and related procedural requirements affecting the contractual parties. However, with the rapid advancements and changes in terms of construction practice and law over the past ten years, the said Forms needed further improvements and changes to reflect the demands and advancements in the construction industry.

Consequently, PAM initiated a review and improvement to its PAM Contract 2006 in August 2015 with the setting up of its Committee and likewise consulted and considered feedbacks and issues raised by stakeholders and changes in the construction industry, which culminated in an updated and improved PAM Contract 2018, with and without quantities version, launched on 11 April 2018. These new Forms considered and adopted several pertinent and positive changes/practices, including document transmission, single retention sum, extension of time reasoning, Construction Payment and Adjudication Act ("CIPAA") implications, expert determination, certifier role in Performance Bond, etc.

In this article, BK Entrusty aims to introduce readers to the new PAM Contract 2018, its pertinent changes and implications by comparing with its predecessor PAM Contract 2006, under the following article contents: -

- Introduction
- PAM Contract 2018 vs PAM Contract 2006 – Changes and Implications
- PAM Contract 2018 – With Quantities vs Without Quantities
- Summary/Conclusion

This article is best read with reference and together with relevant provisions/clauses under PAM 2006 and 2018 Forms of Contract, copies of which are available at the PAM Centre, Bangsar, Kuala Lumpur.

PAM CONTRACT 2018 VS PAM CONTRACT 2006 – CHANGES AND IMPLICATIONS

The comparison below is in respect of PAM Contract 2006 and PAM Contract 2018, both With Quantities contracts, to identify the changes and implications made to the latter Form.

1) Definition (Article 7)

Change is made on the Definition of Service Provider under Article 7(ay) PAM Contract 2006, now is Article 7(ax) under PAM Contract 2018, where the word "telephone" is replaced with "telecommunication", which gives a broader meaning to Service Provider roles, as it is now not limited to telephone, but expanded to include internet, wireless system and other means of telecommunication.

2) Contract Documents, Programme & As-Built Drawings (Cl 3.3 Copies of Documents)

Cl. 3.3 (Copies of documents) is amended, to require Architect and/or QS to provide Contract Drawings and unpriced Contract Bills to the Contractor within 14 days after Contract award. The timeframe of 14 days is introduced to ensure such documents are provided to the Contractor on time, in failing which or delay to do so, the Contractor is entitled for Extension of Time (Cl. 23.8(e)) and Loss and Expense (Cl. 24.3(a)), both are new relevant events added.

PAM Contract 2006	PAM Contract 2018
Immediately after the execution of the Contract, the Architect or Quantity Surveyor shall without charge to the Contractor provide him with:	Within fourteen (14) Days after the award of the Contractor or on any date after the award as agreed between the Architect and the Contractor , the Architect or Quantity Surveyor shall without charge to the Contractor provide him with:
a) one of the two signed original copies of the Contract Documents;	a) two (2) copies of the Contract Drawings; and
b) two (2) further copies of the Contract Drawings; and	b) two (2) copies of the unpriced Contract Bills.
c) two (2) copies of the unpriced Contract Bills.	Within fourteen (14) Days after the execution of the Contract, the Architect or Quantity Surveyor shall also without charge to the Contractor provide him with one (1) signed copy of the Contract Documents.

3) Variations, Provisional & Prime Cost Sums

a. Cl 11.1(d) - Definition of Variation

Variation definition under amended Cl. 11.1 is now expanded to include the change in the execution of temporary works, which was not included in the previous version.

b. Cl 11.5 - Valuation of Variations and Provisional Sum

Cl. 11.5 on Valuation of Variation has been amended to require the Contractor to submit complete Variation details and particulars upon completion. If the Quantity Surveyor (“QS”) finds them insufficient within 28 days of its submission, the Contractor is then required to submit additional details within a further 28 days to the QS. Subject to sufficiency of the details and particulars, the QS shall then measure and value the Variation within 30 days or extended date as agreed between the Architect and Contractor. The said provisions are compared below.

PAM Contract 2006	PAM Contract 2018
All Variations shall be measured and valued by the Quantity Surveyor. Where any recording of site information and/or Site measurements are carried out at the Site, the Contractor shall provide the Quantity Surveyor with such assistance as may be necessary to carry out the works and the Contractor shall be given the opportunity to be present to take such notes and measurement as he may require.	All Variations shall be measured and valued by the Quantity Surveyor. Upon completion of the Variations, the Contractor shall submit complete details and particulars as required by the Architect and Quantity Surveyor for valuation of Variations. Where any recording of site information and/or site measurements are carried out at the Site, the Contractor shall provide the Quantity Surveyor with such assistance as may be necessary to carry out the works and the Contractor shall be given the opportunity to be present to take such notes and measurements as he may require. If the Quantity Surveyor is of the opinion that the details and particulars submitted by the Contractor are insufficient to enable him to carry out the measurement and valuation, the Quantity Surveyor shall within twenty eight (28) Days from receipt of the Contractor's submission, inform him of any deficiency in his submission and may require the Contractor to provide such further details and particulars within a further twenty eight (28) Days. When the Contractor has submitted sufficient details and particulars, the Quantity Surveyor shall measure and value the Variations within thirty days (30) Days or any other extended date as agreed between the Architect and Contractor.

It must be noted that there is no express provision for any effect or consequence if the QS fails to measure and value variations within the time frame. Apart from breach of the contract terms, it can imply professional incompetence or negligence for not doing so. A welcome change as all submitted Variations need to be measured and valued progressively rather than at the end of construction project period, which has been a common practice in the industry.

c. Cl 11.6(f) - Variation Rules

Cl. 11.6(f) on Valuation of Variation in respect of Provisional Quantities work is amended to require the QS to re-measure “...based on actual quantities executed within 60 days after the said works are completed.” Whether the 60 days is sufficient would very much be dependent on the extent of provisional quantities work and time required to complete the re-measurement.

d. Cl 11.9 - Variations and additional expenses added to Contract Sum

The role of the QS in ascertainment of Variations and/or Additional Expenses claimed by the Contractor is now added/recognised via amended Cl. 11.9, in addition to Architect in ascertaining the Variation amount.

4) Cl 15.2(a) - Certificate of Practical Completion

Amended Cl. 15.2(a) now requires the Architect to “specifying the works that are incomplete and/or the conditions that have not been complied with” in addition to the previous requirement of giving reason for his opinion on non-completion. The additions eliminate/reduce ambiguity and provide better/clear details by stating the works that are incomplete and which conditions not complied with. Such change should lessen the differences/disputes arising from non or delay in the issuance of Certificate of Practical Completion.

5) Partial Possession By Employer - Cl 16.1(d) Possession of Occupied Part with consent

The new Form removes the limit to Retention Fund (usually 5%) from the predecessor 2006 Form, hence only a single percentage of total value works, materials and goods in Appendix of Percentage of Certified Value Retained. For further details refer to Cl. 30.5 on Retention Fund hereinafter, which incorporates similar change.

6) Extension of Time (EOT)

a. Cl 23.4 - Certificate of Extension of Time & Cl. 23.6 - Contractor to prevent delay

The amended Cl. 23.4 now requires Architect to provide reasons for his rejection of the Contractor’s EOT submission. And if the Architect issues a Certificate of EOT, he needs to provide details within 6 weeks from receipt of sufficient particulars from the Contractor. This is another welcome change, as it avoids the ambiguity and argument as to why the Architect rejects the Contractor’s application, which is commonly practiced in the past Forms. Likewise, when he grants the extension of time, he needs to provide the necessary details, instead of just a “global” or unsubstantiated extension.

Another welcome change is the removal of the words, “...to the satisfaction of the Architect...”, which always has been very subjective and often abused. Further, with the amended Cl. 23.6, it no longer requires the Contractor to prevent or reduce delay to the satisfaction of the Architect.

b. Cl 23.9 - Extension of time after the issuance of Certificate of Non-Completion

The amended Cl. 23.9 expressly provides for granting EOT subject to Cl. 23.1 to 23.7, which includes:

- Cl. 23.1 - Submission of notice and particulars for extension of time;
- Cl. 23.2 - Delay by Nominated Sub-Contractor;
- Cl. 23.3 - Insufficient information;
- Cl. 23.4 - Certificate of Extension of Time;
- Cl. 23.5 - Other consideration for extension of time;
- Cl. 23.6 - Contractor to prevent delay; and
- Cl. 23.7 - Notification to Nominated Sub-Contractors

c. Cl 23.10 - Architect’s review of extension of time after Practical Completion

Under amended Cl. 23.10, PAM deleted the words “(but not obliged to)”, but retains “The Architect may within twelve (12) weeks after the Practical Completion review and fix a Completion Date later than that previously fixed...”, which really is not a significant change, as the word “may” remained, which itself carry similar meaning. However, with such deletion, it can be inferred that PAM is moving closer to ensuring that the Architect do review the extensions of time, notwithstanding.

Further, PAM introduces new Relevant Events (see below) to both Extension of Time and Loss and Expense clauses in line with the amendments made to Cl 3.3 - Copies of Documents, which allow for the late provision of Contract Drawings and unpriced Contract Bills as relevant events for extension of time and loss/expense under the Contract.

Cl.23.8(e)	the Contractor not having received in due time the necessary documents under Clauses 3.3(a) and 3.3(b);
Cl.24.3(a)	the Contractor not having received in due time the necessary documents under Clauses 3.3(a) and 3.3(b);

7) Determination

a. Cl 25.4(d) Rights and duties of Employer and Contractor

The amended Cl. 25.4(d) now gives clarification of the amounts payable to the Contractor upon determination, in line with the recent case of (*Econpile (M) Sdn Bhd v IRDK Venture Sdn Bhd [2017] 7 MLJ 732*). The High Court held, which subsequently upon appeal, the Court of Appeal upheld the said High Court judgement, that CIPAA Section 35, “conditional payment” is not restricted to the two instances described in sub-section 35(2). The Parliament has chosen a more expansive interpretation by stating a general principle in sub-section 35(1) and used an all-encompassing expression of “any conditional payment provision”. Accordingly, the Court was of the view that, the “Parliament had left it to the court to determine on a case by case basis as to whether a conditional payment term would be defeating the purpose of CIPAA. This meant that the High Court judgement remained good law for the time being, until another similar issue is referred to the Court of Appeal and/or Federal Court, in the near future.

In view of the aforesaid Court judgement, PAM Contract 2006 Cl. 25.4(d) was held to be a conditional payment clause within CIPAA Section 35, which renders it void and unenforceable. The said Clause 25.4(d) provides that:

“... Until after the completion of the Works under Clause 25.4(a), the Employer shall not be bound by any provision in the Contract to make any further payment to the Contractor, including payments which have been certified but not yet paid when the employment of the Contractor was determined. Upon completion of the Works, an account taking into consideration the value of works carried out by the Contractor and all cost incurred by the Employer to complete the Works including loss and/or expense suffered by the Employer shall be incorporated in a final account prepared in accordance with Clause 25.6”

Section 35 CIPAA effectively takes away the contractual right of the paying party to pay only upon the satisfaction of certain conditions and replaced the same with a default payment provision under Section 36 (3) and (4) CIPAA, which provides *“The due date for payment under subsection (3) is thirty calendar days from the receipt of the invoice.”*

In the light of the aforesaid case law, which PAM had considered and taken into account of, the amended Cl.25.4 (d) now provides that, *“...the Employer shall not be bound by any provision in the Contract to make any further payment to the Contractor, including payments which have been certified but not yet due but excluding payments which have been certified and are due but remain unpaid when the employment of the Contractor was determined.”* However, the amended wordings (emphasis underlined), may still be a subject of contention, due to its ambiguity.

b. Cl 25.6 - Final Account upon determination

The amended Cl. 25.6, brings forward the final account (final cost) incurred to complete the works from six (6) months on completion of the Works to *“...three (3) months on the availability of the final cost incurred to complete the Works,....”* This provision is a welcome change as it speeds up the overall dispute issues considerably, including payment as the parties need not wait until completion of the Works, which could be for a long time. The onerous is now on the Architect or QS to do so within three months upon availability of the final cost incurred to complete the Works.

8) **Nominated Sub-Contractor**

a. Cl 27.14 - Contractor permitted to tender for P.C. Sums

The amended Cl. 27.14 now requires the Contractor's prior consent before omission of any P.C. Sums or its award to others. The amended clause added, *“The Architect may omit any P.C. Sums, which are included in the Contract Bills, provided prior consent of the Contractor has been obtained. The Employer shall only be permitted to award the works related to such P.C. Sums to any other contractors with the consent of the Contractor.”* Such amendment avoids unscrupulous Employers awarding such P.C. Sum works to others, instead of permitting the Contractor to tender for the same, which deprives him of doing the said works and/or profit under P.C. Sums.

9) **Certificates And Payment**

a. Cl 30.4 Set-off by Employer

Under PAM 2006 Contract, Cl.30.4 disallows the Employer to set-off disputed amount by the Contractor, unless the amount has been agreed by him or decided by an Adjudicator. This often ends up with the Contractor disputing the said set-offs, for adjudication reference thereafter. The amended Cl 30.4 empowers the Employer to set-off amount (or its part) not disputed by Contractor instead of agreed amount only. The disputed amount can still be referred to adjudication for Adjudicator's decision prior to set-off, if so decided. The amended clause, added, *“The Employer shall only be entitled to set-off the amount or part of the amount not disputed by the Contractor. The Employer shall not be entitled to set-off the disputed amount until the adjudicator has issued his decision.”*

However, one must note that, adjudication under PAM and its Adjudication Rules is strictly contractual and for set-offs only as it has nothing to do, nor have similar recourse and implications under CIPAA 2012, which apart from payment disputes, can include set-offs.

Furthermore set-off dispute reference to adjudication under PAM, is a condition precedent to arbitration, unless such reference is made after the Practical Completion date (See Clause 36.1).

b. Cl 30.5 - Retention Fund

The amended Cl. 30.5 (Retention Fund) removes the “Limit of Retention Fund” under earlier PAM versions i.e. *“When the sum of the amounts so retained equals the amount stated in the Appendix as Limit Retention Fund or that amount as reduced under Clause 16.1(d) and 16.1(f) and/or Clause 27.7, as the case may be, then no further amounts shall be retained by virtue of this clause.”*; and replaces it with a single *“Percentage of Certified Value Retained”*, which can be found in its Appendix. There is no more of 10 % Certified Value Retained and 5 % limit of Retention Fund, as practiced under previous forms.

This is a welcome change, as it not only avoids the confusion between certified value retained and limit of retention fund, it also facilitates better cash flow in the initial stages of the work progress. However, this benefit is only applicable if employers maintain retention at the usual 5 % and not increase to 10 %, as the latter will almost certainly affects contractor's cash flow drastically, particularly when the current market profit level is below five percent for most contractors.

Likewise, under Clause 27 – Nominated Sub-Contractors, the amended Cl. 27.7 - Final payment to Nominated Sub-Contractors, similar deletion, in that *“amount stated in the Appendix as Limit of”* has been deleted.

10) **Cl. 35 - Expert Determination**

PAM Contract 2018 introduces a new provision, “Expert Determination” (Cl. 35), as below.

<p>Cl. 35.1 (Disputes on all matters) At any time, the parties by written agreement may refer any disputes on all matters for determination by an expert. Cl. 35.2 (Expert determination under PAM Rules) If the parties fail to agree on an expert after fourteen (14) Days from the date of the written agreement, any party can apply to the President of Pertubuhan Arkitek Malaysia to appoint an expert. Upon appointment, the expert shall initiate the expert determination in accordance with the current edition of the PAM Expert Determination Rules or any modification or revision to such rules.</p>	<p>Cl. 35.3 (Expert determination shall not prejudice the parties' rights to adjudication or arbitration) Prior reference of the dispute under Clause 35.1 shall not be a condition precedent for its reference to adjudication or arbitration by either the Contractor or the Employer, nor shall any of their rights to refer the dispute to adjudication under Clause 36.0 or arbitration under Clause 37.0 of these Conditions be in any way prejudiced or affected by this clause.</p>
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The above Expert Determination provision, which is not condition precedent to reference to adjudication or arbitration, is meant to be a voluntary process, as it involves an independent Expert to investigate and gives his expert opinion on any matter referred by disputing parties, who agree to abide by the Expert's opinion/decision/findings. Such expert determination, which is usually a thorough and detailed review and finding of the disputed issue/matter, can be relatively faster and possibly cheaper than CIPAA and/or arbitration reference.

PAM is developing its Panel of Experts and its Expert Determination Rules for use under this new provision.

11) **Miscellaneous Changes (ADR clauses)**

PAM Contract 2006 Cl. 34, Adjudication and Arbitration is now separated into two provisions in PAM Contract 2018, which are Cl. 36 (Adjudication) and Cl. 37 (Arbitration). The previous express provision of *“The parties by written agreement are free to refer any other disputes to adjudication.”* under Cl. 34.1 of PAM Contract 2006 is deleted under Cl. 36.1 of PAM Contract 2018.

Further, the Mediation provision is now Cl. 34 (previously was Cl. 35 in PAM 2006), with no change except PAM Contract 2018 requires party to refer to current edition of PAM Mediation Rules for mediation process. Likewise, Arbitration provision (Cl. 37) is similar to PAM 2006 Arbitration provision (Cl. 34.5 to Cl. 34.11) except for a minor addition to amended Cl. 37.3 which refers to *“...the current edition of the PAM Arbitration Rules or any modification or revision to such rules.”*

12) **Notice**

The amended Cl. 38.1 on Notice allows for any written notice or other document to be given under the Contract via electronic transmission and is deemed to have been duly served upon and received by the addressee at the time of transmission. This is provided for under Cl. 38.2(d) *“if transmitted by way of electronic transmission, at time of transmission”* and

38.3(d)" in the case of electronic transmission, that the electronic transmission was duly transmitted from the dispatching terminal, as evidenced by a transmission report generated by the transmitting equipment".

13) Performance Bond

- Cl 39.5 Payments from the Performance Bond
- Cl. 39.6 Return of Performance Bond

A radical change, in that the amended Cl. 39.5 now requires the Architect to certify the Contractor's breach or determination of Contractor's employment prior to the Employer's action in calling on the Performance Bond. Further, amended cl 39.6 shortens the period of returning the Bond from 28 days to 14 days. Such radical change provides due protection for the Contractor to overcome the Employer unilaterally calling on the Performance Bond without default. This change is certainly welcome as it eliminates On Demand Bond, which is a notorious practice in the construction industry.

In summary, the overall changes in the PAM Contract 2018 as opposed to its predecessor, PAM Contract 2006, are in the following provisions/clauses, as tabulated below.

No.	Revisions to PAM Contract 2018	No.	Revisions to PAM Contract 2018
1	Article 7 (ag) – Limit of Retention Fund	15	Cl. 24.3(a) - Matters materially affecting the regular progress of the Works (Loss and/or Expense)
2	Article 7(ax) - Service Provider	16	Cl. 25.4(d) - Rights and duties of Employer and Contractor
3	Cl. 3.3 - Copies of Documents	17	Cl. 25.6 - Final Account upon determination
4	Cl. 11.1 - Definition of Variations	18	Cl. 27.7 - Final payment to Nominated Sub-Contractors
5	Cl. 11.5 - Valuation of Variations and Provisional Sums	19	Cl. 27.14 -Contractor permitted to tender for P.C. Sums
6	Cl. 11.6(f) - Valuation rules	20	Cl. 30.4 - Set-off by Employer
7	Cl. 11.9 - Variations and additional expenses added to Contract Sum	21	Cl. 30.5 - Retention Fund
8	Cl. 15.2 - Certificate of Practical Completion	22	Cl. 34 - Mediation
9	Cl. 16.1(d) - Possession of Occupied Part with consent	23	Cl. 35 - Expert Determination
10	Cl. 23.4 - Certificate of Extension of Time	24	Cl. 36 - Adjudication
11	Cl. 23.6 - Contractor to prevent delay	25	Cl. 36.1 - Set-off Dispute referred to Adjudication
12	Cl. 23.8 - Relevant Events (EOT)	26	Cl. 37 - Arbitration
13	Cl. 23.9 - Extension of time after the issuance of Certificate of Non-Completion	27	Cl. 38 - Notice
14	Cl. 23.10 - Architect's review of Extension of time after Practical Completion	28	Cl. 39.5 - Payments from the Performance Bond Cl. 39.6 – Return of Performance Bond

PAM CONTRACT 2018 – WITH QUANTITIES VS WITHOUT QUANTITIES

Generally, the differences between With and Without Quantities of PAM Contract 2018 Forms, are the removal of QS role in Without Quantities Form and replacing with the Consultant under several provisions/clauses, such as :

- Cl. 11.8 (Access to Contractor's books and documents);
- Cl. 24 (Loss and/or Expense caused by matters affecting the Regular Progress of the Works);
- Cl. 25.5 (Records of Work) under Determination of Contractor's Employment by Employer provision; and
- Cl. 30.10 (Final Account) under Certificates and Payment provision.

On Contract Bills, for With Quantities Form, Article 7 (r) - Contract Bills refers to Bills of Quantities amongst the Listed documents, but in Without Quantities, it refers to Summary of the Tender (or Contract Sum) and Schedule of Rates instead. Further under Clause 11, for With Quantities, it refers to Contract Documents, as opposed to Without Quantities, which refers to Contract Bills and Schedule of Rates.

The significant differences between the said Forms under Clause 12 are;

PAM 2018 (With Quantities)	PAM 2018 (Without Quantities)
Cl. 12 : Contract Bills	Cl. 12 : Quality And Quantity Of The Works
Cl. 12.1 : Measurement of building works	Cl. 12.1 : Quality and quantity of the Works
The quality and quantity of the work included in the Contract Sum shall be deemed to be those which are set out in the Contract Bills and unless otherwise expressly stated, shall be prepared in accordance with the principles of the Standard Method of Measurement of Building Works sanctioned by the Royal Institution of Surveyors Malaysia and currently in force.	The quality and quantity of the work included in the Contract Sum shall be deemed to be those which are shown upon the Contract Drawings and/or set out in the Contract Bills . Unless otherwise expressly stated, the measurements of Variations and Provisional Quantities shall be carried out in accordance with the principles of the Royal Standard Method of Measurement of Building Works sanctioned by the Institution of Surveyors Malaysia and currently in force.
Cl. 12.2 : Correction of errors or omissions	Cl. 12.2 : Lump Sum Contract
Unless otherwise expressly provided, the contract is a Lump Sum Contract. Any error in description, quantity or omission of items in the Contract Bills shall not vitiate the Contract and shall be corrected by the Architect or Consultant.	Unless otherwise expressly provided, the contract is a Lump Sum Contract and shall be deemed to include all ancillary and other works and expenditure, which may or may not have been specifically mentioned or described in the Contract Documents, but which are either indispensably necessary to be carried out to bring the Works to completion or which may contingently become necessary to overcome difficulties before completion.

SUMMARY / CONCLUSION

PAM Contract 2018 is not really a new or radically changed form of contract as there are only several revisions and additions, meant as updates and improvements to its predecessor, PAM Contract 2006, after having consulted and considered the feedbacks and issues raised by stakeholders and changes in the construction industry.

Having consulted and considered the feedbacks and issues raised by stakeholders and changes in the construction industry, the updates and improvements under PAM Contract 2018, in particular the pertinent and positive changes and practices such as single retention sum, extension of time reasoning, expert determination, certifier role in Performance Bond, etc are welcome and positive changes for the construction industry. There are several revisions/changes that will have implications on the consultants, in particular the Architect and Quantity Surveyors on the contract administration aspects.

Meantime, PAM Contract 2006 may continue to be used, but it is envisaged that the PAM Contract 2018 is likely to replace it in the near future, similar to the earlier predecessor, PAM Contract 1998. That said, an alternative form promoted in the Malaysian construction industry is the Asian International Arbitration Centre ("AIAC") Standard Forms of Building Contract (2019 Edition), which introduce the Contract Administrator role, a significant and radical shift from its predecessor 2018 Form, which was viewed as being similar to PAM Contract 2006, except for the inclusion of relevant CIPAA related provisions therein.

Notwithstanding the changes to the aforesaid standard forms, there is still a need for a fairer and more practical form such as the New Engineering Contract ("NEC") Forms, which are principally based on mutual trust and fair contracting, for our Malaysian construction industry. ■

In the next issue of the MBAM Journal, BK Entrusty article will deal with another pertinent contractual issue affecting the Malaysian construction industry, on "Essentials of Works Progress Reporting"

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