

**THE PAM 2006 STANDARD FORM OF BUILDING
CONTRACT — A CHANGE IN RISK ALLOCATION**

by

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INTRODUCTION

A successful standard form of building contract would also lend itself to regulate the day-to-day relationship on site and provide a clear and definitive understanding to the parties, professionals and site personnel of their roles and responsibilities. Users and practitioners must be familiar with the particular standard form of building contract being used.

It would therefore be useful in expressing the obligations of the parties and setting out with reasonable clarity the scope of the project. It is based on the perceived good sense of providing for the problems which experience has taught in the course of construction contracts. Precision in the drafting of a contract is critical to the avoidance of disputes.

COMMON TYPES OF STANDARD FORM BUILDING CONTRACTS

There are four types of standard form of building contracts that are utilised in Malaysia which vary widely.

Firstly, it is those prepared under the auspices of Malaysian institutions or industry groups such as the Pertubuhan Akitik Malaysia ('PAM'), Institution of Engineers Malaysia ('IEM'), Construction Industry Development Board ('CIDB') and Palm Oil Refiners Association of Malaysia ('PORAM').

Secondly, it is those written or commissioned by a government/public sector like the Jabatan Kerja Raya ('JKR') which is used in relation to public work.

Thirdly, it is those drawn up by major employers like Putrajaya, TNB and Petronas for their own specialist need and use.

Finally, it is those drawn up by international or foreign institutions like the Federation Internationale des Ingenieurs Conseils ('FIDIC') and the Institution of Civil Engineers ('ICE'), United Kingdom for use in other jurisdictions. This group of standard forms may be relevant in the Malaysian context if one or more of their clauses are borrowed to be included in an ad hoc contract, or if a Malaysian contractor tenders on a project elsewhere for example, in the Middle East or in India.

THE PAM STANDARD FORM OF BUILDING CONTRACT

The PAM standard form of building contract falls into the first category of 'institutional originated'. They are used extensively in the Malaysian building industry and are generally considered as the de facto Malaysian Standard Form of Building Contract. It is estimated that 90 per cent of the building contracts in the private sector are based on the PAM form.

Many of the clauses in the earlier PAM standard form of building contract have their origin in the corresponding United Kingdom forms, some being identical. There seems, however, in recent times for the forms to diverge, no doubt because of increasing differences between the conditions prevailing in Malaysia.

HISTORICAL ANTECEDENTS

By way of history, the PAM/ISM 1969 Form was first issued in 1969 under the sanction of the Pertubuhan Akitek Malaysia ('PAM') and the Institution of Surveyors of Malaysia ('ISM') and was aimed at fulfilling such an intention. The PAM/ISM 1969 Form was originally based and closely modelled on the 1963 Joint Contracts Tribunal Form ('JCT 1963 Form').

Professor Duncan Wallace in *Construction Contracts: Principles and Policies in Tort and Contract*, (1986) at p 501 pointed out that the title of 'Joint Contracts Tribunal' ('JCT') with its impressive judicial and official overtones is misleading. It has no official or statutory origin or backing. It is not a tribunal at all in the ordinary sense of the word. It meets in secret and its affairs are conducted in secret. There is no equivalent of the JCT in Malaysia.

While the contracts published by JCT have the sanction of a number of bodies, Professor Duncan Wallace complained that there was no employer representation. Further, the strong presence and ability of the contracting lobby in the JCT has influenced adversely the

prolonged drafting and redrafting of the JCT forms to achieve consensus.

CRITICISMS OF THE PAM/ISM 1969 FORM

In the United Kingdom, the JCT family of standard forms of building contract is still widely used. None of the many standard form contracts published by the JCT in England can be regarded as models of draftsman ship. Of all the growing JCT family of contracts, the JCT 1963 Form has been subjected to considerable and justified judicial criticism.

To cite an example, Edmund Davies and Stephenson LJ in *English Industrial Estates Corporation v George Wimpey & Co Ltd* (1972) 7 BLR 122 voiced their annoyance that they had to solve a problem which ought not to have arisen. They made trenchant contributions to the judicial canon of criticism about the standard form of building contract. In particular, Edmund Davies LJ described the JCT 1963 Form as 'a farrago of obscurities'. The lack of clarity made the JCT 1963 Form prone to successful monetary and time claims by contractors against employers.

Similarly, Sachs LJ in *Bickerton & Son Ltd v The North West Metropolitan Regional Hospital Board* [1969] 1 All ER 977 at pp 979 and 989 (CA) complained in the following words:

The difficulties arise solely from the unnecessarily amorphous and tortuous provisions of the ... contract: those difficulties have for a number of years been known to exist; and if, as was stated at the Bar, no relevant amendments have been made even in the latest edition of the contract ... I return to the criticism made earlier of the form of contract and emphasise that it seems to me lamentable that such a form, used to govern so many and such important activities throughout the country, should be so deviously drafted with what in parts can only be a calculated lack of forthright clarity. The time has come for the whole to be completely redrafted so that laymen — contractors and building owners alike — can understand what are their own duties and obligations and what are those of the architect. At present that is not possible.

Other members of the English judiciary have been equally scathing, and the many defects of the JCT 1963 Form have resulted in it being condemned by judicial and other legal opinions. Salmon LJ in *Peak Construction (Liverpool) Ltd v McKinney Foundations Ltd* (1970) 1 BLR 111 at p 114, castigated the form:

Indeed, if a prize was to be offered for the form of a building contract which contained the most one-sided, obscurely and ineptly drafted clauses in the United Kingdom, the claim of this contract could hardly be ignored ...

Professor Duncan Wallace in *Hudson's Building and Engineering Contracts* (10th Ed, 1970) at p 146, writing on the JCT 1963 Form, has expressed the opinion that it is so defective that any consultant recommending its use is guilty of professional negligence to the employer with regard to adequate protection of his reasonable interest as the owner.

In reference to the replacement JCT 1980 Form, Professor Duncan Wallace in his revised abovementioned book (11th Ed, 1995) at p 338 stoutly maintains that:

No informed observer familiar with the 1980 forms would conclude that they are applied with any less force, partly because most of the provisions attracting these criticisms have appeared substantially unchanged in the latter forms.

Until 1998, the construction industry in Malaysia was unhappily obliged to use the PAM/ISM 1969 Form which is essentially the same as the JCT 1963 Form. It is not only drafted in difficult and obscure language, but it also gravely defective in protecting the employer's legitimate interests in many important aspects as highlighted by the English courts. What has been described as the calculated ambiguity of the English parent Form has led to much costly and unnecessary litigation as evidenced by the ample number of accumulated and reported legal cases.

INITIAL ATTEMPTS TO REPLACE THE PAM/ISM 1969 FORM

The same criticism levelled against the JCT 1963 Form was directed against the PAM/ISM 1969 Form. Indeed, this is more so since the PAM/ISM 1969 Form did not incorporate any amendments except those which were necessary to bring the contract document into tandem with the Malaysian law. As a result, the PAM/ISM 1969 Form inherited all the legal and procedural defects of its English parent Form. Nonetheless, prior to 1998, it had been the standard form of building contract in the private sector and was very widely used.

In 1986, the PAM had attempted to draft a replacement for the PAM/ISM 1969 Form. The Building Contract Review Committee of the PAM as chaired by Mr Jerry PM Sum was set up with supporting legal advice. The final document which was ready in 1990 was, however, subjected to authoritative objections and reservations of several senior members of the architectural profession and the Master Builders Association Malaysia ('MBAM'), a body representing the contractors.

In 1990, the PAM decided that the proposed Form should be looked into again as it was not easy to understand and administer. The

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late Professor Vincent Powell-Smith, engaged by the PAM in 1991 to undertake an in-depth critique of the document, concurred with the PAM's view. Following Professor Vincent Powell-Smith's findings, the PAM then decided that the document should not be implemented and effectively abandoned it.

Professor Vincent Powell-Smith was then engaged to revise the PAM/ISM 1969 Form and was asked to take into consideration comments given by those involved in the earlier revision. However, this attempt by the PAM to revise the form fell through when he was unable to deliver the changes requested due to his heavy work commitments elsewhere.

THE PAM 1998 FORM

Thereafter, Mr Sundra Rajoo was commissioned by the PAM to complete the revisions to the PAM/ISM 1969 Form, first started by the late Mr KC Cheang. The result of the commission was the PAM 1998 Form. The approach taken in drafting the PAM 1998 Form was to capitalise on the familiarity of the PAM/ISM 1969 Form that was enjoyed by the Malaysian building industry. At the same time, the stated objective was to evolve, overcome, reduce and ameliorate the often quoted failings of particular provisions of the PAM/ISM 1969 Form.

THE DRAFTING PHILOSOPHY BEHIND THE PAM 1998 FORM

The underlying idea was to close the loopholes that have been exposed in litigated cases and thus, the PAM 1998 Form should become more reliable. Judicial dicta in cases like for example, *Pembinaan Leow Tuck Chui & Sons Sdn Bhd v Dr Leela's Medical Centre Sdn Bhd* [1995] 2 MLJ 57 (SC) and *Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy* [1995] 1 MLJ 817 (FC) had provided authoritative interpretation, explanation and terminology of detailed provisions.

Practitioners have become familiar with it and have used it to their advantage to avoid known pitfalls. Also, such cases have tended to shape attitudes and relationships in the project in a readily recognised pattern (see *Construction Law in Singapore and Malaysia* (2nd Ed, 1996) at p 21).

The PAM 1998 Form also endeavoured to take account of some of the criticisms which had been made, in particular those of Professor Wallace and Professor Vincent Powell-Smith in many of their publications commenting on the JCT 1963 Form. Some of them were conveniently assembled together in Professor Duncan Wallace's



fascinating book, *Construction Contracts: Principles and Policies in Tort and Contract*, (1986).

Professor Duncan Wallace had been vigorous in criticising and in assembling judicial comments unfavourable to the JCT 1963 Form. These were also applicable to the PAM/ISM 1969 Form. A good introduction is Chapter 29 of the abovementioned book which he correctly entitled 'A criticism of the 1963 RIBA joint contracts tribunal contracts'. After setting out 19 major criticisms, he then said:

It must not be thought that the criticisms of the forms which I have made in this article are exhaustive. A problem can be found in literally almost every line of text of the RIBA forms. The real criticisms to be made of the forms are their almost total disregard for the reasonable commercial interest for the employer, their unnecessary obscurity, and their immutability in the face of criticisms. They are of a length and complexity which renders them wholly incomprehensible to the layman and a trap even for a skilful lawyer who has no previous experience in this field. Their policy is to present employers with an apparently attractive tendered price but, concealed in the language of the contract, much of it of a highly misleading kind, are the seeds at a number of points of unjustifiable escalation of that price together with a shifting onto the shoulders of the employer of the burden of many risks which, by virtue of the contractor's experience and knowledge of the factors involved, as well as his overall exclusive control of the project, should properly be borne by the contractor or his sub contractors.

The essence of the above criticisms may be summarised in the Malaysian context that despite its length and complexity, the PAM/ISM 1969 Form was obscure and failed to deal adequately with problems which occurred frequently in practice. Further, from a commercial point of view, the PAM/ISM 1969 Form placed nearly all of the unforeseen risks on the employer and grossly benefited the contractor.

The above criticisms have been borne in mind. The PAM 1998 Form endeavoured to identify, evolve, apportion and balance the risks between the employer and contractor and to put right the glaring defects in the PAM/ISM 1969 Form. It was drafted in tandem with various legislations governing housing and construction in Malaysia. The revisions made in the PAM 1998 Form had the benefit of nearly 30 years of both academic and judicial commentary.

The presumption was that a conscious decision to accept a risk as a matter of business calculation is acceptable whereas it was not acceptable if the risk is hidden. Under the PAM 1998 Form, both the employer and contractor appreciated some of the risks which they are undertaking and were able to take the necessary ameliorative steps.

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The approach may have been successful, as to date there is a dearth of reported legal authorities emanating from the Malaysian courts on the PAM 1998 Form. It could be that there are not many disputes arising from the PAM 1998 Form that have been referred to the courts and those parties were able to resolve such disputes within the mediation and arbitration mechanism provided in the contract.

THE DRAFTING OF THE PAM 2006 FORM

However, after only five years, the PAM through the PAM Contract Review Committee consisting of Ar Tan Pei Ing, Ar Chee Soo Teng, Ar Jerry PM Sum and Sr Low Khian Seng decided to undertake another major revision. The avowed aim of the PAM Contract Review Committee was to produce a balanced Standard Form of Contract.

However, it is not clear if the PAM 2006 Form was drafted with the benefit of an overall, specific and not merely ad hoc legal advice as the PAM Contract Review Committee consisted only of architects and a quantity surveyor. The result of this undertaking is the PAM 2006 Form which was officially launched by Dato' Seri Samy Velu, the then Works Minister on 5 April 2007. The forms were made available for use in 2008.

Although the general arrangement of the clauses (the previous PAM 1998 Form) has been maintained, both the format and content in the new forms have been appreciably altered. The PAM 2006 Form also comprises of three individual forms for building contracts based firstly, on bills of quantities, secondly, on drawings and specifications and finally for nominated subcontractors. The first two of the above-listed forms includes three new clauses whereas the subcontract form has ten additional clauses. It is based on the traditional general contracting route of procurement and it is only intended for building works.

A CHANGE IN RISK ALLOCATION

The PAM 2006 Form does not follow the risk allocation and approach of the PAM 1998 Form. Its provisions are reworded, reshuffled and amalgamated away from the PAM 1998 Form. Employers and contractors may question some of the policy decisions adopted in some of the provisions which may potentially give rise to more disputes between them. From that point of view, the PAM 2006 Form can be considered as a different contract from the PAM 1998 Form.

The risk allocation and antecedents of the PAM 2006 Form are closer to the Construction Industry Development Board ('CIDB') 2000 Form than the PAM 1998 Form with missed opportunities (see

Seminar on PAM Contract 2006 held on 19 January 2010 at the Legend Hotel, Kuala Lumpur as organised by CIOB Malaysia). Since its launch in 2000, the CIDB Form of building contract is viewed as too pro-contractor and it is hardly used in the Malaysian construction industry. Employers have shunned it. Also, it is said that the nominated and Domestic Sub-Contract Forms may be suffering a similar fate.

Despite some improvements in style and formatting, the PAM 2006 Form is still cluttered with deficiencies, material omissions and provisions which an average building construction practitioner may find difficult to comprehend and implement. A majority of those who come into contact with the PAM 2006 Form will be without any specialist legal knowledge.

It is a widely held view among those who have experience of construction disputes that a primary cause of such disputes is inadequate legal knowledge (see Keith Pickavance, *Delay and Disruption in Construction Contracts*, (3rd Ed, 2005) at p 1). In such a situation, the practitioner will need to be careful and seek proper advice if he is not up to it.

Generally, the drafting of the PAM 2006 Form seems rather awkward and artificial, and the language does not quite flow. The layout and design of the form is inadequate and confusing. The PAM 2006 Form appears to be just a revision and reformulation of the previous PAM 1998 Form with the layout being maintained but with additions/amendments made on a cut and paste basis. Save for some welcome changes, it falls short of expectations.

THE PROVISIONS OF THE PAM 2006 FORM

Like the PAM/ISM 1969, PAM 1998 and CIDB 2000 Forms, the PAM 2006 Form makes detailed provisions regulating:

- (1) the work to be executed by the contractor;
- (2) the sum to be paid;
- (3) the extent of the contractor's liability for design;
- (4) the extent of the contractor's liability for defective works;
- (5) the procedure for variations in work;
- (6) the procedure for payment to the contractor;
- (7) the circumstances in which the contractor is entitled to be paid additional sums for variations in the work and/or disturbance to the progress of the work;
- (8) liabilities with respect to insurance;

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- (9) the circumstances in which either party may determine the contract either on default of the other party or in other events; and
- (10) the settlement of disputes.

The list above is by no means exhaustive.

The risk allocation for time, money matters, quality issues and dispute resolution between the contractor, employer and consultant team has been shifted significantly. Although the PAM 2006 Forms contain some contemporary provisions, they are also more procedural requiring the contractor, employer and consultants to strictly adhere to time provisions with the attendant loss of rights or with the incurring of liabilities detailed below.

There is a time bar which requires notices complete with particulars in respect of extension of time claims (see cl 23.1). There are many more relevant events that will entitle the contractor to claim for an extension of time (see cl 23.8). The contractor is entitled for an extension of time arising from any delay caused by work executed for which a provisional quantity is included which the architect finds it to be an inaccurate forecast of the work done (see cl 23.8(t)).

The architect must decide on the contractor's application with sufficient particulars for an extension of time within six weeks (see cl 23.4). If the employer fails to pay on time, the contractor, after giving notice can suspend work and is entitled to an extension of time as well as loss and expense for such suspension (see cll 30.7, 23.8(v) and 24.3(m)).

The contractor can claim for loss and expense for many more matters as compared to the PAM 1998 Form (see cl 24.3). However, there is a time bar which requires such claims for additional payment and loss and/or expense be notified complete with particulars (see cll 11.7 and 24.1). The valuation rules for variations are amended to follow that of the CIDB 2000 Form.

The contractor is entitled for a change of rates for work executed for which a provisional quantity is included or due to variation, if there is a substantial change (see cl 11.6). The contractor is also entitled to loss and/or expense if the architect finds the provisional quantity to be an inaccurate forecast of the work done (see cl 24.3(k)). The contractor is required to keep contemporaneous records (see cll 11.8 and 24.2).

The architect is required to certify practical completion (the definition of which is changed) or refuse to certify with reasons within a specified time of 14 days (see cll 15.2 and 15.6). The

employer is required to notify the contractor with complete details prior to the withholding or deduction of monies from payments due to the contractor.

However, the employer can only proceed if so authorised by an adjudicator's decision if the contractor objects to the withholding or deduction of such monies. The contractor is entitled to a simple interest at the Maybank Base Lending Rate plus 1% if the employer fail to pay the certified sum to him in accordance with the contract (see cl 30.17).

The employer is not entitled to any set off unless the contractor agrees to the amount or the adjudicator decides that such amount can be set-off by the employer (see cl 30.4). As such, it greatly impairs the employer's ability to employ a third party to complete the contractor's outstanding obligations for example, by making good defective works during the contract period.

The contractor, nominated subcontractor and nominated supplier can require for the retention fund to be held by a stakeholder who is to be appointed by them. The employer has no say as to who will be the stakeholder (see cl 30.6(a)). The employer has a more onerous liability as regards to the re-nomination of nominated subcontractors and the contractor is entitled to an additional extension of time and loss and/or expense (see cll 27.11-27.13).

MORE GROUNDS FOR DISPUTES

It can be seen from the foregoing discussion, that the employer's obligations and liabilities in the PAM 2006 Form have been appreciably enhanced with its rights relatively reduced or curtailed. The PAM 2006 Form limits the rights of employers while reducing the risks borne by contractors. Consequently, in terms of risk allocation, there is a significant transfer of the risk involved in the contract to the employer as compared to the previous PAM 1998 Form.

The end result of the above changes is that notwithstanding it being presumably intended to be a more balanced form in terms of risk allocation, in the context of the local building industry, it is viewed to be more contractor friendly particularly by employers and consultants who still remain the single most influential segment of the local building industry. This reallocation of risks proportionately increases the employer's exposure and burden in terms of claims and payments while providing more possible grounds for disputes between the contractor and employer.

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MANAGING THE RISK

Keith Pickavance in *Delay and Disruption in Construction Contracts* (3rd Ed, 2005) at p 14 has explained that allocating risk is one thing but managing the said risk allocated is another matter. Keith Pickavance adds at p 16 that the first essential requirement for a standard form is that it should be drafted with clarity so that it is possible to easily ascertain from the wording just where the risk falls.

Once identified, the magnitude of the risk can be assessed and be ameliorated. The risks will fall either where they are designed to fall as per the contract terms or, by interpretation, where the courts determine they should fall. This may be different from what is expected by those who drafted the forms or where the parties thought they might fall (see John Uff QC, *Standard Contract Terms and the Common Law* (1999) 9 Const LJ 108).

The obscurities and inconsistencies in the PAM 2006 Form is partly due to the compromise for the contractor's benefit between opposing interests and poor drafting. Over time, the draftsmanship and some of the provisions may be subject to stringent criticism.

There are many problems and traps which lie in the path of the parties by reason of the form of some of the clauses in the PAM 2006 Form. For the latter reason, the parties may also suffer the difficulty of being in more disputes instead of focusing on the completion of the project.

Michael O'Reilly in *Risk, Construction Contracts and Construction Disputes* (1995) 11 Const LJ 343 explained that:

It goes without saying that attention should be paid to the clear drafting of contracts. Uncertainty as to the meanings of contract terms reduces the effectiveness of project management as resources need to be channelled into discussions about the division of responsibility within the project. Ultimately, uncertainty may lead to conflict.

It behoves us to heed the observation of Lord Browne Wilkinson in *Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd* [1994] 1 AC 85 at p 105 (HL) where he stated:

Building contracts are pregnant with disputes: some employers are much more reasonable than others in dealing with such disputes. The disputes frequently arise in the context of the contractor suing for the price and being met by a claim for abatement of the price or cross-claims founded on an allegation that the performance of the contract has been defective ...

RECENT DEBATES ON THE PAM 2006 FORM

It would seem that there have not been sufficient academic debates and judicial comments for the PAM and in particular, the PAM Contract Review Committee to undertake such a mammoth task. There is no commonality in the way risk is distributed between the PAM 2006 and PAM 1998 Forms. The resultant PAM 2006 Form has met with less than total acclaim. This is particularly poignant as the recent debates on the PAM 2006 Form have been on whether it is pro-employer or pro-contractor.

The PAM itself has recognised that this has become an issue in the building industry and has embarked on a series of colloquiums to clarify the 'misunderstanding that the PAM Form of Contract 2006 is pro-contractor' (see *The Colloquium on PAM Form of Contract 2006* held on 12 December 2009, *Berita Akitek*, November 2009 at p 6). It does indicate the disquiet and reaction amongst employers, professional consultants and contractors with regard to the radical change of risk allocation and ambiguity arising from it as a roadmap to effective contract administration.

MAKING AMENDMENTS TO THE PAM 2006 FORM

Such criticisms will continue to be made partly by the fact that the PAM 2006 Form has an exemption clause which is the first such clause ever inserted in a standard form of contract issued by a professional institution. Essentially, the exemption clause now requires the professional consultants to advise their employers on whether to use the PAM 2006 Form and to make the necessary revisions in order to ensure that the employer is not worse off if he had used some other form. The net result is that it is almost mandatory for the PAM 2006 Form to be used as the base to produce amended or bespoke forms on behalf of particular employers or contractors as well.

The greatest of care should, however, always be taken to ensure that such ad hoc amendments do not have unintended consequences (see *Keating on Building Contracts*, (8th Ed, 2006) at p 728, paras 19-25). While amendments may introduce positive changes, there is little doubt that they would also complicate the ease of use and understanding as one seeks to ensure that the consequential amendments to the other clauses in the form are also made.

In practice, practitioners and the courts may have great difficulty in deciding upon the meaning that should be given to such contracts when disputes arise. It is anticipated that further debate will also revolve around whether the core of mandatory clauses in the PAM 2006 Form should be used unamended as was the case in other

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jurisdictions (see JA McInnis, *Hong Kong Construction Law*, Vol 1 (1996), Division III at p 2).

POSSIBLE REACTIONS FROM THE CONSTRUCTION INDUSTRY

With the introduction of the new and somewhat complex and different version of PAM 2006 Form of Building Contract which is more procedural and contractor friendly, it is expected that more employers, consultants and contractors will now look towards modifying the older forms like the PAM 1998 Form to return, in effect, to an earlier version of risk allocation or to even design bespoke forms for their projects.

The balance of the bargaining power does not always lie with the contractor and as such, the employer may be in an economic position to insist upon the use of a different or modified form which he may regard as suitable to his own interests. The consultant team is duty bound to advise the employer on it. It should be noted that the choice of a standard form is a distinct question from the considerations entailed in drafting a form of contract (see JA McInnis, *Hong Kong Construction Law*, Vol 1, (1996), Division III at p 57).

Professor Duncan Wallace in his article, *A criticism of the RIBA Joint Contracts Tribunal contracts*, (1973), *The Institute of Quantity Surveyors Journal*, has explained that:

... it is far better to have no standard form than a bad standard form ...
Equally, it is far better to have a good standard form of unilateral provenance than a bad standard form of joint or agreed provenance.

Keith Pickavance in *Delay and Disruption in Construction Contracts* (3rd Ed, 2005) at p 14 explains this approach as the principal aspect of risk management in construction that is the appropriateness or otherwise of the choice of the construction contract by which the employer can manage his risks. It may even lead to the proliferation of a plethora of other standard form of building contracts issued by building industry players that may compete with each other for popular use in the Malaysian building industry.

Contract drafting shares close parallels with legislative drafting. It is an ongoing process. It is a delusion that a perfect standard form of contract can ever be achieved. However, a standard form of contract derives its strength from being predictable, obviating the need for drafting afresh voluminous terms of contract on each occasion. It should also provide a basis for academic study and analysis leading to a better understanding.



CONCLUSION

In the end, whether this has been achieved in the PAM 2006 Form by the PAM Contract Review Committee consisting of Ar Tan Pei Ing, Ar Chee Soo Teng, Ar Jerry PM Sum and Sr Low Khian Seng will be left to users and the building industry to decide.

The various clauses, topic by topic together with the relevant cases need to be examined in detail in order to elucidate a problem concerning a particular clause or to obtain a general view on some aspect of the operation of procedure set out in the contract.

For those who do not specialise in this field, the task of reading and understanding the PAM 2006 Form is a forbidding one. They should try to recognise the different interpretations that may be put on certain provisions. They should be familiar with the mass of legal principles and rules if they are to avoid the pitfalls inherent in that venture. It must be remembered that the construction industry is notorious for complex disputes.

