

PAM PRACTICE BUREAU
CATEGORY G: CONTRACT ADMINISTRATION

No.	DATE	ENQUIRY	RESPONSE FROM TEAM
1.	24 Nov 2021	<p>1. Architect's Practice During DLP period, the cold-water pipe above the ceiling burst and caused the ceiling board to collapse. Such collision of the ceiling had directly caused bad damage to the bed and mattress below the ceiling. The Contractor has made good the affected pipes and ceiling to comply with his obligation under the Contract.</p> <p><u>Questions:</u></p> <p>a) Is the Contractor also liable to compensate the Developer for the damages to the bed and mattress caused by the defective pipe burst under the PAM Contract 2006?</p> <p>b) As the House Owner wanted to claim the Developer for compensation for the damaged bed and mattress instead of claiming from his own house fire insurance, is the developer liable to pay such compensation under the Standard Sales and Purchase Agreement?</p> <p>2. Contract Administration The developer had issued VP for a landed housing project. One of the house owners lodged a defect complaint 1.5 years after VP on most Sanitary fittings which occurred bubbling/blistering effect on the chrome surface.</p> <p>Only 5 house owners out of 450 houses lodged a similar complaint about the defective sanitary fittings.</p> <p>The contractor then submitted the test report run by the product Manufacturer which stated nothing wrong with the product and claimed the bubbling effect was due to the</p>	<p>We refer to your query as received on 24 November 2021, and we write to note the following.</p> <p>1. Architect's Practice</p> <p><u>Replies:</u></p> <p>a) Based on PAM Contract 2006, the Contractor is obliged to only rectify the defects which are detected/ occur, during the Defects Liability Period, to the building for which he was contracted to construct.</p> <p>b) With respect to the Sale & Purchase Agreements under the Housing Development (Control & Licensing) Regulations 1989, we are unaware of any contractual obligations on the part of the Developer to compensate the Purchaser for any damage to the contents of the property after the giving of vacant possession. Nevertheless, please be advised that Purchasers may still attempt to pursue their rights under the above regulations or common law and we would suggest that the Developer seek legal advice on the above.</p> <p>2. Contract Administration</p> <p><u>Replies:</u></p> <p>a) In accordance with PAM Contract 2006, It is the contractor's responsibility to rectify all defects which occur or are detected during Defects Liability Period.</p> <p>Irrespective of the innocence claimed by the various parties, it is the Architect's responsibility to assess the defect and determine if it is a <i>bona fide</i> defect as per Article 7(x) of the Contract.</p>

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		<p>wrongly use of strong acid for cleaning. The correct cleaning manual was also stated in the Home User Manual issued to the owner during VP.</p> <p>The Contractor claimed that he did not use any strong acid or inappropriate cleaning detergents for cleaning the sanitary fittings prior CPC. All units remained unattended until the issuance of VP by the developer to the owner.</p> <p>House Owner also claimed that he did not use any strong acid or inappropriate cleaning detergents for cleaning the sanitary fittings.</p> <p>Hence, the cause of the bubbling effects on the sanitary fittings remained uncleared and the developer is requesting the SO to resolve the issue.</p> <p><u>Questions:</u></p> <p>a) Since all parties claimed innocent on the cause of the sanitary fitting problem, is the Contractor still liable for changing and replacing all affected defective sanitary fittings as the DLP has not ended?</p> <p>b) What dispute resolution can be carried out for the above dispute involving among few parties (house owner, developer, Contractor and Manufacturer)?</p>	<p>All Architects should have the technical competence to carry out the above assessment but if there are disputes regarding this assessment, you may also advise the Employer to engage an independent and qualified consultant to carry out the assessment. We are of the opinion that such an independent assessment would be beneficial in determining subsequent action against the Developer, specifier or any other relevant party who is responsible for the defects</p> <p>Should you have difficulty finding an independent consultant, you may contact Architect Centre Sdn. Bhd [ACSB] at info@architectcentre.com.my or O: 03 2201 662.</p> <p>If it is determined that it is a bona fide defect, the Architect may issue instructions to rectify or repair the said defect.</p> <p>If there is a dispute between the Contractor and Employer on the defect, the Architect may still issue instructions to the Contractor to carry out the necessary rectification work and if the Contractor declines to carry out the instruction, the Employer may employ others to carry out the rectification in accordance with clause 15.4 of the Contract.</p> <p>If there is indeed a dispute between the Contractor and Employer on the defect, they can seek to resolve their dispute by arbitration (as allowed for in the Contract) or by negotiations.</p> <p>b) As there are two (2) distinct contracts with different contractual obligations and parties, we would advise that any disputes be confined to the respective contracts with their corresponding, contractual parties.</p> <p>For the Building Contract, a possible avenue for dispute resolution has already been given above.</p>

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			<p>For the Sale and Purchase Agreement, there are already provisions for the handling of defects and we would advise Purchasers and the Developer to refer to the Agreement for guidance.</p> <p>Please also be advised that Purchasers may also file complaints with the Tribunal for Homebuyer's Claims (Housing Tribunal) as established by the Ministry of Urban Well-being, Housing and Local Government or, if the property is stratified, they may also file a complaint with the Commissioner of Building in charge of the area in question.</p> <p>We trust the above has been helpful.</p>
2.	17 Nov 2021	<p>RE: CLAUSES IN THE PAM CONTRACT PAM Sub- Contract 2006 Date of award by main contractor: 16 October 2020 Date of determination of main contractor: 1 October 2021</p> <p><u>Outstanding/overdue payment</u></p> <p>a. Paycert 2 – 12/4/2021 with due date 12/5/2021 b. Paycert 3 – 28/5/2021 with due date 27/6/2021 c. Paycert 4 – 28/6/2021 with due date 28/7/2021</p> <p><u>Queries</u></p> <p>1. How do we recover debts from main contractor? 2. Can we initiate legal action towards the main contractor to recover debts? 3. Do we have to wait for final account claim to recover debts? If so, final account claim shall be under the previous main contractor or the new main contractor? 4. How does PAM protect NS/NSC in the case of determination and there is outstanding/overdue payment?</p>	<p>Dear Sir/Madam,</p> <p>We refer to your email dated 17 Nov 2021 and note that there are insufficient details on the project for us to reply comprehensively. Nevertheless, as you have mentioned that PAM Sub-Contract 2006 ('Sub Contract') was in use, we shall respond to your query (without prejudice) based on the PAM Sub-Contract 2006 but note that this reply is not applicable to Nominated Suppliers, Domestic Sub-Contractors or Suppliers.</p> <p>1. You have mentioned that the Main Contractor has been determined; as we are not sure whether such determination was by the Contractor himself or by the Employer, we advise that you refer to Clause 25 of the Subcontract to ascertain your contractual rights. Regardless of either way of determination, kindly note that your Sub Contract should also have been automatically determined.</p> <p>2. All existing debts or outstanding payments from the main contractor can still be recovered by yourself in accordance with clause 26.0 of the NSC Form. Any other amounts may be recovered by following the provisions as provided under Clause 23.6 and 23.7, or Clause 26.4 and 26.5 of the Main Contract.</p>

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		<p><u>Outstanding uncertified claim</u> Claim 5 submission date 23/9/2021. The inspection was done and verified on 26/10/2021.</p> <ol style="list-style-type: none"> 1. If this claim is parked under final account claim, does this mean the final account claim under the previous main contractor or the new main contractor? 2. How does PAM protect NS/NSC in the case of determination and it is parked under the final account claim of the new main contractor? 3. Is there a method to remove this claim and resubmit it under the new main contractor? <p><u>Issuance of Letter of Demand via official transmittal (aconex system)</u></p> <ul style="list-style-type: none"> • 1st letter issued 24/6/2021 • 2nd letter issued 4/8/2021 	<ol style="list-style-type: none"> 3. Contractually, any dispute with regard to the final account or payment shall be referred to Arbitration under Clause 29.0 of the Sub Contract. Nevertheless, you are also at liberty to take legal action to recover any sums due to you. Please be advised that legal action may also include the pursuit of your claims based on using the provisions of the Construction Industry Payment and Adjudication Act 2012 (CIPAA). Should you decide to take legal action, we would suggest that you first seek legal advice on the matter. 4. Based on the information provided, you have only entered into an agreement with the previous Contractor. Therefore, all the 3 outstanding payments remain under the responsibility of the said Main Contractor. 5. Unless otherwise stated in your Contract, there are no provisions in the Main Contract or Sub Contract for the transfer of claims from one Main Contractor to another. 6. Kindly note that PAM (Malaysian Institute of Architects) is a professional institute representing architects in Malaysia and when the PAM Contract and Sub Contract Forms were drafted, it was PAM's intention to have <i>equitable</i> contract documents for the benefit and protection of the contractual parties. However, it must be remembered that PAM as a private institute, is not in the position to govern the conduct, intentions and competence of the various contractual parties.
3.	2 Nov 2021	<p>May I check with PAM if a small-scale project comprising (Package A: 10 units of Terrace House, Package B: 10 units of Shop House) can be tendered and awarded as 1 Contract under the PAM Form of Contract, whereby the Consultant Team comprises 1 Architect but with 2 different Civil & Structural Engineer and 2 different Mechanical & Electrical Engineer, each responsible for Packages A & B respectively?</p>	<p>We refer to your email received dated 3 November 2021 our reply is as follows: Please be advised that our reply is based on the PAM 2006 Form of Contract but that our comments would also equally apply to the PAM 2018 Form as well.</p> <p>Generally, the PAM Form of Contract is designed for:</p> <ul style="list-style-type: none"> • one job package (Works) as stipulated under the Article 7(bf); • at one job location (Site), as stipulated under the Article 7(az); • which is to be awarded to one main contractor (Contractor), as stipulated under Article 7(t); and

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		Does the PAM form of Contract allow for 2 different C&S Engineers and 2 M&E Engineer to be bound as 1 Contract?	<ul style="list-style-type: none">• which is to be administered by one Architect as stipulated under Article 3 of the Form of Contract. <p>However, there are no specific clauses that restrict the engagement of the consultants as stated in Article 4 to Article 6 to be only ONE person/company. The consultants can be expanded as per intended Work sections as long as the consultants fulfil the qualifications as stated in the Contract and their appointment is aligned with their statutory obligations and codes of conduct.</p> <p>Where necessary, it is up to the Employer and Consultants to sort out any alternative arrangements in accordance with different Works sections. However, it's prudent that each section of work is properly defined and demarcated to prevent possible overlapping of responsibility, mainly infrastructure works such as earthworks, pipelines etc.</p> <p>Although there is no mention of statutory approval in the PAM Form of Contract; it is always essential to ensure the Works / Sections are related to the respective submitting persons and corresponding authority approvals, so that the submitting persons have full knowledge of the Works as carried out on the job site, prior to issuance of relevant certification, i.e. the G Forms for the Certificate of Completion and Compliance (CCC).</p> <p>Taking into consideration the above, if the Employer intends to carry out the procurement and contract documentation beyond the "normal" and "conventional" practice, we strongly advise the Employer to assess the impact with the relevant consultants and to seek legal advice on the intended approach.</p> <p>For additional information on the above, you may refer to your PAM Contract 2006 or 2018.</p>

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4.	24 Sept 2021	<p>Hi Sir, We are having a contract with the main contractor claiming this contract is following the PAM contract. The contract is:</p> <ol style="list-style-type: none"> 1. Traffic Management 2. Environmental management 3. Occupational safety and health 4. Road furniture 5. Pavement works 6. Temporary Diversion Road Works <p>All the scope are temporary items except pavement works. Our queries are:</p> <ol style="list-style-type: none"> a. The contract starts February 2020 and finishes August 2021 but continues as normal, no E.O.T. given until today. [progress only 15%] b. from the first certificate itself main-con deducting 10 % from our monthly payment which is monthly salary, supply of material [until today we never did permanent road works.] c. the contract indicated only 5% retention. <p>Please advise us on this matter.</p>	<p>Thank you for your email dated 24 Sep 2021.</p> <p>First, we are not sure about the clarification required by you as there was basically no question asked in your email.</p> <p>Secondly, you have not provided clear information about your case, including the contractual positions, the exact version of the PAM Contract, terms and conditions, etc.</p> <p>Nevertheless, we would still try our best to provide you with some feedback on the 3 “queries” that you have stated in your email, based on the general conditions of PAM Contract. Please refer to the followings -</p> <p><u>Extension of time (EOT)</u></p> <ul style="list-style-type: none"> • If the Contractor fails to complete the Works by the Completion Date, the Works will deem to be non-completion and will be subject to Liquidated Damages ('LD'). The amount of LD will be ascertained until the date the Contractor has completed the Works. • We are unable to advise further as we do not know the terms and conditions of your Contract. <p><u>Deduction from monthly payment</u></p> <ul style="list-style-type: none"> • We are unable to provide you with any feedback as we have no knowledge whether the terms of your award state any retention sum of your interim payments. <p><u>Retention</u></p> <ul style="list-style-type: none"> • In PAM Contract 2006, unless otherwise stated, the Conditions have stated 10% as the Percentage of Certified Value Retained in the interim payments, and the total value retained shall not exceed the Limit of Retention (5% of the Contract Sum); whereas in PAM Contract 2018, only Percentage of Certified Value Retained has been prescribed at 5%.

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			<ul style="list-style-type: none"> We advise you to verify the conditions in your Contract. <p>For your information, please also note that PAM Contract is designed for the use between a contractor and an employer, whereas another form of contract - PAM Sub Contract is designed for the use between the main contractor and a nominated sub-contractor('NSC'). It is prudent for you to find out which form of Contract are you referring to.</p> <p>Finally, we strongly suggest that you refer to all relevant terms and conditions as included in your Contract, and study the details as well as the implications. Where necessary, we also advise you to consult the contract administrator or to seek professional legal advice</p> <p>We hope the above answers your queries.</p>
5.	5 Aug 2021	<p>Defects Liability Period (DLP) from March 2021 to September 2022.</p> <p>During June 2021, PPN or new lockdown is implied to the location of the said project.</p> <p>If the contractor cannot do rectification works at these moments, can we extend the DLP later for them to complete the said defects?</p> <p>Are there any professional guidelines for contract administration in relation to Covid-19 in 2021?</p>	<p>We refer to your email dated 5th August 2021 and are pleased to reply as follows:</p> <ol style="list-style-type: none"> This reply assumes that you are using the standard PAM Forms of Contract and that there were no amendments to the conditions of the contract There are no provisions in the PAM Contract to extend the Defects Liability Period which commences upon the issuance of the Certificate of Practical Completion (CPC). However, under Clause 15.4, please note that the Contractor shall make good the defects specified within twenty-eight (28) days after receipt of the schedule of defects (<u>or within such a longer period as may be agreed by the Architect</u>) at the Contractor's costs. You may wish to request the Architect to exercise his discretion to set such a period which is agreeable to the Contractual parties While there are no specific professional guidelines for contract administration in relation to Covid-19 from PAM during 2021, you may wish to refer to the earlier Practice Note which may offer you some insights into any queries you may have on the PAM Form by following this link.

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			<p>http://www.pam.org.my/images/resources/practice_notes/PN3_2020_Covid19-Act.pdf</p> <p>4. We also note though that the current situation regarding SOP's is very fluid as we understand that certain repairs may now be carried out. We would advise as such, that you check with the relevant authorities on whether the defect rectification in question may be carried out by either the contractor or his appointed representatives.</p>

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CATEGORY G: Contract Administration (PAM Contract, PWD 403A, etc)

No.	DATE	INQUIRY	RESPONSE FROM TEAM
1.	28 June 2021	<p>Enquiry on delay of issuance of Certificate of Extension of Time by the Architect</p> <p>Pursuant to PAM Contract 2006, clause 23.4, " When the Contractor has submitted sufficient particulars for the Architect's consideration, the Architect shall subject to Clauses 2.3.5. 23.6 and 23.8, consider the Contractor's submission and shall either reject the Contractor's application or issue a Certificate of Extension of Time within six (6) Weeks from the receipt of sufficient particulars. The Architect may issue the written notice of rejection or the Certificate of Extension of Time before or after the Completion Date."</p> <p>Hence, we would like to enquire that, if the Architect has delayed, or did not respond to issue the Certificate of EOT (after 6 weeks have passed), what are the possible actions to be taken from the Contractor other than to write in to remind the Architect? Also, could the Contractor claim any time / cost impact on this matter?</p> <p>Your kind assistance and prompt response on this matter is highly appreciated.</p>	<p>Thank you for your enquiry dated 28 Jun 2021, with regards to 'Delay of issuance of Extension of Time (EoT) by the Architect'. Our reply is as follows:</p> <ol style="list-style-type: none"> 1. We are assuming that the PAM Contract 2006 form in your query was used in its entirety and that there were no amendments to the conditions of the contract. 2. Kindly note that the time frame as established in the PAM Form is for the benefit of the Contract Administrator and Contractual Parties as it tries to assist them in ensuring that all Claims for Extensions of Time are dealt with in a timely and contemporaneous manner when memories are still fresh, documents and records are still readily available (and not lost in storage) and all relevant personnel are still around to respond. Should you have concerns that there may be issues with the retrieval or information or the recollection of past events if the assessment is not carried out in a timely manner, you are at liberty to write to the architect and communicate your concerns. 3. Although we note that any delays in the assessment of a EoT Claim will not add to or aggravate the delays which have already been incurred, we do recognise that the timely establishment of a revised Completion Date would be beneficial in the Contractor's financial planning (as his liabilities, such as potential <i>Liquidated Damages</i>, may be established). As such, you are at liberty to also write to the architect and request for his assistance in your financial planning, by expediting the assessment of your Claim for EoT. 4. As noted in the above item 3., if any delay in the assessment of your EoT claim should not aggravate the delays which have already been incurred, this delay in assessment should also not add to any loss or additional expense arising from the original delay to the Works. As a delay in assessment would not seem to have any additional: time/cost impact", we are of the opinion as such, that there would not be any grounds for additional claims. 5. If the Architect has not responded after 6 weeks have passed, we do agree with your proposal to send a reminder to the architect. If any of the above points are pertinent to your claim, you may draw the architect's attention to them. You may also be pro-active and ask if the architect requires any further information or assistance to carry out his assessment. <p>We obviously do not have all the background information but would note that under the current circumstances where a lockdown may be in force, there may be difficulties for contract administrators and contractual parties to carry out their contractual obligations. Nevertheless, irrespective of such difficulties, we are confident that architects will carry out their obligations as they are required to abide by the Lembaga Arkitek Malaysia's Code of Conduct which under section 3(3), requires the architect to "administer the building contract competently and responsibly and shall be impartial in any dispute that may arise between the client and the building contractor".</p>
2.	7 June 2021	<p>To whom may concern,</p> <p>I would like to seek for advice on the extension of the Defects Liability Period under the Covid-19 Act as per below:</p> <ol style="list-style-type: none"> a) Does Contractor have the right to refuse to extend the Defects Liability Period? b) If the Contractor refused to extend the Defects Liability Period, what action can the Developer/ Architect take? c) The additional cost incurred due to the extension of the Defects Liability Period shall be under the Developer or the Contractor own cost? 	<p>We refer to your email entitled " Enquiry on Covid-19 Act - Extension of Defects Liability Period" dated 7 June 2021 and write to note the following.</p> <ol style="list-style-type: none"> 1. We note that although the recently gazetted "Temporary Measures for Reducing The Impact of the Coronavirus Disease 2019 (Covid-19) Act 2020 (Act 829)", does cover Construction/Building Contracts (under Section 7), there are no specific provisions for extensions of Defects Liability Periods (DLP) for these contracts within the Act. <p>References to the DLP under the Act (Section 36), mainly refer to the Sale and Purchase of Housing Accommodation Agreement (SPA) between a Developer and Purchaser under the Housing Development (Control and Licensing) Regulations 1989, entered before 18 Mar 2020.</p> <p>As there are no specific provisions with the Act for such an extension for Building Contracts, we are of the opinion that contractually, a contractor has a right to refuse to extend</p>

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			<p>the DLP <i>unless</i> otherwise stated in the contract signed and agreed by both parties.</p> <p>2. If the Main Contractor refuses to extend the DLP, we suggest the following:</p> <p>a. Negotiate to extend the contract/DLP through a supplementary agreement to the Contract with the Main Contractor with additional payment for the extended time</p> <p>b. Negotiate with the Contractor for a NEW contract to look after any defects arising from the extended DLP.</p> <p>c. Engage someone else (i.e. new contractor, maintenance man, etc.) to rectify the defects during the extended DLP.</p> <p>3. The additional cost incurred due to extension of the DLP shall be under the Developer's own cost.</p> <p>We suggest that you refer to PAM's virtual Professional Practice Forum 13.0- Surviving post Covid 19: A Common Sense Approach, organised on 19 December 2020, where issues such as your queries were discussed.</p> <p>We regret that PAM has at this stage, none of the additional information you require but rest assured that the Institute is in continuous dialogue with other stakeholders with regards to the above-mentioned Act.</p> <p>Attached for your information are a copy of the Joint Advisory Note as issued by the Building Industry Presidents' Council dated 11th November 2020, which was prepared with PAM's assistance and guidance, as well as PAM Practice Note (PN3-2020) which you may find useful.</p>
3.	16 April 2021	<p>PAM form of Contract 2006 is used in this case. The Employer has made payment late, after the period of honouring certificate but not beyond the period of delay.</p> <p>Contractor has applied for Extension of Time(EOT) for the overdue period of time until the payment has been made in accordance to clause 23.8(m)-any act of prevention or breach of contract.</p> <p>Is the contractor entitle for this EOT? Is late payment considered breach of contract or an act of prevention? In this case, Contractor also did not submit notice of default for late/ non-payment, no suspension of work being carried out and contractor continues with their work on site within the period of overdue payment.</p>	<p>Please find our response to your email query dated 16 April 2021 as follows:</p> <p>1) If it is clear that the Employer has failed to honor payment within the stipulated period, this failure would constitute a default by the Employer, of his obligations in accordance to clause 26.1(a), i.e.; the Employer would be deemed to be in <i>breach</i> of the contract. Correspondingly, under clause 23.8(m), such a breach of contract/act of prevention by the Employer may be deemed as a Relevant Event upon which the Contractor shall be entitled to apply for an Extension of Time (EOT) .</p> <p>The Main Contractor may also utilise Clause 30.7-Suspension of Works for non-payment to address this matter but as pointed out by yourself, the works have not been suspended and the Contractor would seem to have decided instead to exercise his rights under Clause 23.0 (Extension of Time).</p> <p>Kindly note that we are also unable to ascertain the relevance of your reference to the <i>Period of Delay</i> in this context.</p> <p>2) Should you have received such an application for EOT, we would kindly remind you that all EOT applications by the Main Contractor must observe the required notices by the Main Contractor as outlined in Clause 23.0 and in particular 23.1(a) as a condition precedent and to be completed with submissions per Clause 23.1(b) on final details. It is the role of the Architect to then determine what constitutes a Relevant event for this application. If there is insufficient information to determine the legitimacy of the application, the Architect may, per clause 23.3, request for further particulars. within a 28 day period upon request.</p> <p>If at the date of this reply, payment is still not made, the Main Contractor may not be in a position to advise you on the actual details of the delay. Due considerations must be given to this scenario to determine the actual EOT applicable, let alone the legitimacy of the claim.</p> <p>We hope this helps. Nevertheless, we would advise that should you have any queries related to professional practice in the future, your first point of reference should always be the Architect under whom</p>

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No.	DATE	INQUIRY	RESPONSE FROM TEAM																																										
4.	12 April 2021	<p>RE: Contract Administration in relation to COVID-19 Act 2020, PAM Practice Notes, December 2020 (Serial no. 3-2020)</p> <p>We refer to the above Practice Notes released by PAM in December 2020 with regards to the Contract administration in relation to COVID-19 Act 2020.</p> <p>We would like to seek your opinion as an Architect as Contract Administrator of PAM 2006 or PAM 2018 Contracts that are ongoing and impacted during the COVID-19 pandemic.</p> <p>Defect Liability Period* Can an Architect unilaterally give an extension to the contractor to extend the period of DLP to match the period granted to the developer under the COVID Bill? The Contract is silent on this matter and the COVID Bill does not mention contractors liability for DLP, whereas the PAM practice note seem to imply that the contractor “should” extend the DLP.</p> <p>We would also request you to kindly highlight the particular Clause in the PAM contract that allows for the flexibility that has been proposed in the PAM Notes.</p> <p>We hope that you’ll be able to clarify this urgently as many stakeholders including developers are using the PAM practice notes as justification that the contractor should automatically extend their DLP to match the COVID Bill.</p>	<p>you are receiving your training from as they would have a more complete and accurate record of the context.</p> <p>With regards to your query on 12 April 2021, please find our clarification as follows:</p> <ol style="list-style-type: none"> 1. The cited PAM Practice Notes Serial No:3-2020 issued on 18 December 2020 recognised that there are no provisions in the PAM form of Contract that empower the Architect to unilaterally change the conditions of the Contract to extend the DLP with respect to the MCO period. Nevertheless, under the unprecedented pandemic condition, the practice notes recommend for the Architect to propose to the Client and Contractor to agree on an extension via other means, be it in the form of a supplementary agreement and so forth. 2. The recommendation on DLP in the Practice note MUST be read in conjunction with the preceding section which notes that the agreement on the contractual parties is required. The key objective is 'that consultants are encouraged to play facilitative roles in helping the contracting parties explore options that will seek to balance their respective interests to ensure the sustainability of all stakeholders and the building industry.' 																																										
5.	2 April 2021	<p>Project type: 4-storey commercial building with open space car park together with a TNB compact sub-compact (whole project - 1 acre land) Commencement date on 1 July 2019. Completion date on 30 June 2020 Clerk of work is hired to monitor the progress of project on behalf of me. The project has been running late based on the site progress report given on monthly basis by contractor.</p> <table border="1" data-bbox="428 1694 1045 2754"> <thead> <tr> <th>Date</th> <th>Scheduled progress (%)</th> <th>Actual progress (%)</th> </tr> </thead> <tbody> <tr><td>1 Jun 2019</td><td>0.00</td><td>0.00</td></tr> <tr><td>1 July 2019</td><td>2.01</td><td>2.19</td></tr> <tr><td>1 August 2019</td><td>4.17</td><td>3.34</td></tr> <tr><td>1 September 2019</td><td>8.08</td><td>5.44</td></tr> <tr><td>1 October 2019</td><td>11.38</td><td>6.68</td></tr> <tr><td>1 November 2019</td><td>14.11</td><td>8.79</td></tr> <tr><td>1 December 2019</td><td>19.21</td><td>10.17</td></tr> <tr><td>1 January 2020</td><td>27.55</td><td>12.72</td></tr> <tr><td>1 February 2020</td><td>39.24</td><td>17.55</td></tr> <tr><td>1 March 2020</td><td>56.08</td><td>21.82</td></tr> <tr><td>1 June 2020</td><td>70.44</td><td>32.18</td></tr> <tr><td>1 July 2020</td><td>86.87</td><td>38.73</td></tr> <tr><td>1 August 2020</td><td>100.00</td><td>47.65</td></tr> </tbody> </table>	Date	Scheduled progress (%)	Actual progress (%)	1 Jun 2019	0.00	0.00	1 July 2019	2.01	2.19	1 August 2019	4.17	3.34	1 September 2019	8.08	5.44	1 October 2019	11.38	6.68	1 November 2019	14.11	8.79	1 December 2019	19.21	10.17	1 January 2020	27.55	12.72	1 February 2020	39.24	17.55	1 March 2020	56.08	21.82	1 June 2020	70.44	32.18	1 July 2020	86.87	38.73	1 August 2020	100.00	47.65	<p>Dear Steven Ng,</p> <p>We refer to you email query on 2 April 2021 and based on the information in the email, please find our response as follows:</p> <ol style="list-style-type: none"> 1) No mention is made of the form of contract employed but based on the clause nos. referred to in your e-mail, we shall assume that the PAM Form (2006 or 2018) has been employed. 2) In the PAM Forms, kindly be advised that "Damages for Non-Completion" (under Clause 22) are known as "Liquidated Damages" (LD) and not Liquidated and Ascertained Damages (LAD) as these forms no longer require the damages (as indicated in the Appendix to the Contract) to be ascertained before being levied. 3) As you have appointed an Architect for the project, he/she would be able to advise you better on the salient points of his/her decisions on matters pertaining to EOT and LD as these are very project specific decisions and recommendations peculiar to the case of each project. Based on the standard PAM form of Building Contract, it is the Architect's duty to process all EOT claims that are submitted, in an impartial manner, free from the influence of both the Employer and Main Contractor. A discerning Architect would weigh the reasons for EOT carefully to see if any claims and events, no matter how small, will cause delay to the completion of the works. Any suggestion that an EOT can be used as a threat to either party is not a feature of the PAM form. 4) Please also be reminded that under the PAM Form, all claims for EoT require the Contractor and Architect to follow a procedure and timeframe and you may wish to review the procedure and timing of the claims and certification of any EoT to date with your Architect. 5) As your query does not provide us with a complete picture, it is in your best interest to forward all your queries to the Architect for clarification. We are sure that the Architect would be pleased to forward you with a reply on the justifications of all their decisions and action, thus far. Based on the standard PAM form, whether a project is at the stage ready for Practical Completion or otherwise is the sole responsibility of the Architect as the certifier. It would be incumbent on the Architect to ensure that all conditions required to be fulfilled for CPC would need to be met prior to the issuance of the
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PAM PRACTICE BUREAU

CATEGORY G: Contract Administration (PAM Contract, PWD 403A, etc)

No.	DATE	INQUIRY			RESPONSE FROM TEAM
		1 September 2020	100.00	62.35	<p>CPC. Nevertheless, we would also draw your attention that under Clause 15.0 the PAM Form, a Certificate of Practical Completion may still be issued even if there are still defects subject to ;</p> <ul style="list-style-type: none"> a. the defects being minor in nature, b. receipt of the Contractor's written undertaking to rectify such defects within a reasonable time specified by the architect and c. the Employer having full use of the works for their intended purpose. <p>6) If the Architect fails to forward you a satisfactory reply for whatever reason, the standard PAM form does allow you to pursue other forms of dispute resolutions for cases where the Certificate of Practical Completion has been issued or otherwise. You may wish to look into this as an alternative for your answers. Your Architect should also be able to advise you on all these in-built dispute resolutions options in the PAM form.</p>
1 October 2020	100.00	68.33			
1 November 2020	100.00	77.67			
1 December 2020***	100.00	Not given			
		<p>***The contractor stopped giving out site progress report after 1 November 2020.</p> <p>An EOT 1 was given to contractor till 7 November 2020 from 30 June 2020 due to MCO which is agreed by the me as the paymaster.</p> <p>However, contractor made an application for EOT 2 on 18 September 2020 and citing the following reasons for extension of time to be granted:</p> <p>-Clause 23.8@, delay caused by any appropriate authority and service provider in carrying out, or failure to carry out their work which affects the contractor's work progress, provided always that such delay is not due to any negligence, omission, default and/or breach of contract by the contractor and/or nominated sub-contractor.</p> <p>-Clause 23.8(q), compliance with any changes to any law, regulation, by-law or terms and conditions of any appropriate authority and service provider.</p> <p>Basically contractor cited TNB, TM, Majlis and IWK as the primary reasons for the delay and sought additional 90 days to complete the remaining works.</p> <p>Architect did not issue any EOT 2 as he needs more time to assess the situation.</p> <p>Fast forward on my last meeting together with consultants and contractor on 26/3/2021, I brought up the issue of LAD. The LAD is to compensate the losses that I incur due to delay of completion of building which is supposed to be completed on 30/6/2020. I was shocked to be told by the architect that I will not be awarded any LAD at all. It's because he viewed the delay is caused by change of design required by TNB which is to add a bollard instead of fence to secure the TNB sub-compact station which has been duly completed in mid-March 2021. But I reminded my architect a lot of works are not completed.</p> <p>Contractor asked architect to issue CPC as he said other minor work can be touched up. Architect threaten to seek EOT3 and charge us additional cost under preliminary if CPC is not issued by 1 April 2021. The defect liability period will commence once CPC issued. I informed architect and contractor that part of the the agreed terms for CPC includes Testing & Commissioning but contractor replied that the building is not "energised". I reluctantly agreed due to pressure and architect deemed the building as 99% completed according to his opinion.</p> <p>I am very concerned about the LAD as this is totally unfair to me as the paymaster. I have paid all the fees and bills on time. Can you please advise me on this matter? It seems to me that architect has the absolute power to make decision on this matter which worries me.</p>			
6.	18 March 2021	<p>"Developer A" JV with "Contractor B". "Contractor B" will incharge the Contract for MBW Tender. "Developer A" and "Contractor B" intend to call MBW tender using PAM Contract 2006.</p> <p>After Tender Awarded, "Contractor B" want the "Awarded Main Contractor" work under 'Contractor B'.</p>			<p>We refer to your query as received on the 18th March 2021.</p> <p>Having reviewed your afore-mentioned query, kindly note that we have extreme difficulty in understanding your query. We would advise that you exercise greater precision and discrimination in your use of the terminology related to contractual matters.</p>

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CATEGORY G: Contract Administration (PAM Contract, PWD 403A, etc)

No.	DATE	INQUIRY	RESPONSE FROM TEAM
		<p>"Developer A" INSIST JV partner "Contractor B" stated under Article 1-Main Contractor and put Awarded Main Contractor as Principal Sub-Contractor.</p> <p>Understand that In PAM contract 2016 don't have such Principal Sub-Contractor clause/Article. The Consultants are in the opinion that by doing so, they are in breach of the professional practice as they insist that the PAM Contract can only be used strictly between the Employer and the Main Contractor. However, "Contractor B" lawyer commented that this can be done.</p> <p>My Question as follows: 1. If any dispute/court case happen, PAM contract 2016 have any reference for this situation? 2.If "Developer A" & JV partner "Contractor B" insist the Awarded Main Contractor as Principal Sub[1]Contractor (work under Contractor B). PAM Contract 2006 + amendment clause still valid? 3. What is PAM advice on this situation?</p>	<p>Nevertheless, we shall endeavour to assist in answering your queries as per the following:</p> <p>1. If any dispute/court case happen, PAM contract 2016 have any reference for this situation?</p> <p>We are unsure by what is meant by PAM contract 2016 as the currently available forms of the PAM Contract are the 2006 and 2018 editions and given the multiplicity of possible disputes, we are also unsure of what "this situation" refers to.</p> <p>Irrespective of the edition, we note that the PAM Forms of Contract have dispute resolution processes incorporated into them but that PAM does not collate or maintain a database of any disputes involving these standard Forms of Contract.</p> <p>2.If "Developer A" & JV partner "Contractor B" insist the Awarded Main Contractor as Principal Sub[1]Contractor (work under Contractor B). PAM Contract 2006 + amendment clause still valid?</p> <p>As no details were provided for your "amendment clause", we are unable to offer an opinion or any advice with regards to its adequacy or validity relative to the PAM Forms of Contract. It must be noted that in general, PAM advises that none of its standard Forms of Contract should be modified and if such modifications were to be carried out, these modifications are solely at the risk of the contractual parties and their agents.</p> <p>We are also unsure as to what it meant by "Principal Sub[1]Contractor"(sic.) and further note that there are no provisions, references or definitions for the afore-mentioned term in any of the PAM Forms of Contract. PAM does not support or condone the infusion of additional meanings, intentions or obligations into its standard Forms of Contract, especially when they have the effect of changing the original intent of the Contract.</p> <p>3. What is PAM advice on this situation?</p> <p>a. The PAM Forms of Contract are an agreement between two (2) contractual parties, namely the Employer and Contractor; there are no provisions for any other contractual parties. Our advice for parties intending to use the PAM Forms is that the above arrangement should be maintained.</p> <p>b. As a Graduate Architect, any queries you may have on practice matters should always be first brought up with the Architect under whom you are receiving your professional training from. Please note that under the <i>Lembaga Arkitek Malaysia's</i> Code of Conduct, all architects are required to administer building contracts competently and responsibly as well as ensure that their employees are competent and adequately supervised.</p> <p>c. We would strongly urge you to read and understand the PAM Forms of Contract if you intend on being involved in the administration of these contracts.</p>
7.	16 March 2021	<p>We refer to the Laws of Malaysia Act 829 (Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020). The Act 829 stated the period of extension is automatically granted/allowed for under Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020.</p> <p>As referred to the interpretation of Clause 23.0 of PAM Form of Contract, any Extension of time claims for works being delayed due to measures taken to adhere to any compliance to any Government instruction to control the spread of Covid-19, or indirect consequences as a result of complying to such measures shall be granted, subject to proper submission of records and proof of such delays. We're confused on the above 2 different interpretations. Therefore, we write to seek for your confirmation of the Act if the extension due to Coronavirus Disease 2019 is automatically granted/allowed.</p>	<p>We refer to your letter ref.: SRB/PROJECT/PAM/1905/L001 dated 15th March 2021 as received by e-mail on the 16th March 2021.</p> <p>Before we look into assisting you with your queries, we would like to note the following :</p> <p>a. We refer to the ; i. Temporary Measures For Reducing The Impact of Coronavirus Disease 2019 (Covid-19) Act 2020 (Act 829) as gazetted on the 23rd October 2020. ii. Temporary Measures For Reducing The Impact of Coronavirus Disease 2019 (Covid-19) (Extension of Operation) Order 2020 as gazetted on the 29th December 2020.</p> <p>b. As far as we are aware, there are <u>no</u> provisions in any of the above items of legislation for the <i>automatic granting of a period of extension</i> as alleged in your letter. We note though that under Part II, Section 7 of the above Act 829 ; "<i>The inability of any party or parties to perform any contractual</i></p>

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No.	DATE	INQUIRY	RESPONSE FROM TEAM
		<p>Under the request to provide days of extension of time under below consequence (min and max of the granted/allowed days under the Act 829), can we clarify the exact details of the terms as below:</p> <ol style="list-style-type: none"> 1. If automatically granted/allowed how many days will be granted? 2. Under Clause 23 of PAM Form Contract: with proper submission of records and proof of such delays, how many days will be granted?" 	<p><i>obligation arising from any of the categories of contracts specified in the Schedule to this Part due to the measures prescribed, made or taken under the Prevention and Control of Infectious Diseases Act 1988 (Act 342) to control or prevent the spread of Covid-19 shall not give rise to the other party or parties exercising his or their rights under the contract".</i></p> <p>We take this to mean that should a building contract be delayed beyond its original completion date due to prescribed measures under Act 342, employers shall not be allowed to claim for liquidated damages arising from the non-completion beyond the completion date, for the period as prescribed in above Act and Order.</p> <p>c. We are as such, confused as to what is meant by the "2 different interpretations" referred to in your letter. Based on our understanding, Act 829 is related to the suspension of contractual obligations whilst Cl. 23 of the PAM Forms of Contract (both 2006 and 2018) is related to extension of time.</p> <p>Following on from the above, we would write in reply as follows :</p> <ol style="list-style-type: none"> 1. Act 829, as far as we can see, does not automatically provide for any extension to any building contract. 2. Act 829 also does not specify or advise on any specific period of extension even if such an extension is allowed for under a building contract. 3. In the absence of any background knowledge and the submission of details and documentation, we are unable to <i>technically</i> advise you of any extension which may be due to you under Cl. 23 of the PAM Form and assuming that there is already an Architect administering the contract, we are also unable to <i>professionally</i> advise you on any extensions which may be due to you. We would advise that you refer any claims for an extension of time back to the Architect for their assessment.
8.	2 February 2021	<p>I have some queries on PAM contract and would like to seek for your advice please.</p> <ol style="list-style-type: none"> 1. Noticed there are few versions of PAM contract (ie, dated 2006, 2018 and etc). May I know which version shall we use? 2. May I know if this contract is a must to use and adhere by all organization with their contractor or it's just a reference for us to follow? 3. If Q1 answer is optional and for reference only, <ol style="list-style-type: none"> a) can we amend the clause (ie, change payment terms to 30 days) to follow our company standard practice? b) After we made changes and gotten mutual agreement by the company & contractor, are we protected by PAM if we present to court due to dispute? 4. If Q1 answer is, PAM is a must to follow, <ol style="list-style-type: none"> a) can we amend the clause (ie, payment terms clause) to adhere to our company standard practice? b) After we made changes and gotten mutual agreement by the company & contractor, are we protected by PAM if we present to court due to dispute? c) may I know is there any minimum contract threshold that we must PAM contract? 	<ol style="list-style-type: none"> 1. There are only minor differences between the 2006 and 2018 editions of the PAM Form of Contract (related principally to the issuance of Contract Drawings and the retention sum) but it would be advisable to use the latest PAM Contract -i.e. PAM 2018- as any ambiguity in the terms, clauses and so forth should have been already looked at in the latest version. <p>Please also be advised that both the 2006 and 2018 editions come in two forms; one <i>with Quantities</i> (for where a Bill of Quantities shall form part of the contract) and another <i>without Quantities</i>. We would suggest that you check with your project consultants on the documents which shall form the Contract in order to decide on the correct form.</p> <ol style="list-style-type: none"> 2. There are many different types of construction contracts in use and apart from having to comply with the provisions of the Contracts Act 1950, there are, as far as we are aware, no restrictions on the type or form of contract you may wish to employ. Nevertheless, it is a general practice for the building industry to use "standard forms" of contracts and we understand that the PAM Form of Contract is currently, the most widely used, standard form. A majority of practicing Malaysian architects should be more familiar with the PAM contract to administer for construction as they are required to have a working knowledge of the form to qualify for registration as an architect. 3. <ol style="list-style-type: none"> a. There are no restrictions preventing you from modifying the terms of the PAM form of contract; i.e. modification of the time for honoring certificates from 21 days to 30 days but any such modifications would be at your own risk and we would advise that you seek professional advice before carrying out any modifications. Such modifications though should be made known to all parties before they enter into the contract; i.e. the amendments may be made no later than during tender stage to allow for the correct pricing during the preparation of tenders. b. We are unsure as to what protection you expect from PAM. PAM contracts are only a vehicle for the both Client and Contractor to agree on the offer, consideration and the terms that come with it. In any contractual dispute, only the parties for the contract will be liable to

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			<p>the court of law and PAM as an organization will not be a party for the proceedings.</p> <p>4. c. There is no threshold mentioned for the amount of construction costs. However, for small extension and alteration projects, there are instances where alternative contracts (ie: PAM Minor work Contract) with less legalese are used.</p> <p>Should your project consultants be unable to advise you adequately on the subject of building contracts, you may seek specific and more detailed advice from Architect Centre. Please contact Puan Raja Selamah via E-mail at rajaselamah@architectcentre.com.my or Mobile: +60173033768.</p>
9.	19 January 2021	<p>Defects that occur after the defect liability period (DLP). If there are still defects that occurred after the DLP and after the issuance of Schedule of Defects (SOD) to the Contractor, but CMGD has yet to be issued due to there are still outstanding defects that has yet to be made good by the contractor.</p> <p>How do we deal with the defects that occurred within this period of time?</p> <p>Can we still issue SOD to the contractor, but it has passed the DLP? Or we have to treat them as latent defect? Does the Limitation Act come into reference in this case?</p> <p>But CMGD has yet to be issued.</p>	<p>We refer to your email query received on 19th Jan 2021.</p> <p>Under the Conditions of the PAM Contracts 2006 & 2018, there are no provisions to add new items into the Schedule of Defects (SOD), 14 days after the expiry of the Defects Liability Period (DLP) or a later date if mutually agreed by parties of the Building Contract. The final Schedule of Defects to be delivered at a set time is for the purposes of putting the issues of defects and rectification under the Contract to rest and set the follow-on events (Certificate of Making Good Defects, release of retention, final certificate of Payment) in the Building Contract in motion to bring the Contract to a close. The Architect is not empowered to introduce new items after the final SOD is issued, more so, after the issuance of the Certificate of Making Good Defects (CMGD), regardless of whether they are latent or patent. However, there is nothing to stop the Employer from engaging the Main Contractor and requesting rectification (if it is a latent defect) prior to the Final Payment being made, with you advising both parties accordingly.</p> <p>For circumstances of tackling defects arising and discovered 14 days after DLP, parties of the contract should weigh and consider the nature of the defects (including party responsible) as these defects can later be mitigated in mechanisms either by mediation, arbitration (if the CMGD has not been issued) or outside the contract under other common law/tort resolutions. The Limitation Act will come into play with these forms of dispute resolution.</p> <p>As all other forms of resolution are usually both costly and time consuming, it would be in the interest of the parties on the Contract to avoid resolutions of this nature. You may, if you wish to, advise them on your opinion with regards to the nature of these defects for them to decide to make good, to pay or otherwise, if goodwill is still present between the parties. As a reminder, the Architect is no longer empowered to instruct for these to be made good unless both parties of the Contract agree for this to be allowed, hence allowing the full mechanisms of the Contract to assist in the matter.</p>
10.	18 January 2021	<p>RE: Query Loss & Expense Claim</p> <p>My name is Suraya Ahmad Ramdzan, working in a property investment company.</p> <p>Due to the MCO and other events, we are facing a lot of claims by the contractor. Most of the claims are quite justifiable to be processed. However, we are not very familiar with the Loss & Expense claim. Our consultants do not have experience handling such claim either. Can you recommend anyone / any party that we can seek advise from?</p>	<p>Your email query on 18 January 2021 is referred.</p> <p>As the issues pertaining to loss and expense claims require complex considerations, a simple reply will not be justifiable nor appropriate. You may wish to contact and consider engaging PAM's architectural service centre, Architect Centre, to provide you the advisory services you may need.</p> <p>Please contact Puan Raja Selamah of Architect Centre via email at rajaselamah@architectcentre.com.my or via telephone at +60173033768.</p> <p>We hope that this is helpful.</p>