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**PAM**

**PERTUBUHAN AKITEK MALAYSIA  
MALAYSIAN INSTITUTE OF ARCHITECTS**

**CONTRACT ADMINISTRATION  
IN RELATION TO COVID-19 ACT 2020**

# **PAM Practice Notes**

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## CONTRACT ADMINISTRATION IN RELATION TO COVID-19 ACT 2020

On 23 October 2020 the *Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Act 2020, Act 829* was gazetted. For the purpose of this Practice Notes, this Act 829 is referred to as the **Covid-19 Act**.

**Act 829:** *An Act to provide for temporary measures to reduce the impact of Coronavirus Disease 2019 (COVID-19) including to modify the relevant provisions in the Limitation Act 1953, the Sabah Limitation Ordinance, the Sarawak Limitation Ordinance, the Public Authorities Protection Act 1948, the Insolvency Act 1967, the Hire-Purchase Act 1967, the Consumer Protection Act 1999, the Distress Act 1951, the Housing Development (Control and Licensing) Act 1966, the Industrial Relations Act 1967, the Private Employment Agencies Act 1981, the Land Public Transport Act 2010, the Commercial Vehicles Licensing Board Act 1987, the Courts of Judicature Act 1964, the Subordinate Courts Act 1948 and the Subordinate Courts Rules Act 1955.*

The global Covid-19 pandemic has caused major disruptions to the building industry, including:

- a. Delays to building projects due to disruptions caused by, the Movement Control Orders, Conditional Movement Orders, as well as the Standard Operating Procedures (SOPs) implemented thereafter; and
- b. Escalated costs arising from prolongation of projects and costs for complying with the necessary SOPs.

### **Inability to Perform Contractual Obligation**

Part II of the Act, Inability to Perform Contractual Obligation, is deemed to have come into operation on 18 March 2020 and shall continue to remain in operation until 31 December 2020. The inability of contracting parties to perform any contractual obligation during the above period, shall not give rise to the other parties exercising his or their rights under the contract, thus it temporarily suspends the contractual rights in order to allow all parties to review their respective positions and consider the best way to move forward. The Covid-19 Act also provides an avenue for mediation for contracts without such provisions.

In the PAM 2006 and PAM 2018 Contracts, there are existing provisions for mediation, adjudication and arbitration. PAM 2018 also has the provision for expert determination. However, the mediation process can be lengthy and costly. As contract administrators, Architects and other consultants should take a practical approach to mitigate disputes for the benefit of the contractual parties.

The key recommendation of the 'THE BUILDING INDUSTRY PRESIDENTS' COUNCIL (BIPC) JOINT ADVISORY NOTES' that was issued on 13 November 2020, of which PAM is one of the signatories, 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.

Architects should encourage contractual parties to discuss issues on ongoing projects with the objective of preserving common interests as opposed to insisting on strict contractual rights.

Based on the above, PAM recommends the following with reference to the PAM 2006 and 2018 Form of Contracts for Architects to propose to their clients and contractors to adopt. Architects should use their good judgement in guiding the negotiations between parties to reach a fair solution.

### **Recommendations to be Considered for Contract Administration: -**

#### **General Explanations:**

#### **1. Extension of Time – Clause 23**

For a project that has not been issued with a Certificate of Practical Completion (CPC), the assessment for any application for an Extension of Time (EOT) shall take into consideration any delays to the progress of work caused by the Covid-19 measures including MCO, CMCO, etc; and compliance with SOPs. Architects are encouraged to be more lenient when considering notices and claims for EOT, i.e., by adjustment of the period for the submission of the notices or full details. Architects are recommended to assess the EOT application regardless if the Contractor has not fully complied with the conditions regarding notice and particulars of delays (Clause 23.1).

#### **2. Loss and Expense – Clause 24**

As per the provisions of the PAM 2006 and PAM 2018, EOT can be granted on various relevant events. If the EOT is granted based on 'Force Majeure', the Contractor is not entitled to claim for any loss and expense arising from this delay. However, it is recommended that the parties agree that the costs arising from the delays due to Covid-19 measures should be shared based on the following: -

- i. Each party shall bear their own costs arising from their complying with the COVID-19 SOPs; and
- ii. The Employer shall bear the cost for the extension of performance bonds, Contractor's all-risk-insurance policies and workmen's compensation insurances under the Contract.

#### **3. Defects Liability Period (DLP) – Clause 15.4**

For projects with Defects Liability Periods (DLP) running during the MCO, the DLP should be accordingly extended in consideration of the duration of the MCO period.

Architects are reminded though, under the Covid-19 Act, the DLP for Housing Projects under the Housing Development Act 1966 (HDA) are required to be extended for the period commencing from 18 March 2020 to 31 August 2020, thus, arrangements should be made to extend the DLP under the Construction Contract.

#### **4. Other Contractual Obligations that Have Time Implications**

For the following contractual obligations which fall within the MCO period, the duration for the performance of such obligations should be deemed to be extended for the same duration as the MCO period:

- i. period of Final Account;
- ii. period for issuance of interim certification;
- iii. period for compliance with Instructions;
- iv. period for issuance of schedule of defects;
- v. period for making good defects, etc.

Any delay in performing obligations related to the above during the period affected by the MCO shall not be considered as a default by any party.

Any claims or certification for EOT or loss and/or expense which have already been issued or were submitted prior to the gazettment of the Act shall remain valid and shall be processed in accordance with the provisions of the Contract (refer to Section 10 of the Covid-19 Act).

Issued by:

Professional Practice Committee,  
**Pertubuhan Akitek Malaysia**  
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