

PAM
**/ PRACTICE
NOTE**

**/ CERTIFICATION UNDER
THE PAM CONTRACTS
2006 & 2018**

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Practice Note: Certification under the PAM Contracts 2006 & 2018

Preface

This Practice Note (PN) is the second in a series of notes issued to assist and clarify the administration of Building Contracts based on the PAM Contracts 2006 and 2018 but the first in relation to certification under the above-mentioned Contract forms.

Through the years, PAM has been continuously issuing PN's on this issue of certification¹. As far as the writer is aware, these PN's are still available for reference. This PN though (as a start on a series of PN's on Certification) does not attempt to up-date those previous PN; their proposed scopes are different; it should also be noted that they are based on versions of the PAM Form which may no longer be available or in use.

As for all the PN's in this series on Contract Administration, the intention is to always try and deliver the message as directly as possible with any supporting information being consigned to footnotes. It is the writer's opinion though that these footnotes are as equally relevant and all readers are encouraged to not ignore them.

This PN is based on part of PAM's previous Professional Practice Course (Module M05) related to Architect's Certification under PAM 2006 (as also prepared by this writer).

Introduction

Let's start by asking; "What is Architect's Certification with respect to Building Contracts like the PAM Contracts 2006 and 2018?".

Some have quite succinctly, defined it as an "expression of the Architect's judgement, opinion or skill in a definite and tangible form, pertaining to matters he is empowered to certify under the terms and conditions of the building contract"². In addition, this writer would also add that this expression of judgement, opinion or skill must be;

- i. grounded in fact and
- ii. exercised independently or impartially with respect to the Contractual Parties.

Notes:

¹ The previously issued PN's on Architect's Certification are as follows:

1. "Certification Required Under The PAM Contract Agreement" - Practice Note No.001 dated November 1987; Author Unknown.
2. "Certification Required Under The PAM Building Contract" - dated March 1988; Author Unknown
3. "Certification Required Under The PAM Building Contract" - Practice Note One (MA) dated March/April 1990 by Eric Baxendale.

While parts of the above PN's may still be relevant, Architects are advised to read them relative to contemporaneous conditions as well as the relevant version of the PAM Forms of Contract that they may be using.

² This definition is taken directly from Ar. Jerry Sum's Paper; "Architect's Certificate under the PAM Form of Contract" dated July 1999.

Whilst anyone can choose to certify *anything* under a Building Contract, it is worth noting that under the PAM Forms of Contract, only certificates issued by the Architect will have any effect on the Contractual Parties.

Architects though, when exercising this privilege (and duty) of certification, should always remember that the privilege is *conditional* upon;

- i. his issuance of certificates only under circumstances where the Contract specifically empowers him to do so and
- ii. the issuance of such certificates are wholly in accordance with the Terms and Conditions of the Contract.

The Types of Architect's Certificates under PAM Contracts 2006 and 2018.

For the purposes of convenience, this writer has chosen to classify Architect's Certificates under the following categories;

1. Certificates that **record status** relative to the Contract; i.e.; *Certificates of Non-Completion (CNC)*.

2. Certificates that **record status** and **grant**:

- a. **Financial Benefit** OR **Direct Payment** from one party to another. i.e.; *Interim Certificates* OR
- b. **Non-Financial Benefit**, i.e.; *Certificates of Extension of Time*³.

By this writer's count, there are **17** distinct Architect's Certificates under the PAM Contracts 2006 & 2018 as well as the PAM Sub-Contracts 2006 & 2018. The list of these certificates is as follows:

A. Certificates which record status.

1. Certificate of Practical Completion (Cl.15.2).
2. Certificate of Partial Completion (Cl.16.1(a)).
3. Certificate of Sectional Completion (Cl.21.3).
4. Certificate of Non-Completion (Cl.22.1).
5. Certificate of Making Good Defects (Cl.15.6).
6. Certificate of Practical Completion of a Nominated Sub-Contractor's Work (Cl.27.2(f); **Cl.15.1**)⁴.
7. Certificate of Sectional Completion of a Nominated Sub-Contractor's Work (Cl.27.2(f); **Cl.15.2**).

B. Certificates which record status and grant financial benefit or direct payment.

1. Interim Certificate (Cl.30.1).
2. Certificate for the disbursement of proceeds from an insurance claim (Cl.20.A.4, 20.B.5 or 20.C.5).
3. Certificate for the final payment to a Nominated Sub-Contractor (NSC) before final payment to a Contractor (Cl.27.7; **Cl.26.9**),
4. Certificate of the amounts for which the Contractor has failed to provide proof of payment to a NSC (Cl.27.6; **Cl.26.5**).
5. Penultimate Certificate (Cl.30.13).
6. Certificate for the release of the 1st half of the Retention Fund (Cl.30.6(c)).
7. Certificate for the release of the 2nd half of the Retention Fund (Cl.30.6(d)).
8. Certificate for deduction of any sums due or to become due to the Employer from the Contractor, from the Retention Fund (Cl.30.6(a)).
9. Final Certificate (Cl.30.15).

C. Certificates which record status and grant non-financial benefit.

1. Certificate of Extension of Time (Cl.23.4).

Essential Features of an Architect's Certificate under the PAM Contracts 2006 & 2018

As seen above, there are a variety of Architect's certificates for different but specific circumstances. Irrespective of these differences though, there are also some useful (if not essential) features which are **common** across all the different types of Architect's Certificate, which are as follows:

1. The Certificate must be **tangible**; or in other words, it has to be in writing and in the form of a physical document⁵.
2. It must be **dated**⁶; very often, the certificate is issued to record an event or the contractual status at a specific point in time.
3. It must **refer to the Contract or works** to which the Architect is empowered to issue such certificates⁷.
4. It must be **directed/addressed** and issued to the **relevant party**.

Notes:

³ The writer concedes though, this system of classification may not be as clear-cut as it seems; Non-Financial Benefits after all, may have financial implications, i.e.; a *Certificate of Extension of Time* may affect the project's *Completion Date* which in turn may affect the Employer's Financial Planning and the Contractor's ultimate Financial Benefit.

⁴ Clause nos. for both the PAM Contracts 2006 & 2018 are in black whilst clause nos. for both the PAM Sub-Contracts 2006 & 2018 are in **orange**.

⁵ Although PAM 2018 now recognizes the electronic transmission of documents, both PAM Contracts 2006 & 2018 are still based on a physical/hard-copy Contract; thus, to be prudent, all certificates should also follow this direction of being issued ultimately in hardcopies.

⁶ As noted earlier, the certificates may be used to record status at a specific point in time. Upon receipt of a certificate, the contractual parties may also be expected to follow up and act within a specific time frame, i.e.; upon receipt of an Interim Certificate, the Employer would be obliged to pay the amounts stated in the Interim Certificate to the Contractor within the Period of Honouring Certificates. The timing is critical and it should follow as such that the *issuance* of the certificate should be contemporaneous with the Architect's actual certification, i.e.; it is NOT advisable to certify an event only to issue the certificate 6 months later.

⁷ At it's simplest; the Certificate should bear the project title or project no. for easy identification and reference by the Contractual Parties and the Architect; after all, there may be the possibility that there is more than one contract existing concurrently between the Contractual parties.

5. It must be **sent, served or delivered** in accordance to the Conditions of the Contract ⁸.
6. It should refer to a **specific issue**, i.e.; *Extension of Time* and the **Clause** under which the Architect is empowered to issue such certificates.
7. It should have a **serial or reference no.** (ideally sequential, if more than one of the same type of certificate is to be issued) to assist in easy identification and record-keeping.
8. It must have the specific and explicit **declaration (by the Architect)** as to what is being certified; i.e.; the declaration; *"I hereby certify....."*, must be present.
9. It must be **signed** by the "Architect" as named in the Articles of Agreement.

Conclusion

Some Architect's Certificates shall inevitably get used in a Building Contract; some though, may never get used at all. It is hoped that this series of PN's shall at least, get to visit in the future, the more commonly used certificates.

In the meantime, all Architects are advised, when issuing any certificate, to;

1. remember the ultimate intention (and goal) behind the issuance any certificate,
2. establish and verify the facts behind the issuance of any certificate,
3. check (and re-check) the Contract on the terms and conditions related to the issuance of the certificate,
4. remind the Contractual Parties on the implications behind the issuance of any certificate.

Notes:

- ⁸ Please refer to Clause 36 for the PAM Contract 2006 and Clause 38 of the PAM Contract 2018.

PRACTICE NOTE | PN 2023-2

This Practice Note was authored primarily by Ar. Joseph Tan, reviewed by Practice Note Working Group, Professional Practice Committee 2023-24 and issued on 9 November 2023.

This Practice Note updates PN 1998 (Mar), PN 1990 (Majalah Akitek, Mar-Apr) and PN 1987-1, issued previously.

Practice Notes are a guide for Architects to rely on, and provides clarity on a particular subject but it should also be considered in relation to their respective projects. As in all practices, there are peculiarities and specific issues which PN may not or cannot cover. Therefore Architects must exercise their own judgement.