

PAM
**/ PRACTICE
NOTE**

**/ INTERIM CERTIFICATION
UNDER THE PAM CONTRACTS
2006 AND 2018**

“AN IDIOT’S Q & A PRIMER”

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Practice Note: Interim Certification under the PAM Contracts 2006 and 2018 - “An Idiot’s Q & A Primer”

Notes:

^{ic1} The previously issued PNs on the subject the 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 current PAM Forms of Contract.

^{ic2} An important point to note is that in the PAM Contracts 2006 & 2018, only the Architect is empowered to decide on when and if parts of the Works may be deemed as being completed.

^{ic3} The “Interim Claim Interval” is an interval agreed to by the Contractual Parties before their entry into the contract and is required to be stated in the Appendix to the Conditions of Contract. Although current industry practice sets this interval at 1 month, alternative intervals may be set subject to such intervals being neither too short (with the result of affecting the time frame as already described under Clause 30.1 of the Contract) or too long (with the result of affecting the Contractor’s cash-flow relative to Industry norms).

Although the agreed interval may be noted down in the Appendix, the Conditions of Contract are silent as to when the intervals start. If the tender or contract documents are silent on this commencement, it is advisable for the Architect to get all parties to agree upon a *detailed, regular time frame* no later than the Initial Site Meeting. The detailed, regular time frame may simply involve all parties agreeing for the submission of the payment application by the end of the 1st week of every month followed by issuance of an Interim Certificate by the end of the 4th week of every month.

^{ic4} This version regarding the submission of details to the “Architect and Quantity Surveyor” only applies to the PAM Contracts (With Quantities). For the PAM Contracts (Without Quantities), the submission of details is only to the “Architect”.

Preface

This Practice Note (PN) is the third in a series of Notes (and the second in relation to certification) issued to assist and clarify the administration of Building Contracts based on the PAM Contracts 2006 and 2018 for Architects, stakeholders and other interested parties. There have been previous PN’s issued by PAM^{ic1} covering Interim Certification but it must be noted though that some of these previous PN’s were based on older versions of the PAM Contract which may no longer be available for use. Although this PN may be read in conjunction with the previous PN’s, all Architects should nevertheless, review and decide on whether those PN’s may be applicable to their own respective contracts.

This PN is also 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

When reviewing through all the various Architect’s Certificates found under PAM Contracts 2006 and 2018, a conscious decision was made to select *Interim Certificates* for study under a PN as arguably, it may be the most *important* certificate. In the interest of brevity and clarity, the rest of this PN will take the form of **Questions** and **Answers** (Q&A) revolving around the certificate. **Nevertheless, all readers are advised to not over-look the footnotes/ notes in the margins and read further up on the subject for a more complete picture.**

Q - Why is the Interim Certificate important?

A - Its importance lies in the fact that it is probably the most used certificate during the currency of a contract; i.e. for most contracts, it would be used at least once a month.

Another key point is that it involves the payment of monies from one contractual party to another with payment of money always being a potential source of disputes.

Q - Interim Certification – what is it?

A - Building Works are normally, *not small*, may take a long time and can be very expensive; it would be very difficult to find a Contractor willing to carry out such works and only expect payment when the Works have been completed.

Payment as such, is normally divided into a series of *interim payments* made throughout the contract period. These *progressive* payments though must be reflective of the parts of the work deemed completed by the Architect^{ic2} at the relevant intervals with the process of assessing such work and certifying the amounts payable being collectively known as “Interim Certification”.

Q - What is the process for Interim Certification?

A - Upon commencement of the contract, the Contractor may apply for interim payments for portions of the works he considers completed by submitting a *payment application* at the “Interim Claim Interval”^{ic3} to the Architect (and Consultants) in accordance to Clause 30.1 of the Contract. This payment application though is required to be accompanied with “*complete details and particulars as required by the Architect and Quantity Surveyor*”^{ic4} in order for them to assess the application.

Within 21 Days from the receipt of the Contractor’s application (complete with all the required details and particulars), the Architect is required to issue an Interim Certificate stating the amounts payable.

Notes:

^{ic5} It must be remembered that a QS’s valuation is primarily his estimation of the value of work he considers as completed. As the responsibility of issuing the Interim Certificate lies with the Architect, all Architects are advised to check the valuation to ensure that it is correct. Where required, the Architect is obliged to make the necessary adjustments to a valuation to ensure that any amounts payable under an Interim Certificate are as correct as possible.

^{ic6} If the Conditions of Contract require an Architect to issue his Interim Certificate within 21 Days of receipt of the Contractor’s application, the Architect may want his Consultants to submit their valuations, to him within 14 Days of receipt of the application. Such a time frame would allow the Architect sufficient time to comfortably check the valuation (please refer to note ^{ic5}) prior to preparing the Interim Certificate.

^{ic7} As the timely delivery of the certificate is an important obligation, Architects are advised to always record the actual delivery of the Interim Certificate to (as well as the receipt by) the Employer.

Under the PAM Contract 1998, Interim Certificates were issued by the Architect to the Contractor (with a copy to the Employer). In practice, this meant apart from having to chase the Architect for the timely issuance of the certificate, a Contractor would also have to collect the certificate and rush it to the Employer to assist in getting timely payment. Since under the PAM Contracts 2006 and 2018, the certificate is now issued directly from the Architect to the Employer (with a copy to the Contractor), the Contractor no longer has to collect and deliver the certificate, thus, *in theory*, saving valuable time. *In practice though, most Contractors would claim that they still have to rush to collect and forward the required certificate.*

Architects may also want to remind Employers to honour (pay) the amounts due under the Interim Certificate within the Period of Honouring Certificates as stated in the Appendix with further advice that failure to honour the certificate within this period may allow the Contractor to ;

- i. give notice and suspend their work on site (Clause 30.7).
- ii. charge interest on any outstanding sums until payment is received (Clause 30.17) and
- iii. determine their own employment (Clause 26.1(a)).

Q - What happens if a Contractor fails to submit his payment application at the Interim Claim Interval?

A - Clause 30.1 of the Conditions of Contract is very clear on this; if a Contractor fails to submit his application, it is deemed that he has *waived his rights for issuance of an Interim Certificate* (and corresponding payment) for the relevant interval. Nevertheless, the Conditions of Contract also empower the Architect to exercise his discretion as to whether an Interim Certificate should or should not be issued under such circumstances.

Although they are contractually not obliged to do so, it is prudent for the Architect to remind all Contractors of this Condition (and record such reminders).

Q - Who evaluates the Contractor’s payment application?

A - As issuance of the Interim Certificate is wholly the Architect’s responsibility, it should follow that the steps leading up to his certification including the assessment of the amount of work completed, should also fall under the Architect. Nevertheless, Architects are empowered to request for assistance from their Consultants for the areas under their respective scope and expertise.

For the *PAM Contracts 2006 and 2018 (with Quantities)*, such assistance is actually formalised with Quantity Surveyors (QS) being noted as the party responsible for preparing valuations for the Interim Certificates^{ic5}.

The Conditions of Contract are silent though on the time frame allowed for such valuations; the time frame for the QS’s and Consultants’ valuations as such, should be agreed upon by the Architect and Consultants based upon their working back from the maximum period given to the Architect to issue the Interim Certificate^{ic6} i.e., within the 21 Days from the receipt of the application.

Q - To whom is the Interim Certificate addressed to?

A - This may seem to be a redundant question but Clause 30.1 is again very clear on this; as the Interim Certificate is *issued by the Architect to the Employer*, it should follow that the certificate as such, should also be addressed to the Employer.

Although the Contractor may derive some benefit from the Interim Certificate (such as payment); this benefit can only materialize if the certificate is *received by the Employer* for him to act upon. An Architect’s responsibility as such, is not just restricted to preparing and signing the Interim Certificate; he is also responsible for the *timely delivery^{ic7} of the certificate to the Employer with a copy to the Contractor*. The copy to the Contractor is important as it serves to keep him informed of the stages in the Interim Certification process.

For contracts involving Nominated Sub-Contractors (NSCs) and Nominated Suppliers (NSs), the Architect is also required to *direct* the Contractor as to the amounts due to any of the NSCs and NSs under the Interim Certificate as well as inform these NSCs and NSs of the amounts due to them.

Notes:

^{ic8} Clause 30.2 of the Conditions of Contract allows for any goods or materials ordered by the Contractor and delivered to site, to be taken into account under the sums which may be payable by the Employer to the Contractor. These goods and materials though, must be for incorporation into the *permanent works, be stored properly, protected against any loss, damage or deterioration* and should not have been brought *prematurely* to site.

Upon their inclusion into any Interim Certificate, these goods and materials are deemed to have become the property of the Employer (Clause 14.1). Goods and materials on site (even though they may be deemed as being the Employer’s property), are of limited value to the Employer; after all, the Employer is primarily, only interested in a *building incorporating these goods and materials* rather than the unfixed goods and materials. The PAM Contract 2006 and 2018 recognises this by allowing only a *percentage of the full value* of these goods and materials to be included in the Interim Certificate with this percentage being one which is agreed upon by the Contractual parties prior to entry into the contract and which is stated explicitly in the Appendix.

^{ic9} From the total value of works (and percentage value of goods and materials) under each Interim Certificate, Clause 30.5 of the Conditions of Contract allows the Employer to retain an amount called the “Retention Fund”. Although not stated in the Conditions of Contract, the Retention Fund is normally seen as a protective measure for the Employer to ensure subsequent rectification of any defects which may be *latent* at the time of valuation. **It is important to note that there are distinct differences in the calculation of the Retention Fund between PAM Contract 2006 and PAM Contract 2018.**

With PAM Contract 2006, the Retention Fund is calculated based on a percentage (as stated in the Appendix) of the Total Value of the Work properly executed and the percentage value of the goods and materials on site UP TO A MAXIMUM known as the “Limit of Retention Fund”. This Limit of Retention Fund is normally based on a percentage of the CONTRACT SUM. Upon the Retention Fund reaching this limit, no further deductions may be made in favour of the Retention Fund.

With PAM Contract 2018, there is NO “Limit of Retention Fund” with the Retention Fund being based on a fixed percentage (again, as stated in the Appendix) of the Total Value of the Work properly executed and the percentage value of the goods and materials on site.

Even though the Employer may retain the Retention Fund, it is important to note that this fund belongs to the Contractor and subject to his due performance under the Contract, he should be able to claim this fund in its entirety.

Q - What figures go into the Interim Certificate?

A - Obviously, the most important figure would be the **Amount Payable** by the Employer to the Contractor under the certificate.

Nevertheless, Clause 30.2 of the PAM Contracts 2006 and 2018 requires this figure to be arrived based on the following :

$$(TVw + \%Vgm) - (R + Vpc) = \text{Amount payable under the Interim Certificate.}$$

TVw - Total value of Work *properly executed*

%Vgm - Percentage value (as stated in the Appendix) of any goods or materials delivered to site^{ic8}.

R - Amounts to be retained by the Employer in accordance to clause 30.5 and 30.6 (the “Retention Fund”)^{ic9}.

Vpc - Amounts certified under *previous* Interim Certificates.

In the interests of transparency, it is always advisable to include the above calculation into the Interim Certificate.

Q - Are deductions for Set-Off^{ic10} or Liquidated Damages^{ic11} to be made in an Interim Certificate?

A - There are NO provisions under the Conditions of Contract; namely under Clauses 30.1 and 30.2, for the Architect to make any deductions for Set-Off (as per Clause 30.4) or Liquidated Damages (LD) (as per Clause 22.0).

There are NO contractual conditions though preventing an Architect from issuing any accompanying advice on the amount of LD which an Employer may be entitled to deduct from any sums due to the Contractor under the Interim Certificate in question.

^{ic10} Under Clause 30.4 of the Conditions of Contract, there are provisions for an Employer to *set-off sums of money* from those which are due from the Employer to the Contractor. To explain *set-off*, it is perhaps advisable to use an *example*; if a Contractor fails to comply with an Architect’s Instruction (AI) within the contractual period of compliance, an Employer is empowered to engage *other Persons* to carry out the necessary work to give effect to the instructions with the cost of such engagement being deemed as an additional cost which is to be borne by the Contractor.

To recover such additional costs, the Employer is allowed to set-off the cost either as a debt or from deducting it from any monies due to the Contractor (such as those payable under an Interim Certificate). It is important to note at this point that any such recovery through setting-off is not a simple affair as there is a procedure which needs to be followed before the set-off can actually be implemented.

^{ic11} If a Contractor fails to complete the works by the Completion Date without good and/or *recognised* reasons, Clause 22 of the Conditions of Contract allows the Employer to recover *Liquidated Damages* (LD) from the Contractor to cover any losses he may have suffered due to the Contractor’s non-performance/delay. The rate for LD is an agreed sum which is noted down in the Contract’s Appendix.

Clause 22.1 also allows for the recovery of LD either as a debt, as deductions from a Contractor’s Performance Bond or from deductions from any monies which may be due to a Contractor (such as those payable under an Interim Certificate).

As with set-off, there is a strict procedure which is to be followed before any LD may be imposed and deducted. It is also worth remembering that the imposition of LD is solely at the Employer’s discretion.

Notes:

^{ic12} A question asked occasionally is why are typographical or computational errors allowed to be corrected BUT not errors in valuation. This writer has no ready answer but notes that with computational or typographical error, the original intent in a valuation is patent; the workings/calculations behind the valuation remain unchanged and are there to substantiate the original intent. With supposed errors in valuation, the original intent behind the valuation may not be obvious and there will always be the possibility of abuse if certificates could wilfully be retracted, massaged and re-issued in favour of a Contractual party.

^{ic13} Apart from informing the Contractual parties as to the sums that are required to be paid, it must be remembered that Interim Certificates may also be used as part of their system for financial planning; as such, including additional information such as any projected change in the Value of the Works relative to the Contract Sum would also not be *amiss*.

Q - If there are errors in an Interim Certificate, can an Architect amend and re-issue the certificate?

A - This is dependent on the *nature* of the error (as prescribed under Clause 30.3 of the Conditions of Contract).

If the error is a typographical or computational one, i.e.; the typing in of RM 450,000 rather than RM 405,000, then YES, the Architect can amend and re-issue the certificate.

For all other errors (such as errors in valuation), i.e.; the inclusion of work not properly executed such as brickwork which an Architect had previously rejected, then NO, the Architect is not empowered to amend and re-issue the Certificate. Any corrections can only be made in subsequent Interim Certificates^{ic12}.

Q - In summary, what are the key ingredients necessary for an Interim Certificate?

A - It is this writer’s opinion that the following would make a good start for any Interim Certificate;

- a. Indication of the type of certificate – in this case, it would be an Interim Certificate,
- b. The Certificate No. - as Interim Certificates are issued in a series, any numbering should preferably, be sequential,
- c. The Date,
- d. The Project Title or reference,
- e. The Contractual Parties to whom the Certificate is to be presented and copied to,
- f. The Architect’s declaration, i.e.; “*I/We hereby certify that the following amounts are due from the Employer to the Contractor*”,
- g. The Total Value of Work properly executed at the time of the payment application (or valuation),
- h. The percentage Value of Materials and Goods delivered but which have yet to be incorporated,
- i. The Sum which the Employer is entitled to retain (“Retention Fund”),
- j. The Amounts certified for payment under previous certificates,
- k. **The Amount Payable,**
- l. The Architect’s name and signature.

Although strictly speaking, not a requirement, it is also advisable to consider including in the Contract Sum for reference^{ic13}.

Conclusion.

As the PN’s title notes, this is but just a primer to help interested parties get started in their understanding and use of Interim Certification. There will be further issues involving the micro-management of the process as well as the peculiarities of each particular project but it is hoped that with this PN, there will at least, be a framework to work out suitable solutions for these issues.

PRACTICE NOTE | PN 2024-1

This Practice Note was authored by Ar. Joseph Tan, reviewed by Practice Note Working Group, Professional Practice Committee 2023-24 and issued on 1 March 2024.

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.