

**COMPARISON BETWEEN THE STANDARD FORMS OF BUILDING
CONTRACT USED IN NIGERIA AND MALAYSIA**

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DEDICATION

Thanking the almighty God for his guidance and protection throughout this programme within the specific time. This thesis is dedicated to my entire family for their support and encouragement throughout the programme especially my beloved wife Mrs. Christiana Bawa and my children Hope Bawa, Janet Bawa and John Bawa may God Bless them all (amen).

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ABSTRACT

Payment is considered as the lifeblood of the construction industry because constructions often involve very large capital outlay and take a considerable time to complete. In Nigeria, over 11,800 capital projects are abandoned as the result of non-payment or delay in payment. The research focused on payment issues aimed at identifying the differences in payment method between JCT 2009 and PAM 2006 Standard Forms, invariably recommending ways to improve payment methods in these Standard Forms. JCT 2009 Standard Form is used in Nigeria for both public and private projects while in Malaysia PAM 2006 are used for private projects and JKR 203A (Rev, 2007) is used for government projects. In Nigeria the government standard form was drafted in 1978 for public projects but was abandoned because of its deficiencies. Payment is made through the issuance of interim certificate at interval of 28 days in JCT 2009 standard Form and 21 days in PAM 2006 Standard Form. The Time of honouring interim certificate is 14 days in JCT 2009 Standard Form in PAM 2006 Standard Form is 21 days. In comparing the time of issuance and honouring certificate between PAM 2006 and JCT 2009 standard forms are the same. PAM 2006 Standard Form requires written application as mandatory. Payments on certificates are difficult in most cases because the money most of the time is used for other purpose by the employer. The research found parties to contract are not knowledgeable in construction law in Nigeria. The contractor is entitled to interest on unpaid amount due in interim certificates. The research recommended that the Nigerian government should draft its own Standard Form with, priority to offering the subject of construction law in the school's curriculum should be emphasised, workshop for contactors on legal position of payment should be organised, interest rate be paid on unpaid amount due, adequate project budget should be made, retention fund should be kept for contractor use.

ABSTRAK

Pembayaran adalah dianggap sebagai nadi industri pembinaan kerana pembinaan sering melibatkan perbelanjaan modal yang sangat besar dan juga turut mengambil masa untuk diselesaikan. Di Nigeria, lebih 11,800 modal projek terbengkalai akibat tidak membuat pembayaran atau kelewatan dalam pembayaran. Penyelidikan ini tertumpu kepada isu-isu pembayaran bertujuan untuk mengenal pasti perbezaan di antara kaedah pembayaran Borang Standard JCT 2009 dan PAM 2006, yang mana pada kebiasaanya mengesyorkan cara-cara untuk memperbaiki kaedah pembayaran di dalam Borang Standard. Hasil dari penyelidikan mendapati bahawa Borang Standard JCT 2009 digunakan di Nigeria bagi kedua-dua projek-projek awam dan swasta manakala di Malaysia PAM 2006 adalah digunakan untuk projek swasta dan JKR 203A semakan 2007 adalah digunakan untuk projek-projek kerajaan. Di Nigeria, kerajaan telah menggubal borang standard untuk projek-projek awam pada tahun 1978, tetapi telah ditinggalkan kerana terdapat kekurangan. Pembayaran dibuat melalui perakuan interim pada selang 28 hari di dalam Borang Standard JCT 2009 dan 21 hari dalam Borang Standard PAM 2006. Masa untuk menghormati perakuan interim 14 hari dalam Borang Standard JCT 2009 sementara adalah 21 hari dalam Borang Standard PAM 2006. Perbandingan masa bagi insurans dan penghormatan sijil diantara Borang Standard PAM 2006 dan JCT 2009 adalah sama. Borang Standard PAM 2006 memerlukan permohonan bertulis sebagai mandatori. Pembayaran pada perakuan adalah yang sukar dalam kebanyakan kes. Pihak-Pihak di dalam kontrak pula tidak berpengetahuan dalam undang-undang pembinaan. Kontraktor adalah berhak untuk mendapatkan faedah di atas amaun yang belum dibayar di dalam perakuan-perakuan interim. Penyelidikan ini mencadangkan kerajaan Nigeria perlu mempunyai Borang Standard yang tersendiri, keutamaan kepada subjek undang-undang pembinaan di kurikulum sekolah perlu ditekankan, bengkel undang-undang pembayaran perlu dijalankan untuk kontraktor, kadar faedah perlu dibayar atas amaun yang tidak dikenakan bayaran, projek yang mencukupi bajet perlu dilakukan dan penyimpanan dana perlu dilakukan untuk kegunaan kontraktor. Penyelidikan pada masa hadapan haruslah menganalisis fasal-fasal lain yang terdapat di dalamnya.

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LIST OF ABBREVIATIONS

PAM	Pertubuhan Akitek Malaysia
IEM	Institution of Engineers Malaysia
CIDB	Construction Industry Development Board
JKR	Jabatan Kerja Raya
ISM	Institution of Surveyors Malaysia
JCT	Joint Contract Tribunal
PC	Provisional Cost
CA	Contract Administrator
CPC	Certificate of Practical Completion
EOT	Extension of Time
LAD	Liquidated and Ascertained Damages
RF	Retention Fund
CJ	Chief Judge
HCR	High Court Rule
SCR	Supreme Court Rule
CL	Clause
FCJ	Federal Court Judge
VAT	Value Added Tax
DRA	Development Right Agreement
RM	Malaysian Ringgit

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CHAPTER 1

INTRODUCTION

1.1 Background of the Study

The construction industries of the UK and Commonwealth countries are still generally divided between the client's sides and the contractor sides in terms of structure, and between pre-contract and post contract in terms of focus of responsibility¹. The clarity of any construction contracts depends largely on who drafts or, in many instances on those who amend standard terms². Standard Forms of Contract define the duties, liabilities of the parties to the contract and role of professionals in the contract.

There are four Standard Forms of contract in use in the Malaysian's construction industry, namely Pertubuhan Akitek Malaysia (PAM) Standard Form of contract,

¹ Robison, M. N., Lavers, P. A., Tan, G. K. H. and Chan, R. (1996), *Construction Law in Singapore and Malaysia*, 2nd edition, Butterworths, Asia.

² Othman, N. (2008), *Standard Forms of Contract and Its Influence on Construction Professional*, Jurnal Alam Bina, 11 (2), 47-60.

Institution of Engineers Malaysia (IEM) Standard Form of Contract, Construction Industry Development Board (CIDB) Standard Form of Contract used in private works and Jabatan Kerja Raya (JKR) Standard Form of Contract which is used in relation to public works.

The PAM/ISM 1969 Form was first issued in 1969 under the sanction of the Pertubuhan Arkitek Malaysia (PAM) and the Institution of Surveyors Malaysia (ISM) and was aimed at fulfilling such an intention. The PAM/ISM 1969 Form was originally based and closely modelled on the Joint Contracts Tribunal Form JCT 1963 Form. The PAM standard forms of building contract falls into the first category of 'institutional originated'. They are mostly used in the Malaysian building industry and are generally considered as the de facto Malaysian Standard Form of Building Contract. It is estimated that about 90% of the building contracts in the private sector are based on the PAM form³.

According to Othman⁴ the introduction of new Standard Forms of Condition of Contract in the Malaysian's Construction Industry suggested that the present documents are less than ideal. Pertubuhan Arkitek Malaysia (PAM) issuance of the PAM 2006 (coming fast at heels of PAM 1998), Construction Industry Development Board (CIDB) of Malaysia's Forms (CIDB 2000, model terms for domestic subcontract, etc) and Jabatan Kerya Raya (JKR) Malaysia issuance of JKR 203 A edition 2007 indicated perceived agreement that the source of conflicts and disputes might be traced to the contract.

³ Rajoo, S., Davidson, W. S. W. and Singh, H. K. S. (2010), *The PAM 2006 Standard Form of Building Contract*, LexisNexis Sdh Bhd, Malaysia.

⁴ Othman, N. (2008), *Standard Forms of Contract and Its Influence on Construction Professional*, Jurnal Alam Bina, 11 (2), 47-60.

The Joint Contract Tribunal (JCT) was established in 1931 and has for 80 years produced standard forms of contracts, guidance notes and other standard documentation for use in the construction industry. In 1998 The Joint Contracts Tribunal became incorporated company limited by guarantee. The company is responsible for producing suites of contract documents and in operating the JCT council⁵.

Nigeria adopted the Joint Contracts Tribunal Standard Form of building contract in both public and private building contracts since 1960 and drafted its own Standard Forms called Federal ministry of works Standard Forms of Contract in 1978 which is consider as limited in scope that is deficient in contents. The standard Form was drafted by professionals in the construction industry such as institutional bodies; this group of professionals operates by discussing and determining the content of the clauses.

Standard forms of building contract clearly stated the terms and conditions on which the contract between the employer and the contractor are to be executed. There are normally in hard copy form and published by authoritative body of the industry, both recognized by the parties to the contract. These standard forms are read and construed together with common law principle (implied) along with statutory provisions⁶.

The principal obligation of employer apart from provision of the site is payment of the monetary consideration for the work executed by the contractor or for materials and goods supplied or services rendered by the consultants, while failure is regarded as a potentially fundamental breach⁷.

⁵ JCT Agreement and Condition of Contract (2009).

⁶ Murdock, J. and Hughes.W. (2008), *Construction Contracts Law and Management*, 4th edition, Taylor and Francis, USA.

⁷ Robison, M. N., Lavers, P. A., Tan, G. K. H. and Chan, R. (1996), *Construction Law in Singapore and Malaysia*, 2nd edition, Butterworths, Asia.

According to Omran and Hussin⁸ “payment is the most important aspect of construction project from the contractor’s perspective. Without the payment from the client after completion of any project, the contractor might face cash flow problem. More serious, the company especially that smaller contract firm might close or bankrupt if the client keeps delay their payment or do not pay at all. According to the progress payment, the contractor will receive the payment after they have completed their work”.

Robinson⁹ emphasized that a certificate is condition precedent to payment. In a decided case, Judge May LJ in *Lubenham Fidelities v South Pembrokeshire*¹⁰, gave the meaning of the words “the contractor shall be entitled to payment therefore” is that the contractor shall be entitled to payment of sum stated in the interim certificates to be due to the contractor from the employer. As in case of *Dawnays Ltd v Winter*¹¹, the Judge pointed out that, “Interim certificate was taken to be almost equivalent to cash like a bill of exchange and must be honoured”.

The basic principle of English contract law is that, when contractor undertook to do work for fixed a sum, the contractor will not be entitled to payment until the entire work had been properly executed. When the work is properly executed, the contractor is entitled to full payment of the fixed sum. This arrangement can be good for smaller contract, but for the contract that is larger in nature involving big money spending over a number of months and even years, there is a need to improve cash flow for the contractor. The basic principle of English contract law has to be varied, whereby agreement between contractor and the client allow for interim payment to be made as the work proceeds¹².

⁸ Omran, A. and Hussin, A. A. (2009), Advance Payment: To what extend it Save the Construction works? *The International Conference on Administration and Business*, pp 22.

⁹ Robison, M. N., Lavers, P. A., Tan, G. K. H. and Chan, R. (1996), *Construction Law in Singapore and Malaysia*, 2nd edition, Butterworths, Asia.

¹⁰ (1986) 33 BLR 3.

¹¹ (1971) 1 WLR 1205.

¹² TAG (2003), *Pre-Contract Practice and Contract Administration*, The Aqua Group, Blackwell publishing company, Australia.

“Poor payment practices in the construction industry give rise to substantial additional financing and transaction costs. More importantly certainty over how much and when payment is made build trust between supply team members and underpins collaborative working to achieve value for money projects for clients”¹³.

Clause 30 and 11 in PAM 2006 and clause 4 and 5 JCT 2009 Standard Forms deals with all types of certificates that regulate payment under the contract. The main subjects may be grouped as;

- a. Interim certificate and retention fund
- b. Bills of variation and the adjustment of PC and provisional sums
- c. The final certificate

Once the certificate has been issued, nonpayment (either the stated sum or less than stated sum in the certificate) within the time stated in the article of agreement is a non-repudiatory breach although regular occurrence of nonpayment would signal that the client has the intention to do so. Under PAM 2006 form of contract in clause 26 and JCT 2009 in clause 8, the contractor has the option to determine the contract if the employer does not pay the amount due within the period of honouring the certificate.

In as much as the contractor is entitled to receive payment for work done; there should not be an undue lapse of time between the date of the valuation and that of delivery of the payment certificate and it's being honoured. After the choice of procurement system by public or private client, which identifies the contract structure, the particular contract to be used will relate to the final decision. The choice will range from standard and non-standard contracts¹⁴.

¹³ Cheng, T., Soo, G., Kumaraswamy, M. and Jin, W. (2007), *Are there ways to ensure fair and prompt payment?*, Construct for Excellent: Report of the Construction Industry Review Committee, Hong Kong, pp 2.

¹⁴ Murdock, J. and Hughes, W. (2008), *Construction Contracts Law and Management*, 4th edition, Taylor and Francis, USA.

1.2 Problem Statement

Problems regarding payment have become like a decimal in the construction projects. Payment is considered as the lifeblood of the construction industry because constructions often involve very large capital outlay and take a considerable time to complete. Delays or nonpayment can definitely affect the cash flow and sometime can liquidate the contractor. According to Abdul Rashid and Judi¹⁵, payment problems are old age issues that permeate the Malaysia construction industry over the years. In fact this study which has carried out recently showed that most construction disputes which have been brought to court were mainly concerning payment either late payment or nonpayment by the Employer to contractor. Every so often we hear of contractors complaining of either not getting paid or the payments have been unduly delayed by the Employer. Payment problems exist in some project. In fact there is payment clause in all contract agreements. The issue of nonpayment and delay in payment is a serious matter that affect completion period and consequently affect the final account value significantly due to suspension because nonpayment and delay in payment. Contractor sometimes will not be paid for years and sometimes this lead to abandonment of construction projects¹⁶.

Record in Nigeria showed that between the year 2007 to 2011 about 69 State government projects in Kaura Namoda Local government are either suspended or abandoned as result of nonpayment or delay in payment. The issues of abandoned projects have become a matter of concern and the President and Commander in Chief of Federal Republic of Nigeria formed a committee to look into abandoned projects in the country when he took over power. In Punch Daily News paper dated Saturday 11 June 2011, President Goodluck Jonathan recently commented contracts for the execution of

¹⁵ Abdul Rashid, R., Judi, S. S. (2010) "*Contractor's Right of Action for Late or Non- so\Payment*, The Employer Journal of Surveying, Construction & Property, Vol. 1, pp 70.

¹⁶ Ibironke, T. (1994), A young Quantity Surveyor, *Paper presented during Quantity surveying week at The Polytechnic of Birnin Kebbi*, Pp 3.

projects were abandoned by successive governments, stressing the financial burden of completing over 11,860 capital projects. Jonathan was shocked by reports of the Presidential Projects Assessment committee which revealed that up to 7.7 trillion Naira, would be required to complete capital projects in the country. Among unexecuted contracts, which have already costed billions of Naira, for instance, the 30 year old multibillion dollar Ajaokuta Steel Company Project has costed \$ 4.5 billion US dollar without coming anywhere near completion.

Recently, the General Electric Corporation of the United State begins a compressive assessment of abandoned gas turbine supplied to the government about four years ago for the construction of some power stations under the National Integrated power projects. Out of 69 abandoned projects Kaura Namoda is a library complex which was proposed to be constructed for 18 months at a sum of 180 million Naira, has been abandoned or suspended as a result of nonpayment issue for the past 3 years and this project has only been completed at the roofing level. The abandonment of projects had led to massive infrastructure decay, including an epileptic power sector, bad road network, moribund railway system and collapse of the nation's industrial sector. In Nigeria the abandonment of these projects lead to both the contractors and employers suffer the effect of these project abandonments. The parties to the contracts may not be aware of the legal implication of this; hence there is the need to carry out research. The issue of nonpayment of half moiety of retention and balance of retention fund when the certificate of practical completion and certificate of making good defects are issued in most of the contracts in Nigeria is a matter of concern, hence the need for this research for the parties to the contract to know the legal position of their actions so as improve payment in construction industry and minimize the number of abandoned projects in Nigeria.

1.3 Significance of the Study

The payment clause found in the standard forms used in most contract agreement is almost similar and sometime vary in certain circumstances. Non payment by the employer shall not bring the contract to an end unless the employer goes to liquidation. The effect of late payment and nonpayment has been a source of concern and disputes in construction industry. The study is expected to answer some of the vital issues that arise in the Nigerian construction industry such as abandonment and suspension of construction projects as the result of nonpayment and delay in payment. These issues will be analyzed and interpreted based on court judgment and position of common law. This study will identify various payments under PAM 2006 Standard Form and JCT 2009 Standard Form so that both contractors and employers will know their obligations under the contract this will assist in minimizing disputes and improve payment in Nigerian construction industry.

1.4 Research Aim and Objectives

This research work will aim at comparing various standard forms of building contract. Specific objectives of the research;

1. To identify the differences in payment methods between PAM 2006 and JCT 2009 standard forms
2. To identify ways to improve payment method in these standard forms.

1.5 Scope and Limitation of the Study

The research is limited to the standard forms of building contract in Malaysia and Nigeria and research only concentrated on payments clauses only. PAM 2006 in Malaysia and JCT 2009 Forms of Building Contract was used and the research looked into projects in Kaura Namoda in Zamfara State Nigeria. The research concentrated on issues of nonpayment/ delay in payment which resulted in many abandoned projects in Nigeria.

1.6 Research Methodology

The research process that will be adopted in this research work will be involved the use of the following figure 1.1 below.

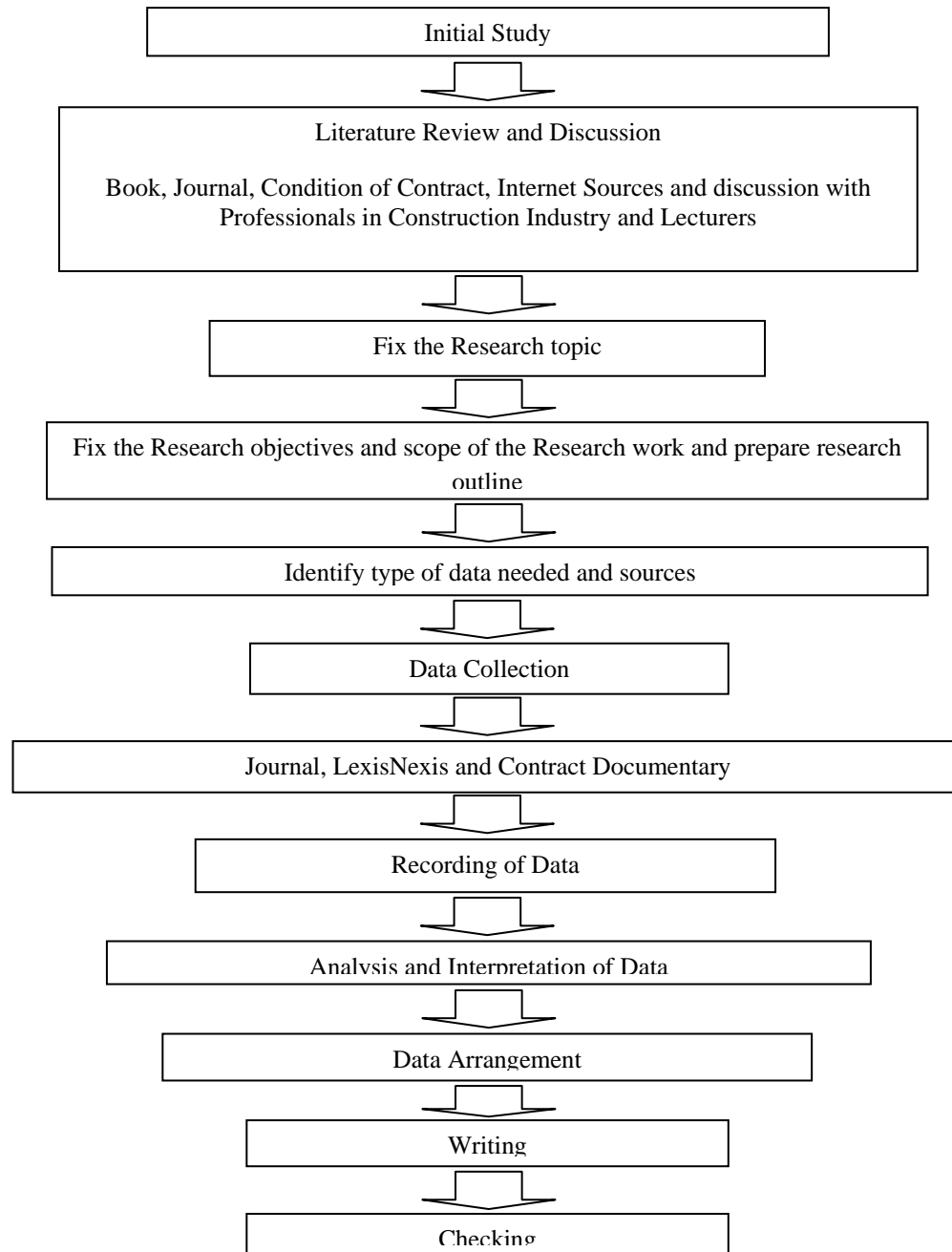


Figure 1.1: Diagrammatic representation of research process (adopted from Kumar, 2005)

1.6.1 Development of Research

In the inception stage, the method that used was discussion with professional expertise and literature of the objectives and the scope of study. An outline was prepared in order to identify the type of data that is requiring including its source of collection.

1.6.2 Data Collection

After determining and agreeing the objectives and the scope of the research study, next step was gathering information by collecting data from LexisNexis journal, contract documentary in Malaysia and Nigeria.

1.6.3 Data Analysis

At this stage data arrangement was carried out, analysis and interpretation for this research work. The outcome of this stage tends to streamline the process of the research writing.

1.6.4 Writing Up

This involve writing up and checking of writing and is the last stage of the research process.

1.7 Thesis Organization

1.7.1 Chapter 1: Introduction

This chapter presents back ground and perspective of Standard Forms used in Malaysia and Nigeria and issue on payment in construction industry. Problem statement of this research is stated and the outlines of objective of this research.

1.7.2 Chapter 2: Payment in Standard Forms of Contract

This chapter examines the payment issue in PAM 2006 Standard Form and JCT 2009 Standard Form including action to be taken by the contractor as the result of nonpayment. The literature review is the second stage of the research which involved the collection of secondary data such, text books, journals, and LexisNexis.

1.7.3 Chapter 3: Comparison between PAM 2006 Standard Form and JCT 2009 Standard Form on issues of Payment

This chapter presents the comparison between the PAM 2006 Standard Form and JCT Standard Form on Payment clause and its application in both Nigerian's and Malaysian's construction industries.

1.7.4 Chapter 4: Analysis of Case Laws

This chapter presents construction case laws, the provision of common law and provision of both JCT 2009 and PAM 2006 Standard Forms of contract on issues of action to be taken by contractor as result of nonpayment or delay in payment. It provides information which serves as primary data, the analysis, and finding is based on the case laws in relation to the actions taken by the contractor as result of nonpayment and the provision of JCT 2009 and PAM 2006 Standard Forms, Malaysian's Company Act 1965, Nigerian's Company and Allied matters 1990. This stage assisted in determining whether the objective stated has been achieved or not.

1.7.5 Chapter 5: Conclusion and Recommendation

This is the conclusion chapter of the research work; it is the main summary of findings of differences in payment in JCT 2009 Standard Form used in Nigerian's construction industry and PAM 2006 Standard Form used in Malaysian's and recommendations made on how to improve payment in Nigerian's construction industry and recommendation for further research.

1.8 Conclusion

This chapter has highlighted the various standard forms on contract in use in Nigeria and Malaysia construction industries. The standard forms available are PAM 2006 and JCT 2009. The Forms contain the mechanism of payment and the obligation

of employers to pay the Contractors. Poor payment practices exist in the construction industry. The research is significant to aid construction industry stakeholders on issues of nonpayment, suspension, and abandonment of works. Therefore, the aim is to identify the apparent differences in PAM 2006 and JCT 2009 and identify ways to improve payment. Payment forms a vital role in the construction industry and discrepancies on any chosen form will be detrimental to sustainability of the key stakeholders and the building project. Also, the legal measures available to the parties in a construction dispute regarding payment vary from one contract form to another.

REFERENCES

- Abdul-Rashid, R., Judi, S. S. (2010), *Contractor's Right of Action for Late or Non-so\Payment*, The Employer Journal of Surveying, Construction & Property, Vol. 1, pp 70.
- Alway (2011). www.alway-Associate.co.uk.
- Ashworth, A. and Hogg, K. (2002), *Willis's Practice & Procedure for Quantity Surveyor*, 11th edition, Black Science Ltd, United Kingdom.
- Cheng, T., Soo, G., Kumaraswamy, M. and Jin, W. (2007), *Are there ways to ensure fair and prompt payment?*, Construct for Excellent: Report of the Construction Industry Review Committee, Hong Kong, pp 2.
- CompactLaw (2011), Legal documents, legal agreements, legal forms and free legal information, <http://www.compactlaw.co.uk/>.
- Farlex (2011). Retrieved May 17, 2011, from www.thefreedictionary.com.
- Fellow, R. F. (1995), *1980 JCT Standard Form of Building Contract*, A Commentary for Student and Practitioners 3rd Edition, Macmillan Press Ltd, London.
- Furmston, M. (2000), *Powell-Smith & Furmston's Building Contract*, 3rd edition, Blackwell Science Ltd, United kingdom.
- Ibironke, T. (1994), A young Quantity Surveyor, *Paper presented during Quantity surveying week at The Polytechnic of Birnin Kebbi*, Pp 3.
- JCT Agreement and Condition of Contract (2009).
- Kumar, R. (2005), *Reaserch Methodology: A step-by-step guide for beginners*. French Forest, Australia: Pearson Education Australia.
- Kwakye, A. A. (2000), *Construction Project Administration in Practice*, Englemere Services Limited, England.
- Malaysia Company Act (1965).
- Murdock, J. and Hughes.W. (2008), *Construction Contracts Law and Management*, 4th edition, Taylor and Francis, USA.

- Nigeria Companies and Allied Matters Act (1990).
- Othman, N. (2008), *Standard Forms of Contract and Its Influence on Construction Professional*, Jurnal Alam Bina, 11 (2), 47-60.
- Omran, A. and Hussin, A. A. (2009), Advance Payment: To what extend it Save the Construction works? *The International Conference on Administration and Business*, pp 22.
- PAM Agreement and Condition of Contract (2006).
- Robison, M. N., Lavers, P. A., Tan, G. K. H. and Chan, R. (1996), *Construction Law in Singapore and Malaysia*, 2nd edition, Butterworths, Asia.
- Rajoo, S., Davidson, W. S. W. and Singh, H. K. S. (2010), *The PAM 2006 Standard Form of Building Contract*, LexisNexis Sdh Bhd, Malaysia.
- TAG (2003), *Pre-Contract Practice and Contract Administration*, The Aqua Group, Blackwell publishing company, Australia.
- USLegal (2011). Retrieved May 16, 2011, from uslegal.com.
- Vohrah, B. and Aun, W. M. (2007), *The Commercial Law Of Malaysia*, 2nd edition, Gain Print Sdn. Bhd, Seri Kembangan, Selagor Darul Ehsan.