

THE PREVAILING PRACTICE IN DECIDING THE PRACTICAL  
COMPLETION OF CONSTRUCTION WORK.

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Specially dedicated with deepest love to *Mak* and *Abah*,  
Hjh. Kamsidi Bt. Hj Salleh and Hj. Mohd Yunos Bin Hj Salih,  
and my beloved wife Hajaratul Azila Bt. Romli  
Thank you for your constant Du'a, support, love and encouragement .

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## ABSTRACT

Practical completion is a stage when in the opinion of contract administrator the works carry out by the contractor has reached practical completion. Generally, contract administrator will issue the Certificate of Practical Completion when: i) the works have been completed in accordance to the contract, ii) the whole works have passed any specified tests and inspections, iii) the building can be occupied for its intended purposes, and iv) the presence of minor defects does not affect the functionality of the building. However, based on the Auditor's General Report, there are projects that have been issued with Certificate of Practical Completion, but are still incomplete and not in accordance to the contract. Therefore, the research on the prevailing practice of contract administrator needs to be refined in order to know to what extent does the contract administrator has discharged his duties in determining the practical completion. Based on the analysis of data, the prevailing practice of contract administrator can be divided into two categories. First is the contractual duties, which are any duties that are expressed in the contract and, secondly is non-contractual duties, which are the duties that are not stated in the contract or considered as common practice in the construction works. The data analysis has shown that the contract administrators have performed their duties in determining the practical completion beyond their contractual duties by performing the prevailing practices. They had performed their due diligence and sometimes more than the standards of what they were expected to do. The prevailing practice was needed to satisfy the duty. The more that the administrator follows the prevailing practice of the industry, the more likely that no breach of the duty can be found. It can be concluded that the power of contract administrator is quite extensive and broad because he is given the discretionary power in deciding practical completion. He has the authority to do more than what is required in the contract. By performing the duties, it will strengthen the decision taken by the contract administrator in

determining practical completion. This hereby dispels any doubt with the issuance of the Certificate of Practical Completion.

## **ABSTRAK**

Penyiapan praktikal adalah peringkat di mana pada pendapat pentadbir kontrak, kerja yang telah disiapkan oleh kontraktor telah mencapai penyiapan praktikal. Umumnya, pentadbir kontrak hanya akan mengeluarkan Sijil Perakuan Siap Kerja apabila semua kerja telah lulus semua ujian dan pemeriksaan, semua kerja telah siap mengikut syarat-syarat kontrak, bangunan boleh diduduki mengikut tujuannya dan kehadiran kecacatan kecil tidak menjejaskan fungsi keseluruhan bangunan tersebut. Walau bagaimanapun, berdasarkan laporan Ketua Audit Negara, masih terdapat projek-projek yang telah diberikan Sijil Perakuan Kerja Siap tetapi masih terdapat lagi kerja-kerja yang belum siap dan tidak mengikut kehendak kontrak. Oleh itu, kajian perlu dibuat untuk mengetahui bagaimanakah pentadbir kontrak melaksanakan amalan lazim dalam menentukan bahawa kerja tersebut telah mencapai penyiapan praktikal. Berdasarkan analisa kajian, tugas pentadbir kontrak terbahagi kepada dua. Pertama adalah tugas kontrak iaitu tugasnya adalah seperti mana yang dinyatakan di dalam kontrak. Kedua adalah tugas bukan kontrak iaitu tugas yang tidak dinyatakan di dalam kontrak. Analisis data menunjukkan, semua pentadbir kontrak telah melaksanakan tugasnya melebihi apa yang dinyatakan di dalam kontrak dengan melaksanakan amalan lazim. Mereka telah melakukan sesuatu yang berhemat dan lebih daripada piawaian orang yang munasabah akan melakukan. Amalan lazim adalah diperlukan di dalam memuaskan tugas. Semakin banyak amalan lazim di dalam industri diikuti, semakin tiada pelanggaran kontrak di dalam tugas ditemui. Kesimpulannya, kuasa yang diberikan kepada pentadbir kontrak adalah luas kerana kuasa budi bicara di dalam menentukan penyipan praktikal. Oleh itu, dia mempunyai autoriti untuk melaksanakan tugas lebih apa yang

dinyatakan di dalam kontrak.. Dengan melaksanakan kedua-dua tugas tersebut, ia dapat menguatkan keputusan pentadbir kontrak dalam menentukan bahawa kerja tersebut telah disiapkan praktikal. Ini sekaligus mengurangkan keraguan terhadap Perakuan Kerja Siap.

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**LIST OF ABBREVIATION**

BAM	Board of Architects Malaysia
BEM	Board of Engineer Malaysia
CIDB	Construction Industry and Development Berhad
CPC	Certificate of Practical Completion
CCC	Certificate of Completion and Compliance
DLP	Defect Liability Period
IEM	The Institute of Engineer Malaysia
KPKR	Ketua Pengarah Kerja Raya
LAD	Liquidated Ascertained Damages
MOF	Ministry of Finance
PAM	Pertubuhan Arkitek Malaysia
NCR	Non-Conformance Report
OFI	Opportunity for Improvement
PWD	Public Works Department
PD	Project Director
S.O	Superintending Officer
SOP	Standard Operating Procedure

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## CHAPTER 1

### INTRODUCTION

#### 1.1 Background of the study

Contract administrator is a qualified person appointed by the Client as to represent him in the administration of the work. He is engaged from the design stage until the project is completed. The main aim of contract administration is to ensure that all parties in the contract fulfill their obligations under the contract.<sup>1</sup> Such obligations can be express or implied. The contract administrator must know the extent of his authority to act within the contract. For private project where PAM Contract 2006 is used, the “Architect” is the contract administrator.<sup>2</sup> Under the IEM Form of Contract for Civil Engineering (IEM.CE 2011 Form) the Engineer is the contract administrator.<sup>3</sup> Article 7(c) of PAM 2006 defined “Architect” as the Person named in Article 3 and shall be a Professional Architect or any other form of practice registered under the Architects Act 1967 and approved by the Board of Architect Malaysia.<sup>4</sup> This is explained further in the Uniform Building by Law 1984 which interprets the “Architect” means any person who is registered as an architect under any law relating to the registration of architects and who under that law is

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<sup>1</sup> Rajoo, S. & Harbans Singh, K.S. (2012), “Construction Law in Malaysia”, Sweet & Maxwell Asia

<sup>2</sup> Pertubuhan Arkitek Malaysia (PAM) Contract 2006

<sup>3</sup> The Institute of Engineer Malaysia (IEM) Contract 2011

<sup>4</sup> Ibid. 2

allowed to practice or carry on business as an architect.<sup>5</sup> Under the IEM.CE 2011 Form the contract administrator must be named an Engineer registered with the Board of Engineers Malaysia.<sup>6</sup>

Under Standard Form of Contract PWD Form 203/203A (Rev. 1/2010), the contract administrator is called “Superintending Officer” (S.O). Under the Standard Form of Contract for Design and Build PWD Form DB (Rev. 1/2010), he is called the “Project Director” (P.D). The term also used in the Construction Industry Development Board (CIDB) 2000 form of contract. The S.O is an officer appointed by the implementing agencies to administer and issue works instruction in accordance with the agreement based on the Standard Form of Contract PWD Form 203/203A.<sup>7</sup> The Implementing Agency shall ensure the appointed S.O is qualified officer, particularly from the technical officer. The decision as to who is to be appointed as the S.O is based on a set of factors such as the level of work, the level of office (whether headquarters or district) undertaking the contract administration and location of works.<sup>8</sup> Besides that, the S.O also has the power to appoint in writing any suitable officer as S.O’s Representative to perform his duties. However, it is a common practice in Malaysia that the construction professionals such as consultant architect, engineer and quantity surveyor will be appointed in the construction development, especially if the government does not prepare the design. In this scenario, the S.O. will usually delegate his authority and power to the respective consultant based on their expertise as set out in clause 3.3 (a) of the Conditions of Contract.

The period between the commencement date and completion date is the duration of construction where the contractor needs to complete the construction works. Once the contractor decides the works have reached practical completion stage, the contractor shall notify the contract administrator in writing that the works have been completed. Upon completion, the contract administrator must make a

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<sup>5</sup> Uniform Building By-Laws 1984 [G.N 5178/85]

<sup>6</sup> Registration of Engineers Act 1967 (Revised 2007)

<sup>7</sup> Surat Pekeliling Perbendaharaan Bil. 6 Tahun 2011, Kementerian Kewangan Malaysia

<sup>8</sup> Surat Arahan KPKR Bil 6/2009 ruj.(1) dlm JKR:KPKR:020.050/03 Klt 9 bertarikh 02.09.2009

considered decision as to whether the works can be certified as practically completed or otherwise. It is the contract administrator's duty to certify acceptance of completed works in conformity to contract specifications and accepted standards. The contract administrator of judgment should be done in a prudent, responsible and impartial manner.

In construction contract, practical completion means that the works has reached completion according to the provision of the contract and to the satisfaction of the contract administrator. As stated in PAM Contract 2006, practical completion occurred when in the opinion of the Architect, the employer can have full use of the works for their intended purposes, notwithstanding that there may be works and defects of a minor nature still to be executed. In PWD Form of Contract, it means that in the opinion of S.O, the whole works have reached practical completion and have satisfactorily passed any inspection or test carried out by S.O. But there is an element of “discretion” as such whether the work is completed or not, and it has always been deemed as a highly subjective matter.

The work cannot be considered as practically completed until it has been satisfied and certified by the person named in the contract as contract administrator. The power or authority to issue the Certificate of Practical Completion is depended on the contract administrator by the provisions in the contract for the work and in the contract for services of consultants. Under clause (e) of the Basic Professional Services under Contract Implementation and Management Phase for contract administrator, it is stated that the contract administrator shall “inspecting the works at periodic intervals so as to ensure that the works are being executed in accordance with the building contract and to issue the Certificate of Practical Completion.”<sup>9</sup> For the public building contract, the S.O has a duty to issue the Certificate of Practical

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<sup>9</sup> Form CSA2014- Architectural (incl. scale of fees 2010), Consultancy Services Agreement, Ministry of Finance Malaysia

Completion and shall be carried out with care when the contractor are successful in fulfilling his contract pursuant to the provisions on the contract.<sup>10</sup>

Under clause 39.5 of the PWD Forms 203/203A (Rev. 1/2010), it is clearly stated that the one of the duties of the S.O include the issuing Certificate of Practical Completion. Once the certificate issued, it means that the work is practically completed and fit for use and occupancy. When the contract administrator has issued the Certificate of Practical Completion, the work is considered complete according to the contract and nobody should doubt it or say otherwise. But whether the work is practically completed or not has always been the subject of argument or even dispute.

The various forms of contract have to a large extent, provide quite clear description of practical completion. The court has also in several cases defined the practical completion. The PAM of Contract Form 2006 stated in clause 15.1(a) that practical completion is when in the opinion of the Architect, the Employer can have full use of the Works for their intended purposes, notwithstanding that there may be works and defects of a minor nature still to be executed and the contractor has given to the Architect a written undertaking to make good and to complete such works and defects within a reasonable time specified by the Architect.

Clause 39.3 of PWD Form 203A, it stated the practical completion is if in the opinion of S.O, the whole Works have reached Practical Completion and have satisfactorily passed any inspection/test carried out by the S.O. The date of such completion shall be certified by the S.O and such date shall be the date of the commencement of the Defects Liability Period (DLP).

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<sup>10</sup> Garis Panduan Mengenai Peranan dan Tanggungjawab Pegawai Penguasa Dalam Mengawal Selia Projek Pembangunan Kerajaan, Surat Pekeliling Perbendaharaan Bil. 6 Tahun 2011, Kementerian Kewangan Malaysia.

CIDB form of contract has contain the definition of practical completion in clause 1.1. Practical Completion means completion of the Works including Test on Completion under the Contract and where the Works include Equipment which requires a license for its operation, then completion so as to tender such Equipment eligible for issuance of a licence in respect of its operation. Provided however the existence of minor outstanding works and defects, which do not affect the functional use of the Works shall not affect Practical Completion.

Generally, the common forms of conditions of contract adopt different procedures for the definition of completion of works. These definitions are explained in the said form, clause 39.3 and 39.5 of the PWD Forms 203/203A (Rev.1/2010), clause 15.1 of the PAM Contract 2006, clause 44.6 of the PWD Form DB (Rev. 1/2010), clause 47.2 of the IEM.CE 2011 Form and clause 1.1 and 20.2 of the CIDB Form (2000 Edn). What is common in all these definitions is that it leaves the ultimate task of determining whether practical completion has been achieved in the hands of the contract administrator.

The description provide the contract administrator with the guideline on the process and procedure of issuing the practical completion. As long as he adhered to all the rules requirements stipulated in the contract, the Certificate Practical of Completion is the “valid” proof of the completion of the work. Sometime however, the issue of practical completion, did not end after the contract administrator has issued the Certificate of Prctical Completion. It is brought up again by many parties who dispute the certification by contract administrator.

Annually, the National Audit Department will be auditing project management for construction projects that are using government funds. Section 6(d) of the Audit Act 1957 requires the Auditor General to carry out audit to evaluate whether Government Activities have been managed efficiently, economically and in

accordance with their stated objective.<sup>11</sup> Usually, the Audit encompasses various activities such as procurement, contract administration and construction to evaluate whether the management of construction projects are planned and implemented orderly, efficient and prudent to achieve the construction goals. Based on the audit report every year, there are projects that have been awarded Certificate of Practical Completion, and later were found involved in the problems as follows: <sup>12</sup>

- a) construction work is not perfect, many defects and damage
- b) construction completed and certified by S.O but there is still unfinished work
- c) testing and commissioning phase has not been completed
- d) facilities cannot be used
- e) building and facilities cannot operate effectively
- f) client refuse to move
- g) building has been handed over to the client but cannot be occupied
- h) the building was occupied but still not obtain the certificate of completion and compliance (CCC)

As reported in the Auditor General Report 2013, the Kuantan New Court complex in Bandar Indera Mahkota, Kuantan, Pahang was completed on 17 July 2012 and has been issued Certificate of Practical Completion by the S.O. However, based on the inspection by the auditor, there were instances where construction works did not comply with contract specification and drawings, construction works

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<sup>11</sup> Audit Act 1957

<sup>12</sup> Zamani, M.J. (2011), "Bengkel Pengauditan Audit Dalam : Pengauditan Pengurusan Projek Pembinaan", Jabatan Audit Negara.

not satisfactory, there were differences between the as-built drawings and the actual construction, and furniture and equipment are not placed in the proper location.<sup>13</sup>

In the case of *George Fischer Holding Limited (formerly George Fischer (Great Britain) Limited) v Davis Langdon & Everest and Others*<sup>14</sup>, a Developer's Agent was found to be negligent for issuing a completion certificate without properly inspecting the works and failing to advise its client that they could no longer call on a Performance Bond provided by the Contractor. Consequently, the right to do so was lost on practical completion.

In certifying the completion of work, the contract administrator must do it according to the contract, the standard operating procedure (SOP) and the treasury instruction. When the audit question the completion of the building, it implied that either the work is not practically completed or the contract administrator did not adhere to the contract requirement or SOP or both. As such, the duty of contract administrator is very important in the issuance Certificate of Practical Completion to make sure the project has indeed reached practical completion and safely occupied.

## 1.2 Problem Statement

The foregoing discussion pointed out to the problem of determining or ascertaining whether a project has been practically completed or not. It is serious issues because in some cases, the contract administrator decision in certifying practically completed works have been questioned or even challenged. The contract is quite clear on the discretionary and authority of the contract administrator with regard to certification of practical completion. Many studies, journals and contracts

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<sup>13</sup> Auditor General Report (2013), National Audit Department, Malaysia

<sup>14</sup> 1998 [61 Con. L.R.85]



have defined clearly what does it mean by practical completion. As such, the issue should be well addressed. But, it points to the problem of what the contract administrator duty and power with regard to Certificate of Practical Completion and prevailing practice by the industry.

Therefore, to overcome the problems that arise after the Certificate of Practical Completion has been issued, the duty of contract administrator needs to be refined in detail by looking at the aspects of the procedure prescribed by the employer and the prevailing practice in deciding practical completion. Construction project is a complex undertaking that includes building, engineering and infrastructure. Practical completion is a subjective matters but it requires objective grounds. Different contract administrator has different opinion on the definition of practical completion. As such, the study on the prevailing practice in deciding practical completion, including his duty according to standard consideration, needs to be studied in detail for improvement. It is important to ensure the contract administrator performs his duties diligently to guarantee that all parties are satisfied when the certificate of practical completion is issued.

### **1.3 Research Question**

The above statement and previous discussion brought several pertinent questions as follows:-

- a) Has the contract administrator performed his duty in accordance to both contract and standard office procedure when issuing Certificate of Practical Completion ?
- b) What are the duties and responsibilities of contract administrator in connection with Certificate of Practical Completion ?

- c) What are the prevailing practices in the industry ?
- d) What kind of action can be taken by the employer against contract administrator who has been negligent in issuance Certificate Practical Completion ?
- e) Can Certificate of Practical Completion be revoked or withdrawn?

But for the purpose of this study, only the following two questions are considered :-

- a) What are the duties and responsibilities of contract administrator in connection with Certificate of Practical Completion?
- b) What are the prevailing practices in the industry?

#### **1.4 Objective of the Study**

The objective of this study is to determine the prevailing practice among contract administrator in the public sector in connection with the certification of practical completion.

#### **1.5 Scope and Limitation of the Study**

The scope of this study will be confined to the following areas:

- a. Standard form of contract to be analysed is limited to PWD Form 203/203A (Rev. 1/2010), PWD Form DB (Rev. 1/2010), PAM Contract 2006, IEM 2011 and CIDB (2000 Edn.)
- b. Documents and Manual regarding practical completion in the public sector.
- c. The comparative study will be made by conducting interviews with S.O as contract administrator in the public sector

## **1.6 The Significant of the Research**

This research is very important in order to ensure the contract administrator's duty in deciding practical completion is in line with the condition of contract and practice in the industry. It will enable all the parties in the construction contract to be satisfied when the Certificate of Practical Completion is issued. The finding of this study will strengthen the duty of contract administrator in deciding practical completion, thereby avoiding any negligence in issuing the Certificate of Practical Completion and the building can be occupied according to its purpose.

## **1.7 Organization of Thesis**

This study covers six (6) chapters as follows:-

### **1.7.1 Chapter 1: Introduction**

This chapter consists of the proposal for the study such as the background of the problem, problem statement, research question, the objective of the research, scope and limitation of the research, significance of the research and the organization of thesis chapter.

### **1.7.2 Chapter 2: Roles and Duties of Contract Administrator Associated with the Practical Completion Certification.**

This chapter discussed the roles and duties of Contract Administrator under the conditions of the contract administrator's agreement of engagement by the employer and the standard form of contract in Malaysia based on PWD Form 203/203A (Rev. 1/2010), PWD DB (Rev. 1/2010), PAM Contract 2006, IEM.CE 2011 and CIDB (2000 Edn.) .

### **1.7.3 Chapter 3: Practical Completion**

This chapter will discuss the basic definition or meaning, terminologies and provides a general understanding of the practical completion that has been described by some authors, by judicial decisions and as described in the standard form of contract. This chapter also provides the requirements and procedures that is practiced in the industry in order to determine the works are in fact practically completed.

#### **1.7.4 Chapter 4: Research Methodology**

This chapter will discuss on the research methodology that has been applied in this research that includes the explanations on the reasons behind the method selection and the type of method used for the purpose to collect information and data.

#### **1.7.5 Chapter 5: Data Analysis**

This chapter will analyse a few sample of interviews with the S.O that are related to the practical completion. This chapter also extensively analyse to determine the contract administrator duty and power is, with regard to Certificate of Practical Completion and prevailing practice by the industry.

#### **1.7.6 Chapter 6: Conclusion and Recommendation**

This chapter presents the recommendations and conclusions with suggestions for further research that is needed in the area of practical completion. It also addresses some implications of the research recommendation to the construction industry.

## **1.8 Conclusion**

Chapter 1 is an introduction to the overall view of the study that consists of background of the study, problem statement, research question, objectives of the study, scope and limitation of the research, the significant of the research and organization of thesis chapter. In the next chapter, Chapter 2 will include a discussion on the roles and duties of contract administrator in associated with practical completion.

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