

**The Malaysian Standard Form of Building Contract
(The PAM 1998 Form - 2nd Edition)**

~ SUNDRA RAJOO ~

FOREWORD BY DATO' V C GEORGE

In 1969, Pertubuhan Akitek Malaysia (PAM) and the Institution of Surveyors of Malaysia (ISM) jointly sanctioned the issue of the Malaysian Standard Form of Building Contract (PAM/ISM 1969 Form) closely modeled on the English Standard Form (JCT 1963 Form) published in 1963 by the Joint Contracts Tribunal.

It turned out that the JCT 1963 Form was subjected to considerable judicial criticism (generally accepted as justified) and its many defects have resulted in it being condemned by judicial and other legal opinion. Not surprisingly, in 1980, the JCT 1963 Form was formally withdrawn and a new and complex JCT 1980 Form was issued in the United Kingdom, adding to the plethora of competing 'standard' forms of building contracts and sub-contracts that exist in that country.

More recently the Institution of Civil Engineers of the United Kingdom has come out with its Engineering & Construction Contracts (previously known as the New Engineering Contract) as a generic form of contract designed to be applicable to all building and engineering works.

Until 1998 (as we shall see) the construction industry in Malaysia, at least in respect of building works, has been unhappily obliged to use PAM/ISM 1969 Form, it being the only local standard form available for building works. As it was modeled on the JCT 1963 Form, the many criticisms leveled against the JCT 1963 Form could be leveled against it as well. Further, the PAM /ISM 1969 Form did not have the benefit of the improvements that the JCT 1980 Form can be said to have provided to the JCT 1963 Form.

In 1986 PAM finally came down to taking some definite steps to have the PAM /ISM 1969 Form replaced. Those persons charged with the difficult task by PAM came out with a draft in 1990. This was found to be unacceptable as a suitable replacement.

PAM then commissioned the late Professor Vincent Powell-Smith to revise the PAM/ISM 1969 Form but, when apparently due to work commitments he could not undertake the job, the late Mr. KC Cheang a former PAM President took over the revision exercise. It was KC Cheang who harnessed the considerable and special talents of Mr. Sundra Rajoo to work in conjunction with him to try to bring the task to fruition. The untimely death of Mr. Cheang in 1996 resulted in PAM directly commissioning Mr. Sundra Rajoo to complete the half-completed and formidable task. The PAM 1998 Form is the result of the further inspired concentrated efforts put in by Mr. Sundra Rajoo.

SUNDRA RAJOO ARBITRATION CHAMBERS SDN BHD (648784K)

Unit No. B11-09, Block B, Phileo Damansara 2, No.15, Jalan 16/11, Off Jalan Damansara,
46350 Petaling Jaya, Selangor, Malaysia.

Tel: 603-7957 8748 Fax: 603-7957 8179

And so it can be said that Mr. KC Cheang and Mr. Sundra Rajoo fathered the PAM 1998 Form.

Mr. Sundra Rajoo tells me that it was no orgy. Worse, having been involved in fathering the child, he had to metamorphose himself into the role of surrogate mother for PAM and after a difficult pregnancy, the period of gestation taking some two years, he again metamorphosed, this time into the mid-wife.

Now, the baby, the PAM 1998 Form, has to be and cannot escape being compared with its elder sibling the PAM /ISM 1969 Form. Who best to do such a comparison but the joint father, surrogate mother and mid-wife Mr. Sundra Rajoo. But what apparently started out to be a note on the topic, primarily for the purpose of easing those involved in the building industry, gently from the PAM /ISM 1969 Form to the PAM 1998 Form, has developed into a comprehensive and learned commentary on the PAM 1998 Form with a detailed article-by-article, clause-by-clause analysis of the Form relevant and in-depth comparison of the PAM 1998 Form with its predecessor. The learned author has inter alia provided extensive and apt reference to case law not only Malaysian but from other jurisdictions, notably England, Australia and New Zealand. What is perhaps unique and would be of particular interest to readers of this eminently readable book is the side-by-side flowcharts (as the author calls them) that have been included with the clause-by-clause analysis.

The academic background of Mr. Sundra Rajoo is formidable to say the least. Starting off with a basic degree in Housing, Building and Planning he went on to obtain professional degrees in Architecture and Town Planning before acquiring a law degree from the University of London. Subsequently, he obtained his Masters in Construction Law and Arbitration as well as a Masters in Philosophy in Law. All this academic learning together with some years of practical application of it, working inter alia with Bank Negara and sitting as an arbitrator in disputes arising out of building contracts and related topics, has been harnessed by Mr. Sundra Rajoo in writing this learned and timely book within whose covers almost all aspects of Construction Law and its practice in Malaysia may be found.

The author has to be commended on his effort in coming out with this important work and congratulated on providing all those involved in the building industry, whether they be owners, developers, contractors, architects, engineers or other professionals such as financiers, accountants and lawyers, with a self-contained, comprehensive and readable book, a veritable tome, on what I envisage will shortly be the only Standard Form of Building Contracts in use in Malaysia.

Dato' VC George
Kuala Lumpur

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