

VALUATION OF INTERIM PAYMENT – CONTRACT TERMS AND STATUTES

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## ABSTRACT

Valuation is a process of determining the estimated amount that a contractor is entitled to received for his performance at a particular stage or in a particular period of time under a construction contract. This process is normally carried out by certain professional specified in the contract. Statutorily, the Quantity Surveying Act 1967 authorises registered quantity surveyors to perform this task. At the same time the Act also allows other professionals to do the same if their regulating statutes express them to do the same. Contractually, the construction contracts specify other professionals to carry out this process. The question is, do the statutes that regulate those other professionals authorise them to do the same. The issue is therefore mainly relate to construing the statutory and contractual provisions. The objective of this study is to determine whether the architects and the engineers as contract administrators have the required statutory authority to do valuation work for interim payment. The scope of this research is confined to the Registration of Engineers Act 1967, Architects Act 1967 and the Quantity Surveyors Act 1967. The methodology used in this research consists of two parts. Part one is essentially reviews the literature on the theoretical and practical aspects of payments in conditions of contracts and statutes. Part two comprehensively analyses the relevant contractual and statutory provisions and the case law extracted from Lexis Nexis. The rules of interpretation are used to interpret the contractual as well as the statutory provisions. The research found that the Quantity Surveyors Act 1967 authorises registered quantity surveyors to perform the valuation work, but at the same time it does not prohibit other professionals to carry out the same task as long their respective statutes expressly provide them with that authority. Although there are express provisions in the Engineers and Architects acts that mention the term 'valuation' it cannot be construed as 'valuation' for the purpose of preparing interim payments. Therefore, it can be concluded that valuations of contractors work made by architects and engineers for the purpose of interim certificates are not valid.

## ABSTRAK

Penilaian adalah satu proses membuat anggaran jumlah kemajuan kerja yang perlu dibayar kepada kontraktor mengikut peringkat kerja atau tempoh masa didalam kontrak binaan tersebut. Proses ini biasanya dijalankan oleh profesional yang dinamakan didalam kontrak tersebut. Mengikut undang-undang, Akta Juruukur Bahan 1967 memperuntukan juruukur bahan untuk menjalankan tanggungjawab ini. Dalam masa yang sama Akta ini juga membenarkan profesional yang lain untuk menjalankan tanggungjawab ini jika akta-akta terbabit membenarkan. Mengikut kontrak, profesional selain dari juruukur bahan juga telah dinamakan untuk menjalankan tanggungjawab ini. Permasalahan sekarang adakah akta yang telah digubalkan itu membenarkan profesional tersebut berbuat demikian. Isu yang berbangkit disini adalah berhubung dengan interpretasi serta gunapakai akta dan peruntukan kontrak. Objektif kajian ini adalah untuk menentukan kedudukan akitek dan jurutera sebagai pentadbir kontrak mempunyai bidang kuasa dibawah undang-undang untuk menjalan penilaian kerja bagi bayaran interim. Bidang skop kajian telah dibataskan kepada Akta Pendaftaran Jurutera 1967, Akta Akitek 1967 dan Akta Juruukur Bahan 1967. Metodologi yang digunakan terbahagi kepada dua bahagian. Pertama memberi fokus kepada mengkaji bahan bacaan secara teori dan praktikal dalam aspek bayaran yang dinyatakan didalam syarat-syarat kontrak dan statut. Kedua menganalisa secara menyeluruh dari segi kes undang-undang yang berkaitan dan peruntukan akta dan kes-kes yang dipilih dari Lexis-Nexis. Peraturan tafsiran telah digunapakai dalam menafsir hubungan kontrak dan peruntukan akta tersebut. Hasil kajian menunjukan bahawa Akta Juruukur Bahan 1967 memberi kuasa kepada juruukur bahan berdaftar untuk menjalankan penilaian kerja dan dalam masa yang sama tidak menghalang mana-mana profesional jika terdapat peruntukan didalam statut profesional tersebut. Walaupun terdapat peruntukan didalam Akta Jurutera dan Akitek yang menggunakan terma 'penilaian' ianya bukanlah bermaksud 'penilaian' untuk tujuan bayaran interim. Kesimpulan yang dapat dibuat adalah penilaian kerja yang dijalankan oleh pihak akitek dan jurutera untuk tujuan sivil interim adalah tidak sah.