

### FOR MEMBERS ONLY

FEATURED INTERVIEW

Sr Eugene Seah Digital Construction : Challenges and Opportunities

## FEATURED ARTICLE AP Sr Dr. Sarajul Fikri Mohamed

Essential Features of SMM for Mechanical & Electrical Works in Malaysia

### LESSON LEARNT

Dr. Hamizah Liyana Tajul Ariffin

Cubic Electronics Sdn. Bhd. (In Liquidation) v Mars Telecommunications Sdn. Bhd.



## Movement for Digital Innovation





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## **Chief Editor's Message**

Associate Professor Sr Dr. Sarajul Fikri Mohamed, CQS

Dear esteem readers, members of RISM,

Innovation is a source of competitive advantage. As Peter Drucker famously remarked that purposeful innovation results from analysis, systemic review and hard work can be taught, replicated and learned. It is important to highlight that the recent innovations in the construction industry from the year 2016 and beyond can be divided into three main components; process innovation, technology innovation and people innovation.

A number of trends in the construction industry are technology innovation-related, either driven to a large extent by digitalisation or other emerging technologies.

In Malaysian The context, Construction Industry Transformation Programme (CITP) 2016 to 2020 championed by the Construction Industrv Development Board construction (CIDB), represents Malaysia's national agenda to transform the nation's construction industry into a highly productive and environmentally sustainable one.

In the era of digital empowerment, the construction industry must reimagine the business models and change the work processes to always stay ahead and competitive as highlighted by Sr Eugene Seah. With the digital construction, it can help by providing the required value judgments for creating a more sustainable infrastructure, which satisfies their owners and occupants.

In our cover features, we examined 'Essential Features of SMM For M&E Works In Malaysia', we highlighted the need to develop M&E works Standard Method of Measurement (MESMM) that would provide a home ground advantage and a framework for managing the cost of building services by quantity surveyors.

On the occasion of the reappointment of Adjunct Prof. Dato' Sr Aziz Abdullah, as the President for the 19<sup>th</sup> Session of Board of Quantity Surveyors Malaysia (2019-2021), the QS Division of RISM would like to extend our warmest congratulations to the President and the newly appointed Board Members of BQSM. We would like to wish further success for BQSM in the new session and looking forward to working closely and strengthening the cooperation among us.

This issue is filled with vital RISM activities and great photos of our social and community engagement activities,



in addition to highlighting . We also share related professional development training and seminar as well as the latest information on publications and legal case for the benefit of quantity surveyors.

Last but not the least; we are pleased to announce the 23<sup>rd</sup> PAQS Congress which will be held in Kuching, capital city of Sarawak. So, do keep a lookout and hurry to book your place! We sincerely trust that you will have as much pleasure reading this edition of Berita QS as we enjoyed compiling this for you, our dear RISM members and readers.

Happy Reading!!

### **Special Acknowledgement**



# "Thank You"

We would like to extend our sincere gratitude and appreciation for all of the hard work and dedication provided by Professor Sr Dr. Abd Ghani Khalid and the QS Division committee members (2018/2019).



### **Headlines & RISM Activities**

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The 23<sup>rd</sup> PAQS Congress and Board meeting are to be held in Kuching, Malaysia from 23<sup>rd</sup> tp 27<sup>th</sup> August 2019. The venue is the Pullman Hotel, Kuching and the hosts are the Royal Institution of Surveyors Malaysia (RISM) with the congress theme : "Human Wisdom Amidst Emerging Technology".

Kindly view this website for registrations https://www.paqs2019.com/







### **Headlines & RISM Activities**



From RISM President and Councillors Session 2018/2019



## **Royal Institution of Surveyors Malaysia**

## Scholarship & Education Fund

Royal Institution of Surveyors Malaysia invites applications from Malaysia Citizens for Educational Loans to pursue full-time courses at local universities (IPTA & IPTS). All courses must be accredited by MQA. The exemption of repayment is subject to First Class Honours only.



How to apply

The application form, may be obtained from the RISM Secretariat or downloaded from RISM website:

### http://www.rism.org.my

All application must be sent to:

The Chairman

Scholarship and Education Fund Committee Royal Institution of Surveyors Malaysia No. 64-66, Jalan 52/4, 3<sup>rd</sup> Floor, Bangunan Juruukur 46200 Petaling Jaya Selangor



**RISM** Calendar of Events



## YBhg. Adjunct Professor Sr Dato' Aziz bin Abdullah

for the re-appointment as

President Board of Quantity Surveyors Malaysia



Congratulations!





## to the newly appointed Board Members of BQSM (2019-2021)

President Registrar

Secretary

Members

: Adjunct Professor Sr Dato' Aziz Abdullah, CQS

- : Sr Noraisah Binti Kadirin, CQS
- : Sr Jamisah Binti Ibrahim, CQS
- : Sr Nik Zainal Alam Bin Hasan, CQS
  - : Sr Amran Bin Mohd Majid, CQS
  - : Sr Maselawati Binti Shamsuddin, CQS
  - : Sr Isabel Sim Tseu Yu, CQS
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  - : Sr Roziyah Binti Ismail, CQS
  - : Sr Muhamad Zulazhar Bin Mohd, CQS

Representatives from Other Board

- Ir. Sundraraj A/L A. Krishnasamy (Representing Board of Engineers Malaysia)
  Ar Mustapha Bin Mohd Salleh
  - (Representing Board of Architects Malaysia)

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### **RISM Event's Highlight**







## 29 April 2019

Technical Visit Indah Water Konsortium Sdn Bhd - Pantai 2 STP











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### **RISM Event's Highlight**







# 27 April 2019

RISM-RICS International Surveying Conference for Undergraduates, University of Reading Malaysia, Iskandar Puteri

Reading



# **QS Division Session** 2019-2020



Vice President Sr Lim Kok Sang, FRISM, FRICS, CQS



Deputy Vice President Sr Mohamad Shazali Sulaiman, FRISM, MRICS, CQS



Secretary Sr Richard Ooi Hoo Ong, FRISM, MRICS, CQS



**Treasurer** Sr Eric Khoo Sui Lai, MRISM, CQS

### **Committee Members**

Sr Engad Ravana Thathiah, FRISM, CQS Sr Ina Binti Abu Bakar, FRISM, MMSAdj, CQS Sr Lim Meng Heok, FRISM, CQS Sr Nazir Bin Muhamad Nor, MRISM, PQS Sr Sharifah Noraini Noreen Binti Syed Ibrahim Jamallullail, MRISM, PQS Sr Syed Abdul Haris Bin Syed Mustapa, FRISM, MRICS, CQS

**Immediate Past Vice President** 

Prof. Sr Dr. Abdul Ghani Bin Khalid, FRISM, CQS

Berita QS Issue 2. Session 2018/2019

### Featured Interview

## Digital Construction: Challenges & Opportunities

Sr Eugene Seah is highly experienced in Quantity Surveying and often injects sustainability value management and green approaches into his work to achieve to project efficiency. He is a Green Mark professional and is knowledgeable in sustainable buildings.

Berita QS content editor, Sr Dr. Fara Diva Mustapa had the privileged of interviewing him. Eugene is now working on enhancing productivity in Design and Construction and researching on Computational BIM, VR/MR and other productivity enhancement topics for the Surbana Jurong Group.

#### Please tell us about your background?

I started my Quantity Surveying career with a Diploma in Building, Quantity Surveying. I then studied a Quantity Surveying degree as a base degree from University of Reading in 1999. I always believe than knowledge is a lifelong learning which is why I decided to take up another degree in IT and Computing from University of Portsmouth in 2002. I guess it become an impetus in my journey for knowledge acquisition when I later pursuit MSc in Construction Law and Arbitration from the joint NUS and Kings College London programme and MSc in Sustainable Building Design from the University of Nottingham. For management I did the Senior Management Development Program from Harvard Business School.

### You are considered one of the pioneers in digitising QS role in South East Asia, can you share with us how you attained the awareness and see the opportunities rather than thread and how you embark into digitising QS role?

I was part of an apprentice scheme by my grandfather since the "Cut and Shuffle" method at Davis, Langdon & Seah era. Now, we are on BIM and I had to rapidly understand how BIM works, the processes involved and the periphery and associated services and technologies that surround Digital. It meant lots of reading, talking to people and working with the larger team members. This is what I practised now being the Senior Director at Surbana Jurong Group, a Singaporean government-owned consultancy company where we focuses on infrastructure and urban development.



## What do you think is the greatest challenge to digitise QS practice and how you overcome it?

It would be getting the QS to understand what it really means to get ourselves digitized. It is not only processes, but to operate measurement tools, to interrogate the BIM model understanding, BIM processes and even knowing how to Specify BIM requirements and digital requirements. Most importantly, there is the needs to have an overall view of how digital looks like and how the QS can be involved and evolve. I believe BIM is no longer considered a newbie in the industry and that QS should embark and really understand the requirements, process and delivery of BIM adoptions.

### Some people said that QS are very much stereotype in doing their businesses and lacking in innovation in promoting their services. Please comments.

I think it is too broad to say the QS profession as a whole. For instance, many parts in UK, ANZ and Singapore are seeing the QS evolve and evolving fast. Hence, to generalize the statement is misleading. However, I do believe it is correct to say that it is not a whole industry per say but siloed firms. So there is a need to rapidly get the professional on board.



## Do you think that it is possible for QS service to be digitilised?

Of course there is and there are much benefits and money to be made. If we do not evolve, very soon, others will step into the QS space. Already, Accountant companies are acquiring QS companies to be part of their firm. Meaning, accountants can do some form of cost management which were regarded as the "bread and butter" of our QS profession.

### Last, but not least, what advice can you give to QS who is still contemplating to digitilise their service and business practice and please share with us your experience in managing digital business service.

One most important advice I would give is for them to go in with eyes wide open and know what you want to spend your money on. It is not just buying softwares and say you are digital. It is about knowing what processes to digitize, what to transform e.g. e-tendering through Digitalisation. It is high time for QS to really transform their business delivery through digitalisation as client's expectations have evolved tremendously. They expect us to deliver our service in timely manner with better value for money. This means that there is less rooms for mistakes which can be managed accordingly with digital technologies. This means that we can leverage our capability through enhancing market insights and extend QS services.





## Sr Eugene Seah

### Designation

Senior Director (Special Projects), GCEO's Office, Surbana Jurong & Director, Threesixty Cotract Advisory Pte Ltd (Member of the Surbna Jurong Group)

### Expertise

BIM, Sustainability, Cost Management and Cotracts Management

Highly experienced in Quantity Surveying and often injects sustainability value management and green approaches into his work to achieve to project efficiency. Berita QS Issue 2. Session 2018/2019

### **Featured Article**

## Essential Features of SMM for M&E Works in Malaysia

The content editor, Dr. Shamsulhadi Bandi had the chance to interview Associate Professor Sr Dr. Sarajul Fikri Mohamed about his involvement in M&E Works Measurement research and development activities. The following is his report.

## Why do we need to manage M&E works in building project?

Mechanical and Electrical (M&E) works are a specialised area of the construction industry in terms of the nature of work, scope, technicality and the parties involved. The design and installations are different from the building structure and finishes and some important design information are often not received in good time or produced until the installation stage. Meanwhile, there is need to have a budget for M&E works to act as a guide for determining a fair price prior to awarding a contract .However, reliable estimation of costs of building services remains the most difficult to achieve at the early stage of building design process. Industry stakeholders expect the cost of M&E works to be effectively managed because of the increasing complexity of modern buildings, which has tremendously increased the significance of M&E works and their relative cost to the total cost of building projects.

Adoption of a structured format based on Mechanical and Electrical Works SMM to present building services cost information is essential in view of the increase in the value and complexity of building services in modern buildings. However, there is need to enhance quantity surveyors' knowledge in the technology and cost management of building services so as to ensure the reliability of cost advice provided to clients. This goal would be partly achieved through education and training of Quantity Surveyors in the interpretation and use of the rules of an SMM.

#### How to systematically measure the M&E components?

The primary objective of measuring and describing is to give the unit cost of a particular component. The



manner and method of presenting this information are set out under the appropriate heading of the detail rules of measurement. The measurement of building services can be simplified into three functional elements that apply to all types of supply installations, namely, source (e.g. boilers, air-handling equipment, transformers, standby equipment); distribution (e.g. piping, ducting, cable, wiring, conduit); and outlets (e.g. radiators, air grilles, lighting points, power outlets). For instance Murray (1997), considered plant and equipment as "source" and are usually enumerated in all cases, services run as "distribution" and are measured in linear metre from the source to the outlets while appliances are referred to as "outlets" and are also enumerated.

### a. Plant and equipment (source)

The cost of plant and equipment constitute a significant proportion of the M&E works cost. The cost could range between 25% and 70% of the M&E works cost depending on the size of the building. There are varieties of equipment from different manufacturers with varying quality and lifespan. One of the most important information to determine the cost of the source equipment is the function of the building and the design standards applicable to each services component.



#### b. Services runs (distribution)

Services runs or distribution refereed to the medium through which the outputs of the plant or equipment are transferred to the endpoint. For example, cables are used to distribute electricity to various sockets of different rated capacity and lighting points. These distributions are concealed by using conduit pipes. Similarly, for water supply, these pipes are used to transfer water from the source to different sanitary wares and taps in a building. The waste water is also conveyed from sanitary fitting to septic tank and soak away or public sewer through pipes. This system is referred to as services run/distribution. The rules of a SMM require these items to be measured in linear metre and the accessories are enumerated. Where there is a need for any incidental work, they are measured in line with the rules of measurement which may be defined in other sections of SMM.

### c. Appliances (outlets)

The appliances or outlets are the endpoint of services runs where the building users make use of the services output. For example, the condi- tioned air generated by the chillers and transferred by air-handling unit through air conditioning ducts are discharged into the comfort zone through diffuser. Similarly, socket outlet enable electricity generated to be used by building users. Appliances or outlets are generally measured in numbers according to the rules of measurement.

## What is the relationship between BIM and rules of measurement of M&E works?

BIM is an emerging technology that offers the capability to generate, take-off, count and measure directly from a model; however, the type of information on the model and type of cost estimate needed depend on the phase of the project, ranging from high-level schematic models during preliminary phases to detailed estimates as projects enter construction.





There is significant non-alignment between the objects in BIM models and the trade items in an SMM because the objects in a 3D BIM model represent the components of the finished product, whereas the SMM calls for the quantification of the work to create that component on a trade-by-trade basis. However, Singapore construction industry seems to have made the most progress in agreeing a coding system to facilitate the exchange of information between computer-based design models and costing systems. They explained that the Singapore standard CP97: Parts 1 and 2 2002 "Code of Practice for Construction Electronic Standards" is aligned with Singapore Standards CP 93: 2002 Classification of construction resources information and CP 83: 2000 Construction computer-aided design, to ensure a common classification and coding system is adopted across the industry, which could provide a good basis for rule-based automated quantity extraction in a BIM model.

#### How to implement M&E works measurement in Malaysia?

In order for the SMM for M&E Works to serve its purpose under current industry practices, it is expected to lav an efficient base for automation. This can only be achieved through appropriate classification and coding systems. The current industry development that needs to be considered in the classification and coding of any rules of measurement for adoption in the construction industry is BIM. As the deployment of BIM in the Malaysian construction marketplace increases, the practicability of automated quantity extraction in BIM models should be considered in the development of the rules of measurement. This can only be achieved by aligning the rules of measurement with the construction information classifica- tion system in the country. The development of a standardised system of classifying information is generally believed to be an important approach to the successful adoption of ICT in the construction industry. This will facilitate the use of a common language between the M&E engineers, quantity surveyors, and contractors in the downstream sector of the supply chain.

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### The Young Mind's

## **Opening Minds** and broadening perspectives

The content editor, Sr Dr. Zuhaili Mohamad Ramly had the chance to interview with Sr Dr. Muhammad Ehsan Che Munaaim, a senior consultant at HKA Global and based in its Dubai office. Dr. Ehsan provides strategic advice to clients and lead HKA teams to assist with resolving their disputes on some of the world's most complex construction and engineering projects in the Middle East and Asia. He is also a part time lecturer at Heriot Watt University Dubai campus where he teach claims, FIDIC contracts and dispute resolution in the MSc in Commercial Management and Quantity Surveying programme.

## Tell us more about your background and previous employments?

I have taught at four universities at both undergraduate and postgraduate level in the UAE, UK and Malaysia as assistant professor, lecturer and teaching fellow. I was an assistant professor at the British University in Dubai where I taught in the MSc in Construction Law and Dispute Resolution programme which was offered in association with King's College London. I was a lecturer at the Department of Quantity Surveying, University of Malaya teaching in the Bachelor of Quantity Surveying Programme. I was a teaching fellow at the Bartlett School of Construction and Project Management, University College London teaching in the BSc in Construction Project Management Programme. I also had a stint working as a contracts executive at Basar and Harun Sdn where I learned our bread and butter from one of the very best in our industry, Encik Basar Juraimi.

## Share with us some of the projects/cases you are currently working on?

I have just finished managing a commission in Jazan, Kingdom of Saudi Arabia, where HKA was appointed as a consultant to prepare two EOT and additional cost (prolongation and disruption) claims for our contractor client.I was the commission manager leading a multinational team of four consultants (delay and quantum). It was such a memorable experience for me as the team had to spend several weeks in Jazan reviewing key documents, interviewing key people and working with lawyers as part of our investigation of the facts of the case. Not to mention the team also had to stay in an all-male dormitory camp on a massive site in the Jazan Economic City in the Southwestern region of Kingdom of Saudi Arabia, approximately 50 kilometers from the Yemeni border!



### Tell us about your greatest achievement as a surveyor? And what is the significance of that achievement to you?

I would say my greatest achievement as a surveyor was when I was selected to receive the Board of Quantity Surveyors Malaysia Inspiration Award 2018, awarded to registered quantity surveyors under the age of 40, for demonstrating excellence in the service of quantity surveying and showing outstanding commitment to the profession and community service in Malaysia. Being the recipient of the Inspiration Award means a lot to me as I was able to prove to myself and my children that a "kampung" boy from one of the most impoverished areas in Malaysia could achieve his dream if he put his mind, heart and soul to it.





The main challenge is that you are very far from home and you can get homesick sometimes being far from your family and close circle of friends. Another big challenge for me is the Malaysian food!.

## How do you deal with culture and ethnicity differences within your working environment?

The UAE is a home to 200 nationalities and there are certainly cultural differences that I have to deal with on a regular basis not only at work but also outside work! This may sound cliché but the most important thing is to respect and understand other people's cultures. I focus on people's strengths and what they can contribute as a team bearing in mind the objective of a commission that we are part of and are trying to achieve.

## What are the key skills in order to complete in the international job market?

It is very important to have the relevant work experience working with an international contractor or consultant. The MRICS qualification is also a must as employers in the Middle East highly regard and value this qualification. It is also good to have a postgraduate qualification from a reputable university.

### What is your ultimate career goal as you see it today?

My ultimate career goal is to become the country manager of HKA Malaysia which is one of our hubs in Asia.

#### What do you enjoy doing outside of work?

I really enjoy spending time with my family and children. As my line of work requires me to travel outside the UAE on a regular basis, I make a point to spend more quality time with them at every opportunity. I also enjoy giving talks to underprivileged school and university students in Malaysia on the importance of education and how it can change lives. I give these talks when I am back in Malaysia for my holidays. To date, I have delivered close to 20 talks in Malaysia . My advice for young QS to gain at least 5 years of experience in Malaysia working with an international contractor or consultant on landmark projects" whilst also pursuing their postgraduate and MRISM/MRICS qualifications.



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Lesson Learnt

# **Summary of Legal Case**

Cubic Electronics Sdn. Bhd. (In Liquidation) v Mars Telecommunications Sdn. Bhd. (2019) 2 CLJ 723

Commentary by Dr. Hamizah Liyana Tajul Ariffin Universiti Teknologi Malaysia

### **Facts of the Case**

Cubic Electronics Sdn. Bhd. as an Appellant was a wound up company with liquidators appointed. The liquidators put up Cubic Electronic Sdn. Bhd.'s land and machineries for sale. Subsequently, the Mars Telecommunications Sdn. Bhd. as the Respondent offered to purchase the properties and was required to pay an earnest deposit to the amount of RM 1 million (the first earnest money). In addition, the acceptance of the Respondent's offer was conditional upon the Sale and Purchase Agreement (SPA) for the properties being executed within 30 days failing which the earnest deposit paid by the Respondent would be forfeited in favour of the Appellant.

However, the Respondent failed to execute the SPA by the stipulated timeline and requested for three extensions to complete the sale and purchase of the properties. On each application of the extension, the Appellant agreed to pay the earnest deposits or RM500,000.00 (the second earnest deposit), RM500,000.00 (the third earnest deposit) and RM 1 million (the fourth earnest deposit). Pursuant to the fourth request for extension, the Appellant similarly required the Respondent to pay further earnest deposit, but this time there was an additional requirement for a non-refundable interest amount to RM40,000.00 on the balance of the deposit for the properties.

It was make clear by Appellant the to the Respondent at all times that the earnest money would be forfeited by way of liquidated damages not by way of penalty should the Respondent failed to make the deadline in completing the SPA agreement. There was final request for an extension by the Respondent together with a cheque worth RM6,000,000.00. However, the Appellant refused to grant another extension and return the cheque and terminated the SPA.

The Appellant thereafter duly forfeited all the earnest deposits paid by the Respondent together with the nonrefundable interest amounting to RM3,040,000.00. An action was then brought by the Respondent against the Appellant for wrongful termination and sought for return of the deposit money and interest paid and stated that the earnest money that was agreed on the SPA was only RM1,000.000.00.



#### **Courts' Decision**

The Respondent's claim was dismissed by the High Court. On appeal, the Court of Appeal ruled that the forfeiture of the entire deposit and interest was impermissible but allowed the forfeiture of the first earnest deposit due to failure of the Respondent to prove its damages pursuant to section 75 of the Contract Act 1950.

The Court of Appeal referred to Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy (1995) 2 CLJ 374 ("Selva Kumar") and Johor Coastal Development Sdn. Bhd. v Constrajaya Sdn. Bhd. (2009) 4 CLJ 569 and held that there was no evidence to show the Appellant suffered the impugned amount due to the Respondent's breach.

In relation thereto, the Respondent still incumbent to prove the damage suffered unless the amount was a genuine pre-estimate of loss as required under section 75 of the Contracts Act 1950. The Appellant appealed to the Federal Court. Upon perusal of the facts of the case, the learned Chief Judge, having examined a litany of cases from English, Indian and even Commonwealth jurisdictions in a thorough analysis found that parties were well aware should there be a default, the earnest money would be forfeited as liquidated damages and not by way of penalty.

Based on the application of the reformulated principles in the cases of *Cavendish Square Holding BV v Talal El Makdessi* [2012] *EWHC 3582* and *Parking Eye Ltd v Beavis* [2015] *3 WLR 1373*, the learned Chief Judge opined that irrespective of whether the damage is quantifiable or not, it is incumbent upon the court to adopt a common sense approach by taking into account the legitimate interest which an innocent party may have and the proportionality of a damages clause in determining reasonable compensation.

The conduct of the parties portrays strong evidence that the additional payment of RM2,000,000.00 would create part of the earnest deposit which provide assurance the plaintiff's performance in carrying out the SPA. It is also found by the Federal Court that failure on the Appellant side in completing the SPA caused the respondent to terminate the sale agreement. The Federal Court ruled that it is incumbent upon the Appellant to show that the additional payment of RM2,000,000.00 is excessive.

However, the Appellant failed to identify any evidence to show that the forfeited payments were unreasonable. This restored the viability of liquidated damages clauses which is based on the fundamental principle that as long as the liquidated damages clause is not a "penalty" or "unreasonable", the innocent party can enforce such a clause to claim for the sum agreed therein **without having to prove actual loss**. Therefore, the Federal Court allowed the appeal by reinstating the order of the High Court which ruled that the forfeiture of the additional RM2,000,000.00 amounted to reasonable compensation.

## Discussion – The Need to Prove the Unreasonableness of the LAD

The Federal Court decision in the case of *Selva Kumar* on the scope of Section 75 of the Contracts Act 1950 has left many questioning the effectiveness of having liquidated damages clauses in contracts and whether such clauses are in fact enforceable in Malaysia.

Many share the view that liquidated damages clauses are effective and important means by which parties to a contract are able to negotiate and agree upon entering into the contract as to the compensation payable for nonperformance of contractual obligations.

Such clauses aim to reduce the need for costly and time-consuming court proceedings in the event of a breach and provide commercial certainty for contracting parties with regard to the risks they undertake in the contract.

The unanimous Federal Court decision in *Cubic Electronics* summarised the restatement of the legal principles now applicable to liquidated damages clauses in Malaysia. The crux of the decision in *Cubic Electronics* is the shift of the burden of proof pertaining to a damages clause from the innocent party to the defaulting party.

In the construction context, this means the contractor, and not the employer, will have to prove that the liquidated and ascertained damages clause and the sums stated therein are unreasonable. The employer however continues to bear the burden of proving the contractor's breach of his completion obligations and the applicability of the LAD clause.



### Conclusion

In conclusion, it is compelling to note that the Federal Court in *Cubic Electronics* has chosen to ingeniously avoid the uncertainty and ambiguity created by the decisions in *Selva Kumar* and *Johor Coastal* by premising its approach completely on the new position in English law brought about by the *Cavendish* decision.

In *Cubic Electronics*, the Federal Court decision significantly clarifies the previous position under *Selva Kumar*. Employers can now be comforted that the new position looks favourable to them in the sense that such clauses on deposits or liquidated damages, if challenged in court in terms of enforceability, would have better chances of success in withstanding such challenges. It is now compulsory upon the contract breaker to prove that the LAD so imposed is unreasonable.

The parties to a contract can now look forward to the right to enter into so sensible an arrangement under which each know where they stand in the event of a breach by the defendant and can avoid the heavy cost of proving actual loss if litigation occur. Berita QS

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### **International Linkages**

## **RISM Accreditation Visit to** UBH Padang Indonesia

The RISM delegation consisting of Sr Ahmad Suhaimi Abdul Majid, Sr Dainna Baharuddin and Sr Dr. Umi Kalsum Zolkafli@Zulkifly visited the Universitas Bung Hatta, Padang West Sumatera Indonesia on 18<sup>th</sup> April 2019. The programme is aimed to conduct provisional accreditation to the Diploma in Quantity Surveying offered by Universitas Bung Hatta (UBH).

Quantity Surveying Programme in Universitas Bung Hatta (UBH) Padang West Sumatera Indonesia is the only quantity surveying programme offered in Indonesia. This programme has established in 2002 based on Decree of Indonesian Higher Education Director Number 1332/D/T/2002. Department of Quantity Surveying is integrated in the Faculty of Civil Engineering and Planning.

The management audit of this programme has been conducted by Universitas Bung Hatta internally and Indonesian National Accreditation Agency of Higher Education externally. Based on the result and continuous quality improvement of the programme, it is important to improve status of Quantity Surveying Department through accreditation process by Royal Institution of Surveyor Malaysia (RISM).

The development of this QS programme were initiated way back in 1998 when the academic staffs from UBH enrolled into master programme in Universiti Teknologi Malaysia (UTM), under the course name Construction





Financial Management and Project Estimating. Since then, the idea of establishing the programme began, and UBH sponsored two students to enroll into bachelor degree in QS programme in the Department of Quantity Surveying, Faculty of Built Environment and Surveying, UTM for the total duration of 4 years. To date, more than 12 graduates from UBH further their studies at degree level in UTM. QS Lecturers from UTM also were invited as guest lecturer in every academic year to deliver lecture on several courses.

Dr Nengah Tela, Dean of Civil Engineering and Planning Faculty said "The prospect of QS programme has a great opportunity due to rapid development of construction sector in Indonesia. QS Diploma programme has been established in Universitas Bung Hatta in 2002 is the only QS programme offered in Indonesia. Therefore the prospect is promising for the next two decades. The only thing we have to do some improvement in the quality of Quantity Surveyors, such as: intensively undertake professional training, join academic activities with university in Malaysia and student exchange programme".



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