**Variation Claims - Pitfalls And Pratfalls***  

*By Ir. Harbans Singh K.S.¹ and K. Sri Kandan²*

Engineering or construction contracts are complex both in nature and the processes required to realise the finished product. More often than not even if carefully planned owing to the inherent characteristics of such contracts it is inevitable that there will be changes to the scope of the contract as work progresses. Such changes may be necessitated by a number of factors, that is, change in the user or employer’s requirement, review of design, changes in statutory requirements, product improvements, etc. These changes may be initiated either by the employer ³ or by the contractor himself; the latter situation arising more frequently in the so called contractor-designed “package deal” type of contracts ⁴.

It is a recognised fact that of late the local engineering or construction industry is plagued with a wide ranging array of claims. A notable example is one being attributed to the so called “variation” species. An unofficial count puts variation claims to account for almost 20 per cent of the total claims being tendered on a monetary basis during the last five years ⁵. This may just be the tip of the iceberg as the figure alluded to above does not take into consideration similar claims involving the other industry players such as sub-contractors, suppliers, fabricators and the like.

In view of the immense importance of the instant topic, this paper has been formulated to look at certain specific issues within the local context perhaps on an introductory basis so as to serve as a catalyst for further investigation, honing and refinement. The paper does not attempt to encompass the entire ambit of the subject matter in hand but will rather delve into the various myths and pitfalls that pock-mark the terrain of “variation claims” in particular through the field-glass of two practitioners coming from the two ends of the professional spectrum.⁶

**VARIATION CLAIMS: MAIN ISSUES**

A detailed investigation of variation claims being pursued by contractors reveals a remarkable consistency in the issues in contention. These can be collated and listed under the following categories ⁷:

* Measurement of varied work;
* Valuation of variation orders;
* Payment of varied work;
* Miscellaneous issues. For example, varied work falling outside the contractual scope, “quantum meruit” claims, effect of limitation on variation claims, the concept of “constructive” changes, etc.

**COMMON MYTHS**

Accompanying the issues listed here above is the preponderance of a host of commonly held beliefs or more correctly “myths” that shroud this area of contract and seemingly gives it an aura of mystery and uncertainty. Contractors generally suffer from the following misapprehensions or myths pertaining to variation claims ⁸:

* That the employer is bound to pay for any change or additional work whatsoever undertaken by the contractor whether expressly directed or not;
* Where the scope of work is unclear or should there be a discrepancy in the contract documents, the contractor is automatically entitled to extras;
* In the event work is omitted, the contractor is automatically entitled as of right to loss of profit;
* Prior to ordering extras, the employer ¹⁰ must obtain the contractor’s agreement to the rates for valuing the varied work;

---

¹ Director, HSH Consult Sdn Bhd  
² Senior Director, KPK Group of Companies.  
³ Normally through the office of the ‘Contract Administrator’.

* This article was presented at The Society of Construction Law (SCL)’s inaugural International Construction Law and Arbitration Conference held on 23 October 2004 in Kuala Lumpur.


8. or ‘Change’.


10. or the Contract Administrator on his behalf.
• The contractor has a right to refuse to undertake varied work if he so desires in particular if there is disagreement as to the rates and time extension sought;
• In the situation where varied work has been undertaken, measured and valued by the contract administrator but payment is not effected, the contractor is automatically entitled to interest on the amount due;
• The employer has no right to order and the contractor is not obliged to carry out varied work in the defect liability period;
• The employer has a right to call for a review of measured and valued work involving variations even after the final account has been prepared and the final certificate issued 11; and
• The contractor has, in addition to the monetary claim for the varied work, a parallel right to claim for extension of time 12 and direct loss and expense.

Looking from the employer’s point of view either due to ignorance or lack of proper understanding of the position vis-à-vis variations, a list of myths that afflict employers include, inter alia, the following:

• The employer has an unfettered right to vary work under the contract 13 and the contractor has a duty of compliance to the same;
• The contractual requirements as to the procedures governing the ordering, measurement, valuation and the payment of varied work are merely directory in nature and do not mandatorily bind the employer in the same way as these do the contractor;
• There are no “variations” in contracts based on firm Bills of Quantities and for extras the use of the corresponding BQ rates is mandatory irrespective of the quantum of the extras 14;
• For omissions, the contractor is not entitled to loss of profit or adjustment of rates unless the contract expressly stipulates so;
• The employer can omit any work as he likes 15 and award it to a third party of his choice during the currency of the original contract 16;
• For “package deal” types of contracts based on a firm price lump sum, there is no entitlement to the contractor for variations;
• Unless there is an express formula for valuing varied work, the final decision as to the rates to be employed is the prerogative of the employer, the contractor’s only recourse in the event of disagreement is to arbitrate the matter;
• The employer has a right to restrict or limit the contractor’s entitlements pursuant to a valid variation order 17;
• Where the contractual provisions are not clear, the employer has an inherent right to order varied work to be undertaken in the Defect Liability Period and the contractor is obliged to effect the same; and
• ‘Quantum meruit’ claims pertaining to varied work do not fall within the contract administrator’s scope of responsibility and therefore the contractor needs to pursue these either through arbitration 18 or litigation.

Owing to the existence of the above-mentioned beliefs or fallacies over the good part of the last three decades, these have not only become institutionalised but in most cases recognised as norms. The end result is that such myths have been concretised as accepted practice and govern the day to day implementation of variation procedures and claims. Coupled to this is a general lack of education vis-à-vis the subject in hand and the consequential ignorance has exacerbated the situation resulting in the current unprofessional approaches taken in the industry at large.

To bring professionalism to the fore, it is incumbent for such myths to be extinguished and the prevailing shortcomings to be redressed lest the industry slips further into the mire created by its own making. Here practitioners, academics and authorities need to create awareness, demystify fallacies and further recognize good practices in contemporary project work; the instant conference being a good starting point.

PITFALLS AND PRATFALLS

The common areas of contention involving variation claims can be narrowed down to the following stages of a typical variation cycle, namely 19:

• Ordering of variations;
• Measurement of variations undertaken;
• Valuation of varied work; and
• Payment for the variation ordered

As each stage proffers its own unique set of pitfalls and areas of concern, these will be examined in brief hereunder with an aim of highlighting issues that need to be addressed from the perspective of a practitioner.

11. Especially where the contract expressly stipulates that the Final Certificate is not conclusive. See example Cl 30.8 PAM '98 Form (With Quantities, Edn.).
12. or “acceleration costs” if asked to accelerate works in lieu of extension of time.
13. Involving even the so called “cardinal changes”.
15. Or other suitable dispute resolution forum.
17. For example denying him extension of time, extended preliminaries, etc.
18. See also ‘Valuation of Varied Work: A Commentary’ by Ir. Harbans Singh K S Vol e.g. PAM ‘98 forms, CIDB forms, IEM forms, JKR/PWD forms, etc.
Ordering of Variations

Most if not all standard forms of conditions of contract contain elaborately drafted express provisions spelling out various procedural requirements encompassing the employer’s right to effect variation to the contract (entered between the employer and the contractor). A classic example is Clause 24 JKR form 203A (Rev. 10/83) which reads:

(a) The SO may at his absolute discretion issue instructions requiring a variation and he may confirm in writing pursuant to Clause 5(c) hereof any oral instruction requiring a variation to the works. No variation required by the SO or subsequently confirmed by him shall vitiate the contract;

(b) The term “variation” means the alteration or modification of the design, quality or quantity of the works as shown upon the contract drawings, Bills of Quantities, and/or specification and include the addition or substitution of any work, the alteration of the kind or standard of any of the materials or goods to be used in the works and the removal from the site of any work, materials or goods executed or brought thereon by the contractor for the purposes of the works other than work, materials or goods which are not in accordance with this contract.

Provisions similar in content and scope arise in the other common ‘Standard’ Forms used in this country. These include Clause 11.0 PAM ‘98 forms (with and without quantities Edn.), Clause 27 PWD form DB/T (2002 Edn), Clause 28 CIDB form (2000 Edn), Clause 23 IEM.CE1/89 form and Clause 19 IEM.ME1/94 form.

A meticulous examination of these express provisions immediately crystallises the various areas of misconceptions and difficulties that practitioners face. These include:

- The employment of a contract administrator as the official initiator or originator of a variation instruction automatically excludes the employer from the very conception of the variation process; a fact little appreciated, especially by private employers who ultimately end up mal-administering the contract. Such an arrangement also mandates a proper delegation of power to the authorised person; a practice rarely seen in the industry, save for public sector projects;
- The usage of phrases such as “the SO in his absolute discretion” apparently shrouds the contract administrator with an unfettered discretion to order any variation which he deems necessary. As discussed earlier, this is a myth as the contract administrator’s exercise of this power is subject to limitations imposed by the law, in particular the common law.
- The definition of a “variation” as expressly spelt out in these standard forms is rather vague and inexhaustive. Although catering for most of the commonly occurring circumstances, it is seriously deficient in not encompassing novel and new situations developing with the contemporary position of the industry. A typical deficiency involves “omissions”. The provisions neither define this term specifically nor delineate its extent without falling foul of the contractual limitation;
- The physical and additionally financial limits of variation work that can be properly ordered by the contract administrator without breaching the contract in any way are not stipulated. This uncertainty and unclarity have led to abuse in practice and a growing body of variation claims premised on the basis of “cardinal changes”; a situation that does not auger well for the industry as a whole; and
- The procedural aspects of ordering variations are not clearly stipulated. Most, if not all standard forms, expressly provide that for such variations to be contractually valid these have to be either “in writing” or reduced to “in writing”. Sadly, however, the term “in writing” is nowhere defined leaving it to lawyers and legal authorities to interpret its exact ambit. With the contemporary practice of the use of new and novel means of communication involving e-mail and/or text messaging, it has become a moot point as to whether these forms fit into the traditional classification of “written” communication. Much certainty could be brought into this area of practice if a concerted attempt is made to properly formulate and clarify these “rubber” phrases instead of being merely mechanically inserted in the contracts.

Measurement of Varied Works

Varied work has to be measured as a condition precedent to valuation and payment. The timing, methodology and the parties responsible are either expressly stipulated in the applicable express contractual provisions or mutually agreed to by the contracting parties. By and large, most if not all the standard forms of conditions of contract contain express stipulations pertaining to the

21. Exercised vicariously through the contract administrator.
22. Entitled “Variation”.
23. Where quantities form part of the contract.
24. Variously described as the “SO”, “engineer”, “architect”, etc.
26. Although, for example, in Public Works Contracts there are Treasury Circulars imposing express limits, these are however not translated into the contract provisions.
27. Or as popularly known as “SMS”.
28. For a more detailed discussion, see Ir Harbans Singh K S 'Engineering & Construction Contracts Management: Post-Contract Practice' at Pages 498 to 508.
issue of the measurement of varied works. A notable example is Clause 25 of the JKR Form 203A (Rev. 10/83) which states:

‘(a) All variations authorised or subsequently confined by the S.O in writing in accordance with Clause 24 hereof shall be measured and valued by the S.O. ..........
(b) ..........................................
(c) ..........................................
(d) ..........................................
(e) The S.O. shall when he requires any parts of the works to be measured give reasonable notice to the contractor who shall attend or send a qualified agent to assist the S.O. or S.O.'s representative in making such measurement and shall furnish all particulars required by the S.O. Should the contractor not attend or neglect or omit to send such agent them the measurement made by the S.O. or approved by him shall be taken to be the correct measurement of the work. The contractor shall be supplied with a copy of the measured bill in respect of the said part or parts of the works.’

Express clauses to a similar effect but in varying drafting styles are included in other 'Standard' forms. For example Clause 11.4 PAM '98 forms (With & Without Quantities Edn.), Clause 24 IEM.CE1/89 form, Clause 30 CIDB form (2000 Edn.) and Clause 42 Putrajaya conditions of contract.

Although appearing at first blush to be rather straightforward and devoid of any areas of uncertainty, the measurement stage exhibits its fair share of pitfalls, notable of these being:

- The express provisions assign the responsibility for initiating, undertaking and completing the measurement process to the contract administrator; the contractor being a mere participant in the process his role being additionally confined as to a facilitator and informant. Unless the contract administrator is an efficient and resourceful person, should he procrastinate there is no express contractual sanction that the contractor can use to expedite the measurement process. This is especially so where the measured work involves multi-disciplines. For example architectural, civil works, M&E plant or systems, etc.;
- The contractual provisions recognise the need to employ recognised methods for measuring the varied work. For example SMM for building works and CESMM for civil engineering works. Generally, this poses no problems for building or civil engineering works but the picture is to the contrary for mechanical and electrical works where it appears for the moment there are no industry accepted norms for the measurement process. Here, unless the parties agree to a mutually acceptable methodology, the measurement of the varied work remains arbitrary and to the apparent whims and fantasies of the contract administrator, a fact readily testified to by M&E contractors having little contractual basis to challenge such exercise of discretionary powers;
- Even for disciplines where internationally accepted rules for measurement are specified and accepted by the parties, in practice, there is a tendency for contract administrators to deviate from the same. The end result is a consistent pattern of under measurement as contract administrators attempt to play safe underpaying the contractor rather than over paying; leaving to the final account stage for any upwards adjustment. Once again, unless the contractor can establish on a balance of probabilities a cause of action in negligent or fraudulent conduct on the part of the contract administrator, he has no recourse but to bite the bullet and wait for the final account to redress any under measurement.

Perhaps an interim adjudication stage may help alleviate the instant area of contention; and

- Other areas of concern include the procedural steps involving the contractor's furnishing of information to enable the measurements to proceed or his omission to do so, the attendance by the various parties at the measurement exercise and the eventual signing off of the measurement records. Although most express provisions empower the contract administrator to proceed "ex-parte" in the event of the contractor's default the actual realisation in practice is not certain as it entails delays in the process with an attendant risk of challenges in the post-measurement stage.

**Valuation of Variation Orders**

Once the varied work has been measured and the records thereof appropriately processed, the subsequent stage involves the carrying out of the necessary valuation of the work in question.

The general principles governing the valuation and reimbursement for varied work have been succinctly expounded in the following pronouncement of the Lord Chancellor in the landmark English case of *Thorn v London Corporation*:

---

29. Entitled 'Measurement and Valuation of Works Including Variations'.
30. Inevitably requiring the input of the Quantity Surveyor, Engineers, etc.
31. As issued by the Institution of Surveyors Malaysia.
32. As issued by CIDB, Malaysia or ICE (UK).
33. E.g. for building works and civil engineering works.
35. (1876) 1 App. Cas (HL).
“Either the additional or varied work which was thus occasioned is the kind of additional and varied work contemplated by the contract or it is not. If it is the kind of additional or varied work contemplated by the contract, he (the contractor) must be paid for it, and will be paid for it, according to the prices regulated by the contract. If on the other hand, it was additional or varied work, so peculiar, so unexpected, and so different from what any person reckoned or calculated upon, that it is not within the contract at all; then, it appears to me, one of two courses might have been open to him; he might have said: I entirely refuse to go on with the contract – “Non hoec in foedera veni”: I never intended to construct this work upon this new and unexpected footing. Or he might have said, I will go on with this but this is not the kind of extra work contemplated by the contract and I do it, I must be paid a “quantum meruit” for it.”

Hence, in analysng the general principles, it is necessary to distinguish between varied work that is within the contract and work that falls outside the ambit of the contract.

To obviate the necessity of negotiating and mutually agreeing upon the rates to be used and the procedure to be adopted every time work is varied, it is quite common for parties to agree upon the specific formulae to be employed and include these in an express clause in the contract itself. Examples of such clauses in the local standard forms of conditions of contract include Clause 29 CIDB Form (2000 Edn), Clause 24 IEM.CE1/89 Form, Clause 19 IEM.ME1/94 Form, Clause 28 PWD Form DB/T (2002 Edn.), Clause 25 JKR Forms 203 et 203A (Rev. 10/83), etc.

As an illustration, PAM ‘98 form (With Quantities Edn): Clause 11.0 stipulates:

11.4 Valuation of Variations and Provisional Sums

All variations required by the architect or subsequently sanctioned by him in writing and all work executed by the contractor following instructions of the architect as to the expenditure of provisional sums included in the Contract Bills shall be measured and valued by the architect or the quantity surveyor as instructed by the architect. The contractor shall be given the opportunity to be present at the time of such measurement and may take such notes and measurements as he may require.

11.5 Rules for Valuation of Variations

The valuation of variations and of work executed by the contractor for which a provisional sum is included in the Contract Bills (other than for work for which a tender has been accepted under clause 27.8) shall, unless otherwise agreed, be made in accordance with the following rules:

11.5(i) the price in the Contract Bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein.

11.5(ii) Where work is of similar character to work included in the Contract Bills but may not be executed under similar conditions the rates in the Contract Bills shall, as far as may be reasonable, be the basis of valuation, which shall include a fair allowance for the difference in conditions.

11.5(iii) Where work cannot be properly measured and valued the contractor shall be allowed day work rates at the prices prevailing as far as may be reasonably ascertained at the time that such work is carried out or at the day work rates stated in the Contract Bills or if no such rates are included at the actual prime cost to the contractor of his materials, transport and labour for the work concerned plus fifteen per cent, which percentage shall include for the use of all ordinary plant, tools and scaffolding, supervision overheads and profit. Provided that in any case vouchers specifying the time spent daily upon the work, the worker’s names, the plant and the materials employed shall be delivered for verification to the architect or to the quantity surveyor as instructed by the architect not later than seven days after the work had been completed.

11.5(iv) The prices in the Contract Bills shall determine the valuation of items omitted. If omissions substantially vary the conditions under which any revising items of work are carried out, the prices of such remaining items shall be valued under sub-clause 11.5(ii).

11.5(v) Effect shall be given to measurement and valuation of all variations in interim certificates and by adjustment of the contract sum.

11.6 Valuation of Direct Loss and/or Expense

If the contractor applies to the architect in writing within a reasonable time of the event and the architect is of the opinion that a variation in respect of work which has caused the contractor direct loss and/or expense for which he would not be reimbursed under any provisions in the conditions, then the architect shall from time to time
time ascertain the amount of such loss and/or expense which amount shall be added to the contract sum. If an interim certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated to be due in the certificate.

11.7 Contractor to submit necessary details

The contractor shall in support of his application submit to the architect upon request such details of such loss and/or expense as are reasonably necessary for such ascertainment under clause 11.6 of this condition.'

Despite its seemingly innocuous appearance, valuation of varied work is a complex exercise often fraught with uncertainty, arguments and disputes. More often than not it seldom if ever involves objective principles and is prone to the subjective computational decisions of the valuer; not surprisingly therefore serving as a breeding ground for alterations and subsequent claims. Among the areas of difficulty and disagreement include, inter alia, the following:

- The valuation procedure spelt out in most of the standard forms is overly rigid and gives unrestricted power to the valuer to fix the value he deems fit subject to review (if necessary) by the arbitrator or the courts. Unless the quantum involved is substantial justifying the expense of determination by arbitration or litigation, more often than not, the contractor is “coerced” into accepting whatever figure is decided by the valuer. This appears inequitable especially for work which was originally not within the contractual scope and for which the contractor has to expend additional time and financial resources;
- As for the measurement process, there is no intermediate dispute or disagreement resolution procedure for the valuation stage. Perhaps the employment of an independent third party expert determination forum such as adjudication would restore a sense of balance and fairness pending final resolution at the end of the contract stage. This would certainly afford valuers a third party “fall back” position in areas of doubt or material disagreement and the benefit of expert opinion;
- The principal methods of valuation or formulae stipulated in most standard forms are rather nebulous and difficult to implement in practice, especially where either rates are missing in the contract or the scope of work varied does not easily fit into the “pigeon-hole” formulae. Use of phrases such as “fair valuation” reasonable “rates” etc. afford no guarantee or certainty to both valuers and claimants alike. Instead they act as catalysts for disagreement and disputes;
- Guidance in the form of explanatory provisions in contracts and/or industry practice procedures is not proffered to practitioners to help implement the more commonly prescribed formulae such as “use of adjusted rates” “market rates” etc. leading to arbitrary implementation in practice much to the detriment of interested parties;
- The common method of rationalisation of rates prior to award of tenders is a much abused one sided, arm-twisting exercise where professionalism is sacrificed at the expense of protecting the so called employer’s interest. The end result is the linking of a contract document with rates not capable of practical implementation whereby claimants attempt to circumvent with ingenious alternatives, inflated claims and resort to extra-contractual means such as quantum meruit claims;
- Uncertainty and disagreement on the actual scope and implementation in particular cases of the specific valuation formulae laid out in the respective conditions of contract leads to undue foot-dragging and procrastination by employers and contract administrators. Therefore, many a varied work remains unpaid even towards the tail end of a contract making the timely issue of the final certificate a rather impossible task;
- Considerable confusion surrounds the valuation of work pertaining to package deal type of contracts. Though the general approach on an international level points to the adoption of the “quotation method”, local practitioners appear either ignorant of this or by design refuse to apply the said formula. Instead, frequent use is made of the conventional formulae used in traditional general contracts. Even for public works contract, the tendency is to use a variant of the “quotation method”, the exact ambit of which is still shrouded in uncertainty. Unless the situation is rectified in the near future, the state of affairs would deteriorate further as more projects seem to be awarded on the package deal basis; where the “quotation” method would be expected to prevail; and
- None of the standard forms prescribe in detail, the possible formulae to be used to value defective work that have been omitted by the employer under the so called “diminution in value” category. The current prevailing practice appears to leave such valuation to the arbitrary discretion of the contract administrator. Perhaps, since such variations do not account for a significant proportion of all varied work encountered in a typical contract, this issue is not accorded much importance. But as projects increase in complexity and defective work falling under the said category assumes a greater significance, it may be timely to clarify and amplify on this area of valuation to obviate possible disputes and claims.

43. Who is for all intents and purposes the quantity surveyor or the engineer.
44. The moot point is ‘fair to whom’ - the contractor or employer?
45. Or where work is of a similar character and/or executed under similar conditions.
46. For M&E Works.
47. Unit rates or BQ rates for variation purposes.
48. e.g. at the final account and final certificate stage.
49. Thereby delaying the final closing-off of a typical contract.
51. E.g. “Fair valuation method”, ‘use of market rates’, etc.
52. See Cl 28: PWD form DB/T (2002 Edn.).
Payments for Variations Ordered

Once the varied work has been executed and the contract administrator has undertaken the necessary measurement and valuation, the contractor must be accordingly paid. This is usually effected by remunerating the contractor through the contractual formula agreed to by the parties. Failure by the employer to reimburse the contractor for the work carried out or any unreasonable delay in effecting the same is a breach on the former's part with its attendant consequences; a fact that must be borne in mind by both the employer and the contract administrator.

It is rare for the standard forms of conditions of contract not to stipulate the necessary requirements for the matter at hand. Common examples of such provisions include, inter alia, the following:

- Clause 29.3 of the CIBD form (2000 Edn) states:
  
  “The superintending officer shall upon notifying the contractor of the value of the variation pursuant to clause 29.2 give effect to the valuation of such variation in the following certificate issued by the superintending officer pursuant to clause 42”.

- Sub-clause 11.5(v) of the PAM ’98 forms (with and without quantities edns.) reads:
  
  “Effect shall be given to measurement and valuation of all variations in interim certificates and by the adjustment of the contract sum”.

- Sub-clause 25(f) of the JKR Form 203A (Rev. 10/83) stipulates:
  
  “The amount to be allowed in respect of variations, as ascertained under the provisions of this condition shall be added to or deducted from the contract sum as the case may be.”

Notwithstanding the above provisions, it is an accepted fact that in many local contracts, employers and contract administrators pay little or no heed to this important stage of the variation process, leaving contractors either being not paid in time or in extreme cases, not at all. Common areas of complaints or claims include:

- A large number of employers and contract administrators cite compliance with the employer’s internal procedures vis-à-vis approval of ordered variations as a principal reason for not effecting payment to the contractor. Contractually, unless such procedures are expressly stipulated as pre-conditions in the contract between the parties, these are of no legal consequence to the contractor’s entitlement to the varied work undertaken. In such situations, the employer may, prima facie, be in breach should he not adhere to the contractual provision regulating the payment of varied work undertaken;

- Employer’s arbitrarily discounting or cutting down on the quantum of work certified by the valuer and using this as a basis to further negotiate with the contractor;

- Valuers and/or contract administrators refusing to entertain the contractor’s claim for consequential remedies pursuant to the varied work such as extension of time, extended preliminaries, etc. or issuing variation orders subject to conditions denying or limiting the right of the contractor to claim extension of time, extended preliminaries, etc.; and

- Non-payment of interest and/or financing charges for varied work undertaken and certified but not valued or paid due to reasons not directly attributable to the contractor and/or not of his making. Many a times the delay ensues due to spurious grounds or attempts by the contract administrators and/or the employer to create issues (where none existed before) in an attempt to delay payment.

Conclusion

Variation claims, while seen by many as merely part and parcel of the contractual process and its vicissitudes, is in reality a rather complex matter involving a thorough, understanding of not only the myths; fallacies and pitfalls but a thorough understanding of the contractual provisions, principles and exercise of professional practice and procedure on the part of all parties associated with a construction contract.

Unless all industry players are prepared to play an active role in resolving the issues raised in an amicable manner, it will not be surprising if variation claims will remain at the forefront of disputes and claims making their way ultimately to arbitral tribunals or the corridors of justice.

REFERENCES


53. Called “Inclusion of variations in interim certificate”.
54. Entitled “Payment”.
55. Labelled “Adjustment to contract sum”.
56. Approval by a V.O. Committee or Board of Directors.
57. Especially where are there no express provisions in the contract permitting the same.