

CHAPTER 7 LEGAL RESOLUTIONS FOR DISCHARGE OF CONTRACT QUANDARIES

*Mohamad Zahierruden Ismail, Aimi Sara Ismail,
Siti Nurhuda Abd Wahid, and Norazam Othman*

7.1 PROLOGUE

A breach of contract in construction projects can lead to the discharge of the contract with one party's substantial failure to fulfil contractual obligations (Shavel, 1980). The purpose of this case study is to introduce the concept of discharge of contract in the construction industry. The focus is on the aspects of breach of contract between employer and contractor specifically on the roles and responsibilities of the parties. The narrative brings the audience into a three-phase conundrum that requires critical problem-solving ideas involving understanding in discharge of contract.

The first phase begins as MZI engineering is invited by Bison Group to submit a proposal package to build sewer works for an embankment dam in Perak. The project was a multi-million ringgit that faced numerous risks and limited time due to the drought season in Perak. As MZI Engineering took the offer to tender, it then uncovered that the soil investigation report was not available in the

tender document. The contract manager then needs to advise on the legally sound responses to the situation.

The second phase proceeds by assuming that MZI Engineering submitted the tender under the agreement that soil investigation is included in the proposal package. A few weeks later, MZI Engineering then won the tender, and the project commenced as per the contract. The contractor then starts the project by performing a soil investigation, only to discover that Bison Group had not disclosed crucial information, which is the unresolved land acquisition prior to the tender advertisement. It was later known that the actual reason for not conducting the soil investigation was due to the land acquisition issue. Once again, MZI Engineering needs to find the lawful resolutions to face the situation. The concept of discharge of contract concerning this situation needs to be addressed to propose effective action as a way forward.

The third phase then begins by assuming that the land acquisition is solved, the contract remains and MZI Engineering proceeds with the soil investigation. Upon completion of Standard Penetration Test (SPT), a rock formation is discovered in the soil. Due to this, rock core drilling was required which will lead to a significant increase in cost and project delay. The unprecedented situation has raised serious concern to find a legitimate solution that benefits all parties in the project. The case study shows the importance of understanding the scope, responsibilities, and liabilities of parties in a construction contract. In the discussion, there are some terms that can be negotiated, while there are situations that are counted as grounds for termination of contract. The case study also highlights the contractual risks that contractors have to face throughout the project delivery and its implication on project performance (cost, time, and quality).

7.2 KEY STAKEHOLDERS AND CHALLENGES IN THE DAM CONSTRUCTION

This section delves into the essential stakeholders involved in the dam construction process, including MZI Engineering, a company with a long history in civil engineering projects, and Bison Group, a key government linked company (GLC) responsible for infrastructure development in the state of Perak. The collaboration between MZI Engineering and Bison Group in a dam construction project in Perak highlights the dynamic relationships between contractors, government agencies, and local stakeholders in the pursuit of sustainable infrastructure solutions. The examination of the roles, responsibilities, and challenges that these entities face shall gain a clearer understanding of the intricacies of dam construction projects in Malaysia.

7.2.1 Dam Construction

When entering a tender for a dam construction project in Malaysia, an engineering company must meet certain requirements. For example, the Department of Irrigation and Drainage (DID) is responsible for overseeing dam construction projects in Malaysia. DID has produced Malaysia Dam Safety Management Guidelines (MyDAMS), a national guideline which acts as a source of information and reference on the latest dam safety best management practices (BMPs) for practitioners in the local dam industry. MyDAMS is applicable for dam construction that is ten metres or more in height with a storage capacity of more than 20,000 cubic metres; or dams with storage capacity of 50,000 cubic metres or more and are higher than five metres. To ensure a successful dam construction, the engineering company must have the relevant experience and expertise in dam construction projects as well as a track record of successful completion of similar projects.

The company should have a team of qualified engineers and professionals, as well as the necessary equipment and resources to carry out the project. The engineering company must comply with all relevant regulations such as MyDAMS and any other requirements set by the