

**PAM PRACTICE BUREAU**

**CATEGORY A: Architects Practice (Architects Act, Architects Regulations, SoMF and LAM General Circulars)**

No.	DATE	INQUIRY	RESPONSE FROM TEAM
1.	27 June 2021	<p>If an architect, who is part-owner of the developer/contractor company for a particular residential project, signs the final certificate of completion for the project that his company constructed, is that legal?</p>	<p>Thank you for your query. In relation, your email does not stipulate if the said architect is the same one from the start of the project nor if the certificate you refer to is related to completion under the relevant Building Bye-laws or with respect to a Building Contract.</p> <p>Nevertheless, please note the following:</p> <ol style="list-style-type: none"> <li>1. All architects in Malaysia are required to follow the "Code of Conduct" as contained in the Second Schedule of the "Architects Rules 1996".</li> <li>2. We refer to the section entitled "Professional Integrity" which is as follows:               <ol style="list-style-type: none"> <li>4. (1) <i>An Architect, while practising his profession, shall not</i> <ol style="list-style-type: none"> <li>(a) <i>carry on or engage in any trade or business which is inconsistent with the fitting and proper discharge of his professional duties; or</i></li> <li>(b) <i>hold, assume or consciously accept a position in any trade or business in which his interests is in conflict with his professional duty, unless he has declared his interest to his clients in writing.</i></li> </ol> </li> </ol> </li> <li>3. Based on the available information, his action is legal so long as his interest in the developer/contractor company was made known and declared to all parties involved at the outset of the project.</li> <li>4. We would advise that you check and confirm if the necessary declarations were made.</li> </ol> <p>We hope this answers your query adequately.</p>
2.	30 March 2021	<p>Project 2 block of Apartment Block sitting on 2 level car park podiums consist of 261 unit            Apartment Phase 1 -143 units Phase 2 — 118 units            Common Facilities — Spa Pool, Children Playground, Surau and Dewan</p> <p>Current status:            Phase 1 — 143 unit (with all required car parking lots), all Common facilities -- Completed            Completed as per Approved Building Plan for Phase 1.            Borang FI issued, VP issued</p> <p>Phase 2 — under construction</p> <p>Developer requested Architect to issue Borang F for Phase 1 instead of Borang FI after discussion with Majlis. Majlis agreed to table this matter in their OSC meeting to cancel previous Borang FI.</p> <p>Question 1:            Can architect cancel Borang FI issued previously, and re-issued Borang F as agree by Local Authority?</p> <p>Question 2:            Referring to KPKT's letter (25)KPKT/0/974/9/A dated 20 Dec 2017, for phases project, PSP is allow to issue Borang F for each phases of completion instead of Borang FI, is this correct?            Can PSP issue Borang F for phases project</p>	<p>We refer to your query sent on 30 March 2021:</p> <ol style="list-style-type: none"> <li>1. With reference to the brief project description and diagram which you have provided, we can only advise based on our assumptions and several key legal provisions.</li> <li>2. In principal, CCC (Borang F) is issued in reference to an approved Building Plan, once all conditions are set out in the UBBL (refer to UBBL gazetted in project location) as summarised below are satisfied –               <ol style="list-style-type: none"> <li>a. Compliance of all technical conditions imposed by the Local Authority;</li> <li>b. Certification of Forms G1 to G21;</li> <li>c. All essential services have been provided, and</li> <li>d. Certification by the Principal Submitting Person ('PSP') that the building has been constructed and completed in accordance with the relevant Act, By-Laws and the approved plans.</li> </ol> </li> <li>3. Meanwhile, Partial CCC (Borang F1) is meant to cater for a building that requires any part/s of the development to be completed ahead of the rest, and that part of the building to be completed must be demarcated clearly in the building plan submitted and approved by the Local Authority. In accordance with By-Law 25 of the UBBL (the clause may vary according to by-laws gazetted in different state), issuance of Partial CCC (Borang F1) shall be subject to any conditions imposed which may be deemed necessary for the reasons of public health and safety, as well as to ensure all essential services. as stipulated, are provided. For additional info, please refer to LAM General Circulate No.2 / 2010, dated 15-Apr 2010)</li> <li>4. It is prudent for the PSP to first observe the provisions in the UBBL and to ensure issuance of Borang F or Borang F1 is legitimate and in full compliance with the by-laws and approved plans. Issuance of Borang F or F1 shall be subject to the PSP's professional discretion and should not be under the instruction by any other parties, unless there is an official notice by the Local Authority requesting to do so.</li> <li>5. Under the UBBL, the Local Authority may issue a directive to PSP to withhold the issuance of Borang F or Borang F1, due to any failure or non-compliance to the building which the Local Authority has found. There is no provision in the UBBL for the Local Authority to cancel any certificate which has been officially issued by the PSP.</li> <li>6. In your case, the PSP should discuss with the Local Authority, to clarify the requirements, and to ensure that all procedures are lawful. Also,</li> </ol>

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3.	2 March 2021	<p><b>Absent of An Architect's Clerk-Of-Work</b>                      We are currently doing a project comprising 26 units of 3-storey terrace house. Currently it is in the beginning of the piling stage.                      We had a COW that is under our engagement while backcharging to the Client with a factor multiplier.                      A week ago, the Client decided to stop paying for the COW.                      Instead, the Client has moved the COW to become their personal site supervisor.                      Though we have highlighted numerous times regarding the importance of having a COW that is under the architect's engagement: To ensure the independency of the contract administrator and to provide standing supervision for quality control. Yet the Client refused to listen.                      We plan to write in a letter stating the potential consequences of their decision and we shall not bear the responsibility regarding quality control and the potential conflicts in the contract administration.                      Is that a good thing to do and do we have other options?                      Please advise what is the next course of action to take up now. We seek your kind advice.</p>	<p>With reference to your query sent on 2 March 2021, please refer to our reply below –</p> <p>Due to the limited information as you have provided, i.e.- we have no information on the conditions of your appointment with the client, engagement of the clerk-of-work (CoW), the CoW's scope of work, etc.. we can only provide you our feedback based on several key scenarios which you had described in your query.</p> <p>Firstly, in the "Conditions of Engagement of An Architect" as stipulated in the Architects Rules 1996, an Architect shall inspect the works at periodic intervals as required and where more frequent or constant inspection is necessary, the Architect may recommend to the client to employ an Inspector of Works, resident Architect or other personnel, and the cost for such engagement shall be subjected to the agreement between the client and the Architect.</p> <p>Hence, if the CoW in your case was for the purpose as mentioned above, there is no restriction for such personnel to be engaged directly by the client or to be seconded to the Architect. Unless noted otherwise, we shall proceed based on the above assumption.</p> <p>Next, it shall be noted that engagement of such personnel is to assist in carrying out the inspection, recording of site activities, etc. Unless otherwise stated in his condition of engagement, he is expected to carry out his duties ethically and independently. Therefore, the method of engagement for such personnel, either by the client or the Architect, should not have an impact as to the integrity of such personnel in carrying out their duties on site. In fact, it is more important to ensure that the inspections and site records as provided by such personnel are complete, fair and correct, to assist the Architect in supervising the work quality and for contract administrative purposes.</p> <p>For the benefit of the works, it is also recommended for you to advise the client to consider engaging a registered Inspector of Works, as regulated under the Architects Act 1967; this may give assurance in terms of the required qualification, skill and knowledge for such personnel.</p> <p>As we do not understand how the change of employment would have an impact on the quality control, conflict of interest, etc as you have stated, we are not able to advise you on the next course of action.</p> <p>However, we do hope that our feedback will assist you in assessing the matter and to decide on the necessary actions in accordance with your project's requirements and conditions of engagement with the client.</p>
4.	22 February 2021	<p>Just want to know when officially duties of Architect to project and Client, legally and officially end? After obtaining CCC or Final Accounts or Defects Liability period?                      Can the Practice committee advise?</p>	<p>We refer to your query (practice matter) dated 22 February 2021 and due to lack of information provided, we shall endeavour to assist you and write to note the following:</p> <p>In general, the contract shall end based on the scope of work as described in the letter of appointment that was agreed by both parties.</p> <p>According to Architects (scale of minimum fees) rules 2010, Rule 12, Basic Services under Final Completion Phase, the duties of architect to his client for a project end upon issuance of Final Certificate to the contractor.                      However, the architect's obligations and liabilities for the project do not end. Issuance of Final Certificate is only conclusive as far as the final value of Works is concerned.                      It should be subsequently discovered that some of the works executed (or material used) are not in accordance with the Contract, even though</p>

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5.	16 February 2021	<p>I was appointed by Turnkey contractor for a project JV with another Architect. Subsequently the Turnkey contractor was terminated. JKR called for open tender and I participated with another contractor. The basic drawings were issued by JKR for tender. Now the new Turnkey contractor has been awarded the project which is about 40% completed by previous Turnkey Contractor.</p> <p>I want to ask the procedure that I should follow if the new Turnkey Contractor is appointing me as the Architect on the same site with the same design.</p> <p>I also want to ask is there any conflict or legal issue if the previous Turnkey Contractor is having dispute with JKR?</p> <p>JKR has previously paid 70% on the architect's fee. Your advice on the legal status of using the same drawings on same site and me being the same submitting person.</p>	<p>Under the Architects Rules, Third Schedule, Conditions of Engagement of Architect Cl.20, copyright in all documents prepared by the Professional Architect, shall remain the property of the Professional Architect, unless otherwise transferred to the Client upon such terms and consideration as may be agreed between the Professional Architect and the Client. As such, ownership of the design and drawings should belong to either you or your previous joint venture unless it is stated to the contrary in your appointment. We would advise that you check the terms and conditions of your first appointment as well as the joint venture agreement. If there are no restrictions in the afore-mentioned items, we believe you can use the design and drawings for Turnkey Contractor 2 (Client 2).</p> <p>You should ensure that your services with Turnkey Contractor 1 have been properly terminated and all conditions and consideration resolved between you and Turnkey Contractor 1 (Client 1).</p> <p>As long as your previous appointment has been properly terminated, we are of the opinion that there should be no conflict of interest. Nevertheless, as stated in Architects Rules, second schedule, code of conduct of architect, an architect shall declare his interest to his client in writing for the significant circumstances known to him that could be construed as creating a conflict of interest.</p> <p>Therefore, we advise you to consider formally by declaring your previous interest in the project to any of the concerned and relevant stakeholders, i.e.; your new Client and JKR to ensure that there are no misunderstandings</p>
6.	15 February 2021	<p>With reference to the above subject, there are a few matters that I require some clarification on.</p> <p>1. The Architect failed to prepare a contract document with reason that the Employer did not request for it, where I thought a contract document is required for any big or small project. When the Employer insisted the Architect to prepare it, he</p>	<p>We refer to your query (Certificate of Practical Completion) dated 15 February 2021 and due to lack of information provided, we have difficulty in fully understanding your query. Nevertheless, we shall endeavour to assist you and write to note the following:</p> <p>1. According to rule 10 of the Architects (Scale of Minimum Fees) Rules 2010, an architect is required to prepare the contract documentation as part of the Basic Services under the Contract</p>

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It is a loss to the Employer as he/she will be unable to claim the LAD as the project completion is delayed for about 5 months.</p> <p>Your kind assistance in these matters is highly appreciated.</p>	<p>Documentation Phase. However, there is no indication as to the services and details of your architect's appointment provided. Therefore, we would suggest your good company to check on the terms of the architect's appointment first before you proceed further. If you, as the employer feel that the architect has not performed in accordance with the terms of his appointment, causing you to suffer a financial loss, you may take legal action against the architect or you may lodge a complaint with Lembaga Arkitek Malaysia (LAM).</p> <p>Kindly note that the LAM is the statutory body empowered to regulate the conduct of all registered architects in Malaysia and they may be contacted at the following: Lembaga Arkitek Malaysia, Tingkat 17, Blok F, Ibu Pejabat JKR, Jalan Sultan Salahuddin, 50582, Kuala Lumpur. T: 03 2698 2878 E: <a href="mailto:info@lam.gov.my">info@lam.gov.my</a></p> <p>2. Although physical inspections are advised prior to issuing CPC's, there are normally, no specific requirements written into most building contracts. How the architect determines practical completion is his prerogative - he may choose to delegate the inspection to his staff, colleagues or site staff or he may choose to carry out virtual inspections. Unless it can be substantiated that the certificate is erroneous, contractual parties are normally bound to accept the CPC. If the Contractor disagrees with the CPC, he can use the Alternative Dispute Resolution (ADR) procedures which are provided for in the contract to resolve the dispute. If the Employer disagrees with the CPC, they can use arbitration to resolve their dispute with their architect or they may take legal action against the architect.</p> <p>3. We are unsure about the meaning of "CPC standards" that you refer to as there are no details of your building contract provided. If you were using the PAM Standard Forms of Contract, there are either patent or latent defects. According to the PAM Forms of Contract, if there are patent defects, CPC cannot be issued unless the defects are minor in nature and the Contractor has given a written undertaking to rectify them. If there are latent defects, they would not be visible, and the architect and contractual parties would be unaware of them before issuance of CPC. However, it should be expected that the contractor will rectify these defects as part of their contractual obligations as and when they appear during the defects liability period. If the defects are of such severity, that the Employer suffers a financial loss, we would advise you to get an independent assessor or building inspector to assess and verify the cause of the defect. Once the cause of the defect is established, you may consider instituting legal action to recover the costs.</p> <p>Should you be unable to find an independent consultant to undertake such an assessment, you may seek specific and more detailed advice from Architect Centre. Should you wish to contact them, you may contact Puan Raja Selamah via E-mail at <a href="mailto:rajaselamah@architectcentre.com.my">rajaselamah@architectcentre.com.my</a> or Mobile: +60173033768.</p> <p>4. According to the PAM Forms of Contract regarding damages for non- completion, it is architect's responsibility to issue a certificate of non-completion to the contractor when the contractor fails to complete the works by the completion date, if in his opinion, the contractor ought to reasonably have completed the works. As per the above item 1, if you are of the opinion that the architect has not performed his duties, you may lodge a complaint with LAM or take legal action.</p> <p>For additional information on the above, you may refer to the PAM Contract 2006 or 2018. Should you decide to take legal action, we would suggest that you engage the services of a lawyer as PAM is unable to provide legal advice.</p>
7.	9 February 2021	<p>I seek your advice as to what action can be taken in respect to a very badly supervised of a high-rise project.</p> <p>We, the buyers are currently taking delivery of vacant possession and discovered many pipe leakages occurrence happening to both concealed and exposed ones. Wonder how this type of finished product would was able to be issued CPC and CCC. I doubt a proper testing and commissioning was done before the unit was handed over to us. Beside the leakage issues, there are many other problems such as alum door and windows,</p>	<p>We refer to your query dated 9 February 2021 and we write to advise the following.</p> <p>1. First of all, under the Housing Development Act 1966, Schedule H, Clause 30, any defect (including at the common property) shall be repaired and made good by the Developer at its own cost and expense within thirty (30) days of the Developer having received written notice. We are of the opinion that purchasers should always look into the issue of defect rectification by firstly, exercising their rights under their Sale &amp; Purchase Agreement (as per the above-mentioned Schedule H).</p> <p>2. If the defect has not been made good by the Developer within 30 days, then you are entitled to carry out the rectification work by yourself and</p>

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8.	15 January 2021	<p>"I have been operating as an sole proprietor since March 2017. I have been collaborating with different business partners and they are mostly Part II architects who are bringing jobs in. My enquiry is: To grow the practice further, is it advisable to register a Sdn Bhd with a business partner (who is currently still a Part II architect registered with PAM and LAM, I don't think he is going to get registered as Part III) with a 60/40 shareholding? We have plan to grow the company with more partners (there will be part II and part III architects joining in). What are the areas i need to be aware of in general, to safeguard myself as the only registered architect in the company?"</p>	<p>With reference to your query dated 15 January 2021, please find our response as follows:</p> <p>"The Architects Act 1967 [Act 117] does not prevent your collaboration with other professional Architects or registered persons in other fields. You may collaborate with Architects, Engineers, Interior Designers, Planners etc who are registered overseas as well. Working with other person/s who are not registered by any professional regulating body/bodies does not translate into collaboration. The person/s may also serve your practice as an employee or a person engaged with an employment under contract on a specific project basis. If the person is not a registered person with any professional regulating body, you may be responsible and liable for the whole works delivered by your practice including the works by the unregistered person as your contract employee.</p> <p>As to your query on growing a practice, it does not necessarily mean that the only option is for your practice to be registered as a body corporate (Sdn Bhd). You may want to consider other options more suitable to your intended growth path. There are sole proprietorships and partnerships that undertake big projects as well. The structure of these practices can be established in many ways, and more importantly, the capacity of the practice needs to be set up proportionately to serve the nature and requirements of the projects you have been engaged.</p> <p>If you plan to register your practice as a body corporate (Sdn Bhd); accordingly, as a director of a body corporate, the conduct of the business and the running of the company will need to be governed under the Companies Act as well as comply with Section 7A(3) of the Architects Act and Rules 30A and 30B of Architects Rules 1996, which requires the following:</p> <p>i. Board of Directors - at least two third of its members are Architects. Day to day affair management team / managing director must be registered Architect/s. Decision on Architectural Consultancy Services can only be made by the Directors who are Architects.</p> <p>ii. Shareholding - Minimum paid up capital of RM50,000 and at least 70% of the share to be held by Architects. The remaining 30% can be owned by any other person. Do note that your intended 60/40 option will not comply. To safeguard your practice when partnering with others, please refer to the Architects Rules 1996, Rule 28(1) Code of Conduct for Architects.</p>
9.	4 January 2021	<p><b>RE: Inquiry on requirement for collaboration between Interior Designers</b></p> <p>We would like to inquire and seek a written confirmation from your good office, on behalf of our</p>	<p>In response to your query on 4<sup>th</sup> January 2021, please note the following:</p> <p>1) The Architects Act 1967 and Rules do not limit the collaboration of Architects with other parties, as the Act is to provide for the registration of</p>

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