

PAM PRACTICE BUREAU

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

No.	DATE	INQUIRY	RESPONSE FROM THE TEAM
1.	28 December 2020	<p>I would like to enquire whether changing of Principal Submitting Person (PSP) is allowed halfway through the project duration for a Body Corporate Architectural Practice: -</p> <p>Scenario 1: BP approved under PSP A. During project implementation, signing person for correspondence to Local Authorities, Form G and Form F for CCC changed to PSP B.</p> <p>Scenario 2: BP approved under PSP A. During project implementation, signing person for Certificates, Certification of Work Completion, Architect's Instructions, and correspondences related to the Contract changed to PSP B. Kindly advise whether the above can be allowed and any conditions imposed.</p>	<p>We refer to your query as received on the 28 Dec 2020 and reply as follows:</p> <p>For your Scenario 1, please be advised that Part II of the Building By-laws allow for the change of the Principal Submitting Person (PSP) subject to the local authority's agreement.</p> <p>We would advise that you check with the local authority on any of the conditions they may set before agreeing to such a change.</p> <p>For your Scenario 2, it is difficult to advise you accordingly as we have not been advised of the Form of Contract nor the Conditions of Contract used. We would advise that you refer to these Conditions of Contract for guidance.</p> <p>Nevertheless, should you be using either the PAM 2006 or 2018 Forms of Contract, please note the following:</p> <ol style="list-style-type: none"> The term "PSP" is only recognised under the Building By-laws. The PAM Forms make no reference to a PSP. The "Architect" may either be a "named" person or "<i>any other form of practice</i> registered under the Architects Act 1967". The change of the Architect is allowed for and we would advise that you refer to Articles 3 and 7 of the above-mentioned PAM Forms of Contract.
2.	4 December 2020	<p>During the contract management stage, if the main contractor is changing their company to another company name, is there any implication to the building contract and any documents we need to request from them?</p>	<p>We refer to your query as received on the 4th December 2020.</p> <p>As we unaware of the details of the Form of Contract which is being used in your case, we have difficulty in advising you accordingly.</p> <p>Kindly note though that under the PAM Forms of Contract, the term "Contractor" also includes all legal successors, i.e. there should be no major effect on the Contract.</p> <p>Irrespective of the form of contract employed, we would also advise that the name change be formalized in writing after receipt of proof of acceptance of such a name change by the relevant statutory authorities tasked with overseeing the registration of the Contractor, i.e. the Registrar of Business, the Companies Commission of Malaysia or the Construction Industry Development Board, etc.</p>
3.	3 December 2020	<p>I would like to make inquiry on the party who should responsible for UBBL compliant design. My office has an renovation back in 2017 and cost about 5 mil. We have engaged an ID company & appointed a contractor via tender. Due to time constraint, we have no choice but to renovate the office before submission.</p> <p>We started the renovation in July 2017 & completed in the same year of November. However, the ID company only reverted to us on Bomba's comments on non-compliance design of our office in July 2020 (as image attached). After checking, we found out that the non-compliance design is due to compartmentation & travel distance to exits which are stipulated in UBBL 1984.</p> <p>Even though, it is obvious that the ID company did not provided professional advice but they claim that it is not their duty or they are not obligated to ensure our office design will be approved by Bomba/authority. In fact, in the contract, their job scope is to obtaining relevant government approvals.</p> <p>We would like to seek advice from PAM that:</p> <ol style="list-style-type: none"> Did the ID company is in fault because failed to provide professional advice to us as the client? What is the action can be taken? The ID company claim that Bomba comments will be vary from each individual officer and they are difficult to predict the 	<p>We refer to your queries as received on 3rd December 2020. Based on the limited information sent in your email, it is difficult for us to form a complete picture of the issue at hand but we shall, nevertheless, try to assist you in answering your queries as per the following:</p> <ol style="list-style-type: none"> As we do not have any details of your consultant's appointment, we are unfortunately, unable to comment on whether there are any shortcomings in their performance. We would advise that you review their appointment to ascertain their exact scope of works. If the aforesaid consultant is a member of our Institute and you are of the opinion that he has not fulfilled his scope of works, you may lodge a formal complaint with us. As a private association though, please be advised that any disciplinary action by PAM against its members is restricted to either only suspension of their membership or expulsion. If the aforesaid consultant is registered with the Board of Architects (<u>Lembaga Arkitek Malaysia</u>) either as an Architect or an Interior Designer and you still hold to your opinion that he has not fulfilled his scope of works, you may lodge a complaint with the Board. Kindly note that the Board of Architects is the statutory body responsible for regulating the conduct of <i>registered</i> Architects and Interior Designers under the Architects Act. You may also seek legal advice with regards to your rights relative to the service offered by your consultant. Historically, it is not unheard of that different officers at the <i>Jabatan Perkhidmatan Bomba Dan Penyelamat Malaysia</i> (Bomba) may have different interpretations of the relevant Building By-laws. Nevertheless, it is our experience that this is <u>uncommon</u> with regards to issues like the <i>means of escape and compartmentation</i> as these are issues which require <u>substantiation</u> on the plans (and calculations) which are to be submitted. The By-laws regulating the relevant issues in your layouts may be found under Part VII of the Uniform Building By-laws 1984. We would advise that

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		<p>actual requirements that they need to comply. is it true?</p> <p>3. What is the by-laws that abided for item A, B, C & D in the layout L27 & item A in the layout L28?</p> <p>4. We have completed the renovation and commenced the business in November 2017, and we have chasing after the ID company for CCC. However, they have provided all kind of excuses for the prolonged submission and only reverted to us on Bomba's comments in July this year. Did the ID company violate any rules/by-laws for the prolonged/delayed submission?</p>	<p>you consult your consultant on the impact of the By-laws with regards to your layouts.</p> <p>4. As we have neither details of your consultant's appointment nor details of your project, we are unable to comment on the submission of plans nor whether there has been any violation of any By-laws.</p> <p>In addition to the above, we would also offer the following advice:</p> <p>a). In general, renovation works would require a renovation permit, subject to guidelines and requirements by the local authority. Application of such permit shall be carried out by a <u>qualified person or Principal Submitting Person (PSP)</u>.</p> <p>b). In your case (reference made to the floor plans which attached in your email), it appears the renovation(s) involves substantial internal office partitioning that would require consideration for design and compliances with passive firefighting design, i.e. - compartmentation, escape routes/dead end limits, etc; and active firefighting system, i.e. - sprinklers, emergency lighting, detection, etc; all in compliance with the Uniform Building By-law ('UBBL') and relevant regulations set by Bomba. Instead of a renovation permit, such extensive alterations may require a Building Plan ('BP') approval.</p> <p>We would advise that you check with your consultant or the local authority on the permit applicable to your case.</p> <p>c). Under the provisions of the Street, Drainage and Building Act and the UBBL</p> <ul style="list-style-type: none"> i. the BP shall be submitted by a Principal Submitting Person ('PSP'). ii. an approval by the local authority shall be obtained prior to commencement of work; iii. a Certificate of Completion and Compliance ('CCC') by the PSP shall be obtained prior to occupation of the building <p>d). Principal Submitting Person ('PSP') means a qualified person who is either a Professional Architect, Professional Engineer or building draughtman as registered under the relevant Act and is legitimately allowed to submit building plans to the local authority. In your case, involvement of such a PSP will be required, and we advise that you refer to the local authority for the right PSP.</p> <p>e). An approval of Building Plan shall also involve approval by Bomba, as well as other technical departments / agencies; all subject to requirements by the local authority.</p> <p>f). With reference to you query on Bomba requirements, please be informed that fire safety plans (Bomba) involving passive and active design, shall strictly comply with the UBBL, as gazetted by the relevant state and other rules and regulations set by Bomba. The appointed PSP shall be in the position to advise you on the compliances.</p> <p>g). In addition to the above, we would like to caution you that, if your renovation work(s) is subjected to a Building Plan approval by the local authority, the followings are serious offenses under the law, and may be subject to prosecution -</p> <ul style="list-style-type: none"> i. commencement of work prior to approval of building plan ii. occupation of a building prior to obtaining of a CCC <p>h). As this matter involves the safety and health of the occupants, we urge you to look into this issue seriously and to take any appropriate actions as soon as possible.</p> <p>i). If you require an independent inspection, advice and recommendations, you may contact any registered Architect. Alternatively, you may also contact Architect Centre SB (a subsidiary of PAM) that offers such a service. (http://www.architectcentre.com.my/about-us/)</p>
4.	26 November 2020	<p>If a client persistently made late payment in response to interim certificates issued by the Architect, and the contractor suffered delays on site on account of not being able to pay the sub-contractors on time, can the contractor claim time at large if there was no provision in the contract for compensating the Contractor for late payment</p>	<p>There is no mention of the Form of Contract employed nor details of your Conditions of Contract. Kindly note that time may only be set at large if the Completion Date cannot be determined and that based on the information received, we are unable to form an opinion on this issue.</p> <p>Nevertheless, assuming PAM Contract 2006 or 2018 is used for the project mentioned above, persistently late payment to Contractors is a default by an Employer of his Contractual obligations and can be grounds for a</p>

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		either by EOT or monetary compensation (e.g. loss & expense)?	<p>Contractor to either suspend his work (Clause 30.7) or determine his own employment (Clause 26.1).</p> <p>Should a Contractor decide to suspend his work, under Clause 23.8(m), he is entitled to claim for EOT and similarly, under Clause 24.3(g), he is also entitled to claim for Loss and</p> <p>Expense provided always that he gives written notice in accordance with the relevant clauses.</p> <p>Please also be reminded that under PAM Form, the Contractor is entitled to claim for interest based on the Maybank base lending rate plus 1%, for the late payment in accordance to clause 30.17.</p> <p>We would suggest that both the Contract Administrator and Contractor review the Conditions of Contract. If the PAM Forms of Contract are employed, please be reminded that the Contractor is entitled to write to the employer to give notice on the issue of late payment in order to 'kick start' all relevant events or suspension for non-payment.</p> <p>For additional information on the above, you may also refer to the PAM Contract 2006 Handbook.</p>
5.	26 November 2020	We recently had to submit Borang B online (Majlis Bandaraya Shah Alam) before we started work on site as per standard requirement. We were informed that upon acknowledgement from the PBT, Submitting Person may submit the hard copy officially. Can the Submitting Person instruct the Contractor to start work after 4 days of the digital submission, or do we need to wait for official submission of hard copy, which may take more than 4 days, depending on the vagaries of the PBT internal processes.	<p>In accordance to Street Drainage and Building Act, Section 90(9)(b) erection of a building can commence upon</p> <p>a) the approval of the building plan b) the PSP giving the Local Authority (LA) 4 days' notice in writing of his intention to commence (which is the Borang B as stated in UBBL by law 22).</p> <p>In our opinion, as long as the notice has been given to the L.A (either digital copy or hardcopy) with its receipt acknowledged, the work shall be able to commence.</p> <p>Apart from the above, we would also advise the architect to approach the local authority to check on the status of the Borang B, digital and hardcopy submission.</p>
6.	26 November 2020	The setting out of piling works was based on boundary lines which later was found to deviate from the original boundary lines. Piling works had been completed. Other than instructing the Contractor to redo the piling (which will cost them heavy loss), is there any other measures that can be taken? Redesigning the main building to suit the as-piled layout is one option but will involve all the Authority approvals - ADO, ABP etc. Appreciate your advice.	<p>As we were not informed of the type of contract used and the parties responsible for providing the setting out information, we are unable to comment on whether it is the contractor's responsibility to bear the cost of re-doing the piling. In looking at the available measures, we are of the opinion that your primary concern should be whether the building can still be constructed in accordance with the Approved Plans and/or any controlling legislation (such as the Street, Drainage and Building Act, the Building By-laws, Town and Country Planning Act. and National Land Code).</p> <p>Depending on the severity of the error, you may want to check if the existing piling layout can be matched back the approved building plans by a re-design of the pile caps, ground beams and stumps. Should this not be possible, additional piling to supplement the piling already carried out, may be combined with a re-design of the pile caps, ground beams and stumps.</p> <p>Should all the above also not be possible, you may then be left with no option but to re-design/re-locate the proposed building. The cost of having to re-submit plans for approval and the delays which may arise should then be balanced against the cost of having to re-do the piling to ascertain which of the above measures are the most cost-effective.</p>
7.	26 November 2020	Earthworks and piling contract due for completion soon. Main buildings works under next construction phase - maybe will only commence in three years' time. On CCC, do we need to get the Borang G1,G2 and G3 prepared and signed now but only submitted upon completion of the main building works?	<p>If the sub-structural and main building works are under the same approved set of building plans and the construction is done in 2 stages, you should get the forms signed off by the appropriate contractors for each of the relevant stages as and when the related work is completed and continue compiling the forms as the work on site progresses. Final submission of the complete set of collated G forms shall be only be carried out upon final completion of the works.</p> <p>However, for contract administration, you should ensure that the piling as built drawings are documented by a licensed land surveyor from the piling contractor as a condition for the practical completion of the piling works. This is to mitigate any claims in the future by the contractor of main building works after award.</p> <p>Please also be reminded that under Section 70(9) of the Street, Drainage and Building Act, works which have been suspended for more than 3 months, can only resume if a new notice of commencement (<i>Borang B</i>) is submitted.</p>

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8.	25 November 2020	<p>1. Would like to enquire on the logic of salaried professional architect not allowed to register any forms of practice. If it is concerning conflict of interest, what makes him/her eligible by being one of the shareholder? Conflict can happen as well.</p> <p>2. Is it possible to set a limit to the scale of project a sole prop can get vs partnership vs body corp? Architects should be able to judge their own capabilities and limit but in certain situations some architects might put in a very low scale of fees to secure the project then end up hiring lots of Assistant Architects to run the project. This will indirectly scale down the reputation of Architect's professionalism as developers will soon not respect the role of Architects.</p>	<p>We refer to your enquiry dated 24th November and write in reply as follows:</p> <p>1. Architects are governed under the Architects Act which also describes the type of practices that can be formed in Malaysia. Ethics wise, a salaried professional architect owes his duty to his employer. When a salaried professional architect can register any form of practice, this means that he/she may be taking on a potential client for his/own gain while at the same time getting his/her earnings from his present employer. This is a conflict of interest as the two companies will eventually be competing with each other. A shareholder of a company, on the other hand, will want the financial capability of the company that he/she owns to be healthy as he/she can then have an opportunity to share the profits.</p> <p>2. The Architects Act does not limit the scale of project a sole proprietorship can vie for. It all depends on the capabilities/resources of the architecture firm. In your scenario, it will be suicidal for a firm to secure a project with very low fees and then in turn hire lots of assistant architects to run it. The economics of this scenario will not work and will end up causing the firm to lose money.</p> <p>If highly talented assistant architects are hired, this means the architecture firm will be losing more money doing the project.</p> <p>If not so talented assistant architects are hired, the principal of the firm ends up doing all the work or at best, will face more issues if his/her staff messes up the project. At the present time, most developers will know which architecture firm can handle their projects. And some architecture companies are born because of the architects handling the projects when they were salaried architects. When the developer sees their potential, they might just award a new project/development if they see their capability.</p>
9.	16 November 2020	<p>Section 36 Defect Liability Period of COVID19 Act</p> <p>Further to our call to PAM centre this morning, we were told to reach you via email on queries regarding the temporary modification to Housing Development Act 1966 due to the gazetted Temporary measures for reducing the impact of Coronavirus Disease 2019 (COVID-19) bill 2020.</p> <p>We would like to obtain more information about the modification to HAD 1966 contained in Part X1 of this act, from Section 34 to 36 as follow:</p> <ul style="list-style-type: none"> i. Sec 34: Late Payment Charges ii. Sec 35: Delivery of Vacant Possession (VP) and Liquidated Damages (LD) iii. Sec 36: Defect Liability Period (DLP) <p>Does the period from 1st MCO to the end of RMCO (18.3.20 to 31.8.20 - 167 days) for the above Section automatically apply to all projects or subject to application by the developers/ purchasers? and also, if applications are required to extend the period above, is there guidelines or written procedures issued by PAM on how to request for extension on the period mentioned above?</p>	<p>We refer to your email entitled '<i>Section 36 Defect Liability Period of Covid-19 Act</i>' dated 16 November 2020 and write to note the following.</p> <p>1. Apart from what is contained in the recently gazetted "Temporary Measures For Reducing The Impact of the Coronavirus Disease 2019 (Covid-19) Act 2020 (Act 829)", PAM unfortunately, has no further information on Sections 34 to 36 (under Part XI) of the above Act.</p> <p>2. We would like to highlight that the above Sections 34 to 36 shall be deemed to automatically apply for all housing projects with Sales and Purchase Agreements (SPA) which are in accordance with Schedules G, H, I and J of the Housing Development (Control and Licensing) Regulations 1989 and which have been entered into before 18 March 2020.</p> <p>3. If there is any requirement to extend the period within the above Sections 34 to 36, <u>developers</u> or <u>purchasers</u> may apply directly to the <i>Minister</i> (of the Ministry of Urban Wellbeing, Housing and Local Government) for an extension. As there are no provisions within the Act for agents or Architects to apply for such extensions. PAM also has no guidelines or written procedures for the above application. Should you need additional information on the application process, we would advise that you contact the above Ministry directly.</p> <p>We regret that PAM has at this stage, none of the additional information you require but rest assured that the Institute is in continuous dialogue with other stakeholders with regards to the above-mentioned Act. Attached for your information is a copy of the Joint Advisory Note as issued by the Building Industry Presidents' Council dated 13th November 2020 which was prepared with PAM's assistance and guidance and which you may find useful. Please also be advised that PAM is looking to organize Forums on the 5th & 19th December 2020 (via Zoom Webinar) to discuss the Act and we would suggest that you look out for further details on this Forum.</p>
10.	11 November 2020	<p>Responsibility of Architect & Developer</p> <p>Our friend has died and left behind a factory building completed in early 1990s with few temporary CFs of 6 months duration. Understand it was built individually by specific architect/developer.</p> <p>Heard from deceased's colleague, the developer has gone bankrupt and ran away. Only outstanding</p>	<p>We refer to your e-mail dated 11th November 2020 and write directly in reply to your queries as follows:</p> <p>1. Under the Building Bye-laws, the Architect as the person who originally submitted plans for the building, is the only person who is allowed to apply for the Certificate of Fitness of Occupation (C.F.). Nevertheless, an Architect can only apply for the C.F. if his Client agrees to carry out the work in accordance to the local authority's requirements and once completed, if his Client instructs him to apply for the aforesaid C.F.. The Architect is not empowered to act unilaterally without his Client's express instructions.</p>

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