

PAM PRACTICE BUREAU

CATEGORY C: PERMIT DELIVERY II BUILDING CONTROL [STREET, DRAINAGE & BUILDING ACT, UBBL]

| No. | SUBMISSION DATE | ENQUIRY | RESPONSE FROM TEAM |
|-----|-----------------|---|--|
| 1. | 17 Nov 2021 | <p>A project in Johore was submitted many years ago before the implementation of CCC certification. As such the local authority will soon be issuing CFO on completion of the works/project. In order to apply for individual strata title the survey dept (a federal agency) requires/insists on the F form under the CCC certification.</p> <p>1. How can we resolve the issue?</p> <p>2. Can the PSP issue an F form since the authority has issued the CFO?</p> | <p>We refer to your email sent on 17 Nov 2021 and reply as follows – First, please note that the application for subdivision of the building is under the scope of a licensed land surveyor. Therefore, the licensed surveyor should be the right person to advise on requirements related to the dealing, including the process, and required documents.</p> <p>Nevertheless, the following is our opinion in responding to your queries –</p> <ol style="list-style-type: none"> 1. As you have mentioned that the survey department had requested for Certificate of Completion and Compliance (CCC), we presume you are referring to application of certificate of proposed strata plan under Section 8A of the Strata Title Act 1985 ('STA'). Please refer to subsection 8A(1)(h), which clearly states that a certified copy of CCC or Certificate of Fitness for Occupancy (CFO) is acceptable for the said application. As far as we are aware, the above subsection is still in force. 2. Issuance of CCC or CFO is part of the conditions in the approved Building Plan, the Principal Submitting Person ('PSP') will have to fulfil all requirements as stated in the approval and comply with a provision in the Uniform Building Bye-Law ('UBBL'). Therefore, unless otherwise required by the authority, please be advised to observe the above, and to determine whether a CCC is legitimate in your case. <p>We hope the above has been of assistance.</p> |
| 2. | 9 Nov 2021 | <p>RE: Architect Issued the Certificates of Completion During MCO</p> <p>We refer to the above matter and would like to check/confirm with PAM whether your members still can certify the progress work completed and the developer to bill the purchasers within the MCO period even though</p> | <p>We refer to your email sent on 09 Nov 2021 and reply as follows -</p> <ol style="list-style-type: none"> 1. Based on our understanding of the letter from the KPKT that you have attached, the key subject was to extend the period for the delivery of vacant possession ('VP') from the developer to the purchasers. |

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| | | <p>Menteri KPKT has ISSUED the EXTENSION LETTER to the developer</p> <p><u>The following information is attached to the letter:</u></p> <ol style="list-style-type: none"> 1. A copy of letter from Menteri Perumahan dan Kerajaan Tempatan dated 30-03-2021 2. 4 copies of Architect Certificates “certified the completion of work” within the MCO period & the extension of time <ol style="list-style-type: none"> a. 03/06/2020 stage 2(b) – 15% b. 04/07/2020 stage 2(f) – 5% c. 18/08/2020 stage 2(c) – 10% d. 09/12/2020 stage 2(e) – 10% | <ol style="list-style-type: none"> 2. On the other hand, certificates of stage completion are required to certify completion of the stages as stipulated in the Third Schedule of the Standard Sales and Purchase Agreement ('SPA'), under the Housing and Development (Control and Licensing) Act 1966 ('HDA'). 3. Therefore, both documents that you have referred to are under different legal provisions and are for different objectives. As far as we can see, there are no provisions in the KPKT's letter that prohibit the Architect from issuing certificates of stage completion. 4. Under provisions of the HDA, the duty of the certifying Architect is to inspect and certify the completion of the works. The Board of Architects (LAM) requires that such certification is in full compliance with their guidelines as stated in their LAM's General Circular No.2/2017 ('Circular'). For more information about the Circular, please refer to – <p>https://lam.gov.my/index.php/circulars/circular-for-architects/finish/8-architects/5608-no-2-2017-guidelines-on-the-third-schedule-of-the-standard-sale-and-purchase-agreement-for-land-and-building.html</p> <p>Nevertheless, it must also be noted any inspections required should be carried out in accordance with any Standard Operating Procedures (SOP's) that may be set in place by the Authorities under the various Movement Control Orders.</p> 5. Should you require further clarification, we suggest you refer to your SPA's solicitor. <p>We hope the above has been of assistance.</p> |

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| 3. | 22 Aug 2021 | <p><u>FIRST QUERY</u> In the case of a mixed development with 1 retail podium and 1 hotel tower, Form F1 was issued to the retail podium upon its completion and fulfilment of the requirements in accordance with the approved plans. Construction of the hotel tower is ongoing. Owners and tenants moved into the retail podium and started their operations. Along the way, alteration/ addition/ renovation has been done by respective owners and tenants in the retail podium.</p> <p>Now question arises when Form F is to be issued to the overall development upon the completion of hotel tower: In view of such alteration/ addition/ renovation of various scales in the retail podium, can a PSP still certify Form F stating that the development is constructed 'according to the approved plans? What will be PAM's advice and opinion in dealing with this kind of situation?</p> <p>We may think that the said alteration/ addition/ renovation has to be submitted and approved by the relevant authority. If that is the case, can this exercise overcome the issue raised above? Can this submission be done by another PSP, or must it be the original PSP?</p> | <p>With reference to your email query on 22 August 2021, please find our reply as follows:</p> <p><u>FIRST QUERY</u> 1) Even if a Form F1 had been issued earlier for a part of a building, the UBBL dictates that the Form F is still required to be issued to certify completion of the entire works as shown in the approved plans, i.e.; the Form F1 issued for a <i>part</i> of the building, shall be replaced by the Form F upon completion of the <u>whole</u> building. Any significant deviation (alteration/addition/renovation) from the earlier, approved plans, will require that amendment plans be submitted (to capture the above deviations) and approved before any certification under Form F can be made. This is well expressed in clause 27 of the UBBL.</p> <p>Please also be reminded that construction of any of the above deviations <i>before</i> the approval of the amendment plans is an offence and may be subject to the imposition of fines by the local authority.</p> <p>2) The option as to whether an alternative PSP can undertake an amendment will depend on the withdrawal of the original PSP. Kindly note that apart from being in contravention to the Code of Conduct as found in the Architect's Rules, there are also no provisions under the Street, Drainage and Building act, nor the UBBL for 2No. PSPs to submit plans on the same site/property at the same time. If indeed there are amendments, it would be advisable for the original developer/owner to issue instructions to the original architect, to undertake the necessary submission for these amendments.</p> |

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| | | <p><u>SECOND QUERY</u> PSP to issue Form F to development upon its completion and fulfilment of the requirements in accordance with the approved plans. This is clear cut. However, is it the responsibility of a PSP to 'guarantee' the issuance of Form F? Especially under the situations as follows:</p> <ol style="list-style-type: none"> 1. Client has defaulted/ delayed in paying a statutory contribution to the relevant utility/ service providers resulting in a delay in obtaining clearance letters for CCC. (Statutory contribution may be up to millions for big scale projects) 2. Client has directly instructed the contractor to deviate from the approved plans (by ignoring PSP's instructions) and refused to go for amendment submission despite PSP's advice. (This happens a lot, especially in those projects involving Temporary Permit, or small-scale housing renovation/ alteration. The matter gets worse when the deviation ordered by the client is beyond the provisions of the Act/ Bylaws, e.g. build beyond the building setback line, etc.) 3. Client has defaulted in paying PSP's fee at the end of the project and saying that they do not require CCC and therefore, PSP's service is no longer needed. Is the PSP supposed to work through that stage and issue CCC despite knowing that he will not get paid for the remaining fee by the client? (This usually happens to those small scale housing renovation/ alteration projects, where the owner does not really care much about getting CCC) | <p><u>SECOND QUERY</u> As for this query, no PSP can be expected to guarantee the issuance of Form F. The duty to issue Form F will depend on whether they have been engaged for the relevant stages of work (which include the issuing of Form F). This can be clarified in the terms and conditions of their appointment.</p> <p>As to the scenarios presented in the query, the PSP is still required to satisfy himself/herself that the completed works are in accordance with the approved plans. The Architect's responsibility, if so appointed to perform this task, is to certify ONLY WHEN THE BUILDING IS COMPLETED IN ACCORDANCE WITH THE APPROVED BP and when ALL THE CONDITIONS OF THE BP APPROVAL have been met (inclusive of requirements set by the approving authorities as condition precedence).</p> <p>The Architect's Act (Scale of Minimum Fees) Rules are very clear on the fact that the Architect is to be remunerated for work done. Should the Client deem that certification of CCC is not required for whatever reason, this does not deter the variations to the terms of engagement. The Architect is advised to clarify these terms early to avoid future misunderstandings and to charge the appropriate fees accordingly.</p> <p>Nevertheless, please be reminded that the requirement for CCC is not decided by the Employer/Client but by the approving authority who issues the building plan approval. We would advise that you write to the Employer for instructions and remind them that occupation of a building without prior issuance of the CCC and failure to deposit the CCC with the local authorities are both offences.</p> |

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| | | <p>The above might sound unlikely, but it does happen. A lot of time, the client has conveniently accused that PSP is the one who refused to issue CCC, and it is not their problem.</p> <p>So, is PSP supposed to 'guarantee' the issuance of Form F (CCC)?</p> | |
| 4. | 17 Aug 2021 | <p>Dear Sir / Madam,</p> <p>We have done minor alterations to the existing car park ramps in the condo, and we have widened the turnings of the ramps by approximate inches.</p> <p>Do we need to appoint an architect or consultant to make the necessary submission of the alteration done for DBKL's approval? I have attached the picture for your reference.</p> <p>Please advise us on this matter.</p> | <p>Your emailed query on 17 August 2021 is duly noted. Please find our reply as follows:</p> <p>Based on the photographs attached in the query, we assume that the original carpark building was constructed in accordance with approved plans with the necessary Certificate of Completion and Compliance (CCC) or CFO in place.</p> <p>As a general rule, any proposed works to an existing building which deviates from the original approved plan shall, in accordance with Section 70 (16)(f) of the Street, Drainage and Building Act, require a submission to the local authorities for approval prior to carrying works out on site. Nevertheless, if the works carried out are to repair the building or do not involve significant deviation relative to the original approved plan, it may not be necessary to submit plans. As your description of the changes done to the walls is vague and we have no way to evaluate its actual impact relative to the original, approved plans, the most prudent step for you is to engage an Architect to assess the works already carried out to confirm if submissions are indeed required. A proper audit can then be carried out for this purpose. As the party most familiar with the original, approved plans, you may try reaching out to the original Architect for the above advice.</p> <p>Do note that under the law, it is an offence to carry out any works without approvals from the Local Authorities (if indeed, such approval is required) and such work may be subject to fines by the aforesaid authorities (in this instance DBKL). Similarly, should you fail to obtain the necessary</p> |

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| | | | approvals, the local authority may direct that you return the building to its original state relative to the approved plan. This should be discussed with the Architect as well. |
| 5. | 12 Aug 2021 | <p>Saya ingin bertanya kan beberapa soalan berkenaan penyaman udara bagi perumahan jenis teres 2 tingkat.</p> <p>Bagi rumah teres 2 tingkat yang mengandungi 4 bilik tidur iaitu 3 bilik tidur pada tingkat kedua dan 1 bilik tidur pada tingkat pertama,</p> <p>Pada bilik tidur tingkat pertama pihak pemaju ingin meletakkan penyaman udara [Mechanical Ventilation] adakah dibolehkan?</p> <p>Dan sekiranya dibolehkan, pemasangan penyaman udara itu dipasang sebelum CCC atau pihak pemaju cuma menyediakan point penyaman udara itu sahaja.</p> | <p>Lanjutan kepada pertanyaan yang ditujukan pada 12 Ogos 2021 di emel pertubuhan kami, sukacitanya kami memberi maklumbalas seperti dibawah:</p> <p>Sekiranya penyaman udara yang dimaksudkan oleh pihak pemaju telah pun dimasukkan di dalam surat perjanjian jual beli rumah teres yang dimaksudkan, pihak pemaju adalah diwajibkan untuk pasang siap unit penyaman udara tersebut semasa serahan milik kosong. Sekiranya penyaman udara tersebut adalah sebahagian dari unsur pelan bangunan yang telah diluluskan dan yang digunakan untuk penjualan rumah teres yang terlibat, pihak pemaju juga diwajibkan untuk siap memasang penyaman udara tersebut sebelum CCC .</p> <p>Persoalan samada pihak pemaju hanya diwajibkan menyediakan poin penyaman udara sahaja ataupun unitnya sekali adalah tertakluk kepada apa yang tertera di dalam Jadual KeEmpat (Fourth Schedule), Surat Perjanjian Jual Beli (SPA) yang ditandatangani. Sila rujuk kepada dokumen berkenaan.</p> <p>Sekiranya penyediaan 'penyaman udara' ini merupakan tawaran tambahan setelah menandatangani SPA, pihak Pemaju dan pihak Pembeli adalah dirujuk kepada tatatertib yang termaktub di dalam SPA berkenaan untuk sebarang penukaran spesifikasi.</p> |