

PAM PRACTICE BUREAU

CATEGORY D: HOUSING LEGISLATION & CONTROL [HDA, HOUSING DEVELOPMENT REGULATIONS & LAM GENERAL CIRCULAR NO2/2017]

No.	DATE	ENQUIRY	RESPONSE FROM TEAM
1.	1 Dec 2021	Please can you help me with my inquiry regarding the misalignment of the sliding door in the condo unit I've purchased from a developer in Melaka. I have been referred to PAM by HBA as per my conversation with them.	<p>Your email received on 1st December 2021 is referred.</p> <p>Before we reply, we shall, for the purposes of simplicity, assume that your condo unit was purchased based on the Sale & Purchase Agreement (SPA) as per Schedule H of the Housing Development (Control & Licensing) Regulations and that the Defects Liability Period (DLP) for your unit has yet to expire.</p> <p>From the brief query and the attached photos, we can only assume, from your description of the sliding door frame being "tilted" that you have concerns regarding the verticality of the sliding door frame in relation to the door reveal/corner of the wall. As your inquiry is regarding confirmation as to whether a tilted door is a construction defect, we shall further assume that you are referring to the frame rather than the door.</p> <p>In general, any form of vertical or horizontal misalignment of the frame can be regarded as a defect if the degree of the misalignment is very pronounced or if it prevents the proper functioning of the door with the understanding that all construction work is carried out based on acceptable tolerances. Unfortunately, based on the photographs which we have received, we are unable to offer an opinion as to whether your frame is indeed "tilted" or misaligned.</p> <p>If you are able to show that the frame or door reveal is indeed "tilted" or if the operation of the door is compromised, we would suggest that you report the defect to the Developer and exercise your rights under the SPA. Any follow up action would be dependent on their response and you may refer to Section 30 of your SPA for further guidance.</p> <p>If you are unable to resolve your problem using the provisions of the SPA, kindly note that you may also pursue any complaints you may have with the</p>

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			<p>Tribunal for Homebuyer's Claims as established by the Ministry of Housing, Local Government and Urban Well-being,</p> <p>We hope the above advice helps.</p>
2.	14 Sept 2021	<p>ENQUIRIES ON CERTIFICATION FOR STAGE 2(H) - SCHEDULE H</p> <p>In relation to LAM GC 2/2017, Guidelines on the Third Schedule for Stage Certification 2(h) - The roads serving the said building.</p> <p>I write in to enquire and seek advice from PAM:</p> <p>1. Can the stage be certified if there are temporary construction facilities (e.g: Tower crane plinth and/or passenger hoist RC plinth) situated on a completed permanent concrete perimeter road (finishes are as per Building Plan)</p> <p>However, the temporary facilities will be removed upon project completion and necessary touch-up work will be made to reinstate the concrete road for handing over?</p> <p>Justification 01: As under the supplementary notes Item 2.0 that for the reasons of construction sequences, practicality, and the works item deferred would need to be completed at a later stage, depending on the logic of construction.</p> <p>Justification 02: The justification for closing/reinstating the temporary works is similar to Stage 2(C) & 2(E) whereby it was specifically mentioned that the Closing up</p>	<p>Thank you for your email dated 14 Sep 2021 with regards to the certification of Stage 2(h) in the Sale and Purchase Agreement (SPA) for the sub-divided building (Schedule H):</p> <p>You state that there are temporary construction facilities such as a tower crane plinth and/or passenger hoist RC plinth situated on a completed, permanent concrete perimeter road (which is also the final finish of the road) and enquired whether you can certify for completion of the stage if these have yet to be removed).</p> <p>Based on LAM's General Circular No.2 / 2017 (Circular), stage 2(h) is deemed completed when the following are also completed:</p> <ul style="list-style-type: none"> ● Paved roads (i.e. Premix and/or concrete imprint and/or pavers and/or any road with any other finishes as specified in the approved plans) leading to the Building containing the said Parcel from an existing road. ● Permanent roads, i.e. Premix and/or concrete imprint and/or pavers and/or any road with any other finishes as specified in the approved plans) around the Building containing the said Parcel <p>We assume that the removal of the tower crane and passenger hoist will only be done at the completion of the project. We are not sure how you can use</p>

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		<p>of temporary openings left in walls for constructional purposes need not to be completed.</p>	<p>Justification 01 for that, as the exclusion of such works is not specifically stated in the Circular.</p> <p>Please also note that the description of construction work that “Need Not Be Completed For Certification” does not mention that removal of concrete plinths for tower cranes or passenger hoist is exempted, unlike for temporary openings for construction purposes. There is no ground to Justification 02.</p> <p>As mentioned in Item 7.0 of the Supplementary Notes of the said Circular, the Architect should request the Engineer for the project to confirm in writing completion for Stage 2(h); which the Engineer will certify completion of the works based on various aspects, i.e.- approved road and drainage plan, nature of works, the method of construction, etc.</p> <p>In conclusion, we are of the opinion that you can only certify completion of Stage 2(h) upon fulfilling the following conditions:</p> <ul style="list-style-type: none"> a. once the tower crane plinth or passenger hoist r.c plinths have been removed and the touching up work completed. b. upon obtaining the relevant recommendation from the Engineer <p>As the guidelines were issued by LAM, we would also recommend that you check with LAM for their interpretation on this issue.</p>
3.	9 Aug 2021	<p>I have some enquiries and seek your kind guidance/ advice:</p> <ol style="list-style-type: none"> 1. Can Architect certify Stage of Completion during MCO based on-site photos provided by the Contractor/ Clerk-of-Work in these various scenarios? <ul style="list-style-type: none"> (a) Building Contractor has not obtained MITI approval to resume site work. (b) Building Contractor has obtained MITI approval to resume site work. 	<p>Your emailed query on 9 August 2021 is duly noted. Please find our reply as follows:</p> <ol style="list-style-type: none"> 1. While there is no requirement for any supporting documents to support the issuance of any stage completion certificate by the Architect, the LAM General Circular 02/2017 notes that inspections must be carried out prior to the certification. The manner in which the inspections are carried out, i.e. whether the inspections are physical, virtual, based on photographic evidence or carried out by representatives, is left to the individual Architect's professional

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		<p>(c) Architect has not obtained MITI approval to resume architectural practice. (d) Architect has obtained MITI approval to resume architectural practice.</p> <p>2. Can we issue certification for stage completion during MCO if the housing developers are applying to KPKT for EOT to handover?</p> <p>Will these implicate us as the Architect since house buyers are billed even though Vacant Possession is delayed?</p>	<p>judgement. Nevertheless, irrespective of how inspections are to be carried out, we would advise all Architects that there should be documentary evidence to substantiate their decision.</p> <p>2. The important pre-requisite remains that the physical works stipulated in the circular mentioned above must be completed satisfactorily before certification regardless of how and when the Main Contractor completed the works.</p> <p>We would advise that your focus should be on ascertaining the actual completion of the stages rather than the circumstances surrounding such completion and/or inspections as outlined in your various scenarios.</p> <p>3. The EOT as described in the KPKT circular is to take into consideration if the works require an extension of time due to events like the Covid 19 pandemic. If the relevant stages of work have been completed and are certifiable, certification of the completed stages can take place irregardless of whether any EoT has been granted by KPKT. (Please be reminded as per the above circular that Architects are not required to certify Vacant Possession but the Developer is to effect Vacant Possession with the Architect's issuance of the <i>Borang F</i> (for CCC).</p>
4.	16 July 2021	<p>We are writing to seek advice on the stage billing claim for stage 2(b).</p> <p>For your information, we are currently working on a serviced apartment project which includes 8 floors of car park podium and 33 floors of apartment units that sit on top of the podium. The said project is in Wangsa Maju, Mukim Setapak, Kuala Lumpur.</p> <p>Reference is made to the Schedule of Payment of Purchase Price in Housing Development Act (ACT 118),</p>	<p>We refer to your query regarding “Advise on Stage Billing Claims (Schedule H)”, dated 16 July 2021. Please refer to our reply as follows:</p> <p>1. As you have stated “draft Schedule” in your email, we presume the said Sales and Purchase Agreement (SPA) was just a proposal, pending official approval from the Ministry of Housing and Local Government (KPKT); and we also presume that Schedule H will be used for the serviced apartment project, being a residential accommodation.</p> <p>2. Please note that, if the Developer intends to make any modification to the SPA, he shall first comply with Regulation 11(3) of the Housing and Development Regulation 1989: “Where the Controller is satisfied that owing to</p>

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		<p>we understand that the developer is allowed to claim 15% of the Sum for Stage 2(b).</p> <p>However, as per the above-attached photo, we received the draft Schedule from the Developer’s Sales and Admin Department which split stage 2(b) billing into two different stages:</p> <p>(i) The structural framework of carpark of said Parcel - 5% (ii) The structural framework of the said Parcel – 10 %</p> <p>We would like to seek your advice if splitting up the claims as follows are viable: -</p> <p>a. To claim 5% upon the completion of the structural framework of car park of said Parcel (at an earlier construction stage) b. To claim 10% upon the completion of the structural framework of said Parcel (at a later construction stage)</p>	<p>special circumstances or hardship or necessity compliance with any of the provisions in the contract of sale is impracticable or unnecessary, he may, by a certificate in writing, waive or modify such provisions: Provided that no such waiver or modification shall be approved if such application is made after the expiry of the time stipulated for the handing over of vacant possession under the contract of sale or after the validity of any extension of time, if any, granted by the Controller.”</p> <p>3. Modified SPA's can only be executed if they are in full compliance with the regulation as stated above.</p> <p>4. Before commencement of the construction works, the appointed, certifying Architect shall observe LAM's General Circular No. 2/2017, including relevant certifying guidelines and Supplementary Notes, i.e. Supplementary Notes 5.0 for Schedule H. Please refer to:</p> <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.htm</p> <p>5. The certifying Architect must inspect and check that the development is fully compliant with the SPA as approved by KPKT</p> <p>6. Irrespective of any modifications which may be approved by KPKT, we would also draw your attention to a recent Federal Court Judgement that has placed parts of Regulation 11(3) in doubt. As we are not legal experts, we would advise that both your developer and yourself check on the implications of the above court judgment on the proposed amendment.</p> <p>7. We are not in the position to advise you on whether the proposed splitting of the claim is viable or not, as such proposed modification shall be subject to the approval of KPKT. As noted above, please advise the developer to consult the lawyer who is appointed to prepare the SPA on the legal impact of the above.</p>

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			<p>8. Please note that the current LAM General Circular 2/2017 regarding the stage certification has no provisions for such a division of stage 2(b). Nevertheless, if such an amendment is indeed approved, the architect would be required to know which accessory parcels (car-parking bays) are associated with the main parcels before being able to certify completion of "the car-park of the said parcel".</p>