

**PAM PRACTICE BUREAU**  
**CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE         | ENQUIRY  | RESPONSE FROM TEAM   |
|-----|--------------|--|--|
| 1.  | 31 July 2023 | <p>Pihak BBB Sdn Bhd telah melantik arkitek ABC Architect &amp; Engineer Sdn Bhd untuk membuat projek (Cadangan membina tambahan dan Pindaan 1 unit bangunan pembuangan sampah 1 tingkat , 1 unit bangunan stor 1 tingkat beserta 2 unit gazebo di atas Kawasan kompleks kilang sedia ada.</p> <p>Namun, pihak arkitek tidak dapat dikesan daripada tahun lepas. Berhubung dengan perkara di atas, pihak BBB ingin bertanya mengenai penyerahan As-Built Drawing kepada pihak MBSA, seperti di bawah:-</p> <ol style="list-style-type: none"> <li>1) Sekiranya status penyerahan As-Built Drawing ke pihak MBSA telah diluluskan, apakah prosedur untuk melantik arkitek lain disebabkan pihak ABC Architect tidak dapat dikesan.</li> <li>2) Jika masih tidak dinuguan, adakah kami masih boleh menukar pihak arkitek?</li> <li>3) Jika tiada sebarang penyerahan dilakukan kepada pihak MBSA oleh pihak arkitek, bolehkah kami melantik arkitek lain untuk menyambung projek ini?</li> </ol> | <p>Berikut adalah maklumbalas daripada pihak kami berdasarkan pertanyaan Puan pada 31hb Julai 2023:</p> <p>Berikutan dengan ketidakpastian maklumat berkaitan syarat dan kaedah penyerahan "as-built drawings" yang dinyatakan dalam pertanyaan Puan, Puan adalah dinasihati untuk merujuk kepada Majlis Bandaraya Shah Alam (MBSA) berkenaan panduan perubahan "Principal Submitting Person" (PSP) untuk projek Puan.</p> <p>Kami memahami bahawa Puan telah meminta bantuan daripada LAM mengenai isu ini, oleh itu Puan boleh terus berhubung dengan LAM untuk nasihat lanjut.</p> <p>Secara umumnya, perubahan PSP memerlukan surat pelepasan (Letter of Release - LOR) daripada PSP terdahulu, walaubagaimanapun, LOR juga boleh dikecualikan berdasarkan arahan daripada LAM. Sila rujuk kepada Circular No. 2/2007 LAM di <a href="https://lam.gov.my/sites/default/files/form/No.%202-2007.pdf">https://lam.gov.my/sites/default/files/form/No.%202-2007.pdf</a></p> <p>Sementara Puan meminta nasihat daripada MBSA dan LAM, kami cadangkan Puan cuba sedaya upaya untuk menghubungi PSP asal bagi kejelasan dan menyelesaikan isu-isu tersebut.</p> <p>Semoga maklumbalas ini sesuai dan membantu.</p> |
| 2.  | 13 July 2023 | <p>Now a day, purchasers will engage and pay to 3rd party (so call defect inspector) to carry out defect inspection after Vacant possession. Those inspectors will tag/mark as much as possible all the defects which they just think those are defect issue until their defect report submitted to developer like a thesis report.</p> <p>We know and aware that some of the items is within tolerances like hollowness of floor or wall tile, etc.<br/> My question is we as professional architect in Malaysia, do we have any references or guideline which we can refer to on those</p>   | <p>Thank you for your enquiry dated 13th July 2023. Given the limited data provided, we aim to offer relevant feedback based on the details at hand.</p> <p>Your query pertained to a third-party defect inspection during the transfer of vacant possession. Please note that the terms of the Sales and Purchase Agreement (SPA), encompassing material specifications, workmanship, and other pertinent conditions, constitute the foundational reference in these instances.</p>   |

**PAM PRACTICE BUREAU**  
**CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE         | ENQUIRY  | RESPONSE FROM TEAM  |
|-----|--------------|--|---|
|     |              | <p>items in their defect report? Then we can reply accordingly to them based on the reference or guideline.</p>  | <p>Unfortunately, due to the absence of detailed specifics about the alleged defects in the third-party report, we find it difficult to provide corresponding guidelines or references. It is the Architect's duty to ensure the work conforms to the specifications outlined in the Approved Plans and SPA, in addition to complying with the prevailing legal and mandatory standards relevant to the work described.</p> <p>In situations lacking precise references or guidelines for defining a particular "defect," it falls within the Architect's professional discretion to establish the acceptable standard and quality of work. This underscores the importance of professional judgement.</p> <p>We trust the above information is useful. We recommend further investigation into relevant references, laws, and standards connected to your case for a better understanding and resolution of such challenges.</p>   |
| 3.  | 26 June 2023 | <p>We would like see clarification on the HDA regulation 2015 schedule H clause 30(3) "Certificate signed by the Developer's architect certifying that such defect, shrinkage or other faults in the said Parcel or the said Building or the said common facilities have been repaired and made good by Developer." And the PAM contract clause 15.6.</p> <p>Q1- What is the difference between HDA 30(3) and PAM contract clause 15.6? Are they referring to the same format of Certificate?</p> <p>Q2 -Does the Architect require issuing a Certificate of making good to individual Purchasers, considering they have different VP (Vacant Possession) dates and DLP (Defect Liability Period) expiry dates?</p> <p>Q3- Can the Management Corporation (MC) reject the Architect's issuance of a Certificate of making good if they consider the rectification of the basement retaining wall water seepage to be temporary, despite the water seepage having been stopped?</p> | <p>We refer to your enquiry as received on 26th June 2023 and based on the limited information as provided, please refer to our reply as follows –</p> <p><b>Q1: What is the difference between HDA 30(3) and PAM contract clause 15.6? Are they referring to the same format of Certificate?</b></p> <p>We assume HDA 30(3) in your query refers to Clause 30(3) Schedule H of the Housing Development (Control and Licensing) Regulations 1989 (HDR 1989), which obligates an Architect to issue a certificate verifying the completion of defect rectification for a property. Conversely, PAM Contract Clause 15.6 refers to the Certificate of Making Good Defects (CMGD), issued by the Architect to the contractor, confirming that all listed defects have been addressed within the contract's scope. These certificates have different formats and address different scopes of work.</p> <p><b>Q2: Does the Architect require issuing a Certificate of making good to individual Purchasers, considering they have different VP (Vacant Possession) dates and DLP (Defect Liability Period) expiry dates?</b></p> |

**PAM PRACTICE BUREAU**  
**CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE         | ENQUIRY   | RESPONSE FROM TEAM  |
|-----|--------------|---|---|
|     |              | <p>This is because the water seepage issue has reoccurred at different spots on the same wall.</p> <p>Can the Management Corporation (MC) refuse to accept the Architect's issuance of a Certificate of making good if they deem the rectification of basement retaining wall water seepage to be temporary, even though the immediate water seepage has stopped. This is because the water seepage problem has recurred at different locations on the same wall.</p> | <p>The certificate mentioned in HDR 1989 Clause 30(3) is issued when a purchaser's claim remains unattended or unfinished within a given period (reference HDR 1989 Clause 30(2)). This certificate can pertain to a single Parcel, the overall building or common facilities and is usually addressed to the developer for reference by purchasers or other stakeholders. However, the HDR 1989 does not appear to mandate individual certifications for all units with differing circumstances.</p> <p><b>Q3: Can the Management Corporation (MC) reject the Architect's issuance of a Certificate of making good if they consider the rectification of the basement retaining wall water seepage to be temporary, despite the water seepage having been stopped?</b></p> <p>The Management Corporation (MC) does not possess the authority to reject a Certificate of Making Good issued by an Architect, under either the HDR 1989 Clause 30(3) or a PAM Contract. If there are any disagreements about the resolution of defects, the MC is advised to seek legal advice. They may consider escalating the issue to the Housing Tribunal or initiating a civil claim, if necessary.</p> <p>We hope the above has been of assistance.</p> |
| 4.  | 3 April 2023 | <p>What is the standard requirement for applying water proofing inside toilet floor? Does it need to apply 1 feet from the floor on wall area as well?</p>  | <p>We refer to your enquiry as received on 3rd April 2023 and based on the limited information as provided, please refer to our reply as follows -</p> <ol style="list-style-type: none"> <li>1. In Malaysia, there is no specific nor mandatory requirement governing the waterproofing works in the wet areas, such as toilet or bathroom.</li> <li>2. The upturn of waterproofing membrane is intended to create tanking protection against the migration of water to adjacent or below spaces. However, the height of such waterproofing upturn is not specifically stipulated by any standard. Upturn of 1 ft (or 300mm) as stated in your query is commonly practised in the waterproofing works.</li> </ol>  |

**PAM PRACTICE BUREAU  
CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE          | ENQUIRY  | RESPONSE FROM TEAM  |
|-----|---------------|--|---|
|     |               |  | <p>3. Depending on the design and specification of the waterproofing works, there may be situation that waterproofing membrane is applied at a larger extent over the wall, example - in the shower compartment or area requiring better waterproofing to the wall and adjacent room.</p> <p>4. The specification and design of the waterproofing system is subject to various factors, such as the building design, construction materials, and user needs. We strongly advise you to consult with a waterproofing specialist to obtain more detailed information and guidance that will address your specific needs and concerns.</p> <p>We hope the above has been of assistance.</p>  |
| 5.  | 24 March 2023 | <p>Can the Architect issue progress certificates if Developer (Dev) failed to follow/comply with sequence of the works and/or progressive payments schedule in the SPA (the Second Schedule stipulates progressive payments by Purchaser are based on the sequence of works to be performed by Developer). The Developer did not carry out the works under stage 2 (c) to (g) but claimed for payment for stage 2(h) instead. NOTE: Todate, the Units for the Project have not been built but the Dev request progressive payments for road, drain and sewerage.</p> | <p>We refer to your query as received on 24 March 2023 and write to note the following:</p> <p>1. The only Guidelines on stage certification which Architects are required to follow are those issued by the Lembaga Arkitek Malaysia (LAM) under their General Circular No. 02/2017 (GC). <b>Kindly note though that the above GC is only applicable for Housing which falls under Schedules G and H of the Housing Development (Control &amp; Licensing) Regulations 1989.</b> Based on the Sale and Purchase Agreement (SPA) as received from you though, it would seem that the property in question <u>does not fall under the control of the Housing Development (Control &amp; Licensing) Act (HDA)</u>. Should you have any queries regarding the types of property that fall under the control of the HDA, you may refer to the Act itself or the Ministry of Local Government.</p> <p>We would therefore be hesitant to conclude that "Lembaga Arkitek Malaysia (LAM) guidelines have no restriction/requirement that certification must be according to the stage sequence spelled out in the SPA" for as far as we are aware, there are NO LAM Guidelines on stage certification for non-housing/commercial developments. You may wish to independently confirm this with the LAM and they may be contacted at info@lam.gov.my.</p> |

**PAM PRACTICE BUREAU**  
**CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE            | ENQUIRY  | RESPONSE FROM TEAM  |
|-----|-----------------|--|---|
|     |                 |  | <p>2. <b>Based on the lack of guidelines on stage certification for such commercial projects as well as our lack of information on the construction and intent behind the SPA in question, it would be difficult for us to respond and assist you in your query.</b></p> <p>3. We are of the opinion that your answers lie within the SPA, any related legislation and common law. Based on the above, we would advise that you contact the developer and seek their clarification on the relevant clauses governing their progressive, stage billing as well as the guidelines (if any) to which they may be referring.</p> <p>When assessing the developer's response, we would also suggest that you seek legal advice and when engaging such legal representation, we would further advise that you select lawyers with the relevant competence and knowledge of Malaysian Property and Contract Law.</p>   |
| 6.  | 7 February 2023 | <p>1. The Vendor and the Proprietor (in liquidation) have entered a Sale and Purchase agreement dated 16.06.2011, the Vendor purchased the old project with the lands and the three-level basement carpark comprising Tower A,B,C,D,E and F (Tower D,E and F have yet to be constructed and completed).</p> <p>2. We and the Vendor have entered a Sale &amp; Purchase agreement dated 20.1.2015, we purchased a parcel at Tower E.</p> <p>3. 14.05.2018, the architect certified that the construction in respect of the parcel has reached Stage 3 "Upon handing over of vacant possession of the said Parcel" completed.</p> <p>4. 01.06.2018, the developer issued a letter "Delivery of Vacant Possession".</p> <p>5. 08.06.2018, the architect writes to the developer to confirm that the Certificate of Completion and Compliance (CCC) is NOT</p> | <p>Your enquiry dated 7 February 2023 is referred.</p> <p>Based on the information uploaded together with the enquiry, please find our feedback as follows:</p> <p><b>Q1: Can the architect certify the Stage 3 "Upon handing over of vacant possession of the said Parcel" completed without the issuance of Certificate For Occupation From DBKL?</b></p> <p>Based on the limited information provided in the enquiry, we can only assume that this project does not fall under the control of the Housing Development Act (HDA) nor Housing Development Regulations and is commercial in nature. As such, the trigger and requirements for 'handing over of vacant possession' shall very much depend on the conditions set out in your Sale And Purchase Agreement (SPA) . The Certificate of Fitness of Occupation (CFO) may or may not be a requirement and we would suggest that you refer to the SPA conditions and if you are still in doubt, we</p> |

**PAM PRACTICE BUREAU  
CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE | ENQUIRY  | RESPONSE FROM TEAM   |
|-----|------|--|--|
|     |      | <p>applicable for this project but the Certificate of Fitness and Occupation (CFO). DBKL Building department has inspected. The application for Borang E has been submitted to DBKL on 14.05.2018.</p> <p>6. 03.07.2018, Dewan Bandaraya Kuala Lumpur (DBKL) issued Perakuan Menduduki Bangunan (Certificate for Occupation).</p> <p>My enquiries are:<br/>           Q1: Can the architect certify the Stage 3 "Upon handing over of vacant possession of the said Parcel" completed without the issuance of Certificate for Occupation From DBKL?</p> <p>Q2: The individual TNB meter panel is ready for TNB metre installation by the developer in the M&amp;E room. We have tried to apply for the individual TNB meter but rejected due to the developer did not submit individual electricity supply application to TNB. Has the architect submitted the TNB approval for the individual electricity meter to the parcel before the application for Borang E that has been submitted to DBKL?</p> <p>Q3: Whether the architect's responsibility to get the individual electricity supply approval from TNB before the application for Borang E?</p> <p>Q4: Any difference in application for the individual electricity TNB meter between CCC and CFO?</p> | <p>would further suggest seeking legal advice on the terms and conditions within your SPA.</p> <p><b>Q2: The individual TNB meter panel is ready TNB metre installation by the developer in the M&amp;E room. We have tried to apply for the individual TNB meter but rejected due to the developer did not submit individual electricity supply application to TNB. Has the architect submitted the TNB approval for the individual electricity meter to the parcel before the application for Borang E that has been submitted to DBKL?</b></p> <p>Under the standard, Architect's appointment as issued by the Lembaga Arkitek Malaysia (LAM), the application for individual electricity supplies is not under the Architect's scope of work. You may wish to address this issue with the original Vendor who would most likely have engaged an Electrical Engineer or their Contractor for the project to administer or carry out the electrical works. We would also suggest that you check your records to re-collect if an application form for an electricity supply was ever signed and returned by yourself (along with payment for a meter deposit) to the Vendor. Should such a form have been prepared, signed and returned, it would be best to follow up with the party to whom the form was returned to.</p> <p><b>Q3: Whether the architect's responsibility to get the individual electricity supply approval from TNB before the application for Borang E?</b></p> <p>Prior to submitting the Borang E, an Architect has a responsibility to ensure that there is an available electricity supply to the building. Nevertheless, the Architect is not responsible to get for obtaining approval for individual, electrical supplies from TNB for the application under Borang E at the material time</p> <p><b>Q4: Any difference in application for the individual electricity TNB meter between CCC and CFO?</b></p> |

**PAM PRACTICE BUREAU**  
**CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE            | ENQUIRY   | RESPONSE FROM TEAM  |
|-----|-----------------|---|---|
|     |                 |   | <p>There are salient differences in the application process for the individual TNB meters throughout the years between the CFO and current CCC requirements; this is best answered by an Electrical Engineer as Architects do not carry out this role. Nevertheless, it must also be remembered that as far as we are aware, the application for individual electricity meters is independent of the process of applying for the CFO or issuing the CCC.</p> <p>We hope that this reply clarifies the issues you are looking into.</p>  |
| 7.  | 19 January 2023 | <p><u>Request for Opinion on Architect's Entitlement to Fees for Absorbing the Liability of ID Works Done by Others</u></p> <p>With reference to the above, we write to you seeking your opinion on the matter of an architect's entitlement to fees for absorbing the liability of ID works done by others for a project, by virtue of the architect's issuance of CCC to including the ID works for the project concerned.</p> <p>The enquirer has been appointed as Architect for a project &amp; the scope of services as described in the Consultancy Services Agreement (CSA) excluded ID services. The project scope is merely Shell &amp; Core and thus the architect's fee is based on a percentage of the contract sum for the project to exclude the ID contract sum.</p> <p>An ID consultant was engaged by the Client after Schematic Design of the architectural works and ID works commenced parallel to the architectural works. There is no contractual agreement between the architect &amp; the ID Consultant. However, the architect conducted an audit review of ID consultant's design to ensure compliance with the UBBL &amp; BOMBA requirements.</p> <p>At the completion stage, the architect issued CCC for the facility which included ID works. There is no avenue for the ID consultant to be held accountable for their works unlike other consultancy services such as engineering etc. when submitting Borang G to the local authority.</p> <p>By virtue the Architect's issuance of the CCC for the building, the architect inevitably absorbed the liability for ID works. Neither the</p> | <p>We refer to your query as submitted on 19-Jan 2023, and in the absence of full details of the Consultancy Services Agreement (CSA) as mentioned in the query, please refer to our reply as follows:</p> <ol style="list-style-type: none"> <li>1. With reference to 'Conditions of Engagement of A Professional Architect' under the Architects Rules 1996 (Third Schedule), a Professional Architect shall provide architectural consultancy services based on the scope of services and be remunerated with fees, as clearly defined in the Memorandum of Agreement, officially agreed between the Professional Architect and the client. We would advise that you refer to your CSA to confirm your scope of services and the fees for which you are entitled to.</li> <li>2. As noted earlier, we are unable to ascertain your exact scope of works but kindly note that based on the Architects (Scales of Minimum Fees) Rules 2010 (SOMF), issuance of the Certificate of Completion and Compliance (CCC) is included under the Basic Services for the Final Completion Phase.</li> <li>3. Being the Professional Architect and Principal Submitting Person (PSP) of the works, it is the professional duty under the Uniform Building By-Law (UBBL) for the PSP to supervise the works and to ensure all conditions are fulfilled prior to issuance of the CCC; by issuing the CCC, please also be reminded that the PSP has indicated that they are willing to take full responsibility for the works. Should the PSP have been unable to supervise the works; or if the works have not been constructed in accordance with the approved building plans; or if they are unable to take full responsibility, the CCC should not be issued.</li> </ol> |

**PAM PRACTICE BUREAU  
CATEGORY A: ARCHITECTS PRACTICE**

| NO. | DATE | ENQUIRY   | RESPONSE FROM TEAM  |
|-----|------|---|---|
|     |      | <p>ID consultant nor the Client is able to provide a letter of indemnification to the architect.</p> <p>The architect is claiming financial compensation for undertaking the liability of the ID consultant's work.</p> | <p>4. Hence, as part of the conditions of engagement, it is prudent for the PSP to understand the nature of the works and to include all relevant scopes of work, i.e. - supplementary services, collaboration with other consultants, etc; for the PSP to perform his/her professional duties.</p> <p>5. There are no guidelines in the SOMF for the claiming of 'financial compensation for undertaking the liability for a consultant's work after the issuance of the CCC.</p> <p>6. Last but not least, we are slightly confused by your references to "Letters of Release" as such letters are primarily required between professionals of the <i>same</i> discipline (i.e.; between <i>architects</i>) undertaking similar work on the same project. We would advise you to refer to LAM's General Circular No.2/2007 for "Guidelines on Letter of Release".</p> <p>We hope the above has been of assistance to you.</p> |