

PAM PRACTICE BUREAU

CATEGORY J: OTHERS/MISCELLANEOUS

NO.	DATE	ENQUIRY	RESPONSE FROM TEAM
1.	15 December 2022	<p>Dear PAM,</p> <p>May I know what kind of attitude a registered member of PAM should have?</p> <p>I knew a person who claimed he is a qualified person of PAM inspector, however, can a qualified member of PAM disclose direct or indirect P&C matters or any related issues to a construction project by uploading on social media a.k.a WhatsApp status?</p> <p>The so claimed qualified inspector registered with PAM always updates whatever happen including belittling other company in his WhatsApp status.</p> <p>Is there any guideline of a qualified and registered PAM I can refer to?</p>	<p>We thank you for your query.</p> <p>We are of the opinion that all PAM members should have an attitude which is reflective of the PAM Code of Conduct. Please be advised that all PAM members are required to abide by this Code of Conduct. A link to the afore-said Code may be found here and the explanatory guide here and you may refer to the Code and guide to assess a member's conduct. Nevertheless, we wish to note that the above Code is only binding upon PAM members.</p> <p>We are unsure of what is meant by "qualified person of PAM inspector" in your query. At present, PAM membership is currently composed of Corporate and Non-Corporate members and there are no classes of membership for PAM inspectors in our Institute.</p> <p>Nevertheless, apart from Architects, Graduate Architects, Interior Designers, Graduate Interior Designers and Building Technologists, Inspectors of Works may also be registered with the Lembaga Arkitek Malaysia (LAM). Upon their registration, in accordance with the Architects Rules 1996, they are also required to abide by their respective Codes of Conduct as contained in the aforesaid Rules. A copy of the Architects Rules 1996 may be accessed at the LAM portal at www.lam.gov.my.</p> <p>We trust the above has been of help.</p>
2.	1 March 2022	<p>RE: PERSONAL DATA PROTECTION ACT</p> <p>On 23 February 2022, PAM issued via email the Circular Notice of the Personal Data Protection Commission Nos 1 and 2 for 2022 asking architects to register at the official portal of the Department Of Personal Data Protection (Jabatan Perlindungan Data Peribadi).</p> <p>In clause 2.3 of Act 709, a Data User is defined as one who processes any personal data or has control or allows the processing of any personal data but excludes anyone who processes data.</p>	<p>We refer to your query that we received on 01-March 2022 and reply as follows:</p> <p>Personal Data Protection Act 2010 (PDPA):</p> <ol style="list-style-type: none"> The e-mail as issued by PAM on 23-Feb 2022 was intended to remind members of their obligation under the PDPA, to register and/or renew their registration with the Department of Personal Data Protection. The PDPA is an Act that regulates the processing of personal data in commercial transactions in Malaysia. Referring to Section 4 of the PDPA, "processing" refers to the collecting, recording, holding or <u>storing</u> of personal data or the carrying out of any operation or set of operations on the personal data. Please refer to the afore-said section for more details.

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		<p>Our enquiry is whether an architectural practice is considered to process personal data when we only use email for communication. Most practices do not store personal data for use in the business for example, we do not store a database of personal data of our clients to promote our services or to use this data for business activities.</p> <p>As advised by the circular, we can call or write to PDP for clarification. We have tried calling many times using the name and number provided in the circular. Our email has also gone unanswered.</p> <p>Can PAM assist in providing some clarity on whether all practices are required to register or only practices that process personal data as defined by the Act?</p>	<p>3. Under Section 14 of the PDPA, <u>all data users as prescribed under the Act are required to be registered under the Act</u>. With reference to Personal Data Protection (Class of Data Users) Order 2013 [P.U. (A) 336], subsection 2(9)(v), <u>any architect who is registered under the Companies Act (Act 125) or Partnership Act 1961 (Act 135) has been listed as a data user under the PDPA.</u></p> <p>4. Should you require further clarification, we advise you to contact the Department of Personal Data Protection (https://www.pdp.gov.my/jpdpv2/); alternatively, you may also seek legal advice on this matter.</p>
3.	1 March 2022	<p>RE: HRDF LEVY</p> <p>The Building Industry President's Council (BIPC) submitted an objection to the expansion of the Human Resources Development Fund (PSMB) Act 2001(Act 612), which included the construction industry with effect from 1 March 2021.</p> <p>Please advise whether an architectural practice with more than 10 employees should register with the HRDF or wait until this matter receives an official reply or conclusion.</p> <p>The "Pembangunan Sumber Manusia Berhad (Exemption of Levy) Order 2021 is welcomed albeit, it is only for the period from 1 March 2021 to 31 March 2021.</p>	<p>Human Resources Development Fund (HRDF)</p> <p>1. The HRDF (presently rebranded as HRD Corp, "HRDC") was established and governed under the Pembangunan Sumber Manusia Berhad Act 2001 (PMSBA).</p> <p>2. Under PSMBA, it is mandatory for employers with ten or more Malaysian employees (and who are listed under the First Schedule - Industry and Sector or Activity) to register for the HRDF. However, employers with less than ten Malaysian employees may also register with HRDF, subject to the requirements under the Optional Category (https://hrdcorp.gov.my/expansion-of-psmb-act-2001/). Architectural services would be covered under the "Professional" category of this First Schedule.</p> <p>3. With reference to the PSMB (Exemption of Levy)(No.2)(Amendment) Order 2021 [P.U.(A) 424], dated 22-Nov 2021, the exemption of levy expired on 31-Dec 2021 and as far as we are aware, here was no further order to extend the exemption period.</p> <p>4. We note the BIPC's letter dated 29-Sep 2021 as stated in your query. Kindly note though that there was no official statement that the exemption of levy has any direct relationship with the above letter.</p>

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			<p>5. In the absence of any further direction from the Ministry of Human Resources, we would advise you to observe the PSMBA and to comply as necessary.</p> <p>6. Should you require further clarification; we advise you to consult HRD Corp (https://hrdcorp.gov.my/contact/)</p>