PAM PRACTICE BUREAU
CATEGORY D: HOUSING LEGISLATION & CONTROL

NO.	DATE	ENQUIRY	RESPONSE FROM TEAM
1.	4 November 2022	Dear Sir, I am a unit owner, my enquiries as below and hope that you can enlighten me: - The developer is now imposing a non-refundable RM220 fee for a rubbish dumpster (Roro Bin) to all residents who want to do the renovation. There are 443 units, so it is a collection of RM97,460. The residents' contractors are forced to use the dumpster bin as it is compulsory according to the developer. As a lot of minor works like air-conditioner installation, water heater installation, etc. do not have a lot of rubbish and all contractors (major or minor works) would not agree to pay for that. They carry the rubbish away after their work, the owners are left to pay for that. A lot of the residents are unhappy about this. I would like to ask - can we residents reject the stated fee if our contractors duly cart away the rubbish themselves? - The developer demands all residents to follow a standard front entrance grille design, a standard yellow colour for the outside face of the main door panel and door jamb, and white colour for the foyer walls (residents cannot paint the foyer walls to other colours). While it is understandable that we cannot change the colours of the walls of our units facing the street, a lot of the residents do not like to have yellow doors and find the developer's grille design ugly. I would like to ask - does the developer has the right to impose such requirements? Do the residents have the right to reject such requirements? We have not got the title transferred now. If we follow the requirements now, we have to fork out extra money to change later, which is extra cost and abortive work also.	Dear Sir, We refer to your queries and information as received on 4 November 2022. and would write in reply as follows: a. Can the residents reject the requirement to pay the non-refundable fee for the use of ro-ro bins? As your query mentions payment to "the developer", we shall assume that the Joint Management Board (JMB) for your property has yet to be established. To assist in finding an answer, we would advise the following : i. Check if there were either House Rules or Deeds of Mutual Covenant which were agreed upon at the time of your signing the Sale and Purchase Agreement (SPA) to your property and if there were such Rules or Deeds, if the regulation regarding the non-refundable fee was indeed contained therein. ii. If the Regulation is a by-law that has been made by the developer after the signing of your SPA or the handing over of vacant possession of the apartment unit to yourselves, check if the regulation/by-law has been approved by the Commissioner of Building (CoB) as per Section 32(2) of the Strata Management Act (SMA). b. Can the residents reject the requirements for grille door designs and paint colour to walls and doors? As per the above query, we would also advise that you check on the developer's regulations relative to any House Rules or Deeds of Mutual Covenant as well as if these regulations have been approved by the CoB. Nevertheless, please be reminded that parts of your apartment may be deemed as common property, i.e. walls facing the corridor directly outside your unit, with control of these parts falling under either the developer, JMB or Management Corporation (MC). Based on the above checks, we would advise that you discuss the imposition of such regulations with the Building Management/developer and see if the Regulations are negotiable. You may also contact the CoB for further assistance as they are the party appointed by the Local Authority to administer the SMA and oversee the management of stratified properties.

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			If there are pre-existing House Rules which may not be of benefit to the apartment purchasers, we would advise that you contact the JMB as and when it comes into existence, to discuss how the Rules may be changed or amended in accordance with the provisions of the SMA.
2.	26 October 2022	Dear PAM, I am an apartment unit owner, having obtained vacant possession on 5th December 2018. The defects liability period based on the Sales and Purchase Agreement Schedule H is 24 months after the date of vacant possession. The apartment owner below my unit constantly complains of water leakage from my toilet and as a result, I've repaired the piping numerous times. However, it continues to leak. Last week, my contractor discovered that there is an apparent crack in the structural floor slab in the toilet area. My questions for PAM are as follow: 1. Who may I engage to provide a professional report (which would stand in a court of law) to justify that the crack is considered a latent defect? 2. How do we go about bringing developers to rectify such defects as the DLP has expired? 3. May I know how to exercise my rights pertaining to this matter under The Limitation Act 1953? 4. My contractor has provided me with the rectification works to be carried out which include a. Hacking existing floor trap concrete, doing a new outlet with concrete finish b. Replace Tiling in Bathroom c. Hacking and removing existing floor tiles and wall tiles d. Prepare and apply Sika 107 waterproofing on the floor and wall surface 3ft from ground	Thank you for your enquiry. We append below our response to your queries: 1. Any professional involved in the building construction industry is able to prepare such a report. However, we would advise that the person who is engaged, should have previous experience with court matters as the report once tabled will be scrutinized and the competency of the professional preparing the report will be questioned during legal proceedings. Should you have difficulty in finding and engaging an independent consultant to prepare such a report, you may consider contacting "Architect Center Sdn. Bhd.", a subsidiary of Pertubuhan Akitek Malaysia, through Puan Raja Selamah, E-mail: rajaselamah@architectcentre.com.my *2.* If the defect is proven to be a latent defect, the developer will still be responsible for the rectification, even after the expiry of the Defects Liability Period (DLP), subject to the provisions of the Limitation Act. Assuming that the alleged, latent defect manifested itself 12 months after the expiry of the DLP, we note the Home Buyer's Tribunal (as established by the Ministry of Housing, Local Government and Urban Well-being) may no longer be able to look into your complaint. Under these circumstances, we would normally advise that you first, approach the developer. The expiry of the DLP notwithstanding, they may still be willing to assist you. Should they be unresponsive towards your approach, we would then suggest that you seek legal advice with a view to considering legal action. *3.* Although the Limitation Act does provide a time frame upon which you may act against the developer, it is best that you consult a lawyer with construction

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		e. To supply labour, cement and cement gum to install new floor tiles and wall tiles full height Do you advise proceeding with the rectification works, seeing that the hacking works might omit the developer's responsibility for latent defects if found? Appreciate your assistance on this matter.	law knowledge on this matter, without further delay for advice on your position relative to the Act**.** We also suggest that you document the chain of events on the leak as much as possible. 4. We are not in a position to comment on the rectification works that your contractor has proposed and described; although we do suggest that you should obtain warranties for both the application and product used for the repair works. Should you be looking to engage a professional to prepare a report on your defect, we would also advise that this same professional be also tasked to advise on how this defect is also to be rectified. However, in our opinion, if you intend to pursue any legal action on latent defects, this repair may affect your claims as well as be disputed by the developer's lawyers. We hope the above answers your queries.
3.	17 October 2022	REGARDING: PERMOHONAN PENGELUARAN KESEMUA WANG DARIPADA AKAUN PEMAJUAN PERUMAHAN DI BAWAH PERTURAN 11 (for high-rise housing projects) The Developer insists we issue *surat perakuan KPKT* Lampiran A1 because the developer claim that there is no more defect submitted by the purchaser. Developer has set off the developer from repairing the defects, therefore developer also does not want to recognize the schedule of defects. Although the developer has engaged 3rd party to continue defect rectification work, the items are not 100% according to the schedule of defects. We advised the developer to close the schedule of defects properly by submitting the report based on the schedule of defects before we can acknowledge the *Lampiran A1*.	We refer to your query as received on 17 October 2022 and have difficulty understanding parts of your query. As an example, we are unsure of what is meant when you state, *"Developer has set off the developer from repairing the defects, therefore developer also does not want to recognize the schedule of defects."* Similarly, you refer to a "*surat perakuan KPKT Lampiran A1".* Please be advised that the Ministry of Housing, Local Government and Urban Well- Being have 2 separate guidelines, a. one being for the **withdrawal of surplus monies from a Housing Developer's Account** (in accordance with Regulation 9 of the Housing Development (Housing Developer's Account) Regulations and b. the other being for the **closing of the Housing Developer's Account** (in accordance with Regulation 11 of the above-mentioned Regulations). Kindly note that for both of the above guidelines, a declaration from the Architect is required and that both also have a "*Lampiran A1*". As the "Lampiran A1" to the guidelines for the withdrawal of surplus monies is for a letter to be issued by a lawyer, we shall assume that you are referring to the

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		Our question: 1. whether our action is correct because there is no clause or law mentioned clearly that we are aware of. 2. are we required to sign the *Lampiran A1* in the first place, according to LAM circular 2/2017, Schedule H item (4) mentioned that Architect does not need to issue any certificate for this stage.	"Lampiran A1" to the guidelines for the closing of the Housing Developer's Account. We would advise that you clarify the above with your Employer. Nevertheless, please find our reply below: **Question 1:** The conditions set out by Kementerian Perumahan, Kerajaan Tempatan dan Kesejahteraan Bandar (KPKT) for the closing of the Housing Developer's Account are as follows: 1. The Certificate of Completion and Compliance (CCC) has been issued for all parcels. 2. The transfer of titles under all the sale and purchase agreements in that housing development have been fulfilled. 3. The defects liability period for the housing development has ended (assuming that Sales and Purchase Agreement (Building Intended for Subdivision) Schedule H stated in Housing Development (Control and Licensing) Regulations 1989 – Regulation 11(1) was used in its entirety and that there were no amendments to the conditions of the agreement between developer and purchasers). 4. The housing developer has not been blacklisted. In addition to the above conditions, KPKT's guidelines also require as part of the supporting documents, the Architect's declaration that the Housing Development has been completed, that the rectification works, as well as the Developer's obligations, have been completed and that there are no further obligations on the part of the Developer. The format for this declaration is laid out in the "Lampiran A1" for the relevant guideline. Based on the above, we would advise all architects that they should only issue the above declaration when all defects have been rectified or for situations where there were outstanding defects, that the Purchaser has been allowed to deduct the cost of making good these outstanding defects in accordance to Item 30(1) of the Sales and Purchase Agreement. It would be in the interest of the project that a schedule of defects be kept and properly signed off and declared as such by the Developer, that there are no further defects unattended to, before doing so.

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			Question 2: As far as we are aware, the LAM General Circular 2/2017 is for Guidelines for Stage Certification under the **Housing Development (Control & Licensing) Regulations**. We are unable to see the relevance of the above Guidelines relative to requirements for the closing of the Housing Development Account in accordance with the **Housing Development (Housing Development Account) Regulations**. To ascertain whether you are obliged to issue the above-mentioned declaration, we would advise that you check the terms of your appointment as the Architect for the development. Nevertheless, it is our opinion that should you already have been certifying the stage completion for the Development, you may also have a duty of care towards the Purchasers.
4.	8 July 2022	Dear Sir/Madam, I received a letter from the developer with the certificate certifying that the carpark framework has been completed last year on December 12, 2021. However, I checked recent photos and the car park framework has not been completely built. I wonder if the architect in Malaysia has an obligation to check with its professional standard or just issue a completion certificate under pressure from the developer. Here I attached the photo for your easy reference. In addition, I would like to enquire about your professional view on the determination for the door and window frames that were set in position, as the developer provide me with a photo that I cannot find any window frames installed in the said unit on it.	Dear Sir, We refer to your e-mail and limited information as received on 8 July 2022, we shall try to clarify the following about the Architect's role in certifying and issuing certificates of stage completion for housing projects. As you did not provide us with a copy of your Sales and Purchase Agreement (SPA), we could only refer to the photos provided and assume that the said development was a housing project. 1. **Sales and Purchase Agreement (SPA) for housing development** All housing projects sold *off-plan* in Malaysia are regulated under the Housing Development Act 1966 (HDA) and Housing Development Regulations (HDR). Under HDR, it is mandatory for developers to use the standardised Sale & Purchase Agreements (SPA) as contained under Schedules G, H, I and J of the Regulations. For stratified property such as condominiums or serviced apartments, the relevant SPA can be found under Schedule H and payment for such property is in stages as detailed under the Third Schedule of the SPA. Each stage of completion requires certification by the Architect in accordance with Circular

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		I should be very grateful if your institute can advise from your professional view on the completion of the said works. Thank you.	2/2017 (Circular) by the Board of Architects Malaysia (which can be found at http://lam.gov.my/sites/default/files/form/GC-02-2017.pdf) 2. **Architect's role and obligation in certifying and issuing the certificate of stage completion** As noted above, all certifying Architects are required to adhere to the guidelines contained in the Circular as mentioned above. The certifying Architects in Malaysia are regulated by the Board of Architects and are bound by a Code of Conduct. The certifying Architects shall act independently of their Clients and provide an impartial assessment of the works. 3. **Certification for stage completion of the car park structure** Assuming the development was adopting Schedule H for the SPA, please note that there is no specific stage of completion for the car park's structural framework. We suggest you check again whether your SPA falls under the HDA and clarify with the developer on the basis of the certification received. 4. **Installation of door and window frames** Assuming again that your SPA was referring to Schedule H, your query with regards to the installation of door and window frames shall refer to Stage 2(c) "The walls of the said Parcel with door and window frames placed in position". In accordance with the Circular, the wall openings shall be properly formed and metal frames for the windows and doors need not be installed for the Architect to certify this stage as complete. Should you have any doubts or queries regarding the developer's claim and certification of works done, we advise you to first refer to your SPA solicitor and seek written clarification from the developer. We thank you for your query and hope the information provided was helpful.
5.	27 April 2022	Reference is made to HDA Covid Act 1966, we are seeking your advice on the following questions:	We refer to your query as received on 27 April 2022 and due to the recent public holidays, please accept our apologies for the delay in replying.

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		1. Does the HDA project is obliged to provide further DLP extension to the Purchaser for the period 1 Jun 2021 until 31 October 2021 according to the amended Covid 19 ACT A1641? Please advise. 2. If the answer is "Yes" for item 1, who is to bear the rectification cost for the further extension of another 5 months DLP (1.6.21-31.10.21)? I'm assuming that there's no contract binding between the contracting party on the further extension of DLP. As such, the developer is to bear the rectification cost. However, please correct me if my understanding is wrong. 3. Per the agreement between the developer & main contractor, does the long lead guarantee period also extended automatically for all warranty items provided by the specialist/NSC due to further DLP extension?	We are unsure of what you mean when you refer to the 'HDA Covid Act1966' but shall assume that you are referring to the *Housing Development (Control and Licensing) Act 1996 (Act 118)*. Our reply as such shall be based on the above Act as well as the Temporary Measure for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) (Amendment) Act 2022 (Act 1641). Our reply is as follows: **Query No.1** Does the HDA project is obliged to provide further DLP extension to the Purchaser for the period 1 June 2021 until 31 October 2021 according to the amended Covid19 Act A1641? Please advise. **Reply** Under the above Act 1641, Section 38E has been amended to note that the period from 1 June 2021 to 31 October 2021 shall be excluded from the calculation of: a) the defect liability period after the Purchaser takes vacant possession of housing accommodation; b) the defect liability period after the date of completion of the common facilities; and c) the time for the developer to carry out works to repair and make good the defects in the housing accommodation and common facilities. Based on the above exclusion, we are of the opinion that the defect liability period for housing projects that fall within the scope of the amendment would automatically be extended for the period from 1 June 2021 until 31 October 2021. **Query No. 2** If the answer is 'Yes' for item 1, who is to bear the rectification cost for the further extension of another 5 months DLP [01.06.2021 – 31.10.2021]? I'm assuming that there's no contract binding between the contracting party on the further extension of DLP. As such, the developer is to bear the rectification cost. However, please correct me if my understanding is wrong.

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			Reply We are unsure as to what is meant by your reference to the 'rectification cost for the further extension' and the 'contract party'. Nevertheless, under the provisions of the standard Sales & Purchase Agreement (SPA) under Schedule G, H, I and J of the Housing Development (Control & Licensing) Regulations 1989, all defects occurring within the defect liability period are to be made good by the developer at their own cost. As noted above though, the defect liability period may also be extended under the amendment to Section 38E of Act 1641. As we have no details as to how the project is built and delivered and the type/form of building contract which is involved, we are unable to comment on whether the developer has separate provisions for the repair of the defects under their *building contract.* Kindly note though that for some standard forms of contract such as the PAM 2006 and 2018 Forms of Contract, the main contractor is already obliged to repair and make good defects which are detected within the building contract's defect liability period. Under the above standard forms, there is no obligation for the main contractor though, to repair and make good defects which are detected after the expiry of the building contract's defect liability period but which may occur within any extended defect liability period under the SPA and Act 1641. Should such a defect occur, the rectification should be at the developer's cost and arrangement. **Query No.3** Per the agreement between the developer & main contractor, does the long lead guarantee period also extended automatically for all warranty items provided by the specialist/NSC due to further DLP extension? **Reply** As we have no details of the agreement between your developer and main contractor, we are unable to advise on whether the warranties would

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<tr><th>NO.</th><th>DATE</th><th>ENQUIRY</th><th>RESPONSE FROM TEAM</th></tr>
<tr><td></td><td></td><td></td><td>automatically be extended. Like our reply above, kindly note though that for some standard forms of contract such as the PAM 2006 and 2018 Forms of Contract, there are no provisions for an extension of warranty periods.

We would advise that you refer to the conditions of your building contract (and sub-contracts) to ascertain both the developer's and main contractor's obligations.</td></tr>
<tr><td>6.</td><td>21 April 2022</td><td>We write to seek your opinion on stage billing matters, specifically Stage 2(g) and what constitutes temporary drains/outfall for the purpose of stage billing.
<table><tr><td>2(g) The drains serving the said Building (2.5%)</td><td>Drains and main drains connected to the outfall (The alignment of the drains and the outfall may be permanent or temporary as approved by the local authority)</td><td>Metal gratings and covers over drains</td></tr></table>BACKGROUND:
1. The Project obtained the Roads and Drainage approval on 30 Dec 2019 (see attached) for the permanent drain system (Appendix A) as shown.

2. Due to tight site constraints, part of the site is required for logistic purposes and the permanent system cannot be currently completed. Since the OSD tank and a substantial portion of the permanent drainage was completed, the team decided for a temporary connection to be put in place to allow for proper drainage of the site.</td><td>We refer to your enquiry as received on 21 April 2022 and write in reply as follows:

1. As noted in your enquiry, Lembaga Akitek Malaysia's (LAM) General Circular No. 2/2017 allows for the completion of temporary drains/drainage for the certification of completion of stage 2(g) (for housing based on using the Sale and Purchase Agreement in accordance to Schedule H of the Housing Development (Control and Licensing) Regulations 1989).

2. Based on the description provided by you, our opinion with regard to the certification of completion of stage 2(g) may not be any different from yours. Nevertheless, we would also note the following points:
a. As the drainage system would seem to be under the purview of the Engineer, please be reminded that their concurrence of completion should be obtained in writing as per item 7.0 of the Supplementary Notes to the above-mentioned General Circular.

b. The drainage system, irrespective of whether it is temporary or permanent, should be maintained and kept in full working order throughout the remainder of the construction period.

c. Any temporary drainage should only be dismantled and removed when the permanent drainage has been completed and is functioning in accordance with the approved plans. It is our opinion also that the decommissioning or dismantling of the temporary drainage should not be to</td></tr>
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		3. Accordingly, the Engineer made an application for temporary drainage works **(Appendix B)**, which was approved on 9 Dec 21 (see attached). 4. The temporary drainage connection was completed on 31 Mar 2022 and the system was duly checked by the Engineer **(Appendix C)**. The system is now functioning and discharges to the OSD. 5. This temporary drainage connection will be eventually dismantled and the full permanent system will be constructed at a later date upon easing of the site constraints. 6. The team is of the view that since the permanent and temporary approvals are in order and the system is functioning, the criteria for Stage 2(g) billing is in order. 7. However, we are uncertain if these temporary works fall within the strict criteria of temporary works as described in LAM Circular. The definition of temporary works is not elaborated in the Circular and hence seek your opinion on the matter to avoid any missteps in our certification of Stage 2(g).	the detriment of the works which have been certified as being completed under the preceding stages. 3. Please also be reminded that our opinions may not necessarily be aligned with that of LAM (as the body issuing the above-mentioned General Circular) or the Ministry of Housing, Local Government and Urban Well-being (as the body regulating housing development under the Housing Development (Control and Licensing) Act) and you may also want to consider obtaining their views on the matter.
7.	23 March 2022	Dear Sir, I purchased a condominium unit under a private developer, and the unit has just been delivered for vacant possession on 23/2/22. Upon entering the unit, I discovered that the kitchen sink location is not built in accordance with the brochure plan – the brochure plan that I received when I first placed the booking fee showed the sink is parked against the wall, but the existing location of the	We refer to your e-mail dated 23 March 2022. As no further details were provided on your signed Sales & Purchase Agreement (SPA), we shall assume that your SPA is as per the agreement under Schedule H of Housing Development (Control and Licensing) Regulation 1989. Our replies to your queries are as follows: • The developer had created a letter to procure 'blanket' approvals from the buyers in this case. Most buyers are laymen, can the developer ask the buyers to sign such a letter to approve all

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		sink is at the centre of the kitchen (see attached images: Damai Residence Brochure Plan – Type A and 20220311_144939). When the pipes at the floor above the leak, the water/wastewater will drip down to the centre of my kitchen/dining room and damage my interior fitting out. When I referred this issue to the developer, the developer pulled out a letter signed by buyers, which approve all changes made by the developer without any claim (see attached: 12-01.pdf). I do not remember I had signed such letter. I supposed the letter was slotted among the many S&P documents for signatures referring to its date of 28/6/19. Hence, my questions are: • The developer had created a letter to procure 'blanket' approvals from the buyers in this case. Most buyers are laymen, can the developer ask the buyers to sign such letter to approve all changes and forgo any claim resulting from variation made? If the developer does not inform the buyers of changes, the buyers probably will only know such changes after collecting the unit's keys, is such a letter legally valid? • Even with the letter, the variation is not informed to the buyers for collection of opinions. Can buyers ask the developer to improve the situation (to prevent leakage etc.)? Is the developer liable for any leakage/defect that occurs in the future? • Besides, when I look back into the S&P documents, I just discover there are no particulars of the developer's solicitors. The developer's initial solicitor is used as the buyer's lawyer as the developer is offering a free lawyer fee. The developer's solicitor should be its stakeholder to hold the Stage 5 purchase price before all defects are rectified and cleared. So, does it mean there is no stakeholder for the	changes and forgo any claim resulting from variation made? If the developer does not inform the buyers of changes, the buyers probably will only know about changes after collecting the unit's keys, is such a letter legally valid? As far as we are aware, the letter you mention does not form any part of the standard SPA under the Housing Development (Control & Licensing) Regulations 1989. As we are also not aware of the circumstances behind the issuance and signing of such a letter, we are unable to comment on whether the Developer is within his rights to ask purchasers to sign such a letter or if the letter is indeed valid. If you do have queries on this letter, we would suggest you seek independent legal advice or direct your query to the Ministry of Housing, Local Government and Urban Well-being as they are the body tasked with regulating the use of the SPA under the Housing Development (Control & Licensing) Act 1966. • Even with the letter, the variation is not informed to the buyers for collection of opinions. Can buyers ask the developer to improve the situation (to prevent leakage etc.)? Is the developer liable for any leakage/defect that occurs in the future? As far as we are aware, there is nothing within the SPA to prevent purchasers from asking developers to "improve the situation" but would note that there is also nothing in the SPA requiring a Developer to entertain any requests as the Developer is only legally obliged to deliver the property in accordance to the terms and conditions of the SPA. If any defects were to occur within the Defects Liability Period (DLP) (and subject to such defects NOT being due to the work of others), the Developer is obliged to rectify such defects in accordance with Clause 30 (1) of your SPA. If any defects were to occur after the expiry of the DLP, the Developer may also be held liable, but this is subject to the cause of a such defect, i.e. whether the defect is due to his poor workmanship or an inherent design defect. If such a defect were to occur, we would suggest that you seek legal advice on how to pursue your case with the Developer.

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		developer under the S&P? Can advise how can I pursue recourse if defects are not rectified?	• Besides, when I look back into the S&P documents, I just discover there are no particulars of the developer's solicitors. The developer's initial solicitor is used as the buyer's lawyer as the developer is offering a free lawyer fee. The developer's solicitor should be its stakeholder to hold the Stage 5 purchase price before all defects are rectified and cleared. So, does it mean there is no stakeholder for the developer under the S&P? Can advise how can I pursue recourse if defects are not rectified? Unless you have directly engaged a lawyer (and paid for his services), we note that for the standard housing transaction, there is no "buyer's lawyer". The lawyer/solicitor who prepared your SPA and arranged for its execution is acting on behalf of the Developer. When the Developer mentions that there is a "free lawyer fee", it normally means that he is not charging you for the payment of his legal fees. Kindly note that the Developer's solicitor is required to act as the "stakeholder" under Clause 30 (3) of the SPA and his particulars may be found under Clause 30 (4) of the SPA. In the event the Developer does not rectify your defects, your rights/recourse may be found under Clause 30 (2) of the SPA. We hope the above has been of assistance.
8.	24 Feb 2022	Dear Sir, I have two questions: A. I have received a request from the developer requesting me to certify the GDV of a housing project, not GDC as it is part of the Developer's License application requirement from KPKT (Attach a snapshot of it). Are we, architects qualified to do so? What is the liability? B. Sometimes, there are instances where we are required to confirm in writing that the CCC will be issued to the units that will be completed in a phased development in the developer's application for Developer's License. Are we compelling to do so?	With reference to your queries received on 24 February 2022 and based on the information provided, please find our replies as follows: <u>QUERY 1</u> 1. We note that architects are required under the Architects Scale of Minimum Fees Rules 2010 (SoMF) to prepare cost estimates under the Basic Services as well as under the Financial Advisory Services (which may be offered as a Supplementary Service). Nevertheless, these are only *some* of the costs which are required to implement a development project; there are other costs such as administration costs, sales and marketing costs, financing costs, etc., which an architect may not be privy to or beware of. Along with these costs, there is also the expected profit (or loss) that a developer may be aiming for as well as expectations of

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			what the *market* is willing to pay, all of which would be required for the computation of the *Gross Development Value* (GDV). Unless the development involves *affordable housing (*which has *selling prices* set by the State) and based on the *limited information an architect may have*, it is our opinion that architects are not necessarily qualified to certify the GDV of a development. 2. Nevertheless, it is recognized that architects may be compelled to issue such certification to assist their employer's compliance with the requirements of the Ministry of Housing, Local Government and Urban Well-being (KPKT). In such instances, we would advise architects to qualify for such certification, i.e.; they may qualify that their certification is based on information provided by the developer. 3. As the above certification is part of a developer's application to the KPKT, we can only assume that architects may be held liable by KPKT if the certified GDV is wholly inaccurate. It must be noted though that the Housing Development Act (HDA) only provides for penalties for <u>offences by Housing Developers</u> and if KPKT does indeed take action against an architect, it may be through a provision outside of the HDA. As we are unaware of how KPKT may make use of such a certified value nor of any other parties which may be affected by this certification, we are unable to comment any further on an architect's liability relative to this certification and would suggest that you clarify with KPKT or seek legal advice on this. <u>QUERY 2</u> 1. We have some difficulties in understanding your query but would note that if you were retained as an architect to provide the Basic Services (under the SoMF), the issuance of a Certificate of Completion and Compliance (CCC) is already part of the services required of you. If the issuance of the CCC is indeed part of your scope of work, we are unable

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CATEGORY D: HOUSING LEGISLATION & CONTROL

NO.	DATE	ENQUIRY	RESPONSE FROM TEAM
			to see any issues in your submission of written confirmation to the KPKT on this. 2. It must be noted though that for *phased* developments, KPKT may also be looking for written confirmation as to whether the CCC is to be issued is for the whole of the works (i.e.; by way of using *Borang F*) or if a partial CCC (based on using *Borang F1*) is to be issued for some of the phases. As long as the selected procedure is able to satisfy the relevant Uniform Building By-laws and Housing Development Regulations, we also do not see any issues in your providing the required written confirmation. We hope the above has been of assistance.