

PAM PRACTICE BUREAU

CATEGORY D: HOUSING LEGISLATION & CONTROL [HDA, Housing Development Regulation, LAM Circular 2/2017]

NO.	DATE	ENQUIRY	RESPONSE FROM TEAM
1.	9 June 2023	<p>Sales & Purchase Agreement (SPA) for residential units is regulated by the Housing Developer Act. However, in the case of Service Suites, it is not covered by HDA because it is a commercial development. The SPA is therefore a contractual obligation purely between two parties.</p> <p>It has become increasing prevalent for developers to include a clause in a commercial SPA to specify the “Developer’s Architect to make a fair and reasonable <u>extension of time</u> for completion and delivery of vacant possession of the said parcel which extension shall be final and binding...”. The reason admissible for extension is listed as ‘exceptional inclement weather, civil commotion, cause beyond Developer’s control...etc</p> <p>In the event that the project is delayed, this is meant to protect the Developer from excessive claims and compensation for delay.</p> <p>The question I would like to ask is whether PAM have a position pose a lot of unanswered question:</p> <ol style="list-style-type: none"> 1. Are we as Architect for a commercial project authorised under the architect’s Act to determine EOT of SPA and issue EOT that is binding and ‘final’? 2. What is the extend of our liability in the event that the investor/homebuyer take the Architect to court for certifying an EOT that the homebuyer feels is biased? 3. Is there a conflict of interest involved in certifying EOT for the Developer who is also paying our fees? What if extension for SPA is allowed to Developer by Architect but is rejected for Building Contract to Contractor for the same issue, e.g. lack of building materials delay? 	<p>We note though that the Form contains no queries for us to reply to but instead, has an implied request for our comments. As there are no details given as to items you wish to be commented upon, we shall assume that the comments sought are related to the questions posed in the above-mentioned letter to you.</p> <p>There would seem to be three (3) main questions posed and our comments on each of these questions are as follows:</p> <p>Q1: Are Architects for a Commercial Development authorised under the Architects Act to determine and issue Extensions of Time (EoT) for Sale and Purchase Agreements (SPA) related to the Development?</p> <p>In the absence of reviewing the actual SPA, it is difficult to ascertain what is required of the Architect with respect to EoT’s which may be allowed for in the SPA.</p> <p>Nevertheless, we note that it is <u>a requirement for all Architects to be knowledgeable of the Architects Act 1967 (Act 117)</u> and arising from Section 35 of the Act, all Architects are also obliged to be knowledgeable of any subsidiary legislation or General Circulars which may be issued pursuant to the Act. Any Professional Architect as such, should always review his expected scope of works against the provisions of the Act and be able to ascertain if his expected scope is indeed, in-line with the Act prior to his acceptance of his appointment. If the Enquirer has any further queries with regards to his scope relative to the Act, we are confident that the SbC will be able to assist him.</p> <p>Q2: What is the extent of the Architect's liability to a Purchaser if the Architect's Certification of EoT under the SPA is perceived as being incorrect/biased by the Purchaser?</p> <p>The issue of an Architect's liability depends again, on the scope of works for which he is appointed, the Purchasers' contractual rights under the SPA and Common Law. As we are unaware of the contents/provisions of both the Architect's Appointment and the SPA, it would be difficult for us to comment on the liability which may arise and as matters such as tortious liability are purely legal issues, we would suggest that legal advice be sought by the Enquirer on these matters.</p>

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		<p>I hope this matter can be brought up to practice committee for guidance and advice by PAM. PAM may have already deliberated on this issue as this is not by any means a new subject. If they do not have an answer, maybe PAM can study the matter and provide a collective response from the profession.</p>	<p>Q3: Is there a conflict of interest for an Architect in certifying EoT for a Developer who is also paying the Architect's fees?</p> <p>The potential for such conflict is certainly present, especially if the Architect allows his judgment in the certification process to be dictated by the Developer in return for monetary or material gain. Nevertheless, it must be remembered that there are specific standards required of an Architect with regard to "all forms of certification" under Part 3(5) of the Architect's Code of Conduct.</p> <p>The issue though of an Architect's certificate to his Employer being used for the Employer's dealings with other parties is certainly not uncommon; a Developer's claim for payment from a purchaser under Sabah's Housing (Control and Licensing of Developers) Rules we understand, is required to be accompanied by an Architect's certificate; would this certification also not be prone to a conflict of interest?</p> <p>The issue of Architects being asked to certify items not found in either standard forms of Building Contracts or gazetted documents is certainly neither new nor novel and we shall leave it to the SbC to decide if their practice committee should look into the enquirer's request to further study.</p>
2.	16 March 2023	<p><u>Enquiry: Housing Legislation & Control</u></p> <p>We have a project (a multi-storey service apartment) which is under construction and right now the contractor is constructing the road works for "Stage Certification 2(h)" - The roads serving the said building.</p> <p>Attached herewith is a sketch diagram showing the roads serving the said building. In our case, there are two types of road serving the said building; the first is the internal</p>	<p>We refer to your query on Housing Legislation & Control. As you are aware, all Architects are required to (be knowledgeable of and) comply with the <i>Lembaga Arkitek Malaysia's</i> General Circular (GC) 2/2017 with regards to Stage Certification under the Housing Development (Control and Licensing) Regulations and our following reply shall be based on the above GC.</p> <p>Q1: Can the SP (C&S Engineer) issue a written confirmation to PSP (Architect) for certifying the completion of Stage 2(h)?</p>

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3.	17 January 2023	I have recently taken vacant possession of an 840sf apartment unit and am preparing the unit for rental. I scheduled the installation of 3 air-cond units for the living area and 2 bedrooms. The air-cond installation personnel discovered that there is no direct electrical power connection and switch within the Living Room area for the air-cond unit in the living room. The 4th schedule of my SPA attached	<p>We refer to your query as submitted on 17-Jan 2023 and would reply as follows –</p> <ol style="list-style-type: none"> 1. Based on our understanding, there is no clear definition of the “air conditioning powerpoint” in the Sales and Purchase Agreement (‘SPA’) (which we presume your property was using either the Agreements contained under Schedule H or J of the Housing Development Regulations)

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		3. The Technical team does not want to meet face-to-face to resolve this issue. Therefore, I intend to write officially to the developer. What other steps should I take as a homeowner?	