

PAM PRACTICE BUREAU

CATEGORY A: ARCHITECT'S PRACTICE [ARCHITECT'S ACT, ARCHITECT'S REGULATION, ARCHITECT'S APPOINTMENT, SOMF, LAM GENERAL CIRCULARS]

No.	DATE	ENQUIRY	RESPONSE FROM TEAM
1.	14 July 2021	<p>We would inquire about the permissible fees charged by your association with respect to work done by an architect.</p> <p>The facts of the case are as follows: Our initial plans were to build a water park.</p> <p>We have appointed an Architect in which the job scope is to ensure that the architect's work complies and for submission with the following authorities:</p> <ul style="list-style-type: none"> • Bomba Department fire safety • Local council requirement • Building by law <p>The mode of payment (to be paid upon completion of each phase)</p> <ol style="list-style-type: none"> 1. schematic design phase (upon BP submission) - 15% 2. design development phase (upon BP approval) - 30% 3. contract documentation phase - 5% 4. contract implementation and management phase (prior application of OP) - 45% 5. final completion phase (upon complication (upon OP issuance) - 5% <p>The water theme park was still under design but not finalized.</p> <p>Later, the management decided not to proceed with the water theme park. As such, construction has never commenced.</p>	<p>We refer to your email dated 14 July 2021, please refer to our reply as follows:</p> <p>First of all, we would like to highlight to you that, in Malaysia, it is mandatory for the appointment of a Professional Architect to fully comply with Architects Act 1967, which consists of the Conditions of Engagement (Architect Rules 1996) and the Architect (Scale of Min. Fees) Rules 2010 ('SOMF').</p> <p>The mode of payment as stated in your email was not fully consistent with that in the SOMF and since there was no complete letter of appointment furnished by you, we shall advise you based on the principles in the SOMF.</p> <p>Note that, with reference to Rule 23(7) in the SOMF, the appointed Professional Architect shall be paid in respect of services rendered under a phase, whether the said phase is fully completed or not.</p> <p>In your case, unless there was any other condition as agreed, i.e.- calculation to determine the scope or cost of works, etc; you should pay the Architect in full upon completion of the BP submission and/or official BP approval. However, if the specific phase was not fully completed, then you should pay the Architect partially for the works rendered for the phase.</p> <p>For the purposes of partial payment, the Architect should prepare his claim based on the work cost calculation method as agreed in the appointment, i.e.- time cost to prepare the BP drawings, printing, transportation, etc.</p> <p>Practically, we strongly advise both parties to be fully guided by the agreed conditions of the appointment, respect the contract, and reach an amicable resolution.</p>

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		<p>We seek advice as to whether there is a need to pay in the full amount of the agreed sum as up to <u>item 2</u> of the above since the architect has never designed the plan by reason that there are specialist designers have been appointed.</p> <p>But the architect needs to ensure the designs are compliant and for submission to the relevant authority.</p>	<p>If you would like to find out more about SOMF and other regulations as stated above, please contact Lembaga Arkitek Malaysia at E: info@lam.gov.my, O: 03 2698 2878, as they are the regulatory body for all Professional Architects in Malaysia, unlike the Pertubuhan Akitek Malaysia (PAM) which is a private institution of architects in Malaysia.</p> <p>For further details on PAM, please click on www.pam.org.my/the-institute/about-us.html.</p>

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No.	DATE	INQUIRY	RESPONSE FROM TEAM
1.	27 June 2021	<p>If an architect, who is part-owner of the developer/contractor company for a particular residential project, signs the final certificate of completion for the project that his company constructed, is that legal?</p>	<p>Thank you for your query. In relation, your email does not stipulate if the said architect is the same one from the start of the project nor if the certificate you refer to is related to completion under the relevant Building Bye-laws or with respect to a Building Contract.</p> <p>Nevertheless, please note the following:</p> <ol style="list-style-type: none"> 1. All architects in Malaysia are required to follow the "Code of Conduct" as contained in the Second Schedule of the "Architects Rules 1996". 2. We refer to the section entitled "Professional Integrity" which is as follows: <ul style="list-style-type: none"> 4. (1) An Architect, while practising his profession, shall not <ul style="list-style-type: none"> (a) carry on or engage in any trade or business which is inconsistent with the fitting and proper discharge of his professional duties; or (b) hold, assume or consciously accept a position in any trade or business in which his interests is in conflict with his professional duty, unless he has declared his interest to his clients in writing. 3. Based on the available information, his action is legal so long as his interest in the developer/contractor company was made known and declared to all parties involved at the outset of the project. 4. We would advise that you check and confirm if the necessary declarations were made. <p>We hope this answers your query adequately.</p>
2.	30 March 2021	<p>Project 2 block of Apartment Block sitting on 2 level car park podiums consist of 261 unit Apartment Phase 1 -143 units Phase 2 — 118 units Common Facilities — Spa Pool, Children Playground, Surau and Dewan</p> <p>Current status: Phase 1 — 143 unit (with all required car parking lots), all Common facilities -- Completed Completed as per Approved Building Plan for Phase 1. Borang FI issued, VP issued</p> <p>Phase 2 — under construction</p> <p>Developer requested Architect to issue Borang F for Phase 1 instead of Borang FI after discussion with Majlis. Majlis agreed to table this matter in their OSC meeting to cancel previous Borang FI.</p> <p>Question 1: Can architect cancel Borang FI issued previously, and re-issued Borang F as agree by Local Authority?</p> <p>Question 2: Referring to KPKT's letter (25)KPKT/0/974/9/A dated 20 Dec 2017, for phases project, PSP is allow to issue Borang F for each phases of completion instead of Borang FI, is this correct? Can PSP issue Borang F for phases project</p>	<p>We refer to your query sent on 30 March 2021:</p> <ol style="list-style-type: none"> 1. With reference to the brief project description and diagram which you have provided, we can only advise based on our assumptions and several key legal provisions. 2. In principal, CCC (Borang F) is issued in reference to an approved Building Plan, once all conditions are set out in the UBBL (refer to UBBL gazetted in project location) as summarised below are satisfied – <ul style="list-style-type: none"> a. Compliance of all technical conditions imposed by the Local Authority; b. Certification of Forms G1 to G21; c. All essential services have been provided, and d. Certification by the Principal Submitting Person ('PSP') that the building has been constructed and completed in accordance with the relevant Act, By-Laws and the approved plans. 3. Meanwhile, Partial CCC (Borang F1) is meant to cater for a building that requires any part/s of the development to be completed ahead of the rest, and that part of the building to be completed must be demarcated clearly in the building plan submitted and approved by the Local Authority. In accordance with By-Law 25 of the UBBL (the clause may vary according to by-laws gazetted in different state), issuance of Partial CCC (Borang F1) shall be subject to any conditions imposed which may be deemed necessary for the reasons of public health and safety, as well as to ensure all essential services. as stipulated, are provided. For additional info, please refer to LAM General Circulate No.2 / 2010, dated 15-Apr 2010) 4. It is prudent for the PSP to first observe the provisions in the UBBL and to ensure issuance of Borang F or Borang F1 is legitimate and in full compliance with the by-laws and approved plans. Issuance of Borang F or F1 shall be subject to the PSP's professional discretion and should not be under the instruction by any other parties, unless there is an official notice by the Local Authority requesting to do so. 5. Under the UBBL, the Local Authority may issue a directive to PSP to withhold the issuance of Borang F or Borang F1, due to any failure or non-compliance to the building which the Local Authority has found. There is no provision in the UBBL for the Local Authority to cancel any certificate which has been officially issued by the PSP. 6. In your case, the PSP should discuss with the Local Authority, to clarify the requirements, and to ensure that all procedures are lawful. Also,

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			<p>be reminded that, issuance of Borang F will have subsequent impact to the execution of Sales and Purchase Agreement under Housing Development (Control and Licensing) Act 1966, and application of strata title under the Strata Title Act. Hence, the PSP should ensure that his/her action will not jeopardize such processes.</p> <p>7. Lastly, KPKT's letter as you have stated in Question 2 was basically KPKT's own interpretation which had resulted in deliberation by various parties; this shall not be regarded as a government directive nor as a piece of legislation. Hence, for issuance of Borang F or Borang F1, the PSP shall strictly adhere to UBBL and official requirement by the Local Authority (if any).</p>
3.	2 March 2021	<p>Absent of An Architect's Clerk-Of-Work We are currently doing a project comprising 26 units of 3-storey terrace house. Currently it is in the beginning of the piling stage. We had a COW that is under our engagement while backcharging to the Client with a factor multiplier. A week ago, the Client decided to stop paying for the COW. Instead, the Client has moved the COW to become their personal site supervisor. Though we have highlighted numerous times regarding the importance of having a COW that is under the architect's engagement: To ensure the independency of the contract administrator and to provide standing supervision for quality control. Yet the Client refused to listen. We plan to write in a letter stating the potential consequences of their decision and we shall not bear the responsibility regarding quality control and the potential conflicts in the contract administration. Is that a good thing to do and do we have other options? Please advise what is the next course of action to take up now. We seek your kind advice.</p>	<p>With reference to your query sent on 2 March 2021, please refer to our reply below –</p> <p>Due to the limited information as you have provided, i.e.- we have no information on the conditions of your appointment with the client, engagement of the clerk-of-work (CoW), the CoW's scope of work, etc.. we can only provide you our feedback based on several key scenarios which you had described in your query.</p> <p>Firstly, in the "Conditions of Engagement of An Architect" as stipulated in the Architects Rules 1996, an Architect shall inspect the works at periodic intervals as required and where more frequent or constant inspection is necessary, the Architect may recommend to the client to employ an Inspector of Works, resident Architect or other personnel, and the cost for such engagement shall be subjected to the agreement between the client and the Architect.</p> <p>Hence, if the CoW in your case was for the purpose as mentioned above, there is no restriction for such personnel to be engaged directly by the client or to be seconded to the Architect. Unless noted otherwise, we shall proceed based on the above assumption.</p> <p>Next, it shall be noted that engagement of such personnel is to assist in carrying out the inspection, recording of site activities, etc. Unless otherwise stated in his condition of engagement, he is expected to carry out his duties ethically and independently. Therefore, the method of engagement for such personnel, either by the client or the Architect, should not have an impact as to the integrity of such personnel in carrying out their duties on site. In fact, it is more important to ensure that the inspections and site records as provided by such personnel are complete, fair and correct, to assist the Architect in supervising the work quality and for contract administrative purposes.</p> <p>For the benefit of the works, it is also recommended for you to advise the client to consider engaging a registered Inspector of Works, as regulated under the Architects Act 1967; this may give assurance in terms of the required qualification, skill and knowledge for such personnel.</p> <p>As we do not understand how the change of employment would have an impact on the quality control, conflict of interest, etc as you have stated, we are not able to advise you on the next course of action.</p> <p>However, we do hope that our feedback will assist you in assessing the matter and to decide on the necessary actions in accordance with your project's requirements and conditions of engagement with the client.</p>
4.	22 February 2021	<p>Just want to know when officially duties of Architect to project and Client, legally and officially end? After obtaining CCC or Final Accounts or Defects Liability period? Can the Practice committee advise?</p>	<p>We refer to your query (practice matter) dated 22 February 2021 and due to lack of information provided, we shall endeavour to assist you and write to note the following:</p> <p>In general, the contract shall end based on the scope of work as described in the letter of appointment that was agreed by both parties.</p> <p>According to Architects (scale of minimum fees) rules 2010, Rule 12, Basic Services under Final Completion Phase, the duties of architect to his client for a project end upon issuance of Final Certificate to the contractor. However, the architect's obligations and liabilities for the project do not end. Issuance of Final Certificate is only conclusive as far as the final value of Works is concerned. It should be subsequently discovered that some of the works executed (or material used) are not in accordance with the Contract, even though</p>

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			<p>the Client has paid the Contractor fully, the Contractor and/or Nominated Sub Contractor can still be held responsible for such non-completion.</p> <p>In addition, on 3 April 2018, the Dewan Rakyat passed the Limitation (Amendment) Bill 2018, amending the Limitation Act 1953 (Act 254) to add Sections 6A, 24A and 29(2). Section 6(1) of the Limitation Act 1953 provides a 6 year time limit to commence an action in tort. The recent amendment of section 6A gives property owners an extension of up to 3 years from the date of finding out about the latent defect to commence an action against the developer.</p> <p>A latent defect is a hidden defect in the material and/or workmanship of an item on the property that may amount to malfunction or failure. However, latent defects are not discoverable through a general inspection, and are therefore sometimes called a hidden defect.</p> <p>The addition of Sections 6A(1) and 6A(2) amends the time limit for a person wishing to commence an action to claim damages for negligence without personal injuries against a developer. This means this provision will apply where the owner discovers damage to property, eg cracks on the walls, ceiling or floor, uneven slant of flooring etc.</p> <p>However, Section 6A(3) provides that no action can be commenced 15 years after the occurrence of the latent defect even if knowledge of the latent defect was obtained during or after the 15 year period.</p> <p>In summary, under Section 6A, a purchaser can commence an action if the following apply:</p> <ul style="list-style-type: none"> · Latent defects are discovered in the property · 15 years from the latent defect have not passed · The purchaser's disability (if any) has ceased within the 15 years (Section 24A). <p>We hope the above answers your query on the duty and responsibility of an architect towards his Client and Project. For additional information on the above, we advise you to check on the letter of appointment that has been agreed by your goodself and the client.</p>
5.	16 February 2021	<p>I was appointed by Turnkey contractor for a project JV with another Architect. Subsequently the Turnkey contractor was terminated. JKR called for open tender and I participated with another contractor. The basic drawings were issued by JKR for tender. Now the new Turnkey contractor has been awarded the project which is about 40% completed by previous Turnkey Contractor.</p> <p>I want to ask the procedure that I should follow if the new Turnkey Contractor is appointing me as the Architect on the same site with the same design.</p> <p>I also want to ask is there any conflict or legal issue if the previous Turnkey Contractor is having dispute with JKR?</p> <p>JKR has previously paid 70% on the architect's fee. Your advice on the legal status of using the same drawings on same site and me being the same submitting person.</p>	<p>Under the Architects Rules, Third Schedule, Conditions of Engagement of Architect Cl.20, copyright in all documents prepared by the Professional Architect, shall remain the property of the Professional Architect, unless otherwise transferred to the Client upon such terms and consideration as may be agreed between the Professional Architect and the Client. As such, ownership of the design and drawings should belong to either you or your previous joint venture unless it is stated to the contrary in your appointment. We would advise that you check the terms and conditions of your first appointment as well as the joint venture agreement. If there are no restrictions in the afore-mentioned items, we believe you can use the design and drawings for Turnkey Contractor 2 (Client 2).</p> <p>You should ensure that your services with Turnkey Contractor 1 have been properly terminated and all conditions and consideration resolved between you and Turnkey Contractor 1 (Client 1).</p> <p>As long as your previous appointment has been properly terminated, we are of the opinion that there should be no conflict of interest. Nevertheless, as stated in Architects Rules, second schedule, code of conduct of architect, an architect shall declare his interest to his client in writing for the significant circumstances known to him that could be construed as creating a conflict of interest.</p> <p>Therefore, we advise you to consider formally by declaring your previous interest in the project to any of the concerned and relevant stakeholders, i.e.; your new Client and JKR to ensure that there are no misunderstandings</p>
6.	15 February 2021	<p>With reference to the above subject, there are a few matters that I require some clarification on.</p> <p>1. The Architect failed to prepare a contract document with reason that the Employer did not request for it, where I thought a contract document is required for any big or small project. When the Employer insisted the Architect to prepare it, he</p>	<p>We refer to your query (Certificate of Practical Completion) dated 15 February 2021 and due to lack of information provided, we have difficulty in fully understanding your query. Nevertheless, we shall endeavour to assist you and write to note the following:</p> <p>1. According to rule 10 of the Architects (Scale of Minimum Fees) Rules 2010, an architect is required to prepare the contract documentation as part of the Basic Services under the Contract</p>

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		<p>then asked the Employer to bear the penalty for stamping. What can the Employer do about this?</p> <p>2. If there was no physical inspection made by the architect for handing over the project, is the CPC considered valid? If no, what can the Employer do about it? If yes, how would the Architect knows and declare the defects?</p> <p>3. If the cost for Defects Rectification is found to exceed the Retention Sum, is the work done up to CPC standards? If not, what can the Employer do about it?</p> <p>4. If an Architect failed to issue the Certificate of Non-Completion with reason that he was not aware that there was delay in the progress and yet issued the CPC, is there anything the Employer can do about this? The Employer was not aware that such certificate is required to claim the LAD, and the Architect also did not brief the Contractor about this. By the time the Employer knows about this, the CPC has already been issued. It is a loss to the Employer as he/she will be unable to claim the LAD as the project completion is delayed for about 5 months.</p> <p>Your kind assistance in these matters is highly appreciated.</p>	<p>Documentation Phase. However, there is no indication as to the services and details of your architect's appointment provided. Therefore, we would suggest your good company to check on the terms of the architect's appointment first before you proceed further. If you, as the employer feel that the architect has not performed in accordance with the terms of his appointment, causing you to suffer a financial loss, you may take legal action against the architect or you may lodge a complaint with Lembaga Arkitek Malaysia (LAM).</p> <p>Kindly note that the LAM is the statutory body empowered to regulate the conduct of all registered architects in Malaysia and they may be contacted at the following: Lembaga Arkitek Malaysia, Tingkat 17, Blok F, Ibu Pejabat JKR, Jalan Sultan Salahuddin, 50582, Kuala Lumpur. T: 03 2698 2878 E: info@lam.gov.my</p> <p>2. Although physical inspections are advised prior to issuing CPC's, there are normally, no specific requirements written into most building contracts. How the architect determines practical completion is his prerogative - he may choose to delegate the inspection to his staff, colleagues or site staff or he may choose to carry out virtual inspections. Unless it can be substantiated that the certificate is erroneous, contractual parties are normally bound to accept the CPC. If the Contractor disagrees with the CPC, he can use the Alternative Dispute Resolution (ADR) procedures which are provided for in the contract to resolve the dispute. If the Employer disagrees with the CPC, they can use arbitration to resolve their dispute with their architect or they may take legal action against the architect.</p> <p>3. We are unsure about the meaning of "CPC standards" that you refer to as there are no details of your building contract provided. If you were using the PAM Standard Forms of Contract, there are either patent or latent defects. According to the PAM Forms of Contract, if there are patent defects, CPC cannot be issued unless the defects are minor in nature and the Contractor has given a written undertaking to rectify them. If there are latent defects, they would not be visible, and the architect and contractual parties would be unaware of them before issuance of CPC. However, it should be expected that the contractor will rectify these defects as part of their contractual obligations as and when they appear during the defects liability period. If the defects are of such severity, that the Employer suffers a financial loss, we would advise you to get an independent assessor or building inspector to assess and verify the cause of the defect. Once the cause of the defect is established, you may consider instituting legal action to recover the costs.</p> <p>Should you be unable to find an independent consultant to undertake such an assessment, you may seek specific and more detailed advice from Architect Centre. Should you wish to contact them, you may contact Puan Raja Selamah via E-mail at rajaselamah@architectcentre.com.my or Mobile: +60173033768.</p> <p>4. According to the PAM Forms of Contract regarding damages for non- completion, it is architect's responsibility to issue a certificate of non-completion to the contractor when the contractor fails to complete the works by the completion date, if in his opinion, the contractor ought to reasonably have completed the works. As per the above item 1, if you are of the opinion that the architect has not performed his duties, you may lodge a complaint with LAM or take legal action.</p> <p>For additional information on the above, you may refer to the PAM Contract 2006 or 2018. Should you decide to take legal action, we would suggest that you engage the services of a lawyer as PAM is unable to provide legal advice.</p>
7.	9 February 2021	<p>I seek your advice as to what action can be taken in respect to a very badly supervised of a high-rise project.</p> <p>We, the buyers are currently taking delivery of vacant possession and discovered many pipe leakages occurrence happening to both concealed and exposed ones. Wonder how this type of finished product would was able to be issued CPC and CCC. I doubt a proper testing and commissioning was done before the unit was handed over to us. Beside the leakage issues, there are many other problems such as alum door and windows,</p>	<p>We refer to your query dated 9 February 2021 and we write to advise the following.</p> <p>1. First of all, under the Housing Development Act 1966, Schedule H, Clause 30, any defect (including at the common property) shall be repaired and made good by the Developer at its own cost and expense within thirty (30) days of the Developer having received written notice. We are of the opinion that purchasers should always look into the issue of defect rectification by firstly, exercising their rights under their Sale & Purchase Agreement (as per the above-mentioned Schedule H).</p> <p>2. If the defect has not been made good by the Developer within 30 days, then you are entitled to carry out the rectification work by yourself and</p>

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		<p>damaged door leaf badly patched & painted, tile hollowness & lippage's, ms railing rusty and badly painted etc.</p> <p>We always have faith to the professional consultants in the construction industry to ensure a proper product is built to the required standard and workmanship, and this is really a surprise to us expecting something like this when we collect our keys, which is supposed to be a moment of cherish.</p>	<p>recover the cost from the Developer provided you have informed the Developer and given them the chance to rectify the defects within 14 days from such notice.</p> <p>3. If you are still not satisfied with the Developer's response/repairs, you may file relevant complaints with the Tribunal for Homebuyer's Claims (Housing Tribunal) as established by the Ministry of Urban Well-being, Housing and Local Government. However, the above Housing Tribunal only has jurisdiction for an individual claim where the total amount does not exceed fifty thousand ringgit.</p> <p>4. Should you still be unsatisfied; you may also take legal action to pursue your grievances. Should you take this route, we would suggest that you first seek legal advice on the matter.</p> <p>5. On the other hand, we also advise you to get an independent assessor or building inspector to assess and verify the issues related to the workmanship or design. Should you be unable to find an independent consultant to undertake such an assessment, you may seek specific and more detailed advice from Architect Centre. Please contact Puan Raja Selamah via E-mail at rajaselamah@architectcentre.com.my or Mobile: +60173033768.</p> <p>For additional information on the above, you may refer to your Sales and Purchase Agreement and "Housing Development (Control and licensing) Act 1966". PAM is unable to provide legal advice and would suggest that you contact the developer for further action.</p>
8.	15 January 2021	<p>"I have been operating as an sole proprietor since March 2017. I have been collaborating with different business partners and they are mostly Part II architects who are bringing jobs in. My enquiry is: To grow the practice further, is it advisable to register a Sdn Bhd with a business partner (who is currently still a Part II architect registered with PAM and LAM, I don't think he is going to get registered as Part III) with a 60/40 shareholding? We have plan to grow the company with more partners (there will be part II and part III architects joining in). What are the areas i need to be aware of in general, to safeguard myself as the only registered architect in the company?"</p>	<p>With reference to your query dated 15 January 2021, please find our response as follows:</p> <p>"The Architects Act 1967 [Act 117] does not prevent your collaboration with other professional Architects or registered persons in other fields. You may collaborate with Architects, Engineers, Interior Designers, Planners etc who are registered overseas as well. Working with other person/s who are not registered by any professional regulating body/bodies does not translate into collaboration. The person/s may also serve your practice as an employee or a person engaged with an employment under contract on a specific project basis. If the person is not a registered person with any professional regulating body, you may be responsible and liable for the whole works delivered by your practice including the works by the unregistered person as your contract employee.</p> <p>As to your query on growing a practice, it does not necessarily mean that the only option is for your practice to be registered as a body corporate (Sdn Bhd). You may want to consider other options more suitable to your intended growth path. There are sole proprietorships and partnerships that undertake big projects as well. The structure of these practices can be established in many ways, and more importantly, the capacity of the practice needs to be set up proportionately to serve the nature and requirements of the projects you have been engaged.</p> <p>If you plan to register your practice as a body corporate (Sdn Bhd); accordingly, as a director of a body corporate, the conduct of the business and the running of the company will need to be governed under the Companies Act as well as comply with Section 7A(3) of the Architects Act and Rules 30A and 30B of Architects Rules 1996, which requires the following:</p> <p>i. Board of Directors - at least two third of its members are Architects. Day to day affair management team / managing director must be registered Architect/s. Decision on Architectural Consultancy Services can only be made by the Directors who are Architects.</p> <p>ii. Shareholding - Minimum paid up capital of RM50,000 and at least 70% of the share to be held by Architects. The remaining 30% can be owned by any other person. Do note that your intended 60/40 option will not comply. To safeguard your practice when partnering with others, please refer to the Architects Rules 1996, Rule 28(1) Code of Conduct for Architects.</p>
9.	4 January 2021	<p>RE: Inquiry on requirement for collaboration between Interior Designers</p> <p>We would like to inquire and seek a written confirmation from your good office, on behalf of our</p>	<p>In response to your query on 4th January 2021, please note the following:</p> <p>1) The Architects Act 1967 and Rules do not limit the collaboration of Architects with other parties, as the Act is to provide for the registration of</p>

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