



*a publication of*

**PAM**

**PERTUBUHAN AKITEK MALAYSIA  
MALAYSIAN INSTITUTE OF ARCHITECTS**

**ENGAGEMENT OF ARCHITECTS  
IN COMPLIANCE WITH  
ARCHITECTS RULES 1996**

# **PAM Practice Notes**

January 2021  
Serial No.: 1-2021

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## **PRACTICE NOTE 1/2021**

### **ENGAGEMENT OF ARCHITECTS IN COMPLIANCE WITH ARCHITECTS RULES 1996**

This practice note is prepared as a reminder to PAM members to always abide by the Architects Act 1967 [Act 117] and Architects Rules made under the Act which requires Architects providing architectural consultancy services to be engaged using Lembaga Arkitek Malaysia (LAM) standard Conditions of Engagement.

It is mandatory under the Act for the appointment of an Architect to be made in accordance with the Third Schedule of the Architects Rules 1996 – Conditions of Engagement of an Architect. No other condition of engagement is allowed to be used without prior permission of LAM. This is to ensure that Architects are properly engaged to deliver an acceptable standard of architectural consultancy services for the safety and health of the public.

This practice note also serves as a reminder to prevent actions which could bring the architectural profession to disrepute and compromises the safety and health of the public due to building failures. It is important to address irregular terms and unhealthy practices imposed by some developers and project owners in their Architects' appointments that is detrimental to the services provided by Architects. Members are advised to inform their clients that they need to obtain approval from LAM before imposing conditions or schedule of fee payments that deviate from LAM standard Conditions of Engagement.

#### **Architect Rules 1996**

*“Conditions of Engagement: Rule 29. (1) Except with the prior approval of the Board given for special reasons, an Architect shall only enter into an agreement for architectural consultancy services according to the Architects (Scale of Minimum Fees) Rules 2010, the Conditions of Engagement in Part One of the Third Schedule and the Memorandum of Agreement in the Part One of the Fourth Schedule.”*

#### **Architect Rules 2010**

*“Rule 27. Payment of fees for Basic Services:*

*(1) The fees payable to the architectural consultancy practice for Basic Services shall be made as follows –*

<i>Upon completion of each phase</i>	<i>Percentage of total fee payable:</i>
<i>- Schematic Design Phase</i>	<i>15%</i>
<i>- Design Development Phase</i>	<i>30%</i>
<i>- Contract Documentation Phase</i>	<i>25%</i>
<i>- Contract Implementation and Management Phase</i>	<i>25%</i>
<i>- Final Completion Phase</i>	<i>5%</i>

*(2) The architectural consultancy practice shall be entitled to monthly payments or at intervals to be mutually agreed upon by the architectural consultancy practice and the client in proportion to the Basic Services rendered so that the total fees paid at the completion of each of the phases of Basic Services rendered shall be equal to the percentage as set out in subrule (1).*

*(3) Notwithstanding subrules (1) and (2), where the architectural consultancy practice is engaged only for the purpose of the Contract Implementation and Management Phase and Final Completion Phase, the architectural consultancy practice's fee shall be increased by 30% of the fee payable for these phases and shall be paid by installments based on the value of works as certified from time to time.”*

PAM members should refer to LAM General Circular No 1/2017 that it is mandatory for architectural consultancy practices to charge their professional fees according to Architects (Scale of Minimum Fees) Rules 2010.

Any deviation from the stipulated Conditions of Engagement and Memorandum of Agreement shall not be accepted without obtaining LAM's approval. Architect's appointment with condition that stipulates 'Payment only after Launch of Project' contravenes Architect Rules 2010, *Rule 27 - Payment of Fees for Basic Services*.

In some housing development, the Architect will be paid only after the down payment from purchasers is collected. The Architect would have completed schematic design and design development phases at this point allowing the client to obtain AP/DL prior to launch. By accepting such conditions, the architect is exposed to the risk of not being paid if the project does not proceed due to unforeseen circumstances.

Architects may agree to monthly or any mutually agreed interval payment as stipulated in Rule 27(2) in proportion to the phases of services. If the payment schedule is not in proportion to the phase of services, members are likely to be exposed to the following risks and consequences:

- i. Fees payment will be spread on monthly interval only after the launch of the sales until the end of Defect Liability Period. Architect may have to bear the overhead cost of the services rendered prior to the launch of the sales;
- ii. At some point, the amount of Architect's fee retained by the client can be as high as 20% of their fees, despite the project has completed the construction works;
- iii. By accepting deferment of fee payment, an Architect has to partially bear the commercial risks of the development. If the project fails, the Architect risks not being paid despite having completed several phases of his services;
- iv. As a Principal Submitting Person (PSP), the Architect bears perpetual professional liability and financial risk of the project after submitting the plan to the Local Authority regardless if the client pays the Architect's fee or not.

## **Conclusion**

In conclusion, Architects should carefully consider the terms of their appointment to avoid placing their practices in grave financial risks and to avoid situations which could potentially put them in the situation where they are unable to perform their professional duties and fulfill their obligations as Architects.

We wish to receive feedbacks from members in relation to the challenges faced by members due to unfair terms of appointment for architectural consultancy services. You may contact PAM Professional Fees Working Group at [fees@pam.org.my](mailto:fees@pam.org.my) for us to follow up and act upon it in our efforts to improve the quality of our profession and services to the industry.