

PAM/SA/01/03-3
19 March 2020

Dear PAM Members,

ADVISORY NOTE: ARCHITECTS' OBLIGATIONS IN RESPONSE TO THE MOVEMENT CONTROL ORDER FROM 18 MARCH 2020 TO 31 MARCH 2020

In response to further enquiries from PAM members and after consultation with PAM Council, Pertubuhan Akitek Malaysia (PAM) wishes to advise our members on their statutory and contractual duties in relation to the Movement Control Order issued by the Malaysian Government on 16 March 2020 and the subsequent Statement issued by National Security Council on 18 March 2020.

For construction and renovation works listed in the National Security Council's Statement dated 18 March 2020 under Appendix B – Non-essential services: Infra-structure works in progress affecting safety and security, these works may proceed subject to assessment by JKR and DOSH. PAM members involved in projects under this category are advised to obtain written consent from both departments before resuming works.

Statutory Duties of the PSP

As the Principal Submitting Person (PSP), our members are advised to formally notify the Client, Contractor and all Consultants to adhere to the Movement Control Order that takes effect from 18 March 2020 to 31 March 2020; and to remind the Contractor to take necessary action to always ensure the good order of the works, security and safety at site.

Notices issued by the respective local authority must also be strictly adhered by the PSP and the Contractor. If a notice or instruction for temporary suspension of works is issued by the PSP to the Contractor, a copy of the same is required to be sent to the local authority.

For on-site, workers' accommodation, the PSP is advised to remind the Contractor to implement sufficient control on his workers in accordance with the Movement Control Order. Contractors should be reminded to keep workers accommodation clean and hygienic as well according to guidelines of DOSH.

Contractual Duties of the Architect under PAM 2006 and PAM 2018 Contract

As the Laws of Malaysia take precedence over any contractual obligations under the PAM Form of Contract, the Contractor is obliged to comply with the Movement Control Order and to temporarily suspend the construction works at site for the above duration (unless otherwise instructed by the Authorities). The Architect is advised to remind the Contractor in writing, of these obligations.

The Architect though, is also reminded that he is entitled under Clause 3.5, to instruct the Contractor to revise the Works Programme to cater for this temporary suspension and that the Contractor, when revising his Works Programme, is obliged to use his best endeavors to reduce any delay (Clause 23.6).

Should any Contractor be of the opinion that his progress of works has been affected and delayed by the temporary suspension, he is at liberty, under the terms of the Contract, to submit his claims for an Extension of Time and/or for any loss and additional expense arising. The Architect's main responsibility is to ensure that these claims are submitted wholly in accordance with the terms of the Contract and assessed fairly. Any Architect unsure of the relevant terms and Conditions of the Contract, is hereby advised to check and familiarize themselves with these terms.

Should the Works be truly delayed, the Architect should also ensure that all necessary insurance coverage (i.e.; under Clauses 19 and 20) and Performance Bonds are extended accordingly.

If any valuations or issuance of Interim Certificates are scheduled within the prescribed period, the Architect is advised to contact and agree on an alternative schedule with the Contractor, Employer and relevant Consultants to minimise any disagreements, further delays or disruptions to the Contractor's cash flow.

Professional Duty of an Architect.

The purpose of the Movement Control Order is to prevent the spread of infection by minimising human contact and the above advice relates to an Architect's obligations as a PSP and Contract Administrator during the prescribed period.

Nevertheless, an Architect is also obliged to ensure that the aims of the Movement Control Order are maintained even after the prescribed period. It is hoped that our Members will use their professional judgement as the *Lead Consultant* to assess if any further measures such as health or temperature screening of all parties entering the work site or the cleaning and disinfection of the site, are required.

For any enquiries, you may contact PAM Secretariat at info@pam.org.my.

Thank you.

Yours sincerely,



Ar S.Thirilogachandran
Honorary Secretary,
PERTUBUHAN AKITEK MALAYSIA