

**PAM PRACTICE BUREAU**

**CATEGORY D: Housing Legislation & Control (HDA, Strata Titles Act & Strata Management Act, LAM GC No. 2/2017)**

No.	DATE	INQUIRY	RESPONSE FROM TEAM
1.	29 June 2021	<p>HDA Stage Completion</p> <p>I am sending a query regarding Schedule H Stage completion 2(c) that had confused me over the timber frame with no subframe vs metal frame with no subframe. As refer to Schedule H Supplementary Notes item 7 stipulated that “architect shall ensure the opening are properly formed to received metal frame before this is certified”.</p> <p>As my involved project’s non-structural wall are constructed with RC Wall and the door and window frame are alum/metal with no sub frame required. Based on my understanding if there has no any damage to the opening, upon the non-structural wall completed, the metal frame not need to install for stage 2 (c) certification.</p> <p>However there has come to an argument that, if metal frame with no subframe, the metal frame shall be installed in order to certify stage 2 (c) which I doubt that it only applies to “timber frame with no sub-frame” but not “metal frame with no sub-frame” where installing metal frame to opening has no damage to the non-structural wall I guess?</p>	<p>We refer to your e-mail dated 29 June 2021 with regards to the Housing Development Act, Stage of Completion.</p> <p>With regards to Lembaga Arkitek Malaysia General Circular 2/2017, Guidelines on the Third Schedule for Stage Certification 2(c) - The walls of the said Parcel with door and window frames placed in position, Schedule H, there is a column which states the 'Description of Construction Work That Need Not be Completed For Certification'.</p> <p>Under 2 (C), this work includes - Metal Frames, Installation of door leaves, window (fixed or operable) or louvres.</p> <p>Under item 7. of the Supplementary Notes to the said guidelines, it is also stated that 'the Architect shall ensure that the openings are properly formed to receive the metal frames and completed with lintols (where applicable) before this is certified'.</p> <p>As such, we are of the opinion that metal (i.e.; aluminium) outer frames are <u>not</u> required to be in place for certification of the relevant stage.</p> <p>We hope the above reply to your query is satisfactory.</p>
2.	24 May 2021	<p>In relation to LAM GC 2/2017, Guidelines on the Third Schedule for Stage Certification 2(c) - The walls of the said Parcel with door and window frames placed in position.</p> <p>I write in to enquire and seek advice from PAM on the walls for RC shear wall:</p> <p>1. For aluminium windows that are not providing subframes, are the outer frames required to be in place for certification?</p> <p><b>Arguments 01</b> - As the description for works must be completed include 'timber door and window frame' where understandings by reading through the lines are for timber door and <b>TIMBER</b> window where there are no subframes. Or whether it is read as a whole of timber door and (any materials of) window frames which there are no subframes.</p> <p><b>Arguments 02</b> - The main purpose for the door and window frames to be placed in position is to ensure the openings are properly formed to receive the frames. However, for RC walls, aluminium formwork had been formed to ensure the frames are able to be received. Hence does this still required for aluminium sub-frame / outer frame to be in place for certification?</p>	<p>We refer to your e-mail dated 24 May 2021 and thank you for your enquiry.</p> <p>With regards to LAM GC 2/2017, Guidelines on the Third Schedule for Stage Certification 2(c) - The walls of the said Parcel with door and window frames placed in position, Schedule G, there is a column which states the 'Description of Construction Work That Need Not be Completed For Certification'.</p> <p>Under 2 (C), this work includes] - Metal Frames, Installation of door leaves, window (fixed or operable) or louvres.</p> <p>As such, metal (i.e.; aluminium) outer frames are not required to be in place for certification of the relevant stage.</p>
3.	1 March 2021	<p><b>Progressive Billing for HDA Cases - Schedule H</b></p> <p>I am a purchaser for a unit in Atwater Serviced Apartment.</p> <p>I have just received a claim for Stage 2(h) - completion of the roads serving the said Building. However, the other claims under Stages 2(b) to 2(g) have not been certified and completed. I am aware under the Schedule H agreement; such a claim is allowable.</p> <p>I have called and spoken to Mr Ng Cho You from Ong &amp; Ong. He is the architect who issued this certificate. He has informed me that the concrete base (I believe that was what was said) has been done but the bitumen has not been laid and applied. His reason is that if the bitumen is laid and applied, it can be damaged as work is still ongoing at the site. He has said that with that level of work completed on the road, it can be certified as completed and claimed by the developer.</p> <p>I write to seek your guidance as to whether this is correct as the claims are meant for the road serving the said Building and I am of the opinion that the Architect is</p>	<p>Referring to your query dated 1 March 2021, we note that as you have described it, the said development is regulated under the Housing Development Act and therefore the Third Schedule of the Standard Sales and Purchase Agreement shall follow the Housing Development (Control and Licensing) (Amendment) Regulations 2015.</p> <p>We wish to refer you to the description for Stage 2(h) as detailed in the General Circular 2/2017 by the Board of Architects Malaysia.</p> <p>[Link to file : <a href="https://lam.gov.my/index.php/circulars/circular-for-architects/finish/8-architects/5608-no-2-2017-guidelines-on-the-third-schedule-of-the-standard-sale-and-purchase-agreement-for-land-and-building.html">https://lam.gov.my/index.php/circulars/circular-for-architects/finish/8-architects/5608-no-2-2017-guidelines-on-the-third-schedule-of-the-standard-sale-and-purchase-agreement-for-land-and-building.html</a> ]</p>

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		<p>wrong in certifying it. The reason for my views are as follows:</p> <ol style="list-style-type: none"> <li>1. as the architect himself has said, the construction of the road is not fully completed.</li> <li>2. his reason for not laying and applying the bitumen is not a decision for him to make. As a professional and independent party that we purchasers rely on, he must ensure full compliance of the requirement and act professionally. His judgement is wrong because while the Schedule H Agreement clearly said that the developer need not claim in accordance with the sequence of the stages in the Third Schedule, it also said that if such claims were made and if it is thereafter damaged, the developer will have to bear the cost of the repair. In short, the Agreement intended that if the road is indeed constructed, it must be layered with the bitumen etc to make it a complete road.</li> </ol>	<table border="1" data-bbox="1161 255 1934 958"> <thead> <tr> <th data-bbox="1161 255 1409 335">Schedule of Payment of Purchase Price under the Third Schedule of the S &amp; P Agreement</th> <th data-bbox="1409 255 1656 335">Description of Construction Work That Must Be Completed For Certification</th> <th data-bbox="1656 255 1934 335">Description of Construction Work That Need Not be Completed For Certification</th> </tr> </thead> <tbody> <tr> <td data-bbox="1161 335 1409 958"> <p>2(h) The roads serving the said Building</p> <p>(2.5%)</p> </td> <td data-bbox="1409 335 1656 958"> <ul style="list-style-type: none"> <li>* Paved road (i.e. Premix and/ or Concrete imprint and/or pavers and/or any road with any other finishes as specified in the approved plans) leading to the Building containing the said Parcel from an existing road. The alignment of the road may be a permanent or temporary access approved by the local authority.</li> <li>* Permanent roads (i.e. Premix and/ or Concrete imprint and/or pavers and/or any road with any other finishes as specified in the approved plans) around the Building containing the said Parcel</li> <li>* Entrance culverts serving the Building</li> <li>* Kerbs (if any)</li> </ul> </td> <td data-bbox="1656 335 1934 958"> <ul style="list-style-type: none"> <li>* Footpaths and roadside tables</li> <li>* Final wearing course to pre-mixed roads or final varnishing for the finishes to any other type of paved roads where applicable</li> <li>* Road markings and signage</li> </ul> </td> </tr> </tbody> </table> <p>As your email did not describe the full details of the completion of the said road, we advise that the following details should be confirmed with the architect:</p> <ol style="list-style-type: none"> <li>1. The state of completion of the road leading to the building as approved by the local authority and the specified finish material;</li> <li>2. The state of completion of the permanent road around the building in the approved plans and the specified finish material;</li> <li>3. That the entrance culverts and kerbs have been completed;</li> <li>4. That the finish material has been applied, save the final wearing course (for premixed bitumen roads) or the final varnish for concrete imprint roads (where applicable)</li> <li>5. To confirm that completion of the road works had been endorsed by the Engineer based on the Road &amp; Drainage approved plan.</li> </ol> <p>We hope this would be of assistance in determining your next course of action.</p>			Schedule of Payment of Purchase Price under the Third Schedule of the S & P Agreement	Description of Construction Work That Must Be Completed For Certification	Description of Construction Work That Need Not be Completed For Certification	<p>2(h) The roads serving the said Building</p> <p>(2.5%)</p>	<ul style="list-style-type: none"> <li>* Paved road (i.e. Premix and/ or Concrete imprint and/or pavers and/or any road with any other finishes as specified in the approved plans) leading to the Building containing the said Parcel from an existing road. The alignment of the road may be a permanent or temporary access approved by the local authority.</li> <li>* Permanent roads (i.e. Premix and/ or Concrete imprint and/or pavers and/or any road with any other finishes as specified in the approved plans) around the Building containing the said Parcel</li> <li>* Entrance culverts serving the Building</li> <li>* Kerbs (if any)</li> </ul>	<ul style="list-style-type: none"> <li>* Footpaths and roadside tables</li> <li>* Final wearing course to pre-mixed roads or final varnishing for the finishes to any other type of paved roads where applicable</li> <li>* Road markings and signage</li> </ul>
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4.	8 February 2021	<p>We wish to inquire the appropriate/ recommended course of actions given the following circumstance:</p> <p>Our architectural consultancy practice completed a residential development with CCC in 2016, after which in September 2020, we were informed in writing that the developer is in the process of voluntary winding-up due to insolvency and hence, the company has been taken over by an appointed liquidator.</p> <p>Subsequently in 2020, the liquidator has requested from us a list of documents required for their onward liquidation administration, among which includes the KPKT's Lampiran A1 (Pengesahan Arkitek Mengenai Pemajuan Perumahan telah Siap) for the purpose of withdrawal of all monies from the HDA account.</p> <p>Nevertheless, we have previously been informed by the Joint Management Body (JMB) of the said development on September 2019 that the developer has failed / refused to make good all defects as submitted to them, and the JMB would appoint a third-party contractor to carry out the said defects rectification works.</p> <p>As such, our queries regarding the above situation shall be as follows:</p> <ol style="list-style-type: none"> <li>1. Given the situation whereby the developer (principal) which our service was appointed under has wound up, is the architect (being an agent appointed by the principal) still obliged to issue the KPKT's Lampiran A1 (Pengesahan Arkitek Mengenai Pemajuan Perumahan telah Siap) for the withdrawal of monies from the HDA account by the liquidator?</li> <li>2. In the event the architect is still required to issue the KPKT's Lampiran A1 (Pengesahan Arkitek Mengenai Pemajuan Perumahan telah Siap), are we required to</li> </ol>	<p>We refer to your query as received on the 8 February 2021 and write to note the following:</p> <ol style="list-style-type: none"> <li>1. As you mentioned, the appointed liquidator has taken over the original development company. As such, the appointed liquidator must also assume all the obligations and liabilities that the original developer has yet to fulfil to the purchasers of the project. If your appointment as Architect for the project has yet to be terminated by either your original Client or the liquidator, it is our opinion that your responsibilities such as the issuance of the relevant <i>Surat Pengesahan</i> to the Jabatan Perumahan Negara/KPKT still remain.</li> <li>2. You already have notification by the JMB that defects rectification works, and the developer's obligations have yet to be fulfilled and we agree that it would be prudent for you to write to the JMB for written confirmation as to whether the developer has still yet to undertake the outstanding defects rectification and any other obligations owed to the purchasers or JMB. Until receipt of the above written confirmation, we also agree that it may not be prudent to issue the KPKT Lampiran A1 for the withdrawal of monies from the HDA account.</li> </ol>								

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		<p>obtain the written confirmation from the JMB pertaining to the status of the defects rectification works and whether all of the developer's obligations have been fulfilled (as stipulated in the KPKT's Lampiran A1), given the JMB had prior notified us previously to withhold the issuance of any certificates of such since the developer has failed / refused to make good all defects as submitted to them ?</p>	
5.	4 February 2021	<p>The developer refused to engage Clerk-Of-Work to park under project architect, and instead engaged him themselves directly. What should the architect do?</p>	<p>We refer to your query as received on the 4 February 2021 and write to note the following:</p> <ol style="list-style-type: none"> <li>1. It is common practice that Clerks of Works are employed directly (either on a <i>contract</i> or <i>permanent</i> basis) by the Employer.</li> <li>2. For some of the standard forms of building contract such as the PAM 2006 or 2018 Form of Contract, there are specific provisions for the employment of such "Site Staff" by an Employer <u>subject to them working under the direction of the Architect, i.e.; the Clerk of Works shall be expected to report to and take instructions from the Architect.</u> Under the above PAM Form, please also note that any directions given by such Site Staff to the contractor shall have no effect unless they have been so authorized in writing by the Architect.</li> </ol> <p>The above system of reporting and issuing directions is to ensure that there are no contradictory instructions given by other parties <i>whom are not empowered to administer the contract.</i></p> <ol style="list-style-type: none"> <li>3. In response to your query and subject to the form of contract employed, we would advise the Architect to remind the Employer of the above conditions under which a Clerk of Works is expected to carry out his duties.</li> </ol>
6.	8 January 2021	<p>Our company is writing in reference to the subject above which we would like to inquire.</p> <p>Further to the attached "Guidelines on the Third Schedule [Clause 4(1)] of the Standard Sale and Purchase Agreement For Land and Building (SCHEDULE G) and Sub-divided Building (SCHEDULE H)" of the following item with the description of construction work that must be/need not completed for certification:</p> <p><b><i>SCHEDULE G: 2(c) The walls of the said Building with door and window frames placed in position</i></b></p> <p><b><i>SCHEDULE H: 2(c) The walls of the said Parcel with door and window frames placed in position</i></b></p> <p>and the statement of below:</p> <p><b><i>For stage 2(c), the Architect shall ensure that the openings are properly formed to receive the metal frames and completed with lintols (where applicable) before this is certified.</i></b></p> <p>Scenario:</p> <ol style="list-style-type: none"> <li>a. 2-Storey Landed Terrace - Using aluminium system formwork with aluminium door and window frame without sub-frames.</li> <li>b. 30-Storey Serviced Apartment - Using aluminium system formwork with aluminium door and window frame without sub-frames.</li> </ol> <p>Given the above two scenario, we hope that you could answer our question below:</p> <ol style="list-style-type: none"> <li>1. Definition of metal frame.</li> <li>2. Could Architect certified the Stage 2(c) upon completion of all non-structural walls, all party walls inclusive of wall stiffeners, with no aluminium window</li> </ol>	<p>We refer to your email query on 8 Jan 2021 on the above.</p> <p>Please note our response as follows:</p> <ol style="list-style-type: none"> <li>1) The guideline from LAM you rightfully referred to and attached in your email is the predominant and current guideline for stage certification. Rightfully, the guidelines and party who will be responsible to mitigate the circumstances of the certificate will be LAM. Our response here is to represent PAM's view on the matter and we hope this will help in your decision making. It would be prudent for you to seek clarification with LAM for a consistent view.</li> <li>2) Definition of metal frames: The definition for the material deemed as metal would generally be referred to any material which is malleable, fusible and hard. For the purposes of definition used in the construction practice, this would generally mean steel, aluminium, iron and so forth which is used to manufacture these frames. The frames referred in the LAM guidelines are the frames attached to the walls which will define the edge of the opening, which will then be attached to another element, be it a window panel (fixed or operable) or a door panel or any other item.</li> <li>3) LAM guideline clearly spells out that metal frames need not be completed for stage 2(c) certification. This has been amplified again in the supplementary notes which highlighted that opening <b>are to be properly formed</b> to receive these metal frames before certification of this stage. The underlying principle is that, if the walls can be completely erected and the subsequent frames can be installed without destruction to the certified walls with the opening intact, then said frames need not be installed for certification. However, if the construction details of metal subframes are those which are embedded/ keyed into walls via fishtail attachment or V shaped wires, these will need to be completed with the wall as a seamless process to complete the opening.</li> <li>4) The same interpretation of the guideline applies to both Schedule G and Schedule H certification.</li> </ol> <p>We hope that this clarifies your query.</p>

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