

PSP

Principal Submitting Person

IMMUNITY TO LIABILITY
Statutory Duties & Responsibilities of PSP (Architects) under Housing Development Act 1966
Uniform Building By-Laws 1984
Housing Development (Control and Licensing) Act 1966(Act 118) & Regulations 1989
Architects Act
Town and Country Planning Act 1976 (Act 172) & Order Street, Drainage and Building Act 1974 (Act 133) Strata Titles Act 1985 (Act 318), Rules & Order Laws of Malaysia Act 757
By : Ar. Patrick S.K. Ho




IMMUNITY TO LIABILITY

Statutory Duties & Responsibilities of PSP (Architects)
under Housing Development Act 1966

By : Ar. Patrick S.K. Ho



Duties & Responsibilities (Statutory)

1. Professional Codes/Duty
 2. Governing Housing Laws
 3. Professional Ethics Laws VS Ethics
 4. Practice Probity – Expert Witness, Litigation & Disciplinary Actions (LAM)
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ARCHITECTS ACT 117
ARCHITECTS RULES
ARCHITECTS
(SCALE OF MINIMUM
FEES)
RULES



ARCHITECT RULES

SECOND SCHEDULE

[Rule 28]

PART ONE

CODE OF PROFESSIONAL CONDUCT FOR PROFESSIONAL
ARCHITECTS

[Subrule 28(1)]



ARCHITECT ACT & RULE ACT 117

[2nd Schedule/Rule 28 Part One]

FAITHFUL DISCHARGE OF DUTIES

3).(2) Misrepresentation, Fraud, deceit

(3) Impartial

5).(a) All forms of certification

(b) Contract Administration

(c) Site Supervision

(d) Compliance of Statutory requirements

PROFESSIONAL INTEGRITY

4).(5) Misleading, Deceptive, False

Statements

(16) Significant circumstances, Conflict

of interest, Compromise interest,

Impartial Judgement

UBBL

General Circular No.4/2017

1) UBBL : Form A,B,C,D & E

Clause 22,23,24,25,25a,26 & 27

2) UBBL- Supervision

Clause: 5

Clause 258 – Failure in buildings

(a),(b),(c),(d) &(e)

Faithful discharge of duties and obligations.

3. (2) A professional Architect shall ensure that his employees are competent and adequately supervised to perform the task to the standard normally expected and accepted by the profession, **and shall not by misrepresentation, fraud or deceit undermine the confidence of persons dealing with the Professional Architect or his employees.**

(3) A Professional Architect shall administer the building contract competently and responsibly and shall be impartial in any dispute that may arise between the client and the building contractor.

(5) A Professional Architect shall exercise a reasonable standard of skill and diligence normally expected and accepted by his profession in respect of but not limited to the following :

(a) all forms of certification;

(b) contract administration;

(c) site supervision; and

(d) compliance of statutory requirements.

Professional Integrity.

4. (5) A Professional Architect shall not make **misleading, deceptive or false statements** or claims about his professional qualifications, experience or performance and shall accurately state the scope and nature of his responsibilities in connection with work for which he is claiming credit.

(16) A Professional Architect shall not fail to disclose to his clients, owners or contractors significant circumstances known to him that could be constructed as creating a **conflict of interest** and shall ensure that such conflict does not compromise legitimate interests of such persons or interfere with the Professional Architect's duty to render impartial judgement of contract performance by others.

LAM GENERAL CIRCULAR

1) No. 1/2002 –
ARCHITECT'S
CERTIFICATION UNDER
THE STANDARD SALE
AND PURCHASE
AGREEMENT

2) No. 1/2008 –
CERTIFICATE OF
COMPLETION AND
COMPLIANCE (CCC)

3) No. 4/2017 – FAILURE
OF BUILDINGS

4) No. 2/2017 –
GUIDELINE ON THE
THIRD SCHEDULE

LEMBAGA ARKITEK MALAYSIA

Tingkat 17, Ibu Pejabat JKR
Jalan Sultan Salahuddin, 50582 Kuala Lumpur
Peti Surat 12695, 50786 Kuala Lumpur

GENERAL CIRCULAR NO. 1/2002

ARCHITECT'S CERTIFICATION UNDER THE STANDARD SALE AND PURCHASE AGREEMENTS

1. The Board finds it necessary to issue this General Circular which follows on General Circular No. 1/2001.
2. This is because even within the first month of the new year, the Board has received information that is of extremely serious concern to the profession. The information relates to the incorrect or apparently fraudulent certification by Architects that will have far-reaching consequences on innocent purchasers of housing units of various types.
3. The Board has already incurred much time and effort in dealing with complaints and disposing of them within the provisions of the Architects Act 1967. This has resulted in the imposition of the maximum penalty of RM5,000 with or without reprimand for those found guilty of improper certification.
4. However, as the serious damage suffered by the innocent purchasers far exceed the penalty imposed on the Architects concerned, the Board has decided that the monetary penalty is inappropriate. **Henceforth, as provided in the Act, the Board will not hesitate to impose a suspension or remove the names from the register of all Architects found guilty of improper or fraudulent certification.** The Board has no choice but to impose such hard measures because past reminders and similar exhortations have not had the desired effect. In adopting this policy, the Board recognises that it will still not be the solution to the shortcomings in the housing delivery system. But at least, the offending Architect will no longer continue to be a hazard to the innocent public.
5. As a reminder, the unacceptable practices most commonly encountered include :-
 - (a) **Premature certification** – including providing undated signed certificates to developers and before proper application has been made for the Certificate of Fitness for Occupation (CFO) together with all prior clearances from subsidiary approving authorities.
 - (b) **Inaccurate certification** – when aspects of work still remain incomplete.
 - (c) **Delegating a part of the Architect's duty** to others (especially to the developer or his nominees) in satisfying himself that the work has been completed in accordance with the Sale and Purchase Agreement notwithstanding that this may have been authorised in writing.
6. The Board hopes that all Architects will take this reminder seriously to avoid causing damage to the reputation and credibility of the architectural profession as a whole.

Thank you.



(NOORISAH ABD. SHUKOR)
President

15 February 2002

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GENERAL CIRCULAR NO. 1/2008

CERTIFICATE OF COMPLETION AND COMPLIANCE

1. In April 2007 the Government had launched the improvement to the building delivery system to enhance the competitiveness of Malaysia globally. This includes the issuance of the Certificate of Completion and Compliance (CCC) by Professional Architects and Professional Engineers as well as Building Draughtsmen registered with the Board of Architects Malaysia (LAM) to replace the Certificate of Fitness for Occupation (CFO) issued by the local authorities. This new system is an effort towards self-certification and self-regulation approach in the construction industry.
2. LAM had organised a series of seminars on 26 September 2005, 19 December 2006 and the latest on 25 August 2007 to keep members informed of this new development.
3. The salient features of this new system under CCC are as follows:
 - (i) Building plans are still required to be submitted to and approved by the local authorities;
 - (ii) CFO by the local authorities will be replaced by the Certificate of Completion and Compliance (CCC) by the Principal Submitting Person (PSP) who is the Professional Architect, Professional Engineer and Building Draughtsman who submitted the building plans;
 - (iii) CCC can only be issued by the Principal Submitting Person (PSP) after the following have been secured:
 - all the certifications by the respective parties (professionals, contractors and licensed tradesmen) based on the prescribed 'Form Gs' under the Matrix of Responsibility (Forms G1 – G21); and
 - clearances from the following authorities :
 - o Tenaga Nasional Berhad (TNB)
 - o Water Authority
 - o Sewerage Services Department (JPP)
 - o Fire and Rescue Department (except for residential buildings of not more than 18 meters high)
 - o Department of Safety and Health (where applicable),
 - o Relevant authorities/Public Works on Roads and Drainage.

- (iv) The local authorities still maintain their rights and power to enter the site during construction and issue an order to stop the issuance of CCC by the PSP if the construction on site is found to have breached the approved building plans and/or against the provision of UBBL or conditions of building plans approval on health and safety issues until such time the fault is corrected.
- (v) The issuance of CCC is restricted to only technical issues concerning health, safety and essential services. The non-technical issues such as bumiputra quota, low cost provision and contribution for public facilities etc are outside the purview of PSP and will have to be resolved between the Owner and the Local Authorities at the planning and building plans approval stage or via other mechanism.
- (vi) There will be only CCC (Form F) and Partial CCC (Form F1). There will not be any Temporary CCC similar to Temporary CF.
- (vii) The issuance of CCC will only apply to projects in which building plans are submitted after CCC came into force.

4. The following are the 21 FORM Gs included in the UBBL covering various scopes of works: -

- FORM G 1 Stage Certification : Earthworks
- FORM G 2 Stage Certification : Setting Out
- FORM G 3 Stage Certification : Foundations
- FORM G 4 Stage Certification : Structural
- FORM G 5 Stage Certification : Internal Water Plumbing
- FORM G 6 Stage Certification : Internal Sanitary Plumbing
- FORM G 7 Stage Certification : Internal Electrical
- FORM G 8 Stage Certification : Fire-Fighting (Passive)
- FORM G 9 Stage Certification : Fire-Fighting (Active)
- FORM G 10 Stage Certification : Mechanical Ventilation
- FORM G 11 Stage Certification : Lift/Escalator Installation
- FORM G 12 Stage Certification : Building
- FORM G 13 Stage Certification : External Water Supply System
- FORM G 14 Stage Certification : Sewerage Reticulation
- FORM G 15 Stage Certification : Sewerage Treatment Plant
- FORM G 16 Stage Certification : External Electrical Supply System
- FORM G 17 Stage Certification : Road and Drain
- FORM G 18 Stage Certification : Street Lighting
- FORM G 19 Stage Certification : External Main Drain
- FORM G 20 Stage Certification : Telecommunication
- FORM G 21 Stage Certification : Landscape

The G Forms can be downloaded from the following website:

- www.lam.gov.my
- www.pam.org.my

5. To facilitate initial implementation of CCC, it has been agreed with the Ministry of Housing and Local Government that PSP shall notify the local authority through OSC (in writing or using prescribed forms) after the Forms G1-G3 are certified (ie, after completion of earthwork, setting up and foundations)

- 6. In the issuance of CCC, all Professional Architects and Building Draughtsmen registered with LAM are required to use the **FORM F** (Certificate of Completion and Compliance) and **FORM F1** (Partial Certificate of Completion and Compliance) printed by LAM. Each Form F or F1 to be issued shall be in 4 copies as follows:
 - (i) Original copy to be addressed to the House Owner in respect of a singly built detached house or to be addressed to the Developer in respect of other buildings;
 - (ii) Second copy to be retained by the Principal Submitting Person;
 - (iii) Third copy to be sent to the relevant local authority;
 - (iv) Fourth copy to be sent to the Board of Architects Malaysia (LAM).
- 7. The Forms F and F1 referred to above can be purchased from LAM's office at a cost of RM 5.00 per set excluding cost of postage.
- 8. The success of CCC will depend largely on the professionalism and integrity of Professional Architects. As such, members shall be reminded on the trust and confidence which have been placed on the professionals and we should ensure our professionalism and integrity are upheld at all time.
- 9. **Fraudulant and wrongful issuance of CCC is a very serious offence and there is no reason for any professional to succumb to pressure by any party to flaunt the independent certifying role that has been entrusted to the profession.** The members must carry out their duties with due care and diligence and together with the other parties including fellow professionals and the registered contractors ensure that CCC works for the good of all.

By Order of the Board of Architects Malaysia,


 (ZURAINA LEILY AWALLUDIN)
 Registrar

21 January 2008



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GENERAL CIRCULAR NO.4/2017

UNIFORM BUILDING BY-LAWS 1984 : BY **LAW 258** - FAILURE OF BUILDINGS

This General Circular is issued to inform all registered members on the requirements and responsibilities of the principal submitting person (PSP) or submitting person (SP) under by-law 258 (1) of the Uniform Building By-laws 1984.

1. WHEN A REPORT MUST BE SUBMITTED UNDER BY- LAW 258(1)

Section (1) of by-law 258 stipulates:

*In the event of any failure to any building or part of the building, whether **in the course of construction or after completion**, the principal submitting person or submitting person shall within one week of the occurrence of such failure or such further period as may be specified by the local authority within whose jurisdiction such building is situated:*

- (aa) report such failure;
- (bb) explain the cause of failure; and
- (cc) if such failure occurred during the construction of such building, state the remedial action taken.

"Failure to building" is a very broad term and may cover even minor defects from non-structural cracks and poor workmanship. The PSP is only required to submit a report to the local authority where there is **failure that affects "safety and health" aspects** of the building. It should not cover the following types of building failure:

- a) Defects that are due to poor workmanship that could be remedied by the Contractor
- b) Defective materials that could be addressed by the Contractor
- c) Failures during the construction process for which the Contractor has contractual obligations which do not affect safety and health
- d) Minor failures for which the Contractor is answerable to respective licensing and approving authorities or utility providers which do not affect safety and health

2. HOW THE REPORT IS TO BE SUBMITTED UNDER BY-LAW 258(2)

Reports submitted should be comprehensive and cover all requirements listed under section (1) of by-law 258:

- (a) Report such failure with plans and photographs of the failure
- (b) Explain the cause of failure; and
- (c) If such failure occurred during the construction of such building, state the remedial action taken.

3. REPORT REQUIRED UNDER UBBL **BY-LAW 258 (3)**

Where the **local authority has reason to believe that a failure to any building or part of a building has occurred** which failure has not been reported to such local authority it shall serve a notice on the qualified person who-

- (a) submitted the plans, drawings or calculations for such building;
- (b) supervised the setting out of such building;
- (c) certified that the setting out was carried out in accordance with the approved site plan;
- (d) supervised the construction of such building;
- (e) certified that proper supervision of such building was carried out;

requiring him within one week of such service to-

- (aa) state whether such failure occurred.
- (bb) explain why he failed to report such failure;
- (cc) if such failure occurred during the construction of such building, state the remedial action taken.

The PSP should submit a comprehensive building failure report as required under by-law 258(3) with supporting relevant documents from the respective registered supporting professionals.

By the Order of the Board of Architects Malaysia,

Ar. YONG RAZIDAH RASHID
Registrar

12 December 2017



GENERAL CIRCULAR NO. 2/2017 (Amendment 2017)

GUIDELINES ON THE THIRD SCHEDULE [CLAUSE 4(1)] OF THE STANDARD SALE AND PURCHASE AGREEMENT FOR LAND AND BUILDING
[Schedule G of the Housing Development (Control and Licensing) Regulations 1989]

GUIDELINES ON THE THIRD SCHEDULE [CLAUSE 4(1)] OF THE STANDARD SALE AND PURCHASE AGREEMENT FOR SUB-DIVIDED BUILDING
[Schedule H of the Housing Development (Control and Licensing) Regulations 1989]

The Ministry of Housing and Local Government had, on 1 June 2015, gazetted the Housing Development (Control and Licensing) (Amendment) Regulations 2015 (P.U. (A) 106/2015) which shall be deemed to have come into operation on 1 July 2015.

Since the enforcement of the new amendment, many queries have been received by the Board on the percentage changes for the different stages of works.

The Board has amended its 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) to reflect the changes in the percentage. The Board has also taken the opportunity to make some clarification on the description of works that must be completed for some of the stages.

This General Circular replaces the current General Circular No. 3/2008 pertaining to the above Guidelines. For any Sale and Purchase Agreement signed prior to 1 June 2015, General Circular No. 3/2008 is still applicable.

All Architects are advised to be familiar with and abide strictly to these Guidelines before certifying works in respect of housing projects undertaken in West Malaysia. In respect of housing projects in Sabah and Sarawak, works should be undertaken in accordance with the relevant laws. In the absence of any specific guidelines in respect of works in Sabah and Sarawak with regard to details of works that must be completed, Architects should refer to the attached Schedules.

LAM wishes to remind all Architects that all wrongful certification shall be taken as a serious offence under the provisions of the Architects Act 1967.

Thank you.

By Order of the Board of Architects Malaysia,

(Ar. YONG RAZIDAH RASHID)
Registrar

25 May 2017

SCHEDULE H

GUIDELINES ON THE THIRD SCHEDULE (CLAUSE 4 (1)) OF THE STANDARD SALE AND PURCHASE AGREEMENT FOR SUB-DIVIDED BUILDING

[SCHEDULE H OF THE HOUSING DEVELOPMENT (CONTROL AND LICENSING) (AMENDMENT) REGULATIONS 2015]

SUPPLEMENTARY NOTES

- 1.0 Certification of stage completion by the Architect is required in the Standard Sale & Purchase Agreement (SPA) specified under the Housing Development (Control & Licensing) (Amendment) Regulations 2015 to enable the Developer to request payment from the Purchaser. The stages of completion are set out in the Third Schedule of the SPA.
- 2.0 These guidelines set to define as comprehensively as possible the work that must be completed at each stage before certification. They also clarify the work items that need not be completed for reasons of construction sequence, practicality etc. However, the work items deferred would need to be completed at a later stage, depending on the logic of construction. For example, in Stage 3 all temporary openings for construction purposes must now be completed.
- 3.0 For all constructional systems other than the conventional framework, the developer should refer to the Controller of the Ministry of Housing and Local Government for modification [Refer to Clause 11(3) of the Housing Development (Control and Licensing) Regulations 1989].
- 4.0 "Building" refers to the structure (containing the said Parcel) which has been approved by the local authority referred to in the preamble of the S & P Agreement and is capable of obtaining a certificate of occupation (Final or Temporary) from the approving authority upon its completion.
- 5.0 Architects are recommended to observe the following before commencement of construction work:
 - 5.1 Request for a copy of the Sale & Purchase Agreement including all schedules as specified in the S & P Agreement of each housing type to be sold in the development for which certification is required.
 - 5.2 Check the details specified in the Sales Brochure approved by the Ministry of Housing & Local Government to ensure they correspond to the specifications in the building contract. The check list shall include the approved layout plans, the building plans and the specifications of the houses. These details must also conform to those specified in the Fourth Schedule.
 - 5.3 Check that the above corresponds to the approved Building Plan which is cited in the preamble of the S & P Agreement.
 - 5.4 Request the Developer to advise on any deviations in the Sale & Purchase Agreement from the Standard Sale & Purchase Agreement and also of any special conditions imposed by the Ministry of Housing on the development.

SCHEDULE H

- 5.5 Establish with the Developer the time frame for certification, to be on a monthly basis or fortnightly basis or when requested by the Developer.
- 5.6 Establish the quantum of units to be certified, to be block by block, floor by floor or parcel by parcel. It will be very time consuming for the Architect to be certifying on a parcel by parcel basis and it is recommended that there be a set minimum number of parcels for each certification.

6.0 Inspections must be carried out before certification.

- 7.0 The Architect shall request the Engineer for the project to confirm in writing his concurrence with the satisfactory completion of Stages 2(a), 2(b), 2(d) where applicable, 2(f), 2(g) and 2(h) before he certifies.

For stage 2(b), it is prudent for the Architect to wait until the side formworks are removed to visually ensure that there are no major honeycomb/defects on the structure before certification.

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.

For stage 2(f), there may be instances where there is no sewerage treatment plant and the sewerage works from the scheme is connected to an existing public main as approved by the relevant authority.

- 8.0 In view of the rampant vandalism and theft of loose fittings experienced in most of the sites, at Stage 3, should the developer desire for the electrical, water, sanitary fittings and fixtures to be deferred until the purchaser moves in to minimise theft and vandalism, these items need not be fitted subject to the following :-

- Prior consent from the purchasers to be secured by the developer. However, in the event prior consent from the purchasers are not secured, an undertaking letter from the developer to hand over these loose fittings/fixtures to the purchasers and to install them as per purchasers' request shall be secured prior to certification.
- The list of deferred items shall be stipulated clearly in the vendor's notice requesting the purchaser to take possession of the said property.
- The deferred items shall only include loose fittings/fixtures such as w.c. seat cover, tap fittings, shower rose, manhole cover, m.s. gratings, ELCB fuse switches, which can be easily removed. Items such as w.c. basins, sink, switch and power sockets are not considered as loose fittings/fixtures.
- All these loose fittings/fixtures are already available at the site before certification.

SCHEDULE H

GUIDELINES ON THE THIRD SCHEDULE (CLAUSE 4 (1)) OF THE STANDARD SALE AND PURCHASE AGREEMENT FOR SUB-DIVIDED BUILDING

[SCHEDULE H OF THE HOUSING DEVELOPMENT (CONTROL AND LICENSING) (AMENDMENT) REGULATIONS 2015]

Schedule of Payment of Purchase Price under the Third Schedule of the S & P Agreement	Description of Construction Work That <u>Must Be Completed</u> For Certification	Description of Construction Work That <u>Need Not be Completed</u> For Certification
<p>(4) On the date the Purchaser takes Vacant Possession of the said Parcel as in item 3 where the Developer has executed and delivered to the Purchaser or the Purchaser's Solicitors the instrument of transfer in favour of the Purchaser together with the original issue document of strata title to the said Parcel.</p> <p>(2.5%)</p> <p>Architect does not need to issue any certificate for this stage.</p>	<p>* The separate strata title relating to the said Parcel has been issued by the Appropriate Authority</p>	

LAWS CONTROLLING THE HOUSING DEVELOPMENT PROCESS

- Architects Act 117
- Housing Development (Control and Licensing) Act 1966(Act 118) & Regulations 1989
- Street, Drainage and Building Act 1974 (Act 133)
- Uniform Building By-Laws 1984
- Strata Titles Act 1985 (Act 318), Rules & Order
- Strata Management Act 2013 (Act 757)
- Town and Country Planning Act 1976 (Act 172) & Order

Housing Development
Act 1966

Housing Dev Regulation
1989

Housing Dev Account
Reg 1991

Tribunal for House
Buyers Reg 2002

Strata Titles Act
1985

Strata Titles Act 2007

Strata Management
Act 2013 (Act 757)

*Saya / Kami memperakui bahawa *saya / kami telah mengawasi pembinaan dan penyiapan *bangunan / bangunan-bangunan dan sepanjang pengetahuan dan kepercayaan *saya / kami kerja / kerja-kerja itu adalah menurut Pelan-pelan Bangunan dan Struktur dan *saya / kami setuju terima tanggungjawab sepenuhnya dengan sewajarnya ke atas bahagian-bahagian yang baginya *saya / kami masing-masing adalah berkenaan.

**1. HOUSING DEVELOPMENT (CONTROL AND LICENSING)
ACT 1966 (ACT 118) & REGULATIONS 1989
(Law stated is as at 5 May 2010)**

**2. STREET, DRAINAGE AND BUILDING
ACT 1974 (ACT 133)
(AS AT 20TH MAY 2010)**

25. Time for delivery of vacant possession

- (1) Vacant possession of the said Parcel shall be delivered to the Purchaser in the manner stipulated in clause 26 within thirty-six (36) calendar months from the date of this Agreement.

26. Manner of delivery of vacant possession

- (1) The Vendor shall let the Purchaser into possession of the said Parcel upon the following:
 - (a) the issuance of a certificate of completion and compliance certifying that the said Building has been duly constructed and completed in **conformity with the approved plans** and the requirements of the **Street, Drainage and Building Act 1974** and any by-laws made there under;

Issuance of certificate of completion and compliance

- (20) No certificate of completion and compliance shall be issued except by a principal submitting person in accordance with the **time, manner and procedure** for the issuance thereof as prescribed by this Act or any by-laws made thereunder.
- (21) Before the issuance of a certificate of completion and compliance, it shall be the **duties and responsibilities of the principal submitting person** to-
 - (a) **supervise the** erection of the building to ensure that the erection is in **conformity with the approved plans** and the requirements of the provisions of this **Act** or any **by-laws** made thereunder;
 - (b) **ensure** that the building has been **duly constructed** and completed in **conformity with the approved plans** and the requirements of this **Act** or any **by-laws** made thereunder and that all technical conditions imposed by the local authority has been duly complied with; and
 - (c) ensure that the building is safe and fit for occupation.

STATUTORY DECLARATION, DUTY AND RESPONSIBILITY OF PRINCIPAL SUBMITTING PERSON

*Saya / Kami memperakui bahawa *saya / kami telah mengawasi pembinaan dan penyiapan *bangunan / bangunan-bangunan dan sepanjang pengetahuan dan kepercayaan *saya / kami kerja / kerja-kerja itu adalah menurut Pelan-pelan Bangunan dan Struktur dan *saya / kami setuju terima tanggungjawab sepenuhnya dengan sewajarnya ke atas bahagian-bahagian yang baginya *saya / kami masing-masing adalah berkenaan.

3. UNIFORM BUILDING BY-LAWS 1984 [G. N. 5178/85] (AS AT 1ST MARCH 2010)

25. Certificate of fitness for occupation

- (1) Certificate of fitness for occupation of a building shall be given when-
- (a) the qualified persons during the course of the work have certified in Form E as set out in the Second Schedule to these By-laws that they have **supervised** the erection of the building, that to the best of their knowledge and belief the building has been **constructed in accordance with these By-laws and any conditions imposed** by the local authority and that they accept full responsibility for those portions which they are respectively concerned with and the local authority or an officer authorised by it in writing for the purpose has inspected the building.

4. STRATA TITLES ACT 1985 (ACT 318), RULES AND ORDER (AS AT 1ST FEBRUARY 2010)

9. Conditions for approval

- (1) The Director shall not approve the subdivision of any building or land into parcels unless the following conditions are satisfied:
- (b) that, in the case of any building or land into parcels for the erection of which planning permission was required-
- (i) it has been **certified by an architect** registered under the Architects Act 1967 or by a professional engineer registered under the Registration of Engineers Act 1967 that the building was constructed **in accordance with the plans and specifications by reference to which that permission was given**, stating therein the **date** on which such permission was given and the **reference number** thereof (if any);

HDA (Control & Licensing) Act 1966 (Act 118)

- 1) Clause 22E: Release of Money by a stake holder - (1) & (2)
- 2) Clause 22F: Progress Certification- (1) & (2)

HAD (Control & Licensing) Regulations 1989 (Schedule 4)

- 1) Clause 5: Advertisement and Sale permit
 - (3) Any misleading Statement – Offence

SCHEDULE H (SPA)

- 1) Clause 1: Free from building restriction – affecting title
- 2) Clause 2: Free from Encumbrances before Vacant Possession
- 3) Clause 4: Schedule of payments
 - (2) Certificate – Architect
- 4) Clause 11: Separate document of title/transfer of title
- 5) Clause 13: Materials and workmanship to conform to Description
- 6) Clause 23: Compliance with written laws
- 7) Clause 24: New laws affecting housing development
- 8) Clause 25: time for delivery of vacant possession
- 9) Clause 26 : Manners of delivery of vacant possession
 - (a) building constructed and completed in conformity with approved plans and the requirement of SDABA 1974 and any by-laws.
- 10) Clause 27 : Completion of common facilities
- 11) Clause 29 : Defect Liability Period (DLP)

HOUSING DEVELOPMENT
(CONTROL AND
LICENSING)

ACT 1966 (ACT 118)

&

REGULATIONS 1989

Housing Development (Control and Licensing) Act 1966

(Act 118)

An Act to provide for the control and licensing of the business of housing development in Peninsular Malaysia, the protection of the interest of purchasers and for matters connected therewith.

[29 August 1969,]

3. Interpretation.

“certificate of completion and compliance” means the certificate of completion and compliance given or granted **under the Street, Drainage and Building Act 1974 [Act 133]** and **any by-laws made under that Act certifying that the housing accommodation has been completed and is safe and fit for occupation but does not include partial certificate of completion and compliance;** *[Subs. Act A1289:s.4]*

22E. Release of moneys by a stakeholder.

(1) **Any stakeholder who releases any money to a housing developer or to any other person knowing that such an act is contrary to the provisions of the sale and purchase agreement shall be guilty of an offence and shall, on conviction,** be liable to a fine which shall not be less than ten thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) **Any person who knowingly and willfully aids, abets, counsels, procures or commands the commission of an offence against** subsection (1) shall be liable to be punished with the punishment provided for the offence. *[Ins. Act A1289:s.27]*

22F. Progress certification.

(1) Any architect or engineer, as the case may be, who issues a progress certification knowing that the works therein referred to have not been completed in accordance with the provisions of the sale and purchase agreement shall be guilty of an offence and shall, on conviction, be liable to a fine which shall not be less than ten thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(2) Any person who knowingly and willfully aids, abets, counsels, procures or commands the commission of an offence under subsection (1) shall be liable to be punished with the punishment provided for the offence. *[Ins. Act A1289:s.27]*

Housing Development (Control and Licensing) Regulations 1989

Arrangement of Regulations

Regulation

5. Advertisement and sale permit.

SCHEDULE H

5. Advertisement and sale permit.

(3) Any misleading statement, false representation or description of the particulars or information required under paragraph (2) of this regulation shall be an offence under these Regulations. [Am. P.U.(A)473/2002]



SCHEDULE H

HOUSING DEVELOPMENT (CONTROL AND LICENSING) ACT 1966

HOUSING DEVELOPMENT (CONTROL AND LICENSING) REGULATIONS
1989

(Regulation 11(1))

SALE AND PURCHASE AGREEMENT (BUILDING OR LAND INTENDED
FOR SUBDIVISION INTO PARCELS)

1. Parcel free from agricultural, industrial and building restrictions

The Vendor hereby agrees to sell and the Purchaser agrees to purchase the said Parcel free from any agricultural or industrial conditions expressed or implied and any restriction against the building of housing accommodation thereon and all encumbrances other than those imposed by the provisions hereto/already subsisting at the date hereof (if any) and any conditions expressed or **implied affecting the title of the said Parcel.**

2. Parcel free from encumbrances before the Purchaser takes vacant possession of the said Parcel

(1) The *Proprietor and the Vendor shall not immediately and at any time after the date of execution of this Agreement subject the said Land to any encumbrances without the prior approval of the Purchaser and the *Proprietor and the Vendor undertakes that the said Parcel shall be **free from encumbrances immediately prior to the Purchaser taking vacant possession** of the said Parcel.

4. Schedule of payments

(2) Every notice referred to in the Third Schedule requesting for payment shall be supported by a certificate signed by the Vendor's architect or engineer in charge of the housing development and every such certificate so signed shall be proof of the fact that the works therein referred to have been completed.

11. Separate strata title and transfer of title

(1) The *Proprietor/Vendor shall, at its own cost and expense and as expeditiously as possible, apply for subdivision into parcels, as the case may be, so as to obtain the issue of a separate strata title to the said Parcel under the Strata Titles Act 1985.

13. Materials and workmanship to conform to description

The said Parcel together with all the common property shall be constructed in accordance with the description set out in the Fourth Schedule and in accordance with the plans approved by the Appropriate Authority which description and plans have been accepted and approved by the Purchaser, as the Purchaser hereby acknowledges. **No changes thereto or deviations therefrom shall be made without the consent in writing of the Purchaser except such as may be required by the Appropriate Authority.** The Purchaser shall not be liable for the cost of such changes or deviations and in the event that the changes or deviations involve the substitution or use of cheaper materials or the omission of works originally agreed to be carried out by the Vendor the Purchaser shall be entitled to a corresponding reduction in the purchase price herein or to damages, as the case may be.

23. Compliance with written laws

The Vendor shall, in relation to the said Building to be erected, conform to the provisions and requirements of any written law for the time being in force affecting the said housing development and shall keep the Purchaser indemnified against all fines, penalties or losses incurred be reason of any breach of the provisions of any written laws.

24. New laws affecting housing development

The Purchaser shall not be liable to indemnify the Vendor in the event of an introduction of new laws or the amendment of existing laws which shall impose on the Vendor additional fees, charges or taxes, the payment of which shall be necessary for continuing and completing the development of the said housing development or any part or parts thereof in accordance with the Building Plan and description therein referred to in such Plans and the due observance and performance by the Vendor of its obligations and liabilities under his Agreement.

25. Time for delivery of vacant possession

(1) Vacant possession of the said Parcel shall be delivered to the Purchaser in the manner stipulated in clause 26 within thirty-six (36) calendar months from the date of this Agreement.

26. Manner of delivery of vacant possession

(1) The Vendor shall let the Purchaser into possession of the said Parcel upon the following :

(a) the issuance of a certificate of completion and compliance certifying that the said Building has been duly constructed and completed in conformity with the approved plans and the requirements of the Street, Drainage and Building Act 1974 and any by-laws made there under;

(2) The delivery of vacant possession by the Vendor shall be supported by a certificate of completion and compliance certifying that the said Building is safe and fit for occupation and includes the handing over of the keys of the Parcel to the Purchaser.

27. Completion of common facilities

(1) The common facilities serving the said housing development shall be completed by the Vendor within thirty-six (36) calendar months from the date of this Agreement. **The Vendor's architect shall certify the date of completion of the common facilities.**

29. Defect liability period

(1) Any **defects, shrinkage or other faults in the said Parcel or in the said Building or in the common property** which shall become apparent within a period of twenty-four (24) calendar months after the date the Purchaser takes vacant possession of the said Parcel and which are due to defective workmanship or materials or; the said Parcel or the said Building or the common property not having been constructed in accordance with the plans and description as specified in the First and Fourth Schedule as approved or amended by the Appropriate Authority, shall be repaired and made good by the Vendor at its own cost and expense within thirty (30) days of its having received written notice thereof from the Purchaser.

STREET,
DRAINAGE AND
BUILDING ACT
1974 (ACT 133)

PART V BUILDINGS

70. Notice of new buildings.

(1) No person shall erect any building without the prior written permission of the local authority.

(3) No plans for the erection of a building shall be approved –

(a) if the building is to be erected on any holding abutting on or having access to any new street or proposed new street, until plans for such new street have been approved by the local authority under the provisions of this Act;

(b) before any deposit, required to be made under the provisions of section 18 has been made or unless such building or class of buildings have been exempted from the provisions of section 17(1) by the State Authority; and

(c) before any other conditions which the local authority may deem necessary to impose have been complied with.

Notice of commencement of resumption of building operations.

(13) Any person who -

(b) deviates from any plan or specification approved by the local authority without the prior written permission of the local authority;

(d) fails to comply with any lawful order or written direction of the local authority or with any term or condition attached by the local authority to any modification or waiver of any of the requirements of any by-law,

Issuance of certificate of completion and compliance.

(20) No certificate of completion and compliance shall be issued except by a principal submitting person in accordance with the time, manner and procedure for the instance thereof as prescribed by this Act or any by-laws made thereunder.

(21) Before the issuance of a certificate of completion and compliance, it shall be the duties and responsibilities of the principal submitting person to –

(a) supervise the erection of the building to ensure that the erection is in conformity with the approved plans and the requirements of the provisions of this Act or any by-laws made thereunder;

(b) ensure that the building has been duly constructed and completed in conformity with the approved plans and the requirements of this Act or any by-laws made thereunder and that all technical conditions imposed by the local authority has been duly complied with; and

(c) ensure that the building is safe and fit for occupation.

(27) Any person who –

(b) issues a certificate of completion and compliance without the relevant forms as prescribed in any by-laws made under this Act;

(c) issues a certificate of completion and compliance in contravention of a direction given by the local authority to withhold such issuance pending rectification of any non-compliance;

(d) knowingly makes or produces or causes to be made any false or fraudulent declaration, certificate, application or representation of any form prescribed in any by-laws made under this Act;

(e) uses any forged, altered or counterfeit declaration, certificate, application or representation of any form prescribed in any by-laws made under this Act knowing the declaration, certificate, application or representation have forged, altered or counterfeit; or

shall be liable on conviction to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

71. Penalty for failure of buildings or earthworks.

Where any building or part of a building fails, whether in the course of construction or after completion, or where there is any failure in relation to any earthworks or part of any earthworks, whether in the course of the carrying out of the earthworks or after completion thereof, and the cause of such failure is due to any one or more of the following factors –

- (a) misconstruction or lack of proper supervision during construction;
- (b) misdesign or miscalculation; or
- (c) misuse,

shall be liable on conviction to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.



122. Court for trial of offences.

Any offence under this Act or any by-laws made thereunder may be tried by a Magistrate's Court.





UNIFORM
BUILDING BY-
LAWS 1984

5. Supervision of work.

Where under these By-laws any plan, drawing or calculation in relation to any building is required to be submitted by qualified person, **no erection** or continued erection of that building **shall take place unless that qualified person or any person duly authorized by him undertakes the supervision of the erection and the setting out, where applicable, of that building.**

- (c) **Delegating a part of the Architect's duty** to others (especially to the developer or his nominees) in satisfying himself that the work has been completed in accordance with the Sale and Purchase Agreement notwithstanding that this may have been authorised in writing.

LEMBAGA ARKITEK MALAYSIA

Tingkat 17, Ibu Pejabat JKR
Jalan Sultan Salahuddin, 50582 Kuala Lumpur
Peti Surat 12695, 50786 Kuala Lumpur

GENERAL CIRCULAR NO. **1/2002**

258. Failure of buildings.

(1) In the event of any failure to any building or part of the building, whether in the course of construction or after completion, the qualified person who –

- (a) submitted the plans, drawings or calculations for such building;
- (b) **supervised** the **setting out** of such building;
- (c) **certified** that the **setting out** was carried out in accordance with the approved site plan;
- (d) **supervised** the **construction** of such building;
- (e) **certified** that the **proper supervision** of such building as carried out;

(4) Any qualified person who fails to comply with paragraph (1), (2) or (3) shall be guilty of an offence.

(5) Notwithstanding that any plan, drawing or calculation has been approved by the local authority, the responsibility for the failure of any building or part of a building shall prima facie lie with the person who submitted such plan, drawing or calculation.

STRATA TITLES
ACT 1985 (ACT
318), RULES &
ORDER

9. Conditions for approval.

(1) The Director shall not approve the subdivision of any building or land into parcels unless the following conditions are satisfied :

(b) that, in the case of any building or land into parcels for the erection of which **planning permission** was required –

(i) **it has been certified by an architect registered under the Architects Act 1967 or by a professional** engineer registered under the Registration of Engineers Act 1967 that **the building was constructed in accordance with the plans and specifications** by **reference** to which that **permission** was given, stating therein the **date** on which such **permission** was given and the **reference number** thereof (if any); or

10. Application for subdivision of building or land.

(1) Any application for the approval of the Director for subdivision of buildings or building and land, under subsection 6(1) shall be in Form 1, and any application for the approval of the Director for the subdivision of land under subsection 6(1A) shall be made in Form 1A, to the Land Administrator and shall be accompanied by –

(b) a proposed strata plan comprising a location plan, storey plan and delineation plan, to be submitted in triplicate containing such details as are specified in subsections (2), (3) and (3A) respectively and **certified by a land surveyor** as follows :

(i) that he has made a comparison of the plans to the **original plans of the building and any approved amendments thereto prepared by the architect or professional engineer responsible for its construction**, or, in a case falling under subsection (6A), to the plans of the building and any approved amendments thereto mentioned in paragraph (a) of that subsection; and

(ii) in the case of **a storey plan, that the boundaries of the parcels shown thereon follow features of permanent construction appearing in the building;**

(c) the **certificates of a land surveyor** referred to in paragraph 9(1)(a), and **Professional Architect or Professional Engineer** referred to in subparagraph 9(1)(b)(i), and where applicable, the certificate of a land surveyor referred to in paragraph 9(2)(a);



(ii) in the case of a storey plan, that the boundaries of the parcels shown thereon follow features of permanent construction appearing in the building;

(c) the certificates of a land surveyor referred to in paragraph 9(1)(a), and Professional Architect or Professional Engineer referred to in subparagraph 9(1)(b)(i), and where applicable, the certificate of a land surveyor referred to in paragraph 9(2)(a);



STRATA
MANAGEMENT ACT
2013

(ACT 757)

Handing over by developer to the joint management body

15. (3) Without prejudice to the generality of subparagraph (1)(b)(iv), the developer shall deliver to the joint management body copies of all of the following documents :

(a) all approved plans for buildings or lands intended for subdivision into parcels relating to the development area;

(d) a **copy** of the **schedule of parcels** or the **amended schedule of parcels** filed with the Commissioner under subsection 6(1) or (2), if applicable, or a copy of the proposed strata plan filed with the Director under the provisions of the **Strata Titles Act 1985**, if any;

TOWN AND
COUNTRY
PLANNING ACT
1976 (ACT 172) &
ORDER

26. Offences relating to unauthorized development.

(1) A person who, whether at his own instance or at the instance of another person –

(d) commences, undertakes, or carries out, or permits to be commenced, undertaken, or carried out, any development after the planning permission or the approval of the building plan, as the case may be, in respect of the development has been modified pursuant to section 25 and the development so commenced, undertaken, or carried out is inconsistent with the modified permission or approval,

commits an offence and is liable, on conviction, to a fine not exceeding **five hundred thousand ringgit or to imprisonment for** a term not exceeding **two years or to both** and, in the case of a continuing offence, to a further fine which may extend to five thousand ringgit for each day during which the offence continues after the first conviction for the offence.



LAW VERSUS ETHICS

Law – minimal ethical standards of society

Ethics – standards set by profession



ARCHITECT'S
CERTIFICATION:
A PROBLEM ?



Architect's Certification: A Problem?

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ABSTRACT

Currently the problems of some architects issuing fraudulent progress certificates for Malaysia's housing projects result in many house buyers losing their life savings. Unfortunately, these house buyers still remain contractually responsible for all the associated, present and future financial obligations such as their bank loans. Fraudulent certification is the most frequent incident of complaints amongst the range of problems complained about to the Board of Architects, Malaysia or Lembaga Akhira Malaysia (LAM). This paper highlights the underlying pertinent issues such as when an architect does not fully understand the ramifications, or exercise due care when performing the certifier's role with its inherent responsibilities under the Housing Development Act (HDA) and Housing Development Regulations (HDR). Also at what stage the architect is legally required to issue progressive work completion certificates, particularly the scope ranging from the inception stage through to the completion stage. This includes the relevant housing laws and regulations that enshrine the architects' professional status and confers legal certification duties. This is designed to protect the public interest, yet many architects fail to perform this duty independently, or impartially and fairly to the new house buyers and the public at large. Recognising the systemic weakness, the elements that contribute to the fraudulent certification and illustrates how the fraudulent certification exploits the trust of house buyers. In the analysis, a quantitative framework was used to measure, quantify and discuss the best all round outcomes.

1. Introduction

Malaysia is one of the most developed nations in the region, which have shown tremendous economic growth during the post-World War Two decades. The provision of public housing became a high priority to meet Malaysia's essential needs (PEMANDU, 2012; Usilappon, 2013). The seemingly inexorable drift of the rural population to the cities resulted in more than half of that population living in basic apartments, condominiums, terrace houses, semi-detached houses and bungalows, in all of the ever growing urban areas. While these national housing developments enshrine Malaysia's basic living requirements, they also fostered economic growth for the population at large (Radzuan, Hamdan, Hamid, & Halim, 2011). More recently, the new generation of house buyers imposes growing demands for higher housing quality standards. It follows that the roles and responsibilities of the modern architect, as a certifier of compliance and progressive equity value, are also expanding to ensure that the house buyer's interests and reasonable expectations will not be compromised. In practical terms this means the architect shall use his commensurate best endeavors to adequately monitor the construction progress from inception until completion to ensure the building works are built according to the relevant statutory laws and regulations, building plan (BP) and quality specifications in the Sale and Purchase Agreements (SPA) (Buang, 2001; Chan, 2011a; Devarajulu, 2012; Ismail, 2009; LRB, 2010a). Many new housing schemes were developed for the shared benefits of house buyers (Dablan, 2006). While many of these housing developments were successfully completed and delivered to the house buyers, far too many failed. This caused many house buyers to lose their life saving as they

still had to pay for their serious defective homes or even the abandoned homes (Dablan, 2007).

In many instances the developer needs to promote and sell his houses before the completion of construction work. In such case, the house buyer signs an SPA with the developer as stated in the HDR (LRB, 2010a). Under the terms of this agreement, the developer is entitled to claim from the house buyers, at each progressive stage work completion, payment which is based on and supported with the architect's stage certificate (Chan, 2011a). The Regulation confers this personal certification power upon the developer's architect. This implies that the architect has, impartially assessed the progressive completion value of the works and issues a certificate (Kasi, 1998). However, this certification procedure has become a major problem in many housing developments, possibly due to this certification power being misused by far too many architects. Subsequently, it has led to fraudulent stage certification problem (Shukor, 2002). The house buyers are duty bound to pay whatever monies are subsequently claimed in accordance with the stage completion certificates, even when the building works are far from reaching the allegedly completed stage value, or at worst, the works are suspended or even abandoned (Hassan, 2011). These problems ultimately contribute an omnipresent dilemma faced by the house buyers.

The fraudulent certification has become a major problem in housing projects, according to Chan (2010a), LAM has received many house buyers' complaints against the architects of these fraudulent certifications comprise 54% in the 1999-2005 period. This is the largest

LAM'S STATISTIC DATA OF PUBLIC COMPLAINT AGAINST ARCHITECTS

Unprofessional Conduct
27%

Non-approved Practice
0%

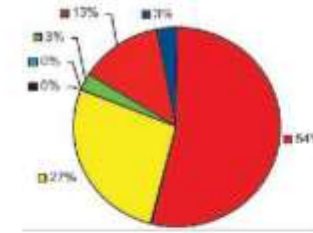
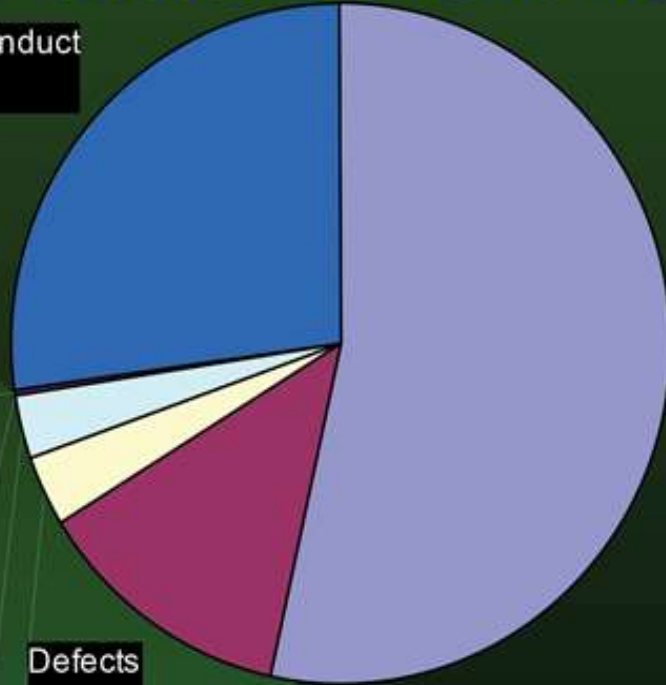
Collabroration with NonRegistered
Person
0%

Delay in Obtaining CFO
3%

Supplanting
3%

Defects
13%

Certification
54%



Legend:

- Certification
- Unprofessional conduct
- Non-approved of practice
- Collaboration with non-registered person
- Delay obtain CFO
- Defective work
- Supplanting

Figure 1: LAM's Statistic Data of Public Complaint against Architects

category of all complaints in housing projects, eclipsing other issues as shows in the figure 1.

Often the architect, especially a newly qualified architect, is not fully aware of his legal responsibilities and his scope of duties (Ho, 2012; Mahamed, 1999). Many cases where although the architects certify and evidence the completion of certain progress developments, but this have not been done honestly. On other words, there are fraudulent practiced by many architects to withdraw the available money in the end financier's hand at the expense of the house buyers (Dahlan, 2006). Worse still, while some housing projects had been abandoned, the house buyers remained obliged to pay the stage progress claim payments as set out in the architect's stage certificates because the bank has paid the developer in accordance with the architect's fraudulent certificates.

This study seeks to address the problem of many architects involved in housing projects, to be familiar with the 'Stage' Certification role and its attendance legal ramifications, hence highlight the problem of fraudulent certification that could compromise the house buyer's interest. Moreover, to identify some elements that could contribute to the fraudulent certification. It would be vetted through all the public complaints cases in LAM's office in order to identify the number of fraudulent certifications as a systemic problem. The use of the quantitative methods is necessary to present a dimensioning scale, as the incidence of fraudulent certification is, by far, the highest nature of complaint amongst the other problem reports in the Table 1. Last but not least, discuss the objective also encompasses the integration between the data analysis and literature review, then provide some tentative recommendations as to how one might reduce the fraudulent certification.

2. Literature Review

The problem currently faced by the aggrieved house buyers are varied and plentiful, but the most serious must be the one relating to the developer making use of the architect's professional integrity to cheat the house buyers. This is the fallout of the unbridled and frenzied speculative situation that the house buyers commonly experienced. It is difficult to imagine the sufferings experienced by the house buyers in their financial predicament, having to lose one's life saving is already bad enough but to be further lumbered with an enormous bank loan with ever increasing interests running is really adding salt to the wound (HBA, 2002c, 2003b). The question to be asked, whether such a situation can be avoided? The Malaysia National House Buyers Association (HBA) certainly thinks so. Buying a house should be no different from buying a car, but in actuality, the risk involved is much

greater (HBA, 2002c). When you buy a car, you are not exposed to the same risks as in buying a house. Have you heard of any person having paid for a car and not taking delivery because the manufacturer cannot supply? Have you heard of any car buyer having to fork out progressive payments while the car is in the manufacturing stage? Why then, is buying a house so different? First of all, the current Malaysia housing development system is sold to the house buyer a piece of drawing and build his home in future (HBA, 2003b, 2003c, 2003d; LRB, 2010b). This system has a so-called progressive billing stage payment it's mean the developer could claim the house buyer of any stage completion work base on the architect's stage certificate (Chan, 2010a; Chee, 1998, 2002; LRB, 2010a, 2010b). The architect is the developer's agent (HBA, 2003c, 2005b), and his consultancy fee is paid by the developer, in such a situation, he could likely fulfill the client's needs and this needs commonly conflict with his professionalism. Ultimately, this leads to the architect not performing his impartial certifier role and responsibility to compromise the house buyer interest (HBA, 2002b).

2.1 What is Fraud?

There are two principal method of getting something illegally. Either you physically force someone to give you what you want (using a gun, knife, other weapon, brute force), or you trick them out of their assets. The first type of theft we call robbery and the second type we call fraud (Albrecht, Albrecht, Albrecht, & Zimelman, 2009). Robbery is generally more violent and more traumatic than fraud as it attract much more media attention, but losses from fraud are bigger than the losses from robbery (Albrecht & Albrecht, 2004). The fraud can be defined as a deception made for personal gain. The word "deception" is a key. Fraud always involves deception, misrepresentation and trickery (Albrecht et al., 2009) Although there are many formal definitions of fraud, probably the most common definition of fraud is generic term, and embraces all the multifarious means which human ingenuity can devise are resorted to by one individual, to get an advantage over another by false representations. No advantage over another by false representations. No definite and invariable rule can be laid down as a general proposition in defining fraud, as it includes surprise, trickery, cunning and unfair ways by which another is cheated. The only boundaries defining it are those, which limit human knavery (Albrecht et al., 2009).

2.2 How Could Fraud Compromise the House Buyer Interest?

Even with the difficulties in measuring the fraud, most people believe that fraud is a growing problem and a lot of monies are lost due to incidents of the fraud increasing, so longitudinal studies of fraud are needed (Matulich & Currie, 2009). This is valuable because fraud affects

the public by having to pay extra for goods and services. It is almost impossible to read a newspaper or business magazine without coming across multiple incidents of fraud (Chang, 2001; Wells, 2004). E.g. many house buyers' pay the fraud billing to many developers base on the fraudulent stage completion certificate from the architects.

Even more alarming than the increased number of fraud cases is the size of discovered frauds. In earlier times, if criminal wanted to steal from his employer, he had to physically remove the assets from the business premise. Because of fear being caught with the goods, frauds tended to be small (Albrecht et al., 2009). The author perceives that, with the very competitive professional business in the construction industry now, many architects tend to hunt for as many projects as possible in order to sustain their architect business. He could try all possible ways to fulfill the client request, and this possibility could commit himself into fraud (HBA, 2002b, 2003e; Mohamed, 1987; Mohamed, 1999). E.g. a developer faces the pressure to meet the deadline to deliver the vacant possession (VP) otherwise, he could be liable for Liquidated Ascertain Damage (LAD) and as these pressure to meet the deadline have intensified, the developer would pressure the architect to prematurely issue the certificate for incomplete work, it consequently becomes an incidence of the fraudulent certification.

2.1 What is a Fraudulent Certification?

A certificate is the expression in a defined form of the exercise of judgement, opinion or skill of the certifier (architect) in relation to some matters provide for by the terms and conditions under the agreement, contract, regulation, act and law (Tan, 1998; Teh, 1998). Whereas, a fraudulent certificate can be defined as a document issued by a certifier (architect) certify the completion work without complying with the terms and conditions under the contract and statutory provisions such as SPA and BP, it includes providing undated signed certificates to developers and before proper application has been made for the Certificate of Completion and Compliance (CCC) together with all prior clearances from subsidiary approving authorities.

The fraudulent certification also can be defined as (1) If the architect signs a certificate, which is not prepared by him, but is prepared by his client or his nominee. (2) If the architects issue a certificate for a housing project which is not supervised by him, but the project is supervised by other parties such as, developer's representative, contractor or any other consultant. (3) If the architect over certifies for any housing project that leads the house buyer pay unwarranted extra upfront monies. (4) Certify the house is completed and complied, but the house has many serious and unacceptable defective works outstanding, which could harm the public safety, health and pure economic loss. (5) Certify the house completed and issue CCC even though the house is not safe for occupation due to dangerous construction work still in progress. (6) Issue CCC without any supportive Form-G certificate. (7) prematurely Certified VP, without water and electricity supply, remaining lots of serious defective and incomplete work 1987 (Awaludin, 2010; LRB, 2010a, 2011; Mahumed, 1999; MDC, 2010; Mohamed, 1987; Shukor, 2002; Tan, Sun, & Chen, 2007).

2.2 Architect's Role and Responsibility

In United States, no duty of an architect is subject to more scrutiny than issuance of payment certificates. The owner, naturally, does not want to pay more money prematurely or needlessly. The contractor, on the other hand, wants, needs and is entitled to the money as soon as possible

(O'Leary & Arthur, 2001). Similarly in Malaysia, the house buyers naturally do not want to prematurely pay the incomplete work, whereas the developers wish to claim as much money as possible from the house buyers (HBA, 2003a, 2006). Both house buyers and developers are generally acutely aware of the interest value of money.

In the certifier role, all completed works must be properly inspected by him before he can certify the work to be in accordance with the HBB, approved BP and the conditions of the SPA (Mohamed, 1987). Hence, the architect, not only as the developer's agent but in his capacity as the impartial and objective services and construction contracts supervisor, shall protect the public's interests such as health and safety as he has a duty of care within the code of professional conduct under the Architect Act-1967 (Chan, 2010b; Chee, 1998; LRB, 2010a). All certification becomes a precedent condition to the developer claims for payment from the house buyers along with the contractor's claims for payment from the employer.

2.3 Unperformed Role and Responsibility of Certifier

The certification system rests upon professional ethics and therefore it upheld by the courts to affirm the faith in the professional integrity of architects' under the statutory accreditation. In Australia jurisdiction, Mr. Justice Isaacs has considered that a contract requiring certificates contained a tacit condition providing for the certifier's independence, so to quote; "The certifier shall preserve his independence and impartiality towards both parties, subject only to whatever might be the necessary effect of honest and faithful performance of his proper duty as owner agent and that when once a dispute arises, such independent and impartiality shall be preserved even though that involves depriving the owner of the architect in connection with the matters in dispute" (RAIA, 1979). In such instances the architect is ethically bound to act in equitable fairness as a public duty. It is of course also necessary to uphold his standing in keeping with the impartial certification role and responsibility (Kasi, 1998; Mahamed, 1999). Having to decide whether to issue a progress payment certificate to the developer to allow him to claim from the house buyer a progress payment sometimes places him in a quandary of self-interest vs. public duty. One of the case study can be referred is within the first month of the New Year 2002, LAM has received a complaint, which is of extremely serious concern to the profession. The allegation relates to the incorrect or apparently fraudulent certification by architects that will have far-reaching consequences on innocent house buyers (Shukor, 2002). This unacceptable practice is encountered as the architect: (1) provides the undated signed certificates to the developer, (2) issue certificate even the work is still remain incomplete, (3) delegating his duty to other parties in satisfying himself that the work is completed according to SPA (Shukor, 2002).

2.4 Unclear Certification Guideline in Housing Laws

The majority of complaints relating to the certification problems, many house buyers have had experiences that the architect fails to provide meaningful reason underlying his decision in certification and failed to certify the works have been reasonably completed and complied in accordance with the terms of the agreement. It commonly happened when the house buyer take the VP from the developer they find their houses are actually not ready for VP but the architects still issued the Certificate of VP to the developers to effect VP without rectified all the serious defective works. Hence, house buyer argues that, the architect is responsible of the third party's interest such as, house buyer and public at large (Ahmad, 2012; Chan, 2011a; HBA, 2002a; Keen & Peng, 2012;

Mahamed, 1999; Shukor, 2002). The architect should not issue a fraudulent certificate to help the developer effect the VP in order to escape the compensation of LAD or claim unwarranted upfront monies for incompleteness works. Whereas, the architect insists that, his responsibility has nothing to do with the defective work, as long as the house is completed, he is obligated to issue the Stage Completion Certificate to the developer (Chan, 2008, 2011b, 2012). This may be due to the SPA under the HDR, which do not have a clear and specific certification guidelines in the act and regulation to clearly emphasize the role and responsibility of a certifier, nor does it endeavor to encourage inexperienced architects to acquire sufficient knowledge and experience to deal with the procedural vagaries of a housing project (Ho, 2012). Subsequently, the architect is being routinely exploited by the developers' insistence to issue fraudulent certification.

2.5 Issuance of Fraudulent Certification under Pressure

In Australia, a more effective way of making the architect the sole judge of the sufficiency of work done is to say in the contract: "No Certificate, No Money" (RAIA, 1979). Whereas in Malaysia the practice could be defined as: "No Certificate, No Consultancy Fee". If the architect is prematurely requested, but do not issue a progress payment certificate to the developers, he would likely not be paid by his client. When the architect is a developer's agent, his architectural business is survival depends on the consultancy fees.

As a fully accredited professional, the scope of an architect's involvement in housing development disputes is inevitable given the additional responsibilities of an architect under the HDA and HDR (Chan, 2011b). Certain duties and responsibilities are entrusted to him, in particular the certification roles in SPA between the developer and the house buyers (Woo, 2001). Under the Code of Professional Conduct, Architect Rules, he is expected to be fair to both parties and carry out his duties competently (Mahamed, 1999). In contrast, the developer understands his project monetary limits as his financial backers expect the projected profit margins, so the developer tries to prevail upon the architect to issue fraudulent certificates in order to claim unwarranted monies (HBA, 2005a; PAM, 2005). E.g. if he wishes to get paid, he should fulfill the developer requirement, even it is an unethical fulfillment as he is a payroll of the developer.

2.6 Unsatisfactory Consultancy Fees

The Singapore Institute of Architects (SIA) has long held that professional services cannot be subject to free-market capitalist forces. Rather, they must be regulated guidelines to avoid unhealthy undercharging. All professionals swear an oath to uphold the integrity and ethics of their profession; they shoulder a host of statutory duties. In the case of architects, they are obligated to be "officer of the State" to ensure that buildings comply with the rules and regulations lay down by state agencies (Chan, 2014). This duty brings to bear a cost on architects that has to be specially and reasonably remunerated as a basic component of fees. There has to be a minimum fee to fulfill the statutory role. Fee guidelines will ensure that quality standards in all professions are maintained and that they can enjoy long-term sustainability (LAM, 2000; Mohamed, 1987; Mohamed, 1999).

In Malaysia, whereas several interesting reasons were discovered that most architects felt the Scale of Minimum Fees under the Architect Rules prescribed for housing projects, is far too low for the work and responsibility involved (Mohamed, 1987). Furthermore, the developer quite often pays lower than the prescribed minimum fee (PAM, 2011).

As for other endeavors, a professionally qualified person can reasonable expect a certain level of remuneration for services rendered. This postulate is based on the belief that every human work place activity should at least not incur a loss and preferably be profitable. In the course of investigating these complaints, LAM has come to the conclusion that one of the contributory causes is directly related to the level of fees charged for the expected professional consultancy service (Mahamed, 1999). The scale of fees was derived after taking into account the fact that it is a necessity for every human activity to be profitable, no matter how narrow the margin is, and after years of works provide the minimum level of remuneration for absolutely minimum level of professional services required in the public's interest, as well as to satisfy both the legal requirements of relevant building laws and legislations and the stage certifications under the SPA. Thus, the inescapable result of inadequate remuneration must either be inadequate service, or even worse, malpractice (Mohamed, 1987). Many architects dare not undertake the periodical site inspections before certifying the stage completion of work, in some cases they even delegate their duty to another party to certify the completion works on their behalf (Shukor, 2002). Subsequently it becomes a fraudulent certification which the public commonly complaint to LAM.

3 Methodology

Methodology is seen as the cornerstone in every research project and it is to determine the research project's credibility, verifiability or validity. Hence, it also straightens out the research design in an empirical way. It is a guideline for conduction research activities in order to achieve the objective at each activity needs a research method to fill the expectations of research findings. It also "guides the researcher in the process of collecting, analyzing and interpreting observations" (Nachmias & Nachmias, 2007). In this study, several activities are used to complete the research objectives and several research method is employed in each stage. E.g. inputting all the public complaint cases in the table format to identify the fraudulent certificates are the highest problem amongst the other complaints, which received by LAM. Firstly, data collection is selected 12 years period (2001-2012 years) archive public complaint files in LAM office as a sample and use the quantitative method to determine the numbers of fraudulent certification as shows in figure 2.

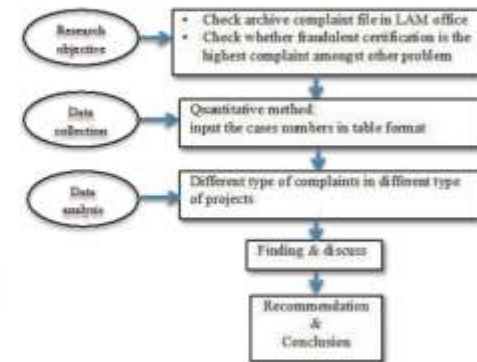


Figure 2: Flowchart for Research Method and framework

The data were collected from LAM archive complaint files such as, letter, emails, faxes, complaint forms and other evident documents which relate the wrong doing of the architects. Moreover, the author has advised by LAM to generally divide the types of public complaints against the architects such as, (11) certification problem, (12) defect, (13) supplanting, (14) collaboration with non-registered person or unlicensed developer, (15) Non-approval of practice, (16) unprofessional conduct, (17) contract matter, (18) architectural fee problem, (19) occupied building without BP, (20) delay of Certificate of Fitness and Occupation (CFO). In order to provide a deeper analysis whether or not the fraudulent certification problem is the highest amongst the other problems, we have depicted the fraudulent certification as shows in Figure 3.



Figure 3: Diagram of Analysis Process

4. Results and Discussions

An absolute requirement of the professional is to exercise an acceptable level of maturity and competence in practice. Moreover, this practice is not a finite science save on certain aspects of design or technical in nature (Mahamed, 1999). Other than these, he is required to exercise impartially judgments, which require analysis of the situations and eventually anticipated outcomes of certain decision. Therefore, his integrity must be unquestioned and his honesty must be impeccable. In his professional dealings he may be entrusted with commercial and strategic confidences and transactions possibly worth millions of Ringgits. So the clients, governments, public and financial institute honor his certifications (Mahamed, 1999). The society expects him to conduct himself beyond reproach, so he should perform his role and responsibility. However, base on all the data analysis and perceive that, many architects have acted oppositely of what is required in the Code of Professional Conduct because the fraudulent certification is the highest allegation from the house buyers amongst the other problems. It appears in the Table 1, the public complaint against the architects in all types of construction projects, e.g. Housing, Non-housing Government, Commercial, Institution project have consisted of 159 cases (46.7%) out

of 341 total complaint cases.

The certifying architect has both a commercial as well as a professional, and in time, even a special personal sense of loyalty to his developer client. Accordingly he may face ethical conflicts in the course of his certifying activity (RAIA, 1979). That is, he may form an objective opinion, which may perhaps be contrary to his client's immediate interests. E.g. a request for an inaccurate progress payment certificate to facilitate the client's financial transaction. A case could be referred to is certifying involving deviation from the approved BP, when the house buyer complains to the certifying architect and the architect's reply is that: "it does not matter the wall is crooked, so long as it has been built" (HBA, 2005a). Most of the house buyers have had experience that the architects have failed to act a completely free agent to utmost of his ability, act independently, fairly and impartially in the certifying process; therefore, the fraudulent certification is the highest complaint amongst the problem as shows in the Table 1, the public complaint against the architects in All types of Housing Projects has consisted of 128 cases (65.6%) out of 195 total complaint cases.

It is noted that, the certification may involve risk aspects that many architects have not traditionally been exposed to. If an architect decides to become a certifier, he will need to ensure that his professional indemnity insurance is adequate to cover the full scope of risk associated with the work (RAIA, 2000; Thurasingham, 2013). This responsibility can neither be delegated nor abrogated. Moreover, certificates often mark financial consequences resulting in the flow of money from one party to another. In doing so, the architect is placed in a position of required impartiality to act fairly between the parties in a professional manner while exercising his own independent judgment (Tan, 1998; Teh, 1998). If this requirement is not met, any related determination by the architect can be challenged. It appears in the Table 1 that, the public complaint against the architect due to the fraudulent certification in Landed Properties Housing Project is the highest amongst the other problems and this consist of 87 cases (63.3%) out of 137 total complaint cases.

In many house buyers' opinions that, the developer commonly pressure the architect to issues fraudulent certification to cheat their interests (HBA, 2005a; PAM, 2005). Distortions such as, understated or inflated progress claims to be paid by the house buyer are often procured by offering an inducements to the architect. E.g. offering the next phase of new housing project to exchange the stage payment certificate to claim unwarranted monies from the house buyers. It appears that, the public allegation regarding the fraudulent certification is the highest complaints amongst the other problems in the Strata-Title Properties Housing Project, this consist of 41 cases (70.7%) out of 58 total complaint cases. Give this statistic, a question of why the architect can be pressured by the developer to issue such fraudulent certification to compromise the house buyers' interests? Hence why the architect would rather damage the Professional Code of Conduct to assist the developer but lost the public trust? It is simply because he/she is the developer's agent (HBA, 2005b).

Moreover, the minimum of consultation fees for the absolutely minimum level service is expected to be in the public's best interest (Mohamed, 1987). Therefore, the architectural fees have a direct integration with the fraudulent certification. A question of 'why the architects still accept a much lower fee for housing projects?' This is simply because, given the need to secure their own architectural business survival, newly qualified architects have no alternative, but to

Table 1 Public Complaints Against Architects in Malaysia during 2001-2012

Complainer	Public complaints against architects for:	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Fraudulent Certification	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	1	2	1	9	11	25	27	23	31	36	10	3	197
	All types of Housing Project	1	1	0	0	0	24	24	16	7	21	4	3	128
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	18	14	9	3	22	0	1	67
	Only Strata Title Properties (Schedule H) Housing Project	1	2	0	0	0	6	10	7	4	1	3	0	41
Defect	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	1	1	4	2	2	0	1	11
	All types of Housing Project	0	0	0	0	0	1	1	2	2	0	0	1	11
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	1	1	1	2	0	0	1	9
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	1	0	0	0	0	2
Supplanting	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	1	0	3	2	4	4	3	2	0	21
	All types of Housing Project	0	0	0	0	0	3	2	4	4	3	2	0	21
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	1	1	2	0	0	0	0	4
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	2	1	2	4	3	2	0	17
Collaboration with non-registered person or unlicensed developer	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	0	0	0	0	0	0	0
	All types of Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
Non-approval of practice	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	0	0	0	0	0	0	0
	All types of Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
Unprofessional conduct	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	1	1	3	2	11	7	16	10	0	49
	All types of Housing Project	0	0	0	0	0	1	1	1	2	3	2	0	11
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	1	1	2	2	0	9
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	1	1	0	0	1	0	0	3
Contract matter	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	1	1	1	1	0	0	1	1	6
	All types of Housing Project	0	0	0	0	0	1	1	1	1	0	1	1	6
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	1	0	0	1
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	1	1	1	1	0	1	1	6
Architectural fee dispute	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	0	0	0	0	1	0	1
	All types of Housing Project	0	0	0	0	0	0	0	0	0	0	1	0	1
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	1	0	1
Occupied building without BP, CHA/CDC	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	0	0	0	0	0	0	0	0	0	0
	All types of Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0
Delay of CFO	All types of Construction Works, E.g. Housing, Non-housing Government, Commercial, Institution project	0	0	0	1	1	1	4	1	1	0	0	0	11
	All types of Housing Project	0	0	0	0	0	1	1	0	0	0	0	0	3
	Only Landed Properties (Schedule G) Housing Project	0	0	0	0	0	1	1	0	0	0	0	0	3
	Only Strata Title Properties (Schedule H) Housing Project	0	0	0	0	0	0	0	0	0	0	0	0	0

accept the inequitable consultation fee from their developer clients. According to the PAM Procurement Survey in March – April 2011, most of the architects do not satisfy with the consultancy fee in housing projects (PAM, 2011; Teh, 2012). As a professionally qualified person, it is reasonable to expect a certain level of remuneration for services rendered based on the belief that every human work place activity should be profitable (Mohamed, 1987).

In the average architectural firm, housing projects, in one form another, constitute at least half of the office workload. For those architects with sufficient experience, it is a known fact that the exposure to liabilities as a result of handling housing projects is especially high relative to the value of the undertaken work when compared to projects not related to housing (Chee, 2002). Because in no small part to the fact that in

addition with having to deal with the developers, the architect may also have to answer to the house buyers should things go wrong whether with the works or with certification for stage progress claims under the SPA (Chee, 1998). It can also be inferred from the complaints against architects received by LAM and since 2001 until 2012 (see Table 1) that many architects involved in housing developments appear inexperienced with their duties and obligations to issue certificates under the main laws governing the housing development such as, HDA and HDR as well as other relevant act such as, (1) Uniform Building By-Law (UBBL), (2) Street Drainage and Building Act (SDBA). Many remain blissfully unaware of the consequences of not carrying out with their duties with due care, especially issuing the fraudulent certifications, either the stage payment certificates or work completion certificates have become a major problem and threatened the house buyers' interests.

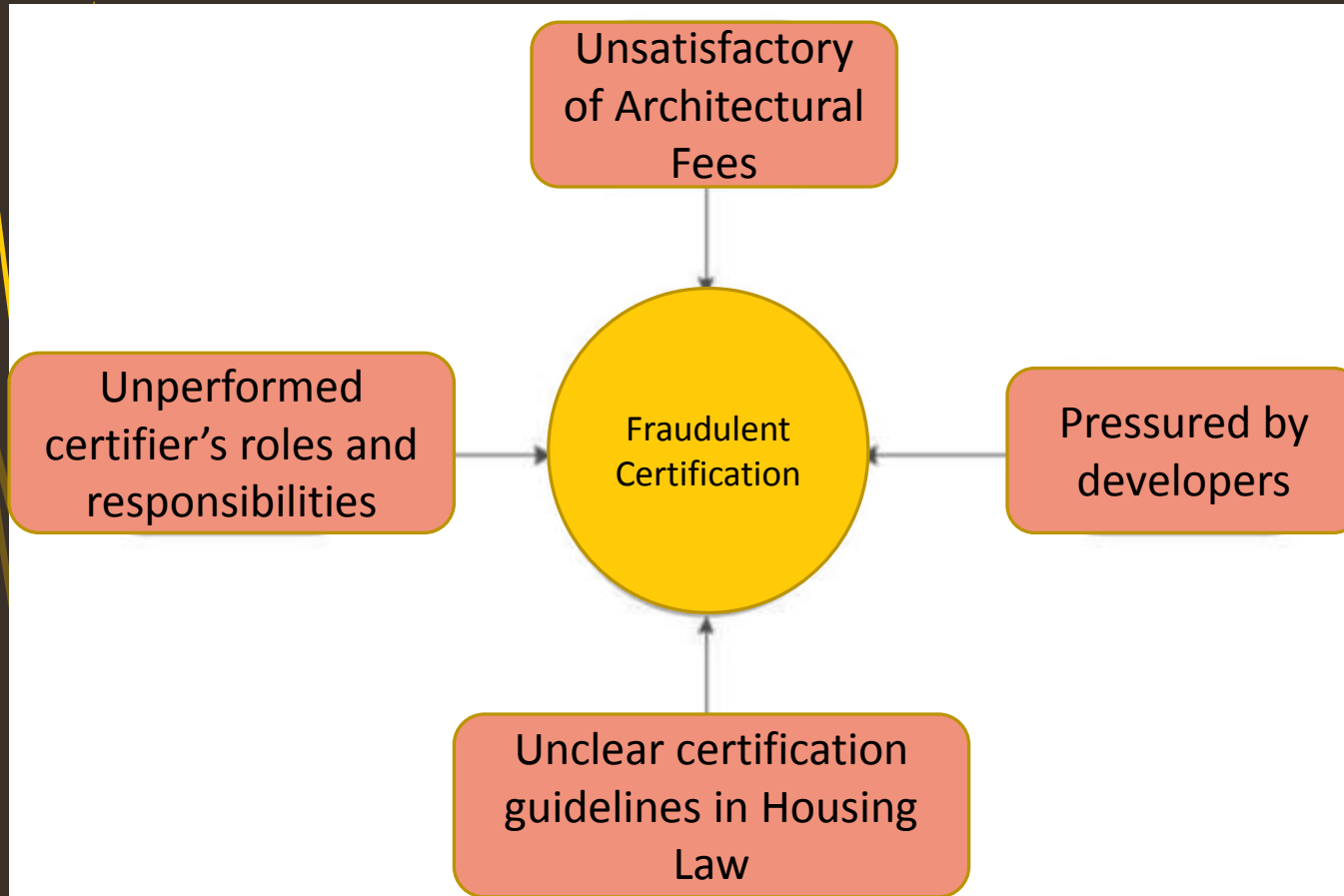


Figure 3: Five Elements Integrated with Fraudulent Certification

5. Conclusions and Recommendations

Many architects do not perform the certifier's responsibility and commit themselves into the professional negligence. It perceive that, the elements of (1) Unperformed Certifier Role and Responsibility, (2) Unclear certification guideline in housing laws, (3) Pressure by Developers to Issue Fraudulent Certificate, (4) unsatisfactory Consultation Fees, which could contribute to the fraudulent certification in housing project as show in figure 3.

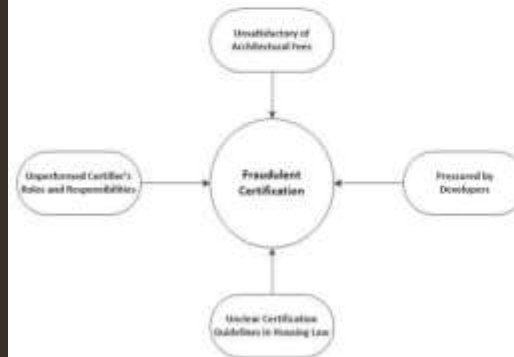


Figure 3: Five Elements Integrated with Fraudulent Certification

One rule for the guidance in performing architect duty as a certifier is that, he should act honestly, strictly, impartially and without any perverse conduct to deal with the matter at all time. LAM should recognize this problem and propose to the federal government to amend the relevant building laws to restrict the developer to interfere (pressure) the architect on the certification role. A question: how to overcome these problems to protect the architect and public's best interests? LAM could refer to the land surveyor procurement and fee payment procedure. An employer shall pay the land surveyor service fee to the Board of Land Surveyor Malaysia as a stakeholder in accordance to Vide Federal Government Gazette PII (A) 169 dated 1 May 1997 Thirteenth Schedule (Regulation 99) Scale of Fees for Title Surveys. Under this procedure, if the developer fails to pay such fee or pay lower than the Architect (Scale of Minimum Fee) Rule, LAM shall immediately instruct the architect to suspend the work. This could cut down the chance of employer demands for discounted fee rate or refuse to pay with any reason. E.g. no payment due to sale not good, or no payment due to economy down turn, or no payment due to the cheque has not been signed by the developer, or no payment due to not fulfill the developer's instruction.

The United State government has realized that, when a house owner request changing the certification procedure in the contract, but the architect does not have the power to do so (O'Leary & Arthur, 2001). In Malaysia, when a house buyer wishes to stop paying the developer in accordance with the architect fraudulent certification, he has no power to do so. Because there is no provision under the SPA allows the bank to stop paying the developer due to architect fraudulent certification; therefore, the architect shall carefully to certify the stage completion work in order to protect the public's interest and architect reputation in the professional industry. LAM should recognize the complicated

problem in the Schedule of Stage Payment Certificates under the SPA and other legal loopholes to compromise the house buyer interest by the fraudulent certification, if nothing is done to mitigate the problem. Should LAM and PAM direct some effort to formulate a comprehensive certification system and regulate this system in the HDA, HDR and SPA to mandate the developer and architect strictly comply in order to secure the house buyers' interests and reduce the omnipresent dilemma to the government. Hence, this comprehensive guideline system shall regularly update in according to the current construction trend and design. LAM and PAM shall also instruct all architects to highlight the certification rule and procedure in certification system in the stage of signing the Memorandum of Agreement for architectural service and insist the client to comply the comprehensive certification guideline under the relevant housing laws.

The finding result shows that most of the architect do not perform the roles and responsibility of undertaking certification, what an architect needs to know and the areas which he needs to be alerted when undertaking progress certification for housing projects. They are by no means exhaustive as new issue and problems keep appearing. A housing development is not just a matter of drawing a typical unit, the architect is expected to diligently and carefully to certify all stages of completion of the works, since the works (houses) belong to the third party (house buyer) instead of the developer. Moreover, in response to the currently evolving litigious trends the House Buyer Associate of Malaysia has been formed to take up collective action against the developers, often citing the architect as a party to be suit. The unwelcome litigation could be enough to tarnish the architect's reputation and may be costly to resolving the matter. During that time, the architect will stand alone to defend himself in the court and there is no laws could protect the architect's interest, but there are many laws could put a full stop to dismiss his architectural practice.

The fraudulent certification could create a strong impact to compromise the house buyer's interest and this compromising could damage the professional reputation. Once the reputation is damaged, the public has no longer trust of Malaysia architect. Ultimately they would rather pay higher fee to appoint foreign talented architect to design and construct their home. In this situation, the Malaysia architect could only become a sub-actor (as a submitting architect only, as it is protected by the Architect Act, SDBA and UBBL), but the foreign architect will slowly occupy the Malaysia architectural industry and become a star architect (main actor) whose is fully supported by the public at-large to act the whole architectural show in Malaysia architectural industry.

References

- Ahmad, S. (2012). Blanket Assumptions On Professional Bodies Inappropriate. *Berita Akitek*.
- Albrecht, S., & Albrecht, C. (2004). *Fraud Examination & Prevention*. Natorp Boulevard: Thomson South Western.
- Albrecht, S., Albrecht, C., Albrecht, C., & Zimbelman, M. (2009). *Fraud Examination*. Canada: South-Western.
- Awalludin, Z. L. (2010). *guidelines On Issuance Of Form FI (Partial Certificate Of Completion And Compliance) (2/2010)*. Kuala Lumpur: Board Of Architects Malaysia.
- Buang, S. (2001, 6 November 2001). *HOUSING DEVELOPMENT ACT: WHO DOES IT PROTECT?* Paper presented at the National Housing



HOW
PROFESSIONAL
ETHICS IMPACT
CONSTRUCTION
QUALITY

Full Length Research Paper

How professional ethics impact construction quality: Perception and evidence in a fast developing economy

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There is a perception that majority of quality-related issues are caused by human factors. The issue of professional ethics plays an important role in quality-related problems in a construction project. This paper highlights the current level of professional ethics standard in the construction industry and how ethics influences the quality of construction projects. A questionnaire survey was conducted in the construction industry in Malaysia, a fast developing economy. Results indicate that various forms of unethical conducts have significant impact on construction quality. This study concludes that professional ethics is a pre-requisite to attaining sustained and acceptable quality in construction and suggests several approaches to enhance professionalism among construction professionals to improve quality in construction.

Key words: Professional ethics, quality-related problem, unethical conducts, fast developing economy, construction quality.

INTRODUCTION

The adoption of ethical principles and the enforcement of standards become matters of increasing importance to society as the number of professions and professionals increase and the work environment becomes more ethically sensitive because the credibility of the entire profession is endangered when there are lapses in occurrence of ethical behaviour. It is important to understand the term "profession" before discussing the issue of professional ethics in depth. According to Greenhalgh (1997), the essence of the word "professionalism" can be defined as the possession and autonomous control of a body of specialized knowledge, which when combined with honorific status, confers power upon its holders. Professionals have always been linked with the notion of "service" so that a profession is described as a group of people organised to serve a body of specialized knowledge in the interests of society based on the perceived relationship (Appelbaum and Lawton, 1990). According to Bayles (1989), professional ethics is

defined as a system of norms so that both the morality and behaviour of professionals could be dealt with in their day-to-day practice by this system. Professional ethics also ascribes moral responsibility not to an individual, but to all professionals practicing in a particular profession. Carey and Doherty (1968) stated that it automatically tied up with more practical concepts and expectations from the public, encompassing issues such as competence, responsibility and willingness to serve the public. Brien (1998) feels that the problem that faces any professional community is how could it regulate itself effectively to justify its autonomy, while ensuring that the clients of its members and society as a whole benefit from the profession's and the individual professional's actions, rather than becoming their victims. It is one of the ethical quality control.

Construction industry plays a substantial role in a country's economy, irrespective of the country's levels of economic development (Zantandis and Tsiotras, 1998). The construction sector in a country's economy is an important employer of a nation's workforce as it employs between 2 to 10% of total workforce of most countries (Abdul-Rashid and Hassan, 2005). Malaysia had gained an impressive economic growth during the last three

decades (Abdul-Rahman et al., 2005) and this sector had employed an estimated 798,200 workforce nationwide in 2004 (CIDB, 2006). The Malaysian Government had given a much needed boost to the country's construction industry under the 9th Malaysian Plan where a total of 880 projects worth RM15 billion is to be tendered (The Star, 2006a). Nevertheless, much had been reported about the performance of the construction industry in terms of quality, productivity and safety. In addition, it should be highlighted that the issue of poor quality in the construction sector had been identified as a major concern even as far back as the mid 1980s (The Star, 2006b). Generally, it is a rule that construction projects must be completed within the planned cost, scheduled time and required quality. Quality may sometimes be ignored in this industry to cut the costs or to shorten the project time (Turk, 2006). To deal with the low quality problem faced by the industry, quality management is seen as an approach to achieve the required level of quality of the end product and had been given great attention world-wide over the past three decades (Hiyassat, 2000; Berawi and Woodhead, 2005). However, there is a perception that majority of quality-related issues are caused by human factor. Therefore, the issue of professional ethics plays an important role in reducing quality problems and preventing inconvenience to all parties concerned.

The issues of professional ethics within the construction industry affect a wide spectrum of population. The local authorities, public works department, client organisations, consultants, suppliers, contractors, home buyers, and users of public infrastructure, are all within the scope of professional ethics. All those mentioned have their own contributions towards the problems in hand, and issues of ethics and integrity in the Malaysian construction industry.

PROFESSIONALS AND PROFESSIONAL ETHICS IN CONSTRUCTION INDUSTRY

The construction sector in Malaysia as that in most other countries is made up of different sectors including client groups, the federal and state councils, private organisations, individuals, developers, contractors, suppliers, manufacturers and professionals, architects, quantity surveyors, and engineers incorporating civil, structural, mechanical and electrical. In addition, there are supporting regulatory bodies whose function is to inspect and to ensure that specialist installation conforms to standards set up by building byelaws. The main problem surfaced is the fragmentation of the different sectors in the industry (Hiyassat, 2000; Berawi and Woodhead, 2005; Segalas et al., 2010). Construction professionals exercise their own skills and judgement and they are accountable to the client and bound by their

professional code of ethics (Toor and Ofori, 2008). Contractors on the other hand, are keen to make a profit and hence their actions inclined to business ethics. Each profession has its own interests, which are often divergent and competing in nature. Their diversity can be a source of conflicting ethical standards and practice, which may affect quality performance and accountability to clients or customers. The uniqueness of the sector and the need to perform accountability among all participants places an imposed duty on the associated notions of ethics and professionalism in an integrated framework that should facilitate responsible and accountable performance across the construction sector (Sichombo et al., 2009; Turk, 2006; Abdul-Rashid and Hassan, 2005).

Profession is an occupation that requires both advanced study and mastery of a specialized body of knowledge and undertaken to promote, ensure or safeguard some matter that significantly affects others' well being (Vee and Skitmore, 2003). Almost every profession has its codes of ethics to provide a framework for arriving at good ethical choices. Therefore, professional ethics is a system of norms to deal with both the morality and behaviour of professionals in their day-to-day practice, and ascribes moral responsibility not to an individual, but to all professionals practicing in a particular profession (Corvellec and Macheridis, 2010). For the building and designing professions, the incalculable value of human life demands nothing less than the highest moral considerations from those who might risk it otherwise (Smyth et al., 2010; Mason, 1998). The construction industry is a perfect environment for ethical dilemmas, with its low-price mentality, fierce competition, and paper-thin margin (FMI, 2006). Jordan (2005) stated that unethical behaviour is taking a growing toll on the reputation of the industry. From a survey conducted by FMI, 63% of the respondents whom are the construction players feel that construction sector is tainted by unethical conducts (FMI, 2006). Surveys conducted by researchers in Australia (Vee and Skitmore, 2003) and South Africa (Pearl et al., 2005) identified several unethical conducts and ethical dilemmas in the construction industry such as corruption, negligence, bribery, conflict of interest, bid cutting, under bidding, collusive tendering, cover pricing, frontloading, bid shopping, withdrawal of tender, and payment game. It is evident that there exist significant areas of concern pertaining to the ethical conducts practised by the construction professionals.

There are many other efforts taken to increase the ethical standards and integrity among the professionals in construction sectors worldwide. According to Pearl et al. (2005), the regulatory professional acts relating to the built environment professional sector in South Africa were totally overhauled in the late 1990's and a new suite of professional acts were promulgated in 2000 to enhance the professionalism. Meanwhile, in America, the construction management association of America

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(CMAA) had updated its code of ethics to include a wider range of professional services as well as professional services among construction players (CMAA, 2006). A standard of professional conduct to govern the ethical practices in the American civil engineering profession was published by the American society of civil engineers. On the other hand, Australia had their own codes of tendering to enhance fairness and transparency (Ray, 1997). In Malaysia, the government is very serious about improving ethics in both public and private sector. For instance, the construction industry had introduced codes of ethics for contractors to encourage self-regulation among the contractor in this sector (The Star, 2006c). Stakeholders of construction projects were asked to enforce the existing code of ethics to safeguard the engineer's good name (The Star, 2006d). The construction industry development board (CIDB) of Malaysia also host integrity courses for contractors to promote the importance of integrity and plans to make the course as a pre-requisite for contractors when renewing their registration (The Star, 2006d). Finally, the launching of the construction industry master plan (CiMP) by CIDB in 2004 also handed in the master plan an objective to enhance professional ethics in the local construction industry.

QUALITY MANAGEMENT IN CONSTRUCTION INDUSTRY

The issues of quality have existed since tribal chiefs, kings, and pharaohs ruled (Gitlow et al., 2005; Tabassi and Bakar, 2009). In a project scenario, quality can be defined as meeting the legal, aesthetic (Arditi and Gunaydin, 1997) and functional requirements of a project (Berawi, 2006). Clients and customers, both from the public and private sectors, nowadays place more emphasis on the quality of products rather than the price which was the major concern in the past. Hence, a rapid expansion of international competition in quality had occurred (Tsiotras and Gotzamani, 1996; Abdul-Rahman and Berawi, 2002). In terms of quality in construction industry, Turk (2006), citing Arditi and Gunaydin (1999), mentioned that 'high quality building project' includes factors like the design being easily understandable and applicable, conformity of design with specifications, economics of construction, ease of operation, ease of maintenance and energy efficiency. Zantanidis and Tsiotras (1998) and Abdul-Rahman and Berawi (2002) mentioned that expectations for quality construction projects will continue to grow rapidly as the number of affluent, educated and quality-conscious customers are increasing.

With the globalization of economy, construction firms world-wide are actively engaged to achieve internationally accepted quality levels to ensure their fore-front position in the emerging international market especially

in developing economies. Thus, the need to have a proper system that ensures quality is critical, coupled with high level of attention paid to quality management in construction industry (Dong et al., 2009; Abdul-Rahman et al., 2006). Scholars indicate that quality management had been adopted by many countries in their respective construction industries including Hong Kong (Leung et al., 1999; Au and Yu, 1999; Tang and Kam, 1999), Singapore (Low and Omar, 1999; Low and Yeo, 1997), Greece (Tsiotras and Gotzamani, 1996; Zantanidis and Tsiotras, 1998), Turkey (Turk, 2006), Jordan (Hiyassat, 2000), Saudi Arabia (Bubshait and Al-Atiq, 1999), Sweden (Landin, 2000), United States (Chini and Valdez, 2003), South Africa (Rwamelila, 1995) and Malaysia (Chew and Chai, 1996).

Quality management is a complex effort that may not be fruitful if only technical aspects are focused and this had led to the modern concept of total quality management (TQM) (Tan and Abdul-Rahman, 2005). Besterfield et al. (2003) defines TQM as both philosophy and a set of guiding principles that represent the foundation of continuously improving organization. Many tools, methods, and techniques have been developed world wide in order to give substance to the concept of TQM (Geraedts et al., 2001; Berawi, 2004). A large number of companies obtained the ISO 9000 standards certificate as a first step towards TQM (Hiyassat, 2000). However, if people are not serious in implementing quality management, no matter how good the system is, it will fail eventually. There is a strong perception that majority of the quality-related problems are caused by human-related factors, especially professionalism and ethics (Besterfield et al., 2003).

PERCEPTION BETWEEN QUALITY-RELATED ISSUES AND PROFESSIONAL ETHICS

Besterfield et al. (2003) mentioned that quality is dependent on ethical behaviour, whereby quality and ethics have a common care premise which is to do right things right and it is a proven way to reduce costs, improve competitiveness, and create customer satisfaction. It is evident that low ethical standards among construction professional will lead to quality problem. These issues were highlighted in the media and received great concern of public (Fleddermann, 2004; NST, 2004b). As an example, the ethical-related case in the construction industry was the collapse of the Hyatt Regency Kansas City walkways (Fleddermann, 2004). It is a hotel project in 1970s with walkways suspended over the large atrium. With the intention to save the cost, the subcontractor for the fabrication and erection of atrium steel suggested changes in the structure and it was approved by the consulting structural engineer. During the construction, part of the atrium collapsed and the engineer came out with the report saying that the design

was safe and ready to be opened for business in 1980. The tragedy happened one year after the completion of the project during a dancing party in the atrium lobby. Some of the walkways on which people were dancing collapsed onto the crowded atrium floor, leaving more than a hundred people dead and almost two hundreds injured. Investigation was then conducted by the Missouri Board of Architects, Professional Engineers and Land Surveyors reported that the original design was only marginally acceptable to the Kansas City building code where the walkways would only have had approximately 60% of the capacity required by the code. The situation was even worse in the new design proposed by the steel subcontractor and approved by the engineer. The consultant was found negligence in its investigation of the atrium collapse and places too much reliance on the subcontractor. Therefore, the engineer had been charged for negligence, incompetence, and misconduct. Both the engineer and the consultant firm lose license of practicing. This case strongly indicates that unethical behaviour will lead to quality problems and structural failures (Fleddermann, 2004).

In Malaysia, as an example, a newly opened specialist hospital in Johor Bahru was closed due to fungi attack on the equipments and walls. It found that many of the hospital's equipments such as oxygen piping and sewerage system are not according to the specifications. This clearly shows the poor ethics of the contractor who failed to do right things right. The contractor was given three months to rectify problems including leaking pipes, broken ceilings and faulty air-conditioning ducts (NST, 2004a). Another sub-standard quality of construction project in Malaysia is the RM238 million Middle Ring Road Two (MRR2) flyover which was closed to traffic after cracks were found in 31 pillars and structural movements were detected (The Sun, 2004). The Government engaged an independent consultant from the United Kingdom to investigate the defects. The independent consultant identified that design deficiencies and improper anchoring of the columns to the crossbeam were the main cause of the cracks (NST, 2004b). Design deficiency is found to be negligence on the design team and the repair works was then carried out at an estimated cost of RM20 million.

RESEARCH METHODS AND PROCEDURES

Consequently, in response to the perception, a study was conducted to seek for the relationship between professional ethics and the quality-related issues in Malaysian construction sector. It should be noted that for the purpose of this survey, contractors and clients are regarded as professions and they are required to demonstrate a high degree of professionalism in performing their task, in response to the Government's effort who has introduced the National integrity plan to enhance integrity and ethics. The research adopted a questionnaire survey as a quantitative method, through which five hundred sets of questionnaires were distributed to selected respondents in Kuala Lumpur and Selangor state by post. The questionnaire contains sixteen questions with multiple

Table 1. Breakdown of response by type of company.

Type of firm	Sent	Responded	Percent (%)
Contractor	275	40	14.55
Architectural	80	11	13.95
Developer	45	6	13.33
Quantity surveying	100	7	7.00
Total	500	66	13.20

choices questions in three sections: A, B, and C. Targeted respondents ranging from developer firms, consultant firms, and contracting firms were chosen from various professional organizations. To ensure the reliability of the questionnaire survey, the sample size was compared to match the sample size recommended by Krejcie and Morgan (Sekaran, 2000: 295). Several approaches have been used to ensure a high response rate. Questions were designed in a very straightforward way and were pilot tested. The addressed used were the most updated. Every questionnaire sent was followed up by a phone call. If the questionnaire form was not well received by the chosen respondent, a copy was either sent again or was delivered through walk in. Five hundred questionnaires were distributed and the rate of return was 13.2%. Table 1 shows the breakdown of response by type of company. Data obtained from the returned questionnaires were sorted out and analyzed using SPSS Version 15.

RESEARCH FINDINGS

Professional ethics in Malaysian construction industry

A majority (77.3%) of the respondents' firms practice their own code of ethics. Another 22.7% of the respondents indicated that they do not have a formal code of ethics. The findings show that most of the companies are aware of the importance of ethics in work. About 34.9% of the respondents indicated that their organizations have ethics training programs for their staff. The frequency of training programmes conducted in a year ranges from one to ten times. Apparently there is much room for improvement in terms of staff training in the areas of professional ethics.

The survey results show that 74.2% of the respondents agree that the construction industry is tainted by unethical conducts. Another 13.64% does not agree with this statement and the remainder 12% either does not indicate their own stand or did not respond to the question. The response reflects that the image of the local construction industry is tainted by unethical conducts amongst the construction players.

Respondents rated the types of unethical conduct based on the frequency scale in Table 2. Means are used to determine the average for each option. The average option can be determined more accurately as each option would fall in one of the four ranges of means. Table 3 shows the rank of the unethical conducts based on their respective means. In contrast, frequency distribution can just tell which option is the most chosen

Options	Mean
None	0.00 ≤ Mean score < 0.75
Sometimes	0.75 ≤ Mean score < 1.50
Often	1.50 ≤ Mean score < 2.25
Very often	2.25 ≤ Mean score < 3.00

Table 2. Classification for frequency scale.

Options	Mean
None	0.00 ≤ Mean score < 0.75
Sometimes	0.75 ≤ Mean score < 1.50
Often	1.50 ≤ Mean score < 2.25
Very often	2.25 ≤ Mean score < 3.00

Table 4. Respondent's experience on compensation of tendering cost.

Compensation of tendering cost	Frequency	Percent (%)	Score
None (Score-0)	32	48.48	0.00
Sometimes (Score-1)	19	28.79	19.00
Often (Score-2)	15	22.73	30.00
Very often (Score-3)	0	0.00	0.00
Total	66	100.00	49.00
Mean			0.74

Table 3. Ranking of unethical conducts by construction players.

Categories of unethical conducts	Mean	Rank
Under bidding, bid shopping, bid cutting	1.67	1
Bribery, corruption	1.61	2
Negligence	1.48	3
Front loading, claims game	1.42	4
Payment game	1.32	5
Unfair and dishonest conduct, fraud	1.30	6
Collusion	1.26	7
Conflict of interest	1.17	8
Change order game	1.12	9
Cover pricing, withdrawal of tender	1.06	10
Compensation of tendering cost	0.74	11

Rank no. 1 = Most frequent; Rank no.11 = Least frequent.

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Compensation of tendering cost	0.74	11

Rank no. 1 = Most frequent; Rank no.11 = Least frequent.

Table 5. Classification for 'agreement' scale.

Options	Mean
Strongly agree	0.00 ≤ Mean score < 0.75
Somewhat agree	0.75 ≤ Mean score < 1.50
Somewhat disagree	1.50 ≤ Mean score < 2.25
Strongly disagree	2.25 ≤ Mean score < 3.00

and 9.1% claimed that they did not experience such conducts.

Determination of relationship between quality-related issues with professional ethics

option. Table 3 also illustrates eight unethical conducts which their mean score fall within the categories of "Sometimes" Meanwhile, two groups of unethical conducts score mean values were in the range of "Often" and one unethical conducts score mean value falls under "None" option. Apart from that, one respondent reported that there were two more unethical conducts in construction industry. Buying tenderer and under table money was rated as "Very Often" happened in the Malaysian construction industry.

Table 3 illustrates the top five categories of unethical conducts in the construction industry, namely: (a) Under bidding, bid shopping and bid cutting (categorised as a group); (b) Bribery and fraud; (c) Negligence; (d) Front loading, and (e) Claims game and payment game. Analysis showed that the top two most unethical conducts "Often" happened and the remaining three occurred "Sometimes". Unsuccessful tenderer claiming for compensation of tendering cost with mean 0.74 shows that "None" of these happened in local construction industry. As shown in Table 4, 48.5% of the respondents never experienced such conducts in the construction industry. About 4.6% of the respondents did not experience any under bidding, bid shopping, and bid cutting exercise in the construction industry. In contrast, more than half (51.5%) of the respondents claimed that they "Often" or "Very Often" experienced such conducts in the industry. In terms of experiences in bribery and corruption, about 53.0% respondents ranked it as "Often" or "Very Often" while 37.9% ranked it as "Sometimes".

Nearly 73% respondents rated the local construction quality level as "average" while 18.2% rated "Good", but nobody rated "Excellent". Tables 5 and 6 illustrate the options provided and the details of findings. In answering the question that whether unethical acts contribute to the quality-related problems in construction industry, 40.9% respondents "Strongly Agree" and 53.0% respondents "Somewhat Agree". This shows that the majority (93.9%) of the respondents agree that unethical acts contribute to the quality-related problem in construction industry as the mean score 0.67 (Table 6) is within "Strongly Agree" rang as shown in Table 5.

A majority of the respondents (72.7%) agree that unethical conducts can be the main cause of poor quality in construction industry with a mean score of 1.05. There are altogether 72.7% respondents chose either "Strongly Agree" or "Somewhat Agree" that unethical conducts can be the main cause of poor quality project. Respondents' view on the current work ethics in the local construction industry falls in the range of "Somewhat Satisfy" with a mean value of 1.47. There were 43.94% respondents who rated it as "Strongly Dissatisfied".

Meanwhile, 84.8% agreed that unethical conducts will affect the effectiveness of quality management implementation of which about 57.5% of them rate the influence of unethical conducts which affects the effectiveness of quality management as "Extremely high" and "high".

CONCLUSIONS AND RECOMMENDATIONS

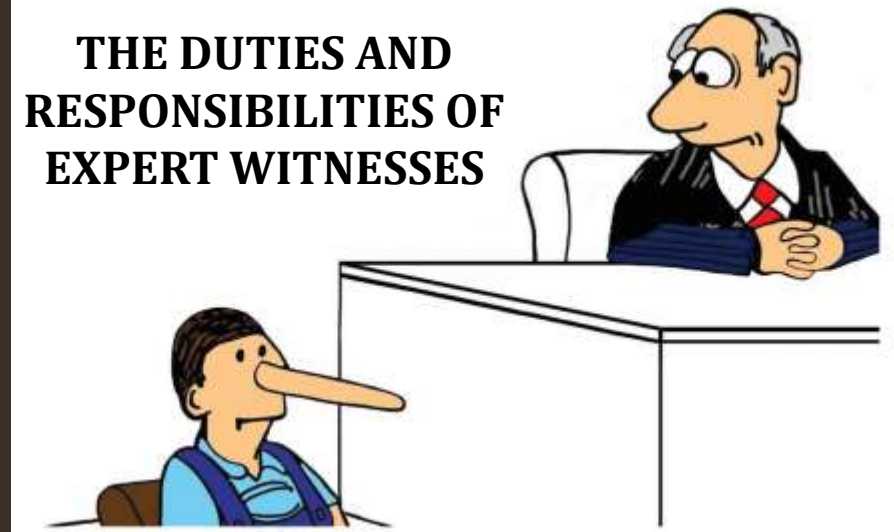
The findings indicate that unethical conducts have a direct and negative impact on the quality of construction. There exist significant areas of concern in the Malaysian construction industry such as the ethical standards among construction professional considered below average. One of the best ways to enhance professionalism is through leadership with leaders serving as role model for the staff. Although the economy growth is one of the main concerns by many economists, it should not be at the expense of poor quality because such a route will later have a negative impact on the economy. Unethical acts that exist in developing economies can negatively affect the quality of constructed projects, thus undermining the clients and users of those projects. If this situation continues, the development and reputation of construction industry will suffer.

Construction professionals are expected to behave with professional integrity and reasonable of care. They should strive to achieve good quality of work as they owe responsibility to the general public. Only when professorial ethics are well practiced, professionalism will be enhanced and thus eliminating the quality-related problems directly. The main public agencies of developing countries are encouraged to enforce existing laws and procedures and to set a standard code of ethics. All construction players must be monitored to generate a standard scheme to measure the quality of work achieved by contractors. Consultants should exercise their duty of care in performing their works and not resort to unethical behaviour for approving any sub-standard work. The contractors should not earn profit in unethical ways. Construction parties should always be alert and try to avoid any unethical behaviour among the construction players from happening. Further researches are recommended to study how to implement the concept of total quality management (TQM) to improve unethical situations in the construction industry.

RIBA's principles of conduct

- 1.1 The Royal Institute expect its Members to act with impartially, responsibility and truthfulness at all times in their professional and business activities.
- 1.2 Members should not allow themselves to be improperly influenced either by their own, or others' self-interest.
- 1.3 Members should not be a party to any statement which they know to be untrue, misleading, and unfair to others or contrary to their own professional knowledge.
- 1.4 Members should avoid conflicts of interest. If a conflict arises, they should declare it to those parties affected and either remove its cause, or withdraw from that situation.
- 1.5 Members should respect confidentially and the privacy of others.
- 1.6 Members should not offer or take bribes in connection with their professional work.

THE DUTIES AND RESPONSIBILITIES OF EXPERT WITNESSES



THE DUTIES AND RESPONSIBILITIES OF EXPERT WITNESSES

“An expert witness is a person engaged to give an opinion based on experience, knowledge, and expertise. The overriding duty of an expert witness is to provide independent, impartial, and unbiased evidence to the court or tribunal.”

Lay witness evidence is normally restricted to factual matters that are within someone’s personal knowledge; he or she is not permitted to express opinions.


An expert witness has a primary obligation to provide an independent, impartial, and objective assessment to the court or arbitration tribunal, which supersedes his or her duty to the instructing party.

In conclusion, it can be said that the key principles to be borne in mind and which allow an 'expert' to be considered as credible and reliable 'expert witness' are :

- the expert witness's primary obligation is to the court [whatever form it may take];
- the expert witness requires to be independent, impartial and objective – this requires the expert witness not to be selective in the materials drawn upon to support the conclusions reached, and to take into account any matters which might be contrary to that conclusion;
- the expert witness should do nothing to compromise his integrity;
- an expert witness is entitled to, and probably should, charge a proper professional fee for their services;
- the fee should not be dependent upon the outcome of the dispute, nor should the expert witness seek or accept any other benefit over and above their normal fee and expenses;

**EXPERT EVIDENCE – THE ROLE, DUTIES AND RESPONSIBILITIES
OF THE EXPERT WITNESS IN LITIGATION**

By Robert Sutherland, Advocate

- 
- the expert witness should avoid a conflict of interest;
 - the expert witness's work should be properly informed and done to a proper standard, having regard to all appropriate codes of conduct, codes of practice and guidelines;
 - the expert witness should therefore have a high standard of technical knowledge and practical experience;
 - the expert witness should keep up to date through work experience, and appropriate continuing professional development and training.

**EXPERT EVIDENCE – THE ROLE, DUTIES AND RESPONSIBILITIES
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Disciplinary Actions
taken by (LAM) on the
failure of Statutory
Duties by Principal
Submitting Person
(PSP)

DISCIPLINARY COMMITTEE

DISCIPLINARY COMMITTEE

The following reprimands taken and penalties imposed by the LAM Disciplinary Committee on members who are Architects, have been selected to be published in this edition of Warta LAM. The intention is to remind the profession-at-large, on the seriousness of the offences committed by Architects in the course of discharging their professional duties. The local authority jurisdiction where the offence took place, the date of verdict passed and the penalty imposed are stated below, to illustrate the severity of the misconduct that was committed.

NO.	OFFENCE	JURISDICTION	DATE DECISION MADE	PENALTY
1	Wrongly and/or prematurely issued Stage Completion Certificate for Stage 2(c), 2 (d), and 2 (e) where the works has not been completed on site, in contravention of the Code of Conduct for Architects as provided in the Second Schedule Rule 28 of Architects Rules 1996 under sub-paragraph 3(2) & 3(5) (a) - (d)	Majlis Perbandaran Selayang	31/10/2018	Warning and RM 100,000 fine
3	Failed to exercise a reasonable standard of skill and diligence normally expected and accepted by the profession in respect of all forms of certification and compliance of statutory requirements as the Building Draughtsman, in contravention of the Code of Conduct for Building Draughtsman as provided in the Second Schedule (Part Two) Subrule 29(3) of Architects Rules 1996 under sub-paragraph 3(1),(2) and (5)(a) - (d)	Majlis Perbandaran Ampang Jaya	25/3/2019	Warning, RM 50,000 fine and One (1) year Suspension
7	Wrongly certified the Form G16 (External Electricity Supply System) and the Certificate of Completion and Compliance (CCC) without ensuring an electricity are ready for connection, in contravention of the Code of the Professional Conduct for Architects as provided in the Second Schedule Rule 28 of Architects Rules 1996 under sub-paragraph 3 (1) & (5) (a) - (d)	Majlis Bandaraya Pulau Pinang	4/4/2019	Warning and RM 25,000 fine

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NO	OFFENCE	JURISDICTION	DATE DECISION	PENALTY
1	Wrongly and/or negligently issued a Certificate of Completion and Compliance without electrical connection and/or clearance from TNB, in contravention of the Board of Architects General Circulars 1/2008 and the Code of Conduct for Architects as provided in the Second Schedule Rule 28 of Architects Rules 1996	Majlis Daerah Perak Tengah	1/7/2016	Warning Letter and RM 60,000 Fine.
2	Wrongly and/or negligently issued a Certificate of Completion and Compliance pertaining to only 22 units of houses when the balance of the 80 units of houses comprised in the said Phase 2A were not so completed, in contravention of the Board of Architects General Circulars 1/2008 and 2/2010, and/or without	Majlis Daerah Perak Tengah	1/7/2016	Warning Letter and RM 25,000 Fine.
3	Wrongly and/or negligently issued a Certificate of Completion and Compliance without ensuring the amendment to the approved Building Plans has been duly approved first as per the Uniform Building By-Law(UBBL), in contravention of the Code of Professional Conduct for Professional Architects as provided in the Second Schedule Rule 28 of Architects Rules 1996 under sub-paragraph 3 (5)(a) and (d)	Majlis Bandaraya Shah Alam	28/11/2016	Warning Letter and RM 50,000 Fine.
4	Wrongly and/or negligently issued a Certificate of Completion and Compliance without obtaining the prior approval of the approving local authority in contravention of the Code of Professional Conduct for Professional Architects as provided in the Second Schedule Rule 28 of Architects Rules 1996 under sub-paragraph 3 (5)(a) and (d)	Majlis Daerah Batu Gajah	10/12/2016	Warning Letter and RM 30,000 Fine.
5	Wrongly and/or negligently issued a "Stage Completion Certificate" did wrongly and prematurely issued Stage Completion Certificate for Stage 2(b) dated 17 May 2010 when the access road serving the building has not been completed, in contravention of the Code of Professional Conduct for Professional Architects as provided in the Second Schedule Rule 28 of Architects Rules 1996 under sub-paragraph 3 (5) (a) and (d)	Majlis Perbandaran Kota Kinabalu	21/12/2016	Warning Letter and RM 100,000 Fine.



Conclusion

PSP are strongly urged to discharge your professional responsibilities with high probity, professionalism, and high ethical standards to uphold your profession.



THANK YOU

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