

## CHAPTER 1

### INTRODUCTION

#### 1.1 BACKGROUND OF RESEARCH

Malaysian Institute of Architects has defined who is an architect. An architect is a qualified professional to assist developer in translating their requirement on building into practical reality. After five to seven years of university level education and practical training, an Architectural Graduate seeks registration with the Board of Architects (Lembaga Akitek Malaysia). Upon completion of the required practical experience and upon passing the LAM-PAM 3 examination, a graduate Architects joins Pertubuhan Akitek Malaysia as a Corporate Member and then seeks registration as an Architect with Board of Architects Malaysia. A Professional Architect is employed to seek planning and building approvals from the relevant authorities before a building approval from the relevant authorities before a building project can be implemented. <sup>1</sup>

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<sup>1</sup> Malaysia Institute of Architects, Who is an Architect, [http://www.pam.org.my/architectural\\_services.asp](http://www.pam.org.my/architectural_services.asp), surf on 14/3/2008,

Board of Architects Malaysia has defined the meaning of Professional Architect. 'Professional Architect' means a person registered under sub section 10(2).<sup>2</sup>

Sub section 10(2) "subject to this Act, the following persons shall be entitled on application to be registered under Section A of the Register as Professional Architects:

- (a) any person who-
  - i. is a Graduate Architect
  - ii. has obtained the practical experience as prescribed by the Board and passed the examinations as may be determined by the Board under paragraph (1)(b) and
  - iii. is a corporate Member of the Pertubuhan Arkitek Malaysia or has obtained a qualification which the Board considers to be equivalent thereto.<sup>3</sup>

As a qualified expert in building and environmental design, the Professional Architect maintains close relationship with the building industry. He coordinates the necessary engineering and environmental service to his design so as to achieve developer objectives. He has knowledge about site analysis, building designs and complex regulations. He can clarify the developer requirements in respect of project, study possible solutions and make design proposal. Since the Professional Architect is familiar with building construction in term of what material to use, what problems to look for on site and which contractors to go on, he can prepare probable costs and the construction programmed in respect of any proposal he prepare. In this respect Professional Architect can become a developer advisor. The professional Architect also acted as an agent when he submits drawings to the Local Authorities on behalf of developer for planning and building approvals. He continues as agent when calling for and awarding tenders,

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<sup>2</sup> Architects Act 1967 (Act 177) (incorporating amendments up to April 2007) , Lembaga Arkitek Malaysia, pg. 9

<sup>3</sup> Architects Act 1967 (Act 177) (incorporating amendments up to April 2007) , Lembaga Arkitek Malaysia, pg. 32

contract administration and in helping to obtain Certificate of Fitness or issuance of Certificate of Completion and Compliance.<sup>4</sup>

However obligations, duties and liabilities of the Professional Architects are defers between types of building contract used by the developer. For example is in traditional procurement. Under traditional procurement mainly there are two types of building contract used by developer. For private sector the most popular form of building contract used is Agreement and Conditions of Building Contracts (Private Edition with and without quantities). The latest version is PAM 2006. However in public sector Conditions of Contract PWD 203 or 203A is used.

Under Agreement and Conditions of Building Contract PAM 2006 (with or without quantities), Architect plays an important role in supervising and administration the building contract. Employer is under obligation to specifying the Architect and other consultants involved in the contract and the scope of their duties. The name of the Professional Architect and the name of their practice and address are to be stated in Articles 3. Article 7 defined 'Architect' means the Person, named in Article 3, and shall be a Professional Architect or any other form of practice registered under the Architects Act 1967 and approved by the Board of Architects, Malaysia.<sup>5</sup> The definition is also consistent in the Uniform Building by Law 1984 which states the 'Architect' means any person who is registered as an architect under any law relating to the registration of architects and who under that law is allowed to practice or carry on business as an architect.<sup>6</sup> Under Agreement and Conditions of Building Contract PAM 2006 (with or without quantities), there are certain powers given and duty to issue only and to no one else. These include the power and duty to issue and certify Architect Instruction, Submission to Local Authority, Variations, Extensions of Time, Loss & Expense and

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<sup>4</sup> Malaysia Institute of Architects, Who is an Architect, [http://www.pam.org.my/architectural\\_services.asp](http://www.pam.org.my/architectural_services.asp), surf on 14/3/2008,

<sup>5</sup> Agreement and Conditions of PAM Contract 2006 (with quantities), pg. 4

<sup>6</sup> Uniform Building By-Law 1984 (GN 5178/85)

Certificates & Payment. The Professional Architect is also required to supervise the work of actual construction to ensure it complies with intentions, standard of workmanship and quality in accordance with contract.<sup>7</sup> Employer is under obligations to ensure for the purpose of the contract and the building control legislation, that the Professional Architect be employed to supervise the contract. In the event of the Professional Architect's death or ceasing to be the Professional Architect, to nominate a succeeding Professional Architect within twenty eight (28) days of the original Professional Architect ceasing to act. The Professional Architect performs essential functions within the contract and any failure to nominate a successor would be a breach of an implied term of the contract. This would render the employer liable for damages should contractor suffer any losses as a result of the breach.<sup>8</sup>

However under Conditions of Contract PWD 203 or 203A, the important role to supervise and administration the building is not a Professional Architect. This important role is hold by the Superintending Officer. The Superintending Officer is named in clause 1(a) (IV) and includes his successor in person. The position is to be assumed by an individual with his official designation stated. There is no express necessity that the person must be construction professional, e.g. an architect, engineer or quantity surveyor. It is nonetheless important to appreciate that the Superintending Officer must act impartially and fairly in performing his duties administering the contract, in particular the duties relating to certification for payment and grant of extension of time. The successor to the Superintending Officer is generally not authorized to disregard or overrule any decision, approval or direction given to the Contractor in writing by his predecessor. This includes any instruction or certificate issued by the predecessor Superintending Officer. The Superintending Officer's Representative is defined in clause 1(a) (VI) and the position can be assumed by an individual or a sole proprietorship, partnership or a body corporate. There is also no express requirement for the Superintending Officer's

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<sup>7</sup> Sundra Rajoo, *The Malaysian Standard Form of Building Contract (The PAM 1998 Form)*, Malayan Law Journal (1999), 2<sup>nd</sup> Edition, pg. 40

<sup>8</sup> Sundra Rajoo, *The Malaysian Standard Form of Building Contract (The PAM 1998 Form)*, Malayan Law Journal (1999), 2<sup>nd</sup> Edition, pg. 41-pg42

Representative to be a construction professional.<sup>9</sup> However it is normal practice in Malaysia, consultant architect, engineer and quantity surveyor will be appointed in the construction development especially on the fast track project and designs is not produce by the government. In this case normally Superintending Officer will delegate his power and authority to the respective consultant based of their expertise. By clause 2(c), the Superintending Officer may delegate from time to time in writing to the SO's Representative the powers and authority vested in him under the Contract save for those set out in Clause 3(a) of the Conditions.<sup>10</sup> Upon such delegation, any instruction or decision of the SO's Representative is binding on the parties to the contract unless the Contractor refuses such instruction or decision and refers the matter to the Superintending Officer for reconsideration. If the Contractor so refers, the decision may either be confirmed, reversed or varied by the Superintending Officer. Besides it is also provided that the Superintending Officer retains the right to reject any work or materials which was not disapproved by the SO's Representative.

In April 2007 the Government of Malaysia had launched the improvement to the building delivery system to enhance the competitiveness of Malaysia globally. Certificate of Completion and Compliance (CCC) is issued to replace the Certificate of Fitness for Occupation issued by Local Authorities. The Certificate of Completion and Compliance will be issued by Professional Architects and Professional Engineers as well as Building Draughtsman registered with the Board of Architects Malaysia (Lembaga Akitek Malaysia).

Board of Architect Malaysia has issued circular on this matter. General circular No. 1/2008 has explained the objective of the implementation of Certificate of Completion

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<sup>9</sup> Lim Chong Fong, The Malaysian PWD Form of Construction Contract, Sweet & Maxwell Asia (2004), pg 13-pg 14

<sup>10</sup> PWD Form 203 (Rev. 10/83), pg 5

and Compliance and also the features of the system.<sup>11</sup> This new system is an effort towards self-certification and self regulation approach in the construction industry. The features of this new system under Certificate of Certification and Compliance are as follows

- a. Building plans are still required to be submitted to and approved by the local authorities
- b. Certificate of Fitness for Occupation by 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.
- c. Certificate of Completion and Compliance only be issued by the Principal Submitting Person (PSP) after all the certifications by the respective parties (professionals, contractors and licensed tradesmen) based on the prescribed 'Form G's under the Matrix of Responsibility is fulfilled and clearances from Tenaga Nasional Berhad, Water Authority, Sewerage Services Department (JPP), Fire and Rescue Department (except for residential buildings of not more than 18 metres high), Department of Safety and Health (where applicable), Relevant authorities / Public Works on Roads and Drainage.
- d. The local authorities still maintain their rights and power to enter the site during construction and issue an order to stop the issuance of Certificate of Completion and Compliance (CCC) by the Principal Submitting Person (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.
- e. The issuance of Certificate of Completion and Compliance is restricted to only issues concerning health, safety and essential services. The non technical issues such as bumiputera quota, low cost provision and contribution for public facilities etc are outside the preview of Principal Submitting Person (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.

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<sup>11</sup> Lembaga Arkitek Malaysia, General Circular No. 1/2008

- f. The issuance of Certificate of Completion and compliance will only apply to projects in which building plans are submitted after Certificate of Completion and Compliance came into force.

The issuance of Certificate of Completion and Compliance to replaced Certificate of Fitness for Occupation has made Professional Architect play an important role in any building contract whether in private or public sector. The Professional architect may perform functions as the agent or as impartial certifier. He may also do things which incur a duty under the law of tort to other persons. Therefore, it will depend largely on the professionalism and integrity of the Professional Architects. Professional Architect must carry their duties with due care and diligence.

## **1.2 PROBLEM STATEMENT.**

The duty, responsibilities and liability of Professional Architect become more important after the issuance of Certificate of Completion and Compliance. This will make them play an important role in construction industry. Termination of architect's engagement may lead to various problems especially when architect withhold the letter of release. No architect will take over from another architect without a letter of release. This letter is a very important document because without it a builder or an owner of land will have difficulty in employing another architect to replace the one that has left. Besides that, it will affect the building contract especially on supervision of works, instruction to contractor, variation orders, extension of time and others. Building will not complete in time, buyers will suffer especially when it involved with housing development, and developer may face problem of granted extension of time and loss & expenses to the contractor. Questions on "Architect withhold Letter of Release, can it be avoided?" is the main issue that need to be discuss in detail in this research.

### **1.3 OBJECTIVE OF RESEARCH**

The objective of this research is to understanding the Conditions of Engagement of Professional Architect. Identify the Professional Architect roles and duties. Identify the reason and procedure for termination of Professional Architect. The most important matter is to educate and inform the potential developer about the function of letter of release issued by the Professional Architect.

### **1.4 SCOPE AND LIMITATION OF THE RESEARCH**

The main element in this research is regarding the withholding of Letter of Release by the Architect. This research will be limited to the Conditions of Engagement between the Client and the Professional Architect. Liability and responsibility under the contract will be discussed in detail. The scope of this research will be limited to the following areas:

- a. The research scope will only focusing on Standard Conditions of Engagement of a Professional Architect.
- b. The research scope will focusing on the duties and liabilities of Professional Architect
- c. The research scope will only focusing on the Termination of Engagement of Professional Architect



## **1.5 THE SIGNIFICANT OF RESEARCH**

This research is very important in order to educate developer or potential developer regarding their right and responsibilities if the Memorandum of Agreement between the Professional Architect and the client may be terminated.

This research also will contribute for better understanding to the developer or potential developer regarding issue on Letter of Release. It also will give information on problem that will be rise if this contract of services terminated.

Besides that it also help in better understanding about contract of services between the Professional Architect and the client. And this will lead for a better management of construction contract.

## **1.6 RESEARCH METHOD**

In pursuant of the aim or objective as stipulated, the primarily methods that have been used to complete this study are research by literature review.

Sources for literature review are from books, journals, newspaper article, lecturer notes and magazines. These sources provide a lot of data that can help to determine the background of the study - Termination of architect's engagement. And it also helps in understanding issue on 'Withholding of Letter of Release by the Architect'.

All this reading sources can be obtained at the internet sites that are related to this study and library in UTM City Campus and Universiti Malaya, Fakulti Undang-Undang. Cases are collected from the Malayan Law Journal and books.

Interviews were made to a few groups of people. Professional Architect, Developer and Lawyers are the chosen group. View and their opinion were analyzed to get better understanding on the research issue. Their view and opinion proved the reality happen in the construction industry on the subject matter.

## **1.7 RESEARCH STRUCTURES**

This research consists of five (5) chapters. The brief descriptions of each chapter are as follows:

### **Chapter 1: Introduction**

This chapter presents the overall content on the study. It introduces the background of the study, issue, objective and method to achieve the objective.

### **Chapter 2: Duties, Responsibility and Liability of Professional Architect**

This chapter concentrates on the duties, responsibility and liability of Professional Architect to the client. The relationship as an agent to the client is explained in detail. Duty and responsibilities as contract administrator also has been discussed in this chapter. Elements and item that need to be included in the Agreement of Professional Architectural Services also discussed in detail.

**Chapter 3: Termination of Architect's Engagement**

This chapter discussed about termination of engagement by the client and by the Professional Architect himself. Termination procedure under the Architect Rules 1996 was explained in detail. The function and application of Letter of Release is discussed in detail. This is to ensure that issue of the study is achieved.

**Chapter 4: Analysis on Research**

This chapter analyzed about the results from the judicial decisions as reported in law reports which is related to the research issue on 'Withholding of Letter of Release by the Professional Architect'. All cases are discussed in detail. Data from interview with a group of professional were analyzed and present in the pie chart. Besides that analysis about the provision in the Architect Act 1967 (Act 117) and Architect Rules 1996 regarding the issue of Letter of Release is also discussed in detail.

**Chapter 5: Conclusion**

Conclusion on the research based on all the discussion in the previous chapter will be presents in this chapter.