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## GENERAL CIRCULAR NO. 3/2023

### GUIDELINES ON LETTER OF RELEASE

1. This General Circular replaces the current General Circular No. 2/2007 pertaining to the above Guidelines.
2. An Architect on being approached or instructed to proceed with professional work for which he knows or can ascertain by making reasonable enquiries that another Architect has been engaged by the client who is the registered proprietor <sup>(Note 1)</sup> and/or his bona-fide agent <sup>(Note 2)</sup> of the site or part of the site concerned to provide the full basic services or any part thereof as provided in the Architects (Scale of Minimum Fees) Rules 2010 shall, before proceeding with such work, communicate in writing with that Architect and obtain a "Letter of Release" from the Architect or obtain such letter through his prospective client, provided that this requirement may be waived at the discretion of the Board.

*(Note 1: "registered proprietor" shall include individuals, group of individuals, trustees, agencies, statutory organisations, corporations or any other legal entity whose name(s) and/or legal identity is endorsed on the title of the land or any other instrument which provides legal ownership to the land.)*

*(Note 2: "bona fide agent" shall mean individuals, group of individuals, trustees, agencies, statutory organisations, corporations or any other legal entity which has been empowered by the "registered proprietor" to represent him in relation to the development of the land.)*

3. The words "has been engaged" referred to in paragraph 2 above is as defined under paragraph 7 of the Conditions of Engagement of an Architect under the Third Schedule (Part One) of the Architects Rules 1996 as follows :

"7(1) An Architect shall obtain the written agreement of the client in respect of his remuneration for architectural consultancy services to be provided by him pursuant to subparagraph 1(1) <sup>(Note 3)</sup> within sixty days from the date the notification regarding such remuneration is duly served on the client;

- (2) Notwithstanding subparagraph (1) above, where the client's agreement in writing is not obtained within the period as stipulated in subparagraph (1) but the client agrees by his conduct to the conditions of engagement and the scale of professional fees and charges, the client shall for the purposes of subparagraph (1) be considered to have agreed to such conditions of engagement and scale of professional fees and charges."

*(Note 3 : Subparagraph 1(1) of the Conditions of Engagement of an Architect under the Third Schedule (Part One) of the Architects Rules 1996 stipulates the following : -*

*"An Architect who carries on business as an architectural consultancy practice shall provide architectural consultancy services as described in the scope of services incorporated in the Memorandum of Agreement between the Architect and the client").*

4. Listed below are the circumstances when a "Letter of Release" is not required :

- 4.1 When an Architect is approached by either the purchaser or lessee of a building where a Certificate of Fitness for Occupation or Certificate of Completion and Compliance has already been issued;
- 4.2 When the registered proprietor engages an Architect for a mixed development as the overall planner only and the development would be implemented in phases where the registered proprietor wishes to engage other Architects for the various phases <sup>(Note 4)</sup>.

*(Note 4 : In this case the Architect should clarify his appointment at the inception to avoid disputes with the registered proprietor).*

5. The Board may use its discretion to waive the requirement for a "Letter of Release". Listed below are examples of circumstances under which the Board may exercise such discretion :

- 5.1 When the first Architect refuses to issue a "Letter of Release" after his engagement has been terminated by the client and all outstanding fees and disbursement settled in full;
- 5.2 When there is a dispute on the quantum of fees and disbursement payable to the Architect and such dispute has been submitted to the Board by either party for determination by arbitration.

The Board would, pursuant to paragraph (ea) of section 4(1) of the Architects Act 1967, act as a stakeholder for fees in dispute to be deposited with it until the award of arbitration is made. The Board shall determine the quantum of fees to be deposited based on the documents submitted by both parties;

- 5.3 When there is a dispute on the quantum of fees and disbursement payable to the Architect and such dispute has been submitted by either party to other than the Board for determination by arbitration and/or other means of dispute resolution;

- 5.4 When the first Architect has commenced legal proceedings <sup>(Note 5)</sup> for the recovery of his fees or to contest the termination;

*(Note 5 : "legal proceedings" shall mean the commencement of proceedings in court by way of any originating process.*

*"arbitration" shall mean the issuance of a Notice of Arbitration and the appointment of an arbitrator either by mutual consent or by the President of LAM.)*

- 5.5 When an Architect has been appointed to only provide advisory services for the development of a site even when other Architect may also have been appointed to provide similar service;

- 5.6 When the client who has commissioned the Architect for a project has been declared insolvent by the court and placed under receivership <sup>(Note 6)</sup>;

*(Note 6 : This excludes projects that are to be completed under any form of rescue arrangements as may be arranged by any of the government agencies for which a Letter of Release will still be necessary).*

- 5.7 When the Architect has been engaged by the registered proprietor and/or his bona fide agent to provide basic services and design and built contractors are invited to submit tenders for design and build including financing where several Architects were engaged by the respective tenderers provided the first Architect's services have been terminated and his fees fully paid by the registered proprietor and/or his bona fide agent;

- 5.8 In the event there is a change in ownership of the site or part of the site: -
- a) when there is a transfer of liability to the new registered proprietor, and the new registered proprietor has settled the outstanding fees owing to the first Architect.
  - b) when there is no transfer of liability to the new registered proprietor, the new registered proprietor shall ensure that the outstanding fees owing to the first Architect is settled by the previous registered proprietor and/or his bona fide agent and the "Letter of Release" is issued before the new registered proprietor and/or his bona fide agent is allowed to engage a new Architect.

- 5.9 When an Architect engaged on a project has either been suspended or had his name removed from the Register of Architects by the Board for any reason whatsoever.

Provided always that the fees and other disbursement that are due to the Architect in respect of the project concerned, up to the time of his suspension or the removal of his name from the Register of Architects, have been paid to the Architect. In the event of a dispute arising on either the quantum or validity of the Architect's claim, the matter shall be submitted to the Board for determination by arbitration as per item 5.2;

- 5.10 When the Architect dies or is incapacitated and his architectural consultancy practice has no legal capacity to carry out his services and responsibility;

- 5.11 In the event the client, being the registered proprietor, terminates the power of his 'bona fide agent' to represent him in relation to the development of the land as per <sup>(note 2)</sup> above, the registered proprietor shall take over the responsibility to secure the "Letter of Release" from the Architect appointed by his 'bona fide agent' before the registered proprietor and/or his new 'bona fide agent' appoints a new Architect or continues with the appointment of the first Architect;

- 5.12 In the event a design and built contractor appointed by the registered proprietor and/or his bona fide agent to design and construct has been terminated, the registered proprietor and/or his bona fide agent shall take over the responsibility to secure the "Letter of Release" from the first Architect appointed by the design and built contractor before he is permitted to commission a new Architect or to continue with the appointment of the first Architect.

*(Note 7: For development in which construction has commenced, in addition to the above, the replacement of the original Architect who is the Principal Submitting Person is subjected to the approval/consent of the local authority).*

6. The procedure that must be followed in meeting the requirements of these Guidelines shall comprise the following steps:-

- 6.1 The second Architect shall be required to take the initiative to write to the first Architect to enquire if his services have been properly terminated and all outstanding fees are fully paid.

- 6.2 The first Architect, upon receipt of the enquiry from the second Architect, shall ensure that a reply be given promptly and in any case within fourteen (14) days of the date of receipt of the second Architect's letter.

- 6.3 The first Architect shall be obliged to issue a “Letter of Release” if there is no outstanding fees to enable the second Architect to accept the appointment.
- 6.4 In the event the first Architect claims that there are outstanding fees due to him, he must reply to the enquiry within fourteen (14) days of receipt of the letter, which shall be sent either by registered post or recorded delivery to the registered proprietor and/or his bona fide agent copied to the second Architect to advise on the status of his claims.
- 6.5 Upon receiving the first Architect’s reply, the second Architect must advise the client on the relevant provisions of the Code of Professional Conduct and Conditions of Engagement as provided under the Second and Third Schedules of the Architects Rules 1996 respectively.
- 6.6 In the event no reply is received by the Second Architect within the time frame stipulated in paragraph 6.2, the matter may be referred to the Board who shall have the sole discretion of waiving the necessity for a “Letter of Release” or stipulating conditions to be fulfilled prior to the waiver being granted.
7. Ignorance of another Architect's Involvement.

In circumstances where an Architect, having accepted a commission in good faith and without knowing beforehand that another Architect had been involved in the project and when subsequently the involvement of another Architect was made known to him, shall take the following steps: -

- 7.1 Immediately notify his client in writing of the situation and of his obligations under these Guidelines; and
- 7.2 To comply with the procedure as stipulated under paragraph 6 above.

This General Circular shall come into effect on the date of this General Circular.

By Order of the Board of Architects Malaysia,

  
(Ar. ABD. SHUKOR BIN ISMAIL)  
Registrar

2 October 2023

Distribution:

All registered members