

LEMBAGA ARKITEK MALAYSIA

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

GENERAL CIRCULAR NO. 1/2001 (Revised 2002)

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

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

1. The Board has become increasingly concerned on the escalating volume of complaints received particularly from house purchasers and building owners and others with regard to the Architects' certification under the above standard Sale and Purchase Agreements. These third parties have a right to expect their interest to be safeguarded by Architects. Being employed by developers, Architects have no privity of contract with purchasers. However they still owe a professional, legal and moral obligation to ensure that the end product in as far as those aspects for which they are responsible and for which they certify, fulfill the terms of the Sale and Purchase Agreement. These would range from compliance with the plans and qualitative aspects as contracted, to the accuracy and absolute reliability of the Architect's certificate for stage completion.
2. This General Circular is therefore issued as guidance to all registered Architects in certifying works in respect of housing projects undertaken in West Malaysia. All registered Architects are expected to follow these guidelines in exercising their certification duties under the above agreements. The subject had been deliberated in consultation with PAM and had taken into account comments and feedback that have been received from various parties.
3. Architects are advised to be familiar with these guidelines before certifying works in respect of housing projects undertaken in West Malaysia. For housing projects in Sabah and Sarawak, works should be undertaken in accordance with their relevant laws. However 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, registered Architects are to refer to the attached Schedules as guidance.
5. Every proven unprofessional act relating to the issuance of stage payment certificates will be seriously dealt with. The Board hopes that such disciplinary measures will not be necessary and all Architects must comply with this General Circular.

By Order of the Board,



(ZAINAB bt. MOHAMED)

Registrar

2 September 2002.

SCHEDULE G

GUIDELINES ON THE THIRD SCHEDULE [CLAUSE 4 (1)] OF THE STANDARD SALE AND PURCHASE AGREEMENT FOR LAND AND BUILDING

[SCHEDULE G OF THE HOUSING DEVELOPERS (CONTROL AND LICENSING) REGULATIONS 1989]

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>2(a) The foundation and footing works of the said Building</p> <p style="text-align: center;">(10%)</p>	<ul style="list-style-type: none"> * All foundation work below the lowest floor level * Piling (if any) * Pilecaps & stumps (if any) * Raft slab (if any) * Footing & stumps (if any) 	<ul style="list-style-type: none"> * Retaining wall (if any) * Backfilling * Lowest floor slab if it is not part of the foundation * Ground beams * Services
<p>2(b) The reinforced concrete framework of the said Building</p> <p style="text-align: center;">(15%)</p>	<ul style="list-style-type: none"> * All primary reinforced concrete structural elements above lowest floor level including: <ul style="list-style-type: none"> - Beams - Columns - Suspended Slabs - Roof beams * Retaining walls forming part of the structural element to the Building (if any) 	<ul style="list-style-type: none"> * Non-structural ground floor slabs with or without BRC * R.C. wall stiffeners and lintols * Non structural or supporting R.C. works e.g. hoods, aprons, gutters, parapet * R.C. staircase * R.C. walls (that do not form part of the R.C. framework)
<p>2(c) The walls of the said Building with door and window frames placed in position</p> <p style="text-align: center;">(10%)</p>	<ul style="list-style-type: none"> * All masonry walls * All party walls inclusive of RC wall stiffeners * Timber door and window frames * All frameworks for partitioning excluding lining of partition 	<ul style="list-style-type: none"> * Metal frames * Installation of door leaves, window (fixed or openable) or louvres * Parapet walls, boundary walls and fence walls * Closing up of temporary openings left in walls for construction purposes

SCHEDULE G

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[SCHEDULE G OF THE HOUSING DEVELOPERS (CONTROL AND LICENSING) REGULATIONS 1989]

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>2(d) The roofing, electrical wiring, plumbing (without fittings), of the said Building</p> <p>(10%)</p>	<ul style="list-style-type: none"> * Roof structure, roof coverings and flashing * All electrical wiring * All water piping including bends and joints * All sanitary pipings including bends, joints and traps 	<ul style="list-style-type: none"> * Ceiling boards or panels * Switch boxes , socket outlets, switches and electrical fixtures and fittings (if any) * Sanitary fittings including sinks, taps, basins, bath tubs and shower heads * Hot water heaters * Water tanks * Rain water downpipes and gutters (if any)
<p>2(e) The internal and external plastering of the said Building</p> <p>(10%)</p>	<ul style="list-style-type: none"> * All plastering where specified to all wall soffits of suspended slabs (if any), beams and columns * Wall tiles (if any) * All linings/boards/panels to framed partitions and/or ceiling (if any) 	<ul style="list-style-type: none"> * Floor screeding and/or finishes * Painting and other wall finishes except wall tiles * Closing up of temporary openings for construction purposes

SCHEDULE G

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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>2(f) The roads, drains and sewerage works serving the said Building</p> <p>(15%)</p>	<ul style="list-style-type: none"> * Paved road leading to the Building from an existing road. The alignment of the road may be a permanent or temporary access approved by the local authority. * Permanent roads around the Building * Entrance culvert serving the Building * Drains and main drains connected to the outfall (The alignment of the drains and the outfall may be permanent or temporary as approved by the local authority) <p>Sewerage reticulation including manholes from the Building to a completed sewage treatment system (The treatment system may be permanent or temporary as approved by the local authority)</p>	<ul style="list-style-type: none"> * Metal gratings and covers over drains * Footpaths and roadside tables * Testing and commissioning * Water and electricity connection * Final wearing course to pre-mixed roads * Road markings and signages

SCHEDULE G

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[SCHEDULE G OF THE HOUSING DEVELOPERS (CONTROL AND LICENSING) REGULATIONS 1989]

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>(3) On handing over of vacant possession of the said Building with water and electricity supply ready for connection</p> <p style="text-align: center;">(15%)</p> <p><i>Architect's role for this stage is only to do the following :</i></p> <p>i) <i>Issue a certificate certifying that <u>the construction of the said building has been duly completed.</u></i></p>	<ul style="list-style-type: none"> * All other works inclusive but not limited to all items not completed in Stage 2(a) to 2(f). * External works including fencing, gates and turfing (if any) * Electrical wiring, water and sanitary piping services completed and ready to receive supply * Water and electricity supply available and ready for connection for tapping into the said building * The TNB sub-station should be energised * All external electrical cabling from sub-station to the unit must be completed with supply. * Sewerage treatment plant shall be serviceable * Water reservoir (if applicable) is operational * Closing up of temporary openings for construction purposes. <p>Acknowledgement of receipt by the local authority of the application (Borang E) for the Certificate of Fitness for Occupation (CFO) for the building.</p>	<ul style="list-style-type: none"> * Electrical, water and sanitary fittings and fixtures to be installed at handing over as agreed between the developer and purchasers * Minor defects * Electrical and water meters

Note : The wording in the Architect's certificate should only read as stated in Clause 21 (1) of the standard Sale and Purchase Agreement and as underlined in 3 (i) above.

SCHEDULE G

GUIDELINES ON THE THIRD SCHEDULE [CLAUSE 4 (1)] OF THE STANDARD SALE AND PURCHASE AGREEMENT FOR LAND AND BUILDING

[SCHEDULE G OF THE HOUSING DEVELOPERS (CONTROL AND LICENSING) REGULATIONS 1989]

SUPPLEMENTARY NOTES

- 1.0 Certification of stage completion by the Architect is required in the Standard Sale & Purchase Agreement (SPA) specified under the Housing Developers (Control & Licensing) Regulations 1989 to enable the Developer to request payment from the Purchaser. The stages of completion are set out in the Third Schedule of the SPA.

These guidelines are hence for landed properties only and particularised for buildings with reinforced concrete structural framing.

- 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 reinforced concrete framework, the developer should refer to the Controller of Ministry of Housing for modification [Refer to Clause 11 of the Housing Developers (Control and Licensing) Regulations 1989].

- 4.0 The following steps should be adhered to by the Architect before commencement of construction work :

- 4.1 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.
- 4.2 Check the details specified in the Sales Brochure approved by the Ministry of Housing & Local Government that they conform to the specifications required of the contractor who is going to construct the houses. The check list shall include the site plans, the building plans, the layout plans and the specifications of the houses. These details must also conform to those specified in the 4th schedule.
- 4.3 Check that the above conform with the approved building plan which is cited in the preamble of this S & P Agreement.
- 4.4 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 G

- 4.5 Establish with the Developer the time frame for certification, to be on a monthly basis or fortnightly basis or when requested by the Developer.
- 4.6 Establish the quantum of units to be certified, to be block by block or unit by unit. It will be very time consuming for the Architect to be certifying on a unit by unit basis and it is recommended that there be a set minimum number of units for each certification.
- 5.0 Inspections must be carried out before certification.
- 6.0 The Architect should request the Engineer for the project to confirm in writing his concurrence with the satisfactory completion of Stages 2(a), 2(b) and 2(f) before the Architect certifies.
- 7.0 At Stage 3, should the developer desire for the electrical , water, sanitary fittings and fixtures to be deferred for security reasons until the Purchaser moves in, the list of deferred items shall be stipulated clearly in the Certificate certifying that ‘the construction of the said parcel has been duly completed’ so that the buyers are aware of the items involved.
- 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, etc which can be easily removed. Items such as w.c, basins sink, switch and power sockets are not considered as loose fittings/fixtures.
- Before Stage 3 can be certified, the guidelines state that water and electricity supply are ready for connection. Architects should note that what is expected is that water and electricity supply should be ready for tapping into the individual unit and that the internal electrical and plumbing works in each house have been completed, serviceable and tested and commissioned by the authorised agents. The JBA bulk/ individual water and electrical meters itself may or may not be available depending on the circumstances but the supply is available till the meter and the system serviceable at the point of certification. This would imply that the electrical substation has been energised and that the water reservoir is operational.
- 8.0 Architects may certify the stages not in accordance with the sequence but he must satisfy himself with the fact that the stage being certified has been completed (e.g. Stage 2(f)) and will not be materially damaged by the works that still have to be carried out to the preceding stages that have yet to be completed.

SCHEDULE G

- 9.0 The Certificate of Fitness, issued by the local authority responsible for development, is not required for the last Stage 3 but application to the local authority is required. Hence although the Purchaser has vacant possession, he is not entitled to occupy the building until the Certificate of Fitness is obtained. This is a dichotomy but it is generally not possible for both to coincide as the issuance of the Certificate of Fitness may require compliance with certain conditions outside the province of the Third Schedule of the SPA.

In submitting the application for the Certificate of Fitness, Architects are reminded of their duty to comply with by-law 25(1)(b) of the UBBL which reads as follows :-

“25(1) Certificate of fitness for occupation of a building shall be given when –

- (a)
- (b) all essential services, including access roads, landscape, car parks, drains, sanitary, water and electricity installation, fire lifts, fire hydrant and others where required, sewerage and refuse disposal requirements have been provided.”

- 10.0 The Architect shall, where practical, endeavour to coincide his Certificate of Practical Completion to the building contractor with his certification that the construction of the said building has been duly completed and it is recommended that this be done for administrative reasons as the defects liability of the building contract can then be tied to that of the SPA.

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 DEVELOPERS (CONTROL AND LICENSING) REGULATIONS 1989]

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>2(a) The work below ground level including piling and foundation of the said Building comprising the said Parcel</p> <p>(10%)</p>	<p>* All foundation work below the lowest floor level</p> <ul style="list-style-type: none"> - Piling (if any) - Pilecaps & stumps (if any) - Raft slab (if any) - Footing & stumps (if any) <p>where applicable of the said building comprising the said Parcel.</p>	<ul style="list-style-type: none"> * Retaining wall (if any) * Backfilling * Lowest floor slab if it is not part of the foundation * Ground beams * Services
<p>2(b) The reinforced concrete framework and floor slab of the said Parcel</p> <p>(15%)</p>	<p>* All primary reinforced concrete structural elements above lowest floor level including:</p> <ul style="list-style-type: none"> - Beams - Columns - Suspended Slabs <p>where applicable of the said parcel.</p> <p>* Retaining walls forming part of the structural element to the Parcel (if any)</p>	<ul style="list-style-type: none"> * Non-structural ground floor slabs with or without BRC * R.C. wall stiffeners and lintols * Non- structural or supporting R.C. works e.g. hoods, aprons, gutters, parapet * R.C. staircase including that in the common area * R.C. walls (that do not form part of the R.C. framework)

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Schedule of Payment of Purchase Price under the Third Schedule of the S & P Agreement	Description of Construction Work That Must Be Completed For Certification	Description of Construction Work That Need Not be Completed For Certification
<p>2(c) The walls of the said Parcel with door and window frames placed in position</p> <p style="text-align: center;">(10%)</p>	<ul style="list-style-type: none"> * All masonry walls within the said Parcel * All party walls inclusive of R.C. wall stiffeners * Timber door and window frames * All frameworks for partitioning excluding lining of partition 	<ul style="list-style-type: none"> * Metal frames * Installation of door leaves, window (fixed or openable) or louvres * Parapet walls, boundary walls and fence walls * Closing up of temporary openings left in walls for constructional purposes
<p>2(d) The roofing/ceiling, electrical wiring, plumbing (without fittings), gas piping (if any) and internal telephone trunking and cabling (if any) to the said Parcel</p> <p style="text-align: center;">(10%)</p>	<ul style="list-style-type: none"> * Roof structure, roof covering and flashing to the said Parcel (if any) * Bare soffits of the floor slab to the Parcel above and/or the framing of the ceiling (if any) within the said Parcel * All electrical wirings within the said Parcel * All water piping including bends and joints within the said Parcel * All sanitary pipings including bends, joint and traps within the said Parcel * Gas piping (if any) including joints and valves within the said Parcel * Telephone trunking (if any) and cabling (if any) within the said Parcel 	<ul style="list-style-type: none"> * Ceiling boards or panels * Switch boxes, socket outlets, switches and electrical fixtures and fittings (if any) * Sanitary fittings including sinks, taps, basins, bath tubs and shower heads * Hot water heaters * Water tanks * Rain water downpipes and gutters

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 DEVELOPERS (CONTROL AND LICENSING) REGULATIONS 1989]

Schedule of Payment of Purchase Price under the Third Schedule of the S & P Agreement	Description of Construction Work That <u>Must Be Completed For Certification</u>	Description of Construction Work That <u>Need Not be Completed For Certification</u>
<p>2(e) The internal and external plastering of the said Parcel</p> <p>(10%)</p>	<ul style="list-style-type: none"> * All plastering where specified to all walls, soffits of suspended slabs (if any), beams and columns * Wall tiles (if any) * All linings/boards/panels to framed partitions and/or ceiling (if any) 	<ul style="list-style-type: none"> * Floor screeding and/or finishes * Painting and other wall finishes except wall tiles * Closing up of temporary openings for construction purposes
<p>2(f) The roads, drains and sewerage works serving the said Building</p> <p>(15%)</p>	<ul style="list-style-type: none"> * Paved road leading to the Building containing the said Parcel from an existing road. The alignment of the road may be a permanent or temporary access approved by the local authority. * Permanent roads around the Building containing the said Parcel * Entrance culvert serving the Building * Drains and main drains connected to the outfall (The alignment of the drains and the outfall may be permanent or temporary as approved by the local authority) * Sewerage reticulation including manholes from the Building containing the said Parcel to a completed sewerage treatment system (The treatment system may be permanent or temporary as approved by the local authority) 	<ul style="list-style-type: none"> * Metal gratings and covers over drains * Footpaths and roadside tables * Testing and commissioning * Water and electricity connection * Final wearing course to pre-mixed roads * Road markings and signages

SCHEDULE H

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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>(3) On handing over of vacant possession of the said Parcel with water and electricity supply ready for connection</p> <p style="text-align: center;">(15%)</p> <p>Architect's role for this stage is only to do the following :</p> <p>i) <u>Issue a certificate certifying that the construction of the said parcel has been duly completed.</u></p>	<ul style="list-style-type: none"> * All other works inclusive but not limited to all items not completed in Stage 2(a) to 2(f). * External works including fencing, gates and turfing (if any) * Electrical wiring, water and sanitary piping services completed and ready to receive supply * Water and electricity supply available and ready for connection for tapping into the said Parcel * The TNB sub-station should be energised. * All external electrical cabling from sub-station to the unit must be completed with supply * Sewerage treatment plant shall be serviceable * Water reservoir (if applicable) is operational * Closing up of temporary openings for construction purposes. <p style="text-align: center;">Acknowledgement of receipt by the local authority of the application (Borang E) for the Certificate of Fitness for Occupation (CFO) for the building</p>	<ul style="list-style-type: none"> * Electrical, water and sanitary fittings and fixtures to be installed at handing over as agreed between the developer and purchasers * Minor defects * Electrical and water meters

Note : The wording in the Architect's certificate should only read as stated in Clause 23 (1) of the standard Sale and Purchase Agreement and as underlined in 3 (i) above.

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 DEVELOPERS (CONTROL AND LICENSING) REGULATIONS 1989]

SUPPLEMENTARY NOTES

- 1.0 Certification of stage completion by the Architect is required in the Standard Sale & Purchase Agreement (SPA) specified under the Housing Developers (Control & Licensing) Regulations 1989 to enable the Developer to request payment from the Purchaser. The stages of completion are set out in the Third Schedule of the SPA.

These guidelines are hence for sub-divided buildings only and particularised for buildings with reinforced concrete structural framing.

- 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 reinforced concrete framework, the developer should refer to the Controller of Ministry of Housing for modification [Refer to Clause 11 of the Housing Developers (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 The following steps should be adhered to by the Architect 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 that they conform to the specifications required of the contractor who is going to construct the houses. The check list shall include the site plans, the building plans, the layout plans and the specifications of the houses. These details must also conform to those specified in the 4th schedule.

SCHEDULE H

- 5.3 Check that the above conform with 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.
- 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 or unit by unit. It will be very time consuming for the Architect to be certifying on a unit by unit basis and it is recommended that there be a set minimum number of units for each certification.
- 6.0 Inspections must be carried out before certification.
- 7.0 The Architect should request the C & S Engineer for the project to confirm in writing his concurrence with the satisfactory completion of Stages 2(a), 2(b) and 2(f) before the Architect certifies.
- 8.0 At Stage 3, should the developer desire for the electrical, water, sanitary fittings and fixtures to be deferred for security reasons until the Purchaser moves in, the list of deferred items shall be stipulated clearly in the Certificate certifying that 'the construction of the said parcel has been duly completed' so that the buyers are aware of the items involved.
- 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 etc which can be easily removed. Items such as w.c, basins sink, switch and power sockets are not considered as loose fittings/fixtures.
- Before Stage 3 can be certified, the guidelines state that water and electricity supply are ready for connection. Architects should note that what is expected is that water and electricity supply should be ready for tapping into the individual unit and that the internal electrical and plumbing works in each house have been completed, serviceable and tested and commissioned by the authorised agents. The JBA bulk/ individual water and electrical meters itself may or may not be available depending on the circumstances but the supply is available till the meter and the system serviceable at the point of certification. This would imply that the electrical substation has been energised and that the water reservoir is operational.
- 9.0 Architects may certify the stages not in accordance with the sequence but he must satisfy himself with the fact that the stage being certified has been completed (e.g. Stage 2(f)) and will not be materially damaged by the works that still have to be carried out to the preceding stages that have yet to be completed.

SCHEDULE H

- 10.0 The Certificate of Fitness, issued by the local authority responsible for the development, is not required for the last Stage 3 but application to the local authority is required. Hence although the Purchaser has vacant possession, he is not entitled to occupy the building until the Certificate of Fitness is obtained. This is a dichotomy but it is generally not possible for both to coincide as the issuance of the Certificate of Fitness may require compliance with certain conditions outside the province of the Third Schedule of the SPA.

In submitting the application for the Certificate of Fitness, Architects are reminded of their duty to comply with by-law 25(1)(b) of the UBBL which reads as follows :-

“ 25(1) Certificate of fitness for occupation of a building shall be given when –

- (a)
- (b) all essential services, including access roads, landscape, car parks, drains, sanitary, water and electricity installation, fire lifts, fire hydrant and others where required, sewerage and refuse disposal requirements have been provided.”

- 11.0 The Architect shall, where practical, endeavour to coincide his Certificate of Practical Completion to the building contractor with his certification that the construction of the said Parcel has been duly completed and it is recommended that this be done for administrative reasons as the defects liability of the building contract can then be tied to that of the SPA.