



BOARD OF ENGINEERS MALAYSIA

CIRCULAR NO. 008

PROCEDURE FOR A REGISTERED ENGINEER OR AN ENGINEERING CONSULTANCY PRACTICE TAKING OVER THE WORK OF ANOTHER REGISTERED ENGINEER OR AN ENGINEERING CONSULTANCY PRACTICE

In exercise of the powers conferred by paragraph 4(1)(f) of the Registration of Engineers Act 1967 [Act 138], the Board of Engineers Malaysia hereby set out the procedure for taking over the work of a registered Engineer or Engineering consultancy practice by another registered Engineer or Engineering consultancy practice in accordance to Regulation 31 of the Registration of Engineers Regulations 1990 (Revised 2015).

This Circular supersedes Circular No. 1/2006, Guidelines for An Engineer Taking Over the Work of Another (BEM/RD/PPC/02).

1. Regulation 31 of the Registration of Engineers Regulations 1990 (Revised 2015) states:

A registered Engineer or an Engineering consultancy practice shall not directly or indirectly –

- (a) *supplant or attempt to supplant another registered Engineer or an Engineering consultancy practice;*
- (b) *intervene or attempt to intervene in or in connection with engineering work of any kind which to his knowledge has already been entrusted to another registered Engineer or an Engineering consultancy practice; or*
- (c) *take over any work of that other registered Engineer or an Engineering consultancy practice acting for the same client unless he has -*
 - (i) *obtained the consent of that other registered Engineer or an Engineering consultancy practice; or*
 - (ii) *been formally notified by the client that the services of that other registered Engineer or an Engineering consultancy practice have been terminated in accordance with the provisions of any contract for professional engineering services entered into between that other registered Engineer or an Engineering consultancy practice and the client, provided always that, in the case of dispute over non-payment of fees or quantum of any outstanding fees under the contract, the client may request the Board to be the stakeholder.*

2. For the purposes of the Regulation 31 and this Circular:-

2.1 The reference to consent of that other registered Engineer or an Engineering consultancy practice in Regulation 31(c)(i) means a letter from an existing registered Engineer or an Engineering consultancy practice ("First Engineer" or "First Engineering consultancy practice") agreeing to another registered Engineer or an Engineering consultancy practice ("Second Engineer" or "Second Engineering consultancy practice) taking over his or its work ("Letter of Release").

2.2 The reference to contract in Regulation 31(c)(ii) means a contract or agreement in writing between the First Engineer or the Engineering consultancy practice in which he or it is practising and the party that engages them ("the Client"). The Board considers that there is a contract or agreement in writing if the contract or agreement is made in writing whether or not it is signed or if the contract or agreement is made by an exchange of communication in writing.

3. For the purposes of Regulation 31(c):-

3.1 A Second Engineer or Second Engineering consultancy practice shall check with his or its prospective client namely the Client and the relevant Local Authority, if applicable, whether there is a First Engineer or First Engineering consultancy practice whose appointment has not being properly terminated, or where there is a dispute over non-payment of fees, before accepting any work. If there is, the Second Engineer or Second Engineering consultancy practice shall write to the First Engineer or First Engineering consultancy practice for a Letter of Release for him or it to take over the work.

3.2 If the appointment of the First Engineer or First Engineering consultancy practice has been terminated in accordance with the provisions of the contract or agreement and:-

(a) the First Engineer or First Engineering consultancy practice is not claiming any fees due from the Client (i.e. no "Dispute of Fees"),

(i) he or it shall issue a Letter of Release to the Second Engineer or Second Engineering consultancy practice within fourteen (14) days of being requested by the Second Engineer or Second Engineering consultancy practice, regardless of any other dispute between the First Engineer or First Engineering consultancy practice and the Client.

(ii) if he or it did not do so, the Second Engineer or Second Engineering consultancy practice may refer the matter to BEM for BEM to issue a letter to the Client, copied to the First Engineer or First Engineering consultancy practice, confirming a Letter of Release by the First Engineer or First Engineering consultancy practice is no longer necessary ("Confirmation Letter").

- (b) the First Engineer or First Engineering consultancy practice is claiming there are fees due from the Client (i.e. there is a “Dispute of Fees”),
 - (i) he or it shall reply accordingly within fourteen (14) days of the request. The Second Engineer or Second Engineering consultancy practice may then advise the Client to submit a request in a SH Form appointing BEM to act as a stakeholder, where the terms in the SH Form shall apply and bind both parties.
 - (ii) if he or it did not do so, the Second Engineer or Second Engineering consultancy practice may refer the matter to BEM for its consideration on whether a Letter of Release by the First Engineer or First Engineering consultancy practice is no longer necessary (“Confirmation Letter”).
- 3.3 Where a Client has submitted a request in a SH Form appointing BEM to act as a stakeholder:-
 - (i) BEM shall assess a sum of money to be deposited with BEM as stakeholder (“the Stakeholder Sum”) and inform the Client accordingly;
 - (ii) On receipt of the Stakeholder Sum, BEM shall issue a Confirmation Letter to the Client, copied to the First Engineer or First Engineering consultancy practice.
- 3.4 The letters under paragraph 3.2(a) and (b) above shall not prejudice nor affect any dispute which the First Engineer or First Engineering consultancy practice may have with the Client other than the Dispute of Fees.
- 3.5 The BEM also does not consider Regulation 31 contravened and a Letter of Release is not necessary if the First Engineer or First Engineering consultancy practice:-
 - (a) has commenced an action to resolve the Dispute of Fees **after** his or its termination (“the Action”);
 - (b) has either been suspended or had his or its name removed from the Register maintained by BEM for any reason whatsoever;
 - (c) has informed the local authorities that he or it was withdrawing from the work; or
 - (d) has terminated his or its employment on his or its own accord.
- 3.6 The Action in paragraph 3.5(a) means arbitration proceedings commenced under the Arbitration Act 2005 (“AA”) if there is an arbitration agreement or an originating process under Rules of Court 2012 (“ROC”) or adjudication proceedings under the Construction Industry Payment and Adjudication Act 2012 (“CIPAA”).

- 3.7 The Action as defined in paragraph 3.5(a) is deemed to have commenced: -
- (a) For an action in court, when an originating process defined in Order 5 of ROC is filed;
 - (b) For arbitration, when a notice of arbitration defined in Section 23 of AA is served;
 - (c) For adjudication, when a notice of adjudication defined in Section 5 of CIPAA is served.

[337th Board Meeting / 9th April 2019]



DATO' SRI Ir. Dr. ROSLAN BIN MD. TAHA
President
BOARD OF ENGINEERS MALAYSIA

FORM SH
REGISTRATION OF ENGINEERS ACT 1967 (REVISED 2015)
(Section 4(ea))

[to be read together with "Procedure for a registered Engineer or an Engineering consultancy practice taking over the work of another registered Engineer or an Engineering consultancy practice"]

APPLICATION FOR BOARD OF ENGINEERS MALAYSIA TO ACT AS STAKEHOLDER

Name of Applicant:

NRIC/Passport No.: Nationality:

Address:

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Name of project:

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Disputing Parties

A. Name of Client:

Company Registration No.:

Address:

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Tel. No.: Fax. No.: E-mail:

B. Name of First registered Engineer/
First Engineering consultancy practice:

BEM's Registration No.:

Address:

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Tel. No.: Fax. No.: E-mail:

Contact Person:

Brief description of dispute (Please use additional pages if necessary)

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Attachments: (Please tick where submitted)

- Copy of contract document
- Proof of contract
- Letter of termination
- Status of works
- Amount of fees outstanding for works done to-date
- Other relevant documents (please describe)

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- Non-refundable processing fee of RM 2,000.00

Cheque No.:

I/We hereby request the Board of Engineers Malaysia to act as stakeholder for the disputing parties as detailed above and hereby confirm that I/We shall abide by the conditions as contained herein.

.....
Applicant's Signature

.....
Position in the Company

.....
Company Stamp

Date:

CONDITIONS

1. Payment of the Stake

- 1.1 Further to Regulation 31(c)(ii) of the Registration of Engineers Regulations 2012, if the Client ("the Applicant") claims that it had terminated the appointment of the First Engineer or First Engineering consultancy practice in accordance with the provisions of the contract and the First Engineer or First Engineering consultancy practice is claiming there are fees due to him or it ("Dispute of Fees"), the Applicant may submit an application in the SH Form appointing the Board of Engineers ("BEM") to act as a stakeholder, whereby the following stakeholder terms shall apply.
- 1.2 BEM shall assess a sum of money to be deposited with it as stakeholder ("the Stakeholder Sum"). On being informed, the Applicant shall deposit the Stakeholder Sum within thirty (30) days, failing which this application is deemed to have been withdrawn by the Applicant.
- 1.3 On receipt of the Stakeholder Sum, BEM shall issue a letter to the Applicant, copied to the First Engineer or First Engineering consultancy practice, confirming a Letter of Release by the First Engineer or First Engineering consultancy practice is no longer necessary ("Confirmation Letter").
- 1.4 BEM shall place the Stakeholder Sum in any account of its choice ("Stakeholder Account") and shall hold it until its release as provided in paragraph 3 below.

2. Dispute of Fees Resolution

- 2.1 Within sixty (60) days from the Confirmation Letter, the Applicant shall initiate action as defined in paragraph 5 below to resolve the Dispute of Fees ("the Action").
- 2.2 The Action is deemed to have commenced: -
 - (a) For an action in court, when an originating process defined in Order 5 of Rules of Court 2012 ("ROC") is filed;
 - (b) For arbitration, when a notice of arbitration defined in section 23 of Arbitration Act 2005 ("AA") is served;
- 2.3 If the Action is not commenced within sixty (60) days, BEM shall release the Stakeholder Sum to the First Engineer or First Engineering consultancy practice.
- 2.4 After the commencement of the Action but before the Decision, the First Engineer or First Engineering consultancy practice and the Applicant may amicably settle the Dispute of Fees by a mutual agreement in writing stating clearly the parties' agreement on the release of the Stakeholder Sum ("Settlement Agreement").

3. Release of the Stakeholder Sum

Within thirty (30) days from the Settlement Agreement or the decision as defined in paragraph 5 below ("the Decision") regardless of any challenges against the Decision ("Appeal"), BEM shall deal with the Stakeholder Sum in the following manner:

- (a) Release the Stakeholder Sum according to the Settlement Agreement; or
- (b) If there is no Settlement Agreement;

- (i) If the amount awarded to the First Engineer or First Engineering consultancy practice in the Decision (“Amount Awarded”) is lesser than the Stakeholder Sum, BEM shall release an amount equivalent to the Amount Awarded to the First Engineer or First Engineering consultancy practice from the Stakeholder Sum and refund the balance to the Applicant; or
- (ii) If the Amount Awarded is higher than the Stakeholder Sum, BEM shall release the Stakeholder Sum to the First Engineer or First Engineering consultancy practice. The First Engineer or First Engineering consultancy practice is at liberty to recover the remaining Amount Awarded from the Applicant; or
- (iii) If there is no Amount Awarded to the First Engineer or First Engineering consultancy practice in the Decision, BEM shall refund the Stakeholder Sum to the Applicant.

4. Other Proceedings

- 4.1 If BEM commence any interpleader or similar proceedings to determine the release of the Stakeholder Sum (“Interpleader Proceedings”) and/or any party commence legal actions against BEM in relation to or arising from the Stakeholder Sum or BEM’s appointment as stakeholder (“Other Proceedings”), all BEM’s costs in or arising from these proceedings shall be paid out of and deducted from the Stakeholder Sum prior to releasing the same.
- 4.2 The balance of the Stakeholder Sum shall be released by BEM in accordance with the order granted in the Interpleader Proceedings.

5. Interpretation

Action	means arbitration proceedings commenced under AA if there is an arbitration agreement or an originating process under ROC;
Amount Awarded	means the fees ordered to be paid by the Applicant to the First Engineer or First Engineering consultancy practice in the Decision;
Appeal	means an application under section 37 and/or 42 of the AA or an appeal within the meaning of Order 55 and 55A of ROC and Part II of the Rules of Court of Appeal 1994 or any other application under the AA made to challenge the Decision or any part thereof;
Decision	means an order from the Court or an award by the Arbitrator in the Action ordering an amount to be paid to the First Engineer or First Engineering consultancy practice.