

Serial No. 0023



BOARD OF ENGINEERS MALAYSIA

CIRCULAR NO. 1/2006

GUIDELINES

for

AN ENGINEER TAKING OVER THE WORK OF ANOTHER

1. These guidelines replace Circular No. 1/2004 in setting out the procedure for taking over the work of one registered Engineer by another registered Engineer in concert with Regulation 31 of the Registration of Engineers Act 2002 in that:

A registered Engineer shall not directly or indirectly –

- (a) *supplant or attempt to supplant another registered Engineer;*
- (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*
- (c) *take over any work of that other registered Engineer acting for the same client unless he has:-*
 - (i) *obtained the consent of that other registered Engineer; or*
 - (ii) *been formally notified by the client that the services of that other registered Engineer have been terminated in accordance with the provisions of any contract for professional engineering services entered into between that other registered Engineer 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 these guidelines:

- 2.1 the consent of that other (or First) Engineer, in the context of Regulation 31, shall be in writing in a letter to be known as a Letter of Release to the registered (Second) Engineer who is taking over his work.
- 2.2 the Engineer shall include an Engineering Consultancy Practice registered with the Board.
- 2.3 the Contract shall mean a written agreement between the Client and the First Engineer and may be in the form of exchange of correspondence or a formalised memorandum of agreement.
- 2.4 the Client shall include the “registered proprietor” or “bona-fide agent” or “contractor” for the development of the land and/or buildings. “Registered proprietor” can be individuals, group of individuals, trustees, agencies, statutory

organizations, corporations, or any other legal entities whose names and/or legal identities are endorsed on the title of the land or any other instruments, which provide legal ownership to the land and/or buildings. "Bona-fide agent" can be individuals, group of individuals, trustees, agencies, statutory organizations, corporations or any other legal entities who have been empowered by the "registered proprietor" to represent him in relation to the development of the land and/or buildings. "Contractor" can be any legal entity appointed by the "registered proprietor" or "bona-fide agent" to carry out the development of the land and/or buildings under a concession agreement or a turnkey/design and build contract.

3. In compliance with Regulation 31 and these guidelines:
 - 3.1 A registered Engineer in accepting any commission shall check with the Client and Local Authority whether there is an earlier appointed registered Engineer whose appointment has yet to be properly terminated. If there is, the Second Engineer shall write to the First Engineer for the Letter of Release for him to take up the commission.
 - 3.2 If the services of the First Engineer have been properly terminated, he shall be obliged to issue a Letter of Release to enable the Second Engineer to accept the commission. The First Engineer shall not unreasonably withhold the issuance of the Letter of Release within fourteen (14) days of being requested by the Second Engineer. If he is unable to give the Letter of Release, he shall state the reasons.
 - 3.3 In the event the First Engineer claims that there are outstanding fees due to him, he shall:
 - (a) present his accounts to the Client for professional services rendered within thirty (30) days of being requested for a Letter of Release.
 - (b) issue the Letter of Release upon settlement of his outstanding account by his client.
 - 3.4 In the event that the Client disputes the First Engineer's claim for fees and it remains unresolved after a period of fourteen (14) days from the date when the First Engineer first submitted his account, the dispute may be referred to the Board.
 - 3.5 The Client may submit a request for the Board to act as stakeholder. The request shall be made on the prescribed Form SH (obtainable from the Board's office).
 - 3.6 The Board shall assess a fair and reasonable sum of money to be deposited with the Board as stakeholder, reflecting the quantum in dispute and inform the Client accordingly with a copy to the First Engineer.
 - 3.7 The Client shall deposit the assessed sum with the Board.
 - 3.8 On receiving the money from the Client, the Board shall instruct the First Engineer to issue the Letter of Release to the Client for him to appoint a Second Engineer.
 - 3.9 The Board shall hold the disputed sum in paragraph 3.4 until the dispute is settled. The Board recommends that the dispute be settled through mediation or arbitration.
 - 3.10 On being informed of the terms of settlement, the Board shall release the settlement sum or the entire sum in the stakeholder's account, whichever is the lesser to the First Engineer.

- 3.11 The balance of money left in the stakeholder account, if any, after payment is made to the First Engineer shall be returned to the Client.
- 3.12 In the event a reply from the First Engineer is not received by the Second Engineer within the time limit provided in paragraphs 3.2 and 3.3 above, the matter may be referred to the Board by the Second Engineer or Client as the case may be. If the First Engineer is found to be unreasonable in not responding to the request, the Board may direct the First Engineer to issue the Letter of Release or deem that the Letter of Release is not necessary for the Second Engineer to take up the commission for the works.
4. The Board also does not consider Regulation 31 contravened and that the need for a Letter of Release does not arise when the First Engineer:
- (a) has commenced litigation and/or alternative dispute resolution for the recovery of his fees.
 - (b) and the Client have agreed to submit the dispute to arbitration
 - (c) has either been suspended or had his name removed from the Register maintained by the Board for any reason whatsoever.

Dated: 15th April 2006

[BEM-252nd Meeting / 15th April 2006]

DATO' PROF. Ir. DR. WAHID BIN OMAR
President
Board of Engineers Malaysia

FORM SH
REGISTRATION OF ENGINEERS ACT (AMENDMENT) 2002
(Section 4(1)(e)(ea))
[to be read together with Circular No 1/2006 Rev 3]

APPLICATION FOR BOARD OF ENGINEERS MALAYSIA TO ACT AS STAKEHOLDER

Name of Applicant

NRIC/Passport Nationality

Name of project

.....

Disputing Parties

A. Name of Client
.....

Company Registration No
.....

Address
.....
.....

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

...

B. Name of Consulting Engineers (First Engineer)
.....

Company Registration No
.....

Address
.....
.....

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

...

Contact person
.....

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

.....

.....

.....

Attachments: (Please tick where submitted)

- Copy of contract document
- Proof of contract
- Other relevant documents (please describe)
.....
.....
- 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 company

.....
Company Stamp

Date

CONDITIONS

1. The Applicant shall abide by the decision of the Board of Engineers Malaysia (BEM) on the quantum of money (the stake) to be deposited with BEM acting as stakeholder.
2. BEM shall have the right to call upon any party to assist in determining the stake.
3. The Applicant shall forward payment of the stake in the form of a crossed cheque made payable to BEM within six (6) months of being informed of the amount, failing which this application will be deemed to have lapsed.
4. On confirmation that the cheque is cleared, BEM shall instruct the First Engineer to issue the Letter of Release to the Client.
5. BEM shall place the stake in a Stakeholder Account.
6. (i) The Applicant undertakes to initiate action within sixty (60) days of the date of the Letter of Release to settle the dispute on fees with the First Engineer in accordance with the provisions in the professional services agreement signed between the two parties, failing which the Applicant hereby agrees that BEM may release the stake to the First Engineer, unless otherwise agreed by all parties concerned.

(ii) In the case where the professional services agreement is silent on the mode of settlement of dispute, the Applicant undertakes to negotiate and agree within thirty (30) days of the Letter of Release with the First Engineer on a mode of settlement of dispute over non-payment of fees or quantum of any outstanding fees under the contract. If the negotiation is not successful, the Applicant hereby agrees that he/she shall allow BEM to determine the mode of settlement and abide by BEM's decisions thereof, inclusive of the release of the stake to the First Engineer
7. On being informed of the terms of settlement, BEM shall release the settlement sum or the entire sum in the Stakeholder's account, whichever is the lesser to the First Engineer.
8. The balance of money, if any, in this account after disbursement to the First Engineer, shall be returned to the Client.
9. Accrued interest shall be distributed proportionately to the disputing parties.