



LEMBAGA JURUKUR BAHAN MALAYSIA

BOARD OF QUANTITY SURVEYORS MALAYSIA

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CIRCULAR NO: 1/2007

GUIDELINES ON THE APPOINTMENT AND TERMINATION OF SERVICES OF CONSULTING QUANTITY SURVEYORS

1.0 PREAMBLE

- 1.1 BQSM issued a Circular titled "Guidelines for Appointment and Termination of Appointment of Consulting Quantity Surveyors" dated 8 December 1997.
- 1.2 Since then, the Quantity Surveyors Act 1967 and the Rules have been amended and the above-mentioned Guidelines have to be revised to incorporate the amendments in the Quantity Surveyors (Amendment) Rules 2004 which have been gazetted on 31 December 2004.
- 1.3 The revisions herein are in accordance with the provisions of Clause 28 and 34 under Part IV of the Code of Professional Conduct And Clause 16A under Part II Administration.

2.0 APPOINTMENT OF CONSULTING QUANTITY SURVEYORS (CQS)

- 2.1 Clause 28 provides the following obligations for the CQS:
 - (1) Before accepting any appointment, a registered Quantity Surveyor (RQS) shall notify his client in writing of the prevailing terms and conditions in the Memorandum of Agreement (MOA) Between the Client and the Consulting Quantity Surveyor For Professional Quantity Surveying Services (hereinafter referred to as the 'Memorandum of Agreement') as issued by the Board.
 - (2) Within thirty days of receipt of a written confirmation of the appointment as a consulting Quantity Surveyor, the registered Quantity Surveyor shall notify the Board of such appointment by submitting to the Board a copy of the letter of appointment or Memorandum of Agreement duly signed between him and his client.

- 2.2 Based on the above provision, a Registered QS is advised to follow the following steps before embarking on the project:
- (i) inform the Client of the existence of the Board's MOA which includes the Articles of Agreement, General Conditions of Engagement and the Schedule of Fees.
 - (ii) agree with the Client on the scope of the QS services, whether full or partial, which will decide the Schedule of Fees for the project. However, the MOA shall be the basis of working out the amendments to suit the scope of the services by the QS.
 - (iii) obtain a Letter of Appointment prior to the execution of the MOA.
 - (iv) submit to the Board the particulars on the project as per standard Form LJBM/CQS/Reg./1/10/2005 – Notification on the Appointment of Registered Consulting QS to Undertake Quantity Surveying services in Malaysia pursuant to Rule 28 (2) of the Quantity Surveyor (Amendment) Rules 2004 under the Quantity Surveyors Act 1967, together with a copy of the Letter of Appointment or the MOA whichever is available within 30 days.
 - (v) Any amendment made to the MOA either as a deletion, an addition and a revision to the clauses, must be initialed by both parties.
 - (iv) The MOA must be signed by both parties and stamped; the Original copy to be kept by the Client and a stamped copy to be retained by the Consulting QS.

3.0 TERMINATION OF APPOINTMENT OF CONSULTING QS

- 3.1 BQSM's standard Memorandum of Agreement makes provision for the termination of the Consulting QS by the Client and vice-versa.
- 3.2 If the termination is in accordance with the provisions of the Agreement, the Consulting QS will have to follow the procedures contained in the document. If the Consulting QS wish to appeal, or wish to challenge the validity of the termination, action must be initiated early.

4.0 SUPPLANTING, INTERVENTION AND TAKING OVER THE WORK OF ANOTHER CONSULTING QS

- 4.1. Rule 34 of the Quantity Surveyors (Amendment) Rules 2004 provides the following:

A registered Quantity Surveyor practising as a consulting Quantity Surveyor shall not directly or indirectly-

- (a) supplant or attempt to supplant another registered Quantity Surveyor practicing as a consulting Quantity Surveyor who has

already been appointed by an employer or client and whose appointment has not been terminated or discharged;

- (aa) secure an appointment by undercutting or reduction of fees or by any other means;
- (b) intervene or attempt to intervene in, quantity surveying work of any kind which to his knowledge has already been entrusted to another registered Quantity Surveyor practicing as consulting Quantity Surveyor; or
- (c) take over the work of another registered Quantity Surveyor practising as a consulting Quantity Surveyor acting for the same employer or client, on the same project, unless he has:-
 - (i) obtained the consent of that other registered Quantity Surveyor; or
 - (ii) been formally notified by the employer or client that the engagement of that other registered Quantity Surveyor has been terminated or discharged in accordance with the provisions of any contract entered into between that other registered Quantity Surveyor and the employer or client.

- Note:
- (i) 'Supplant' means to take over another registered consulting QS's appointment as the consulting QS for a project which has been confirmed through Letter of Appointment and MOA, copies of which have been deposited with the Board.
 - (ii) 'client' includes 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 organisations, corporations or any other legal entities whose names and/or legal entities are endorsed on the title of the land or any other instruments, which provide legal ownership to the land and/or buildings.
 - (iii) 'Bona-fide agents' can be individuals, group of individuals, trustees, agencies, statutory organizations, corporations or 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.
 - (iv) '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 built contract.

4.2. Whenever a registered QS is approached to provide QS services for an on-going project, the registered QS must obtain a confirmation in writing from the Client whether there is any other registered QS on the same project, before he commences his services. If there is a registered QS on the same project, then the Second (2nd) registered CQS may only take over the same project from the First (1st.) registered QS provided:

(i) 1st QS has given consent in writing to the 2nd QS;

OR

(ii) the Client has confirmed in writing that he has terminated the appointment of the 1st QS in accordance with the provisions of the contract entered between the same Client and the 1st QS and the termination is not disputed by the 1st QS;

OR

(iii) A Letter of Release has been issued by the 1st QS to the Client with no conditions attached and permission granted for a 2nd QS to take over the project.

5.0 ISSUANCE OF A LETTER OF RELEASE

A Letter of Release shall be issued by the 1st QS within 14 days from the date of request by the Client to do so. If there are reasons for not issuing the Letter of Release, the 1st QS must state the reasons in the letter of reply to the Client.

6.0 OUTSTANDING FEES DUE TO THE 1ST QS AND BOARD AS A STAKEHOLDER

6.1 The QS Act 1967 has been amended to include new provisions which include the following clauses:

Part II, Clause 4 Functions of the Board Sub-Clause (ea):

“to act as a stakeholder in a contract for consulting quantity surveying services, where deemed necessary by the Board ;”

6.2 In the event the 1st QS claims that there are outstanding fees due to him, he shall:

(i) present his claims to the Client for professional services rendered up to termination of appointment, within 30 days of a request to issue a Letter of Release.

(ii) issue a Letter of Release upon settlement of his outstanding amount by the Client.

6.3. In the event that the fees claims have been disputed by the Client and it remained unsolved after 14 days from the date of submission of Accounts to the Client, the matter may be referred to the Board by the Client or the CQS to initiate in writing as per the following procedures:

(i) The client or CQS may submit a request to the Board to act as a stakeholder by filling-up the prescribed Form SH, which is available at the Board.

- (ii) The Board shall make a fair and reasonable assessment of the amount of money to be deposited with the Board as the Stakeholder, reflecting the quantum in dispute and inform the client or CQS accordingly, with a copy to the 1st QS or client respectively.
- (iii) The client shall deposit the assessed sum with the Board.
- (iv) On receiving the money from the client, the Board shall instruct the 1st QS to issue a Letter of Release to the client so that a 2nd QS can be appointed accordingly.
- (v) The Board shall hold the deposited money until the dispute is settled through mediation, arbitration or any other means of dispute resolution. On being informed of the settlement, the Board shall release the settlement sum.

By Order of the Board,

Dato' Haji Mohamed bin Gading
President
Board of Quantity Surveyors Malaysia

25 January 2007

*(Prepared by the Scale of Fees and Practice Committee
and approved by the Board on 5 December 2006 and revised again by Board on 25 January 2007)*