

APPENDIX 6

Draft of

ACCORD POLICY ON FORM OF PRACTICE

Revised on Dec. 3, 2002

That architects should be allowed to practice in any form legally acceptable in the country in which the service is offered, but always subject to prevailing ethical and conduct requirements. The UIA, as it deems necessary, will develop and modify its policies and standards to take account of alternative forms of practice and varied local conditions where these alternatives are thought to extend the positive and creative role of architectural profession in the interests of society.

RECOMMENDED GUIDELINE FOR THE ACCORD POLICY ON FORM OF PRACTICE

INTRODUCTION

In most jurisdictions, architects have been practicing within the basic forms of practice evolved over the years, e.g. Sole-Proprietorship and Partnership. Some jurisdictions have either regulatory bodies or their respective professional institutes that outline in detail the legal parameters and conditions under which architects can practice. A majority of member sections responding to the UIA Professional Practice Commission questionnaire indicated that their states permitted the practice of architecture in partnership and conventional corporate forms. The restrictions placed on corporate practice and the newer limited liability companies are often onerous. The great variety of these restrictions suggests that a guideline is needed to seek a reasonable, international provision respecting firm practice while assuring the public integrity of architectural services performed.

This set of guidelines defines practices by the forms of legal entity. Issues relating to forms of practices defined by the scope of services it offer is addressed in the Guideline on Scope of Practice.

The great variety of legal forms together with the growing trend of multi-disciplinary practices brings about the issue of ownership and control of the practice. The UIA has an interest in ensuring that the offering of architectural services in the various forms of practice, regardless of ownership, is under the effective control of architects and are required to conform to and maintain the same professional standards of service, work and conduct as individual architects. This is essential to ensure that the public's interests as well as the integrity of architectural services performed are maintained.

The UIA also recognizes a need to promote the awareness of such forms of practice by architects in their own jurisdictions to the public as well as government administrators. Furthermore, the UIA also recognizes that such forms of practice should take into consideration the local environmental, social and cultural factors, and ethical and legal standards prevailing in each jurisdiction.

The Accord acknowledges that while there are many jurisdictions that may not have the administrative and legal means to promote or regulate the various forms of practice, due

to differing standards, practices and conditions that reflect the diversity of cultures of such jurisdiction. While the UIA advocates proper regulation of architectural practices by a process of Registration, the Accord guidelines represents the first step in an effort by representatives of the international community of architects to reach consensus on the acceptable forms of practice that architects can operate and perform their services without infringing the legal boundaries. As such, the Guidelines are intended to lay down the various basic forms of practice as well as the Practice Structure that architects could choose from.

Form of Practices can be categorized by several approaches. Essentially, we can define Forms of Practices by the following approaches:

- 1) By membership of the association – e.g. Sole Proprietorship versus all other Forms of Practice;
- 2) By liability on the assets - e.g. Sole Proprietorship / Partnership versus limited liability companies
- 3) By the system of management, particularly between ownership and management – Basic Form of Practices versus Public Companies, or subsidiaries of Corporate.

The following list categorizes several major Forms of Practice prevailing at the present moment. Less common forms of practices are classified as “Specialized Forms of Practice” and non-profit making organizations are classified as “Other Forms of Practice”

A) Basic Forms of Practice

- i) Sole Proprietorship
- ii) Unlimited Partnership
- iii) Unlimited Company
- iv) Limited Partnership
- v) Limited Company

B) Specialized Forms of Practice

- i) Group Practice
- ii) Collaborate Practice
- iii) Consortium
- iv) Community Practice
- v) University Based Project Office
- vi) Subsidiaries / Affiliates of Corporate
- vii) Multi-Disciplinary Practice

C) Other Forms of Practice

- i) Government
- ii) Quasi-governmental bodies / Institutional Bodies

GUIDELINES FOR FORM OF PRACTICE

The UIA Guidelines recommends that local jurisdictions should strive to promote as well as obtain their respective regulatory bodies to endorse such principles, if possible, and

that their local statutes should incorporate the following principles for the various forms of practice:

A) Basic Forms of Practice

- i) Sole Proprietorship - Practices owned solely by one person with sole responsibility of all profits and losses. It is required that this person shall be a registered architect.
- ii) Unlimited Partnership - Practices formed be a group of individuals sharing in agreed proportions profits and losses according to the amount of work and expertise each partner will be applying to the business, and the amount of money they have each invested. There is personal and unrestricted liability of each partner for the debts and obligations of the firm, and there is also the right of each partner to participate in the management of the firm and act as an agent of it in entering into legal transactions on its behalf. Partnerships shall consist wholly of registered architects.
- iii) Limited Partnership – Partnerships consisting of certain members who are liable for the firm’s debts only to the extent of the capital contribute or agree to contribute, but such members are prohibited from taking part in the management of the firm. The requirement is the same as Partnership, except there should not be any restriction on the professional background of the limited partners.
- iv) Unlimited Company – Legal entity formed by incorporation in the local jurisdiction, without specifying any limit of liability of its member. The following guidelines shall prevail:
 - a) The article of association of the unlimited corporation / company provide that no person other than a registered architect or an associated professional shall be a director of the corporation.
 - b) That the articles of association of the corporation provide that any person who is neither a registered architect nor an associated professional, or is a nominee of such a person, or is not a director, manager or employee of the corporation, shall not be registered as a member of the corporation.
 - c) That the business of the corporation shall be under the control and management of a director of the corporation who is a registered architect, and is a member or a registered owner of at least 1 share of the corporation.
- v) Limited Company – Legal Entity formed by incorporation in the local jurisdiction, and may be either having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (company limited by shares) or having the liability of its members limited by the memorandum to such amount that the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (a company limited by guarantee). This includes also corporation where stocks are offered by the general public and listed in the stock exchange. The following guidelines shall prevail:
 - a) That a certain of authorized capital of the corporation amount , determined appropriately by the local jurisdiction, is paid up

- b) That the articles of association of the corporation provide that the chairman and the majority of the directors of the corporation shall be registered architects or associated professionals and ordinarily resident of the local jurisdiction.
- c) That the business of the corporation shall be under the control and the management of a director of the corporation who is a registered architect ordinarily resident in the local jurisdiction.

Not with standing the above provision, the following conditions shall apply regardless of the form mentioned above:

- a) An unlimited / limited corporation shall have the same rights and shall be subject to the same obligations in respect of the fiduciary, confidential and ethical relationships with each client of the corporation that exist at law between a registered architect and his client.
- b) A registered architect who has the control and management of the business of a unlimited / limited corporation or a licensed partnership shall be subject to the same standards of professional conduct and competence in respect of such services as if he / she was personally supplying the architectural services.

Recommended forms of practice are summarized and represented in Table 1

Although architects are allowed to practice in any form legally acceptable in the country in which their services are offered, conditions should be disclosed to clients in any case other than forms represented in Table 1. There are basic conditions for entities to disclose to clients in order to avoid a "conflict of interest", and the "possibility that architects' autonomy may be impaired." Each condition in Table 1 is the recommended standard to avoid "conflict of interest."

1. Ownership
2. Composition of officers
3. The most responsible person in charge of management
4. The most responsible t person in charge of practice
5. A person who is responsible in civil matter
6. A person who is responsible in criminal matter
7. A person who is a responsible in administrative matter
8. Other things related to "conflict of interest", and the "possibility that architects' autonomy is impaired."

B) Specialized Forms of Practice

- i) Group Practice
 - a) Any group practice may consist of any combination of the basic forms of practice stated in (A).
 - b) In any relation among a group practice, an agreement covering all aspects of legal issues, auditing, work apportionment, conduct, sharing of employees,etc. shall be prepared and agreed and under the terms and conditions prevailing in the local jurisdiction.

- c) Any entity in a group practice shall also be abide by the respective laws, code of conduct and other prevailing conditions as wet out by the regulatory bodies of the local jurisdiction.
- ii) Collaborative Practice
 - a) Any collaborative practice may consist of any combination of the basic forms of practice as stated in (A) except that the entities involved shall state clearly their respective job description and responsibilities at the onset.
 - b) All other legal relationships as well as the rules and conditions governing the entities shall remain unchanged as for the group practice.
- iii) Consortium refers to two or more practices acting together for a single project or group of projects. Consortia can be architectural only or multi-disciplinary. A Consortium can be constituted as a partnership of a company.
 - a) Consortiums may consist of any combination of the basic forms of practice as stated in (A) for the purpose of providing architectural services. Multi-disciplinary consortiums may consist of other allied disciplines, e.g. engineering consultants, cost consultants, specialized services...etc.
 - b) Likewise, the relationships and responsibilities amongst the entities shall be defined and agreed. The architectural entity shall ensure that all responsibilities, liabilities, work appointment, conduct, etc. with the other disciplines be clearly agreed and defined under that prevailing conditions In the local jurisdiction. Appropriate professional indemnity insurance should be secured for the particular circumstances of the consortium.
 - c) The entities of a consortium shall also abide by the prevailing conditions and other legal aspect government in the local jurisdiction where a consortium is formed.
- iv) Community Practice refers to practices working directly with the community. It may take any form of practices as mentioned in (A), and the objectives may not necessarily be profit making, although it may function similarly to any other forms of business association. The owner of the practice is normally the community itself with management function conducted by registered architects and associated professionals. Sometimes the registered architects will have ownership as well. It is suggested that the professional liability should rest with the registered architect, whereas commercial risk should rest with the practice, which includes a fair share by the community.
- v) University Based Project Office refers to a unit within universities which offers professional advice in specialty areas such as energy conservation...etc which also give students hands on experience. The form and ownership shall follow the guidelines set by the local jurisdiction as well as the university within which it is set up. The ownership should be held jointly by the University and registered architects ordinarily resident of the local jurisdiction. Professional liability should be the responsibility of the registered architect, while commercial liability should rest with the University, or as agreed between the University and the registered architects. Due to the relatively specialized nature,

educational benefits, and in many instances profit making not being the sole objective, it is appropriate for such practices to define their scope of services in more specific terms and secure appropriate professional indemnity against commercial risks.

- vi) Subsidiaries / Affiliates / of Corporate refers to a company which is solely owned by another corporate.
 - a) A subsidiary/affiliate practice may be consist of any form, or combination of the basic forms of practice as stated in (A) for the purpose of providing architectural services.
 - b) The relationships and responsibilities of the practice in relation to the Holding Corporate, as well as among all other affiliates within the same Holding Corporate shall be defined and agreed. The architectural subsidiary/affiliate shall ensure that all responsibilities, liabilities, work appointment, conduct, etc. with the Holding Corporation and other affiliates be clearly agreed and defined under that prevailing conditions In the local jurisdiction. Appropriate professional indemnity insurance should be secured for the particular circumstances of the architectural entity.
 - c) The entities of a consortium shall also abide by the prevailing conditions and other legal aspect government in the local jurisdiction where a consortium is formed.
- vii) Multi-disciplinary Practice refers to a company which offer architectural as well as other building related services and is not under the management of registered architects.
 - a) A multi-disciplinary practice may be consist of any form, or combination of the basic forms of practice as stated in (A) for the purpose of providing architectural or other building related services.
 - b) The offer of the architectural services in a multi-disciplinary practice shall be under the effective control of a registered architect ordinarily resident of the local jurisdiction.
 - c) The practice shall also abide by the prevailing conditions and other legal aspect government in the local jurisdiction where the multi-disciplinary practice is formed.

C) Other Forms of Practice

- i) Government refers to the organizations within the state government rendering architectural services using public funding for the use of the general public. This will include organizations such as the public works department, local authorities, or the like.
- ii) Quasi- Government bodies refer to institutions formed by the state government with the state as the sole or majority shareholder.

Where architects are employed in the above, and are required to provide architectural services, the prevailing conditions governing code of conduct, etc, as set out by the regulatory body of the local jurisdiction shall be abided by except that any liability shall be undertaken by the respective governmental body.

In the event where architects within governmental bodies are required to perform and provide architectural services as a separate entity, the prevailing laws and conditions governing the various forms of practice shall be abided by accordingly.

End of Guideline

TABLE 1

Recommended Standards of “Form of Practice”

December 3, 2002

Basic Form of Practice	Ownership	Composition of Board of Directors	Responsibility for practice		Responsibility for professional errors and omission		
			The most responsible person in charge of management	The most responsible person in charge of practice	A person who is responsible in criminal matters	A person who is responsible in civil matters	A person who is a responsible in administrative matters
Sole Proprietor	Registered Architect	Registered Architect	Registered Architect	Registered Architect	Registered Architect	Registered Architect	Registered Architect
Unlimited Partnership	Registered Architect as Unlimited partner	Registered Architect as Unlimited partner	Registered Architect as Unlimited partner	Registered Architect as Unlimited partner	Registered Architect as Unlimited artner	All unlimited partners	Registered Architect as Unlimited partner
Unlimited Company	Registered Architect as Unlimited company Member	Registered Architect as Unlimited company Member	Registered Architect as Unlimited company Member	Registered Architect as Unlimited company Member	Registered architect as Unlimited Company Member	All unlimited company members	Registered Architect as Unlimited company Member
Limited Corporation Limited Partnership Limited Company	The majority of shares is desired to be owned by registered architects.	The majority of the board of directors is desired to be registered architects who are officers.	Registered architect	Registered architect	The registered architect in charge of the project. The most responsible person in charge of practice The most responsible person in charge of management/Corporation	The registered architect in charge of the project. The most responsible person in charge of practice The most responsible person in charge of management/Corporation	The registered architect in charge of the project. The most responsible person in charge of practice The most responsible person in charge of management/Corporation