

1.0 Introduction

The construction industry is one of the major growth drivers to the economy of Malaysia. The industry contributes on average 3.06% of the annual GDP (Table 1). In 2012, the construction sector recorded an impressive growth of 18.1% (Figure 1), the highest growth since 1996 (16.2%). The growth was reinforced by the sturdy performance of Civil Engineering at 27.6% and Residential at 20.8%. Infrastructure projects as well as the oil and gas activities have fuelled the Civil Engineering while the continuous constructions of high-end housing projects have lifted the Residential (*Department of Statistics Malaysia, 15 May 2013*). In the latest quarter, i.e., 3rd quarter 2013, the construction sector posted a double-digit growth of 10.1% (*Department of Statistics, Malaysia, 15 Nov 2013*).

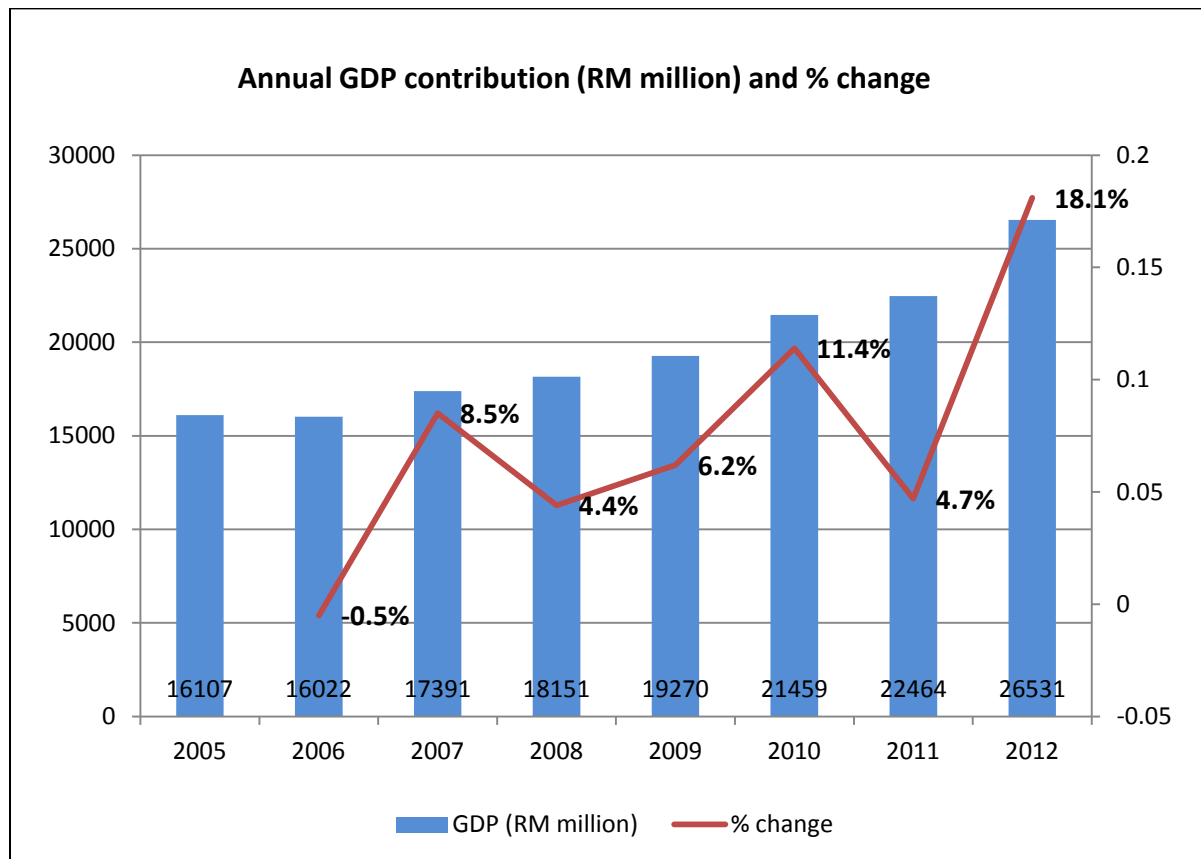
The total value of construction work during the first half of 2013 rose 13.8% to RM 43.3 billion (January – June 2012: 24.6%; RM 38.1 billion) with the highest share contributed by civil engineering at 36.1%, followed by the non-residential (31.9%) and residential (27.5%) subsectors. The overall performance of the sector is expected to moderate to 10.6% in 2013 (2012: 18.1%) following the completion of some of the high-impact public infrastructure projects (*Ministry of Finance Malaysia, 2013*).

Table 1: GDP by Kind of Economic Activity at Constant 2005 Prices - Percentage Share to GDP

Year	Kind of economic activity					Plus Import Duties
	Agriculture	Mining and quarrying	Manufacturing	Construction	Services	
2005	8.3	13.3	27.5	3.0	46.8	1.2
2006	8.3	12.4	28.0	2.8	47.5	1.0
2007	7.9	11.9	27.2	2.9	49.2	1.0
2008	7.8	11.1	26.1	2.8	50.9	1.2
2009	7.9	10.5	24.2	3.1	53.2	1.1
2010	7.6	9.8	25.2	3.2	53.2	1.1
2011	7.6	8.8	25.1	3.2	54.1	1.2
2012	7.3	8.4	24.9	3.5	54.6	1.3

Source: Department of Statistics Malaysia

Figure 1: Annual GDP contribution and percentage change 2005-2012 of the Construction Sector



Source: Department of Statistics Malaysia

1.1 Construction Industry Development Board

The Construction Industry Development Board (CIDB) was established under the *Construction Industry Development Board Act 1994 (Act 520)* to coordinate all activities in the construction industry and increase its competitiveness. CIDB's roles and responsibilities are contained in Section 4 subsection (1) of the Act as shown in Box 1.

CIDB in its corporate objective strives *“to develop the capacity and capability of the Construction Industry through the enhancement of quality and productivity by placing great emphasis on professionalism, innovation and knowledge, in the endeavour to improve the quality of life”*.

Box 1: Section 4 subsection (1) of the Construction Industry Development Board Act 1994 (Act 520)

ACT 520

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT 1994

Section 4. Functions of the Lembaga.

The functions of the Lembaga shall be:

- to promote and stimulate the development, improvement and expansion of the construction industry;
- to advise and make recommendations to the Federal Government and the State Government on matters affecting or connected with the construction industry;
- to promote, stimulate and undertake research into any matter relating to the construction industry;
- to promote, stimulate and assist in the export of service relating to the construction industry;
- to provide consultancy and advisory services with respect to the construction industry;
- to promote quality assurance in the construction industry;
- to encourage the standardization and improvement of construction techniques and materials;
- to initiate and maintain a construction industry information system;
- to provide, promote, review and coordinate training programs organised by public and private construction training centres for skilled construction workers and construction site supervisors;
- to accredit and register contractors and to cancel, suspend or reinstate the registration of any registered contractor; and
- to accredit and certify skilled construction workers and construction site supervisors.

Source: Construction Industry Development Board Act 1994

1.2 Scope of “construction works”

Box 2 shows the interpretation of “construction works” as defined in the *Construction Industry Development Board Act 1994 (Act 520)*.

Box 2: Interpretation of “construction works” in the *Construction Industry Development Board Act 1994 (Act 520)*

"construction works" means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of

- any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level;
- any road, harbour works, railway, cableway, canal or aerodrome;
- any drainage, irrigation or river control works;
- any electrical, mechanical, water, gas, petrochemical or telecommunication works; or
- any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation works, and

includes any works which form an integral part of, or are preparatory to or temporary for the works described above, including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping.

Source: *Construction Industry Development Board Act 1994*

The “Registration Requirements and Procedure Guidelines” Annexure 2C describes the scoping of “construction works” as defined in the Act 520.

1.3 Registration of foreign contractors

As shown in Box 3, section 25 subsection (1) and section 26 of Act 520 requires that any contractors – local or foreign – doing construction works or projects must register with CIDB. And CIDB is to maintain a master register of contractors.

Box 3: Sections 25 and 26 of the *Construction Industry Development Board Act 1994 (Act 520)*

25. (1) No person shall undertake to carry out and complete any construction works unless he is registered with the Lembaga and holds a valid certificate of registration issued by the Lembaga.

(2) Every certificate of registration shall be in the prescribed manner and form.

26. The Lembaga shall keep and maintain a Register which shall contain the names, business addresses and other particulars of contractors who are registered as registered contractors.

Source: *Construction Industry Development Board Act 1994*

The procedures and requirements for registration is described in detail in the *Registration of Contractors (Construction Industry) Regulations 1995*. The regulation makes a differentiation of the registration procedures and requirements between local and foreign contractors.

As stated in the “Registration Requirements and Procedure Guidelines” contractors are categorized and defined as follows:

- Local contractor – a company incorporated in Malaysia which has a local equity holding of not less than **seventy per cent (70%)**. **Foreign equity** from citizens of **ASEAN countries** are permitted but shall not exceed **fifty-one per cent (51%)** of the total paid up capital or accumulated capital;
- Foreign contractor – a company incorporated in Malaysia or in a foreign country which has a foreigners’ equity holding of **thirty-one per cent (31%)** or more.

Table 2 shows the registration fees imposed on local and foreign contractors.

Table 2: Fees Payable

Registration	Local	Foreign
Term / Frequency	1 – 3 years	Per project basis
Fee	RM20 – RM1,400/annum	RM5,000/project
Levy	0.125%	0.125%

Source: *Construction Industry Development Board*

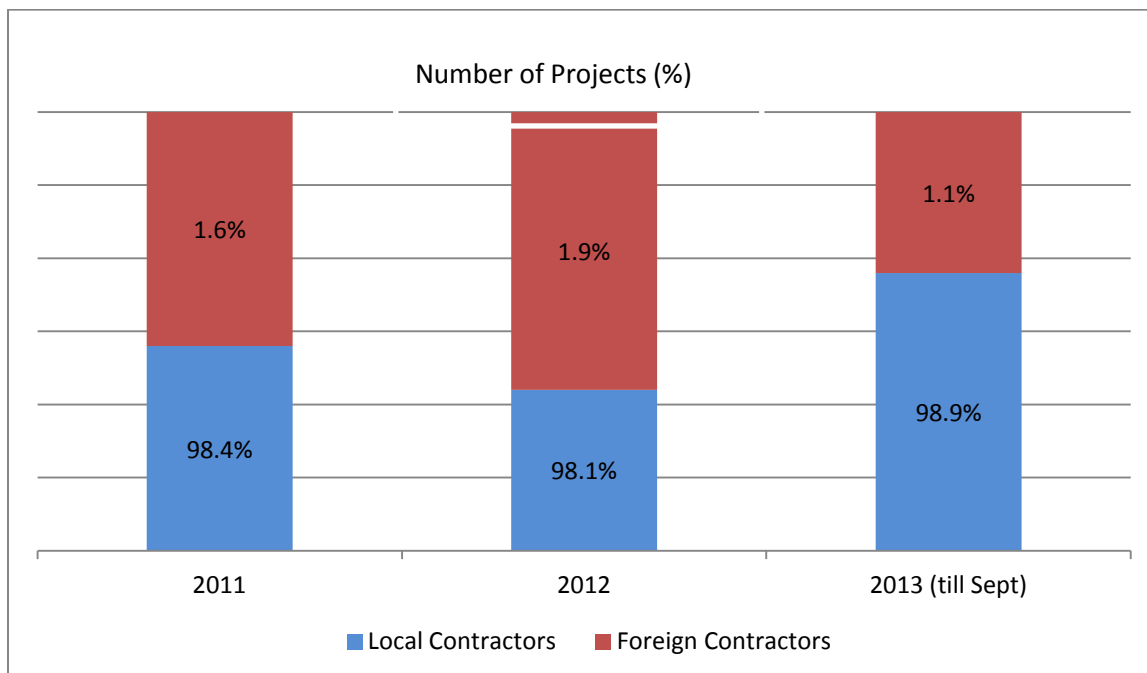
Local contractors register once with CIDB and the registration can be renewed for a period between one to three years. Whereas, foreign contractors are required to register for every project they bid and undertake.

There are two types of registration for foreign contractors. The *Provisional Registration Certificate* requires the foreign contractor to seek permission to participate in any construction tender bid. And this registration is only for a specific tender bid.

Before a foreign contractor undertakes any construction work in which they have been awarded, they are required to apply for a *Registration Certificate for Foreign Contractor*. And this registration is for the specific project only. And if the foreign contractor bids for a tender and eventually awarded the tender, they have to apply for two registrations, i.e., the Provisional Registration Certificate and the Registration Certificate.

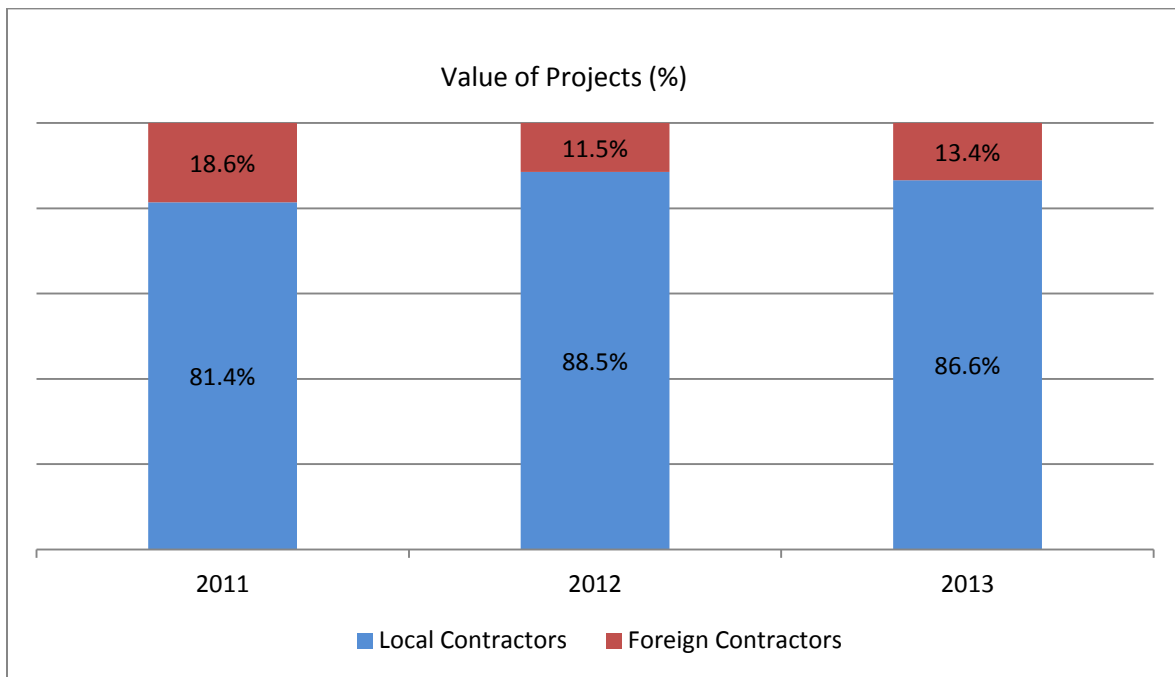
Figure 2 and Figure 3 show the number of projects and project value undertaken by foreign contractors as compared to local contractors for both government and private projects from year 2011 to September 2013.

Figure 2: Comparative Number of Projects Awarded between Local and Foreign Contractors



Source: Construction Industry Development Board

Figure 3: Comparative Project Value Awarded between Local and Foreign Contractors



Source: Construction Industry Development Board

1.4 Public disclosure of 'commercially sensitive information'

Section 4 subsection (1) (h) of the *Construction Industry Development Board Act 1994* (Act 520) describes one of the functions of CIDB (Box 4). CIDB publishes a monthly "Construction Project Register" and a quarterly bulletin, namely "Construction Statistics Quarterly Bulletin".

Box 4: Section 4 subsection (1) (H) of the *Construction Industry Development Board Act 1994 (Act 520)*

ACT 520

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT 1994

Section 4. Functions of the Lembaga.

(1) The functions of the Lembaga shall be-

(a) ... (g)

(h) to initiate and maintain a construction industry information system;

(i) ... (k)

Source: *Construction Industry Development Board Act 1994*

The “Construction Statistics Quarterly Bulletin” provides aggregated and summarized projects information undertaken within the quarter. Whereas, the “Construction Project Register” provides for both aggregated and details of projects awarded and undertaken in the month concerned. Details of the information published in the monthly Construction Project Register are produced in Appendix D.

1.5 Regulatory burdens (*Malaysia Productivity Corporation, 2013*)

Regulatory burdens arise from the costs imposed by regulation and enforcement that would otherwise not arise for businesses. Where requirements from regulation create a change in business behaviour and practices, a regulatory burden can be said to exist. Regulations can adversely impact on businesses in a variety of ways. Most can usually be grouped under the following four categories of cost impacts:

- administrative and operational costs such as:
 - reporting, record keeping;
 - getting legal advice, training
- changes to the way goods are produced or services supplied;
- changing the characteristics of what is produced; and
- lost production and marketing opportunities.

1.6 Unnecessary Regulatory Burdens (*Malaysia Productivity Corporation, 2013*)

While it is usually necessary that some burden is placed on business for regulation to achieve its objectives, where it is poorly designed, or its enforcement and administration is not implemented well, it may impose greater burdens than necessary. It is those regulatory burdens which can be considered 'unnecessary' that are of primary interest (Box 5).

Box 5: Examples of Unnecessary Burdens

- excessive coverage of the regulations, including 'regulatory creep' — that is, regulations that encompass more activity than was intended or is to achieve their objective
- subject-specific regulations that cover much the same ground as other generic regulation
- prescriptive regulation that unduly limits flexibility, such as preventing:
 - businesses from meeting the underlying objectives of regulation in different ways
 - use of the best technology
 - product changes to better meet consumer demand
- overly complex regulation
- unwieldy license application and approval processes
- excessive time delays in obtaining responses and decisions from regulators
- rules or enforcement approaches that inadvertently provide incentives to operate in less efficient ways
- unnecessarily invasive regulator behavior, such as overly frequent inspections or information requests
- an overlap or conflict in regulations and or the activities of different regulators; and
- inconsistent application or interpretation of regulation by regulators.

Source: *Malaysia Productivity Corporation*