

4.0 Insufficient guidance on which construction works need to be registered with CIDB

4.1 Findings

4.1.1 Views from business

1. Lack of clarity in the definition of the meaning of “construction works” in the CIDB Act 520:
 - Interpretation of current definition is very broad and not limited to construction industry e.g., fixtures;
 - Magnetic Resonance Imaging (MRI) equipment, hand-held ultrasound machines installation in a hospital is considered as construction works under this definition.
 - Inconsistent interpretation between regulators on the same piece of definition causes confusion and potentially increases the compliance costs;
 - Duplication in registration activities of different regulators e.g. SPAN (National Water Services Commission), AELB (Atomic Energy Licensing Board), DOSH (Department of Occupational Safety and Health), and ST (Energy Commission)

4.1.2 Views of the regulators

1. CIDB commented that supply of equipment with installation and cabling or fixing equipment to the building falls under construction work, and the supplier is required to register as a contractor. CIDB provided example of the same practice in Australia and Singapore, whereas Hong Kong categorised this as separate scope of business.
2. CIDB commented that to ensure consistency of the definition of “functionality”, the work details have to be listed clearly;

3. CIDB commented there is no overlapping of registration with different regulators. Data of contractors registered with the other regulators (e.g. SPAN) is consolidated in CIDB's Master Register of Contractors.
4. CIDB commented on the intent of Act 520;
 - To consolidate the industry under a central monitoring body;
 - The intention is not focused directly on integrity or safety of the building infrastructure but to provide a listing of competent contractors – i.e. Master Registration of Contractors in Malaysia. Indirectly the list of capable and competent contractors ensures the integrity and safety of the building;
 - To ensure contractor's competency (areas of specialty) – this records quality, safety, cost, capability of the contractors.
5. Regulators suggested that it depends on the scope of work, examples;
 - If repair is a small part of the contract , it only requires Ministry of Finance registration;
 - If major work is civil and/or mechanical in nature, then its “construction works” (requires registered contractor);
 - If specialist work e.g. installation of medical equipment; then requires registered contractor.
 - If the work changes or effects the original functionality of a building (e.g. hospital), then it is “construction works”;
 - If installation of computers involves change in the functionality of a building, addition of power points, insufficient power, then it is considered “construction works”.
6. AGC recommend considering using terms used or interpreted (defined) in courts to maintain consistency of the definition.

4.2 Discourse

As the construction industry has moved from a very labour intensive, low technology and craft-based industry to a more technological highly mechanized industry, the

current definition of “construction works” may not apply. Businesses have a view that the supply and installation of equipment and machinery is not part of “construction works” especially equipment which are “plug-and-play” or hand-held. This view differs from the regulator. This has lead businesses, especially equipment suppliers, to be uncertain of their status and the status of the job undertaken.

CIDB’s “Registration Requirements and Procedures Guideline” outlines in detail the requirements and procedures for registration of local and foreign contractors. Annexure 2C (Registration Category and Specialisation) of the said guidelines describes in detail the category of “construction works” and its corresponding specialisation. The confusion stems from a part of its description of the specialisation, example shown in Figure 4.

Figure 1: Sample description provided in the Registration Requirements and Procedures Guideline

SPECIALISATION	DESCRIPTION	SPECIALISATION REQUIREMENTS
M06 Medical equipment	Installation, commissioning and maintenance of medical equipment such as air compressor system, medical gas system installation, dental chair, hydrotherapy system, etc.	Proof of work

Source: Construction Industry Development Board of Malaysia

Etc. or et cetera which means *and others; and so forth; and so on (used to indicate that more of the same sort or class might have been mentioned, but for brevity have been omitted)* – have caused confusion and misinterpretation among businesses and regulators.

4.2.1 Impact on business

Due to the different interpretation of the meaning of “construction works”, businesses involve in the construction industry are not certain of their status and the status of the job undertaken. This leads to these businesses having “arm’s length” relations with the contractors.

4.2.2 Impact on regulator

Government agencies are also uncertain about what constitute “construction works”. Some agencies may disregard the need to have registered contractors as they assume the work required does not require it. This assumption may compromise the safety and integrity of the job undertaken.

4.3 Options for resolution

1. Provide a full list of all items included in each category and delete “etc”.

Provide a full list of type of works in the specialisation description of the “Registration Requirements and Procedure Guideline” and not use the word “etc.”

2. Provide a clear definition and functional description of construction works

A much more clearly defined definition and functional description of “construction works” must be described taking into consideration the type of work to be done. The safety and integrity of the building could be provided. As an example, the description in “specialisation description” in the “Registration Requirements and Procedure Guideline” Annexure 2C may be amended as

“Installation, commissioning and maintenance of medical equipment that affect the electrical, plumbing, gas, compress air infrastructures and does not compromise the integrity of the building.”

3. Explicitly exclude jobs and items deemed lowest risk

Explicitly exclude jobs and items deemed lowest risk and which do not compromise the integrity and safety of the building or infrastructure.

4. Educate the relevant stakeholders

Educating both government agencies and the businesses what constitutes “construction works” by way of, as to discussion sessions and other platforms online or “offline” to ensure that all involved stakeholders have the same understanding. As part of the education, establish a FAQ that is easily accessible on what is not within the scope of “construction works”.

5. Periodic review of policies and guidelines

Regulators are obliged to review policies and guidelines regularly as changes to the environment may affect the meaning and intent of “construction works” ensuring the intent is up to date

6. Establish an expert oversight committee

CIDB to establish an expert oversight committee to resolve any issues on the scope of “construction works”. The decision of the expert committee will be able to provide further clarity.

4.4 Recommendations

All of the options provided will be able to address the issue concerned. But it is recommended that Option 2 (Provide a clear definition and functional description of construction works) and Option 6 (Establish an expert oversight committee) be implemented in the immediate as it is within the ambit of CIDB. These options will quickly dispel the confusion and uncertainty of the type works that constitute “construction works”.

Note: CIDB is in the midst of reviewing the specialisation description in the Guidelines but it has to be noted that the review should be further enhanced using Regulatory Impact Analysis (RIA) methodology.