

5.0 Different Registration Requirements for Foreign Contractors

5.1 Findings

5.1.1 Views from business

1. The registration fees for foreign contractors are regarded as unnecessary burden as they imposed direct cost to the business;
2. As foreign contractors are required to apply registrations for every project bids and project works, it becomes tedious and time-consuming;
3. The same documents must be submitted, it costs the businesses for preparing the same documents for every application
4. Businesses have commented that CIDB's adherence to its definition of local and foreign contractors has caused locally-owned public listed construction company becoming a foreign company at one time or another when its equity structure changes due to investors buying and selling of its shares.

5.1.2 Views of the regulators

1. CIDB commented that the renewal of licenses for foreign contractors is by project basis (it could last up to 10 years if the project duration is lengthy), whereas renewal of license by local contractor is on an annual basis,
2. CIDB clarified that a company that was setup before 1994 is regarded as local company if there has been no change in the equity structure.
3. CIDB is not entirely certain as to objective the requirement for foreign contractors to register for every tender bids and works undertaken;
4. MIDA stated concern on the loss of investment by giving an example of a US company facing equity issues in a joint-venture with a local company. As a result, the investor moved to Singapore to open its office.
5. AGC commented if the intention is to benefit local contractors on technology transfers, then the requirement may not serve its intention, and may have

succeeded in restricting foreign participation if the intention of the requirement is as such.

6. AGC commented that making changes to regulations requires time and discussions among relevant regulators or agencies/ministries (CIDB, MOF, AGC, etc.) and local chambers of commerce to come out with specific and objective recommendations.

5.2 Discourse

Table 3 summarizes the number of contractors registered, the total projects undertaken and the total project values for both local and foreign contractors.

Table 1: Local and Foreign Contractors Participation 2011 to 2013 (as of Sept 2013)

Year	Nationality	No. of Contractors	No. of Projects	Project Value (RM mil)
2011	Foreign	88	123	18,531.49
	Local	3,203	4,205	57,806.66
2012	Foreign	100	141	14,133.17
	Local	5,306	7,401	108,587.43
2013 (as of Sept)	Foreign	38	48	8,982.11
	Local	5,217	7,462	81,208.52

Source: Construction Industry Development Board of Malaysia

In the *Registration of Contractors (Construction Industry) Regulations 1995 (Regulation 2. Interpretation)* states that:

“In these Regulations, “foreign contractor” means a foreign company as defined in the Companies Act 1965 [Act 125].”

In the Companies Act 1965 Section 4 subsection (1) states “foreign company” means —

- (a) a company, corporation, society, association or other body **incorporated outside Malaysia**; or
- (b) an unincorporated society, association, or other body which under the law of its place of origin may sue or be sued, or hold property in the name of the secretary or other officer of the body or association duly appointed for that purpose and which does not have its head office or principal place of business in Malaysia.

In the “Registration Requirements and Procedures Guideline” it is stated that:

“Foreign contractor means a company incorporated in Malaysia or in a foreign country which has a foreigners’ equity holding of thirty-one per cent (31%) or more.”

5.2.1 Literature Review

Practical Law Company Limited UK has compiled and shared the specific requirements for foreign contractors and contractor professionals must comply with across 19 countries in its website (*PLC UK, 2011*). Appendix B presents the requirements for foreign contractors to do business in 19 countries. None of the countries require foreign contractors to register for every tender bid and job awarded. Most of these countries require that foreign contractors comply with the same regulations as the local contractors.

In Singapore, companies are required to register if they wish to participate in construction tenders for the public sector or as sub-contractors in public sector projects. Singapore’s Building and Construction Authority which serves the construction and construction-related procurement needs of the public sector provides an online system - The Contractor Registration System – to ease the registration process.

5.2.2 Impact on business

Foreign contractors having to apply for a registration certificate for each and every tender bid and construction work is quite tedious and time consuming. This creates

unnecessary burden in applying for the certificates and may delay the implementation of the works. This also increases the cost of doing business as for every certificate a fee is imposed. The contractors are further burdened by having to provide the same documents for each and every for a certificate. This costs the business.

As the documentation requirements for the issuance of a Provisional Certificate and/or a Certificate of Registration is the same, the contractors have to provide the same documents to the regulators.

In the case of foreign companies intending to have joint venture with local companies, these companies are shying away as they are not comfortable with the equity requirements. This may lead to Malaysian companies losing out in terms of acquiring the latest relevant technology.

5.2.3 Impact on regulator

Same contractors bidding for and implementing projects may lead to oversights in evaluating certificate applications. CIDB is also burdened by having to keep and store all the documents (duplicate documents) submitted as the documents are to be kept for 7 years.

5.3 Options for resolution

1. CIDB to revert to the interpretation of foreign companies as stated in The Companies Act 1965

It is suggested that CIDB reverts to the meaning of foreign companies as stated in the Companies Act 1965. This will allow all companies incorporated in Malaysia whether the majority is foreign-owned treated similarly.

2. Remove the requirement of applying for registration for every tender bids and work awarded by adopting time-based registration

Remove the requirement for foreign contractors to apply for registration for every tender bid and work to be undertaken. This will enable the contractors to reduce their cost and indirectly may reduce the works cost. A time-based registration should be adopted.

3. Common registration procedures

No differentiation between the local and foreign contractors. The registration of foreign contractors should follow the same procedures and requirements of local contractors. A probationary period of 2-3 years for monitoring the performance of the foreign contractors to ensure that the foreign contractors are competent could be put into place.

4. Enhancement of current online registration system

Presently, CIDB provides for online registration through its SMB Online Registration System. Currently, the system provides for the registration and registration renewal for local contractors. It is suggested that the system be enhanced to include the registration process for foreign contractors. This would provide a seamless registration process and ease the administrative burdens for foreign contractors.

5.4 Recommendations

As a “low-hanging fruit”, Option 4 (Enhancement of current online registration system) will greatly alleviate the onerous and time-consuming procedures for foreign contractors in applying the *Provisional Registration Certificate* and the *Registration Certificate for Foreign Contractor*. For the medium and long-term view, it is recommended that a time-based registration for foreign contractors be considered for adoption.

Note: CIDB has agreed to develop an online registration system for foreign contractors.