

### 3.0 WHAT ARE UNNECESSARY REGULATORY BURDENS?

In describing ‘unnecessary regulatory burdens’, firstly, it is important to understand what regulation is and what regulatory burden is. Regulations are Acts, laws, by-laws, rules or directives prescribed and maintained by an authority, especially to regulate behaviour. They can also include quasi regulation such as guidelines and administrative circulars. A good regulatory system should have a set of regulations which are clear to practitioners, administratively efficient, enforceable and legitimate.

Regulatory burdens are the extra requirements, activities and costs that practitioners must deliver or bear in order to comply with regulations. The extra requirements usually demand extra efforts, time and cost from the practitioners, thus impose costs on and often decrease the productivity of the practitioners. These costs or adverse impacts include:

- administrative and operational requirements such as reporting, record keeping, getting legal advice and training,
- requirements on the way goods and/or services are managed and handled, such as prescriptions on transportation and handling methods, occupational registration requirements requiring professionals to use particular techniques,
- requirements on the characteristics of what is transported or handled, such as dangerous and restricted goods, and
- loss of opportunities due to prohibitions, such as ban on import/export of certain goods.

Unnecessary regulatory burdens arise when regulation is more burdensome than necessary in serving its objectives. Where regulation is poorly designed or written, or it is not administered or enforced well, it may impose greater burdens than necessary. In reviewing existing regulation, it is those regulatory burdens which can be considered ‘unnecessary’ that are of primary interest. The common types of unnecessary regulatory burdens experienced by business include:

- excessive coverage by a regulation – that is, the regulation affects more activity than was intended or required to achieve its objective,
- subject-specific regulation that covers much the same issues as other generic regulation,

- prescriptive regulation that unduly limits flexibility such as preventing businesses from:
  - using the latest technology
  - making changes to better meet customer demand
  - meeting the underlying objectives of regulation in different ways,
- overly complex regulation,
- unwieldy licence application and approval processes, excessive time delays in obtaining responses or duplicative information requests,
- an overlap or conflict in the activities of different regulators, and
- inconsistent application or interpretation of regulation by regulators.

More information on reducing unnecessary regulatory burdens are available from MPC electronic publication: *A Guide to Reducing Unnecessary Regulatory Burdens: A Core Concept*<sup>13</sup>. This booklet can be downloaded from [www.mpc.gov.my](http://www.mpc.gov.my).

### **3.1 Restrictions on competition**

Restrictions on competition can also be unnecessary. For professional services, the main sorts of barriers concern those which limit the number of people able to offer any of these services, usually by applying entrance criteria to become members of the relevant association or occupational group. The question is whether or not they are necessary to protect clients or the public?

### **3.2 Controls in Professional Administration**

The regulation and administration of professional practice by the professional boards are made with the authority provided under an Act of Parliament. Through the professional

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<sup>13</sup> Malaysia Productivity Corporation (2013), *A Guide to Reducing Unnecessary Regulatory Burdens: A Core Concept*, Petaling Jaya, Malaysia Productivity Corporation.

Acts, the relevant boards regulate the practise of its professional members and makes rules and regulations to be adhered by its members. These rules and regulations made by the Boards must be formalised through Minister's approval.

Although the Federal Government holds the highest authority in the legislative structure, state governments and local governments are also empowered to issue gazette with regard to the state and municipality regulations, rules and by-laws as long as it does not contradict the Act of Parliament.

Besides the Act of Parliament, gazetted regulations and rules, it is also common for the regulators to issue other forms of controls such as technical and non-technical statements of policies, practice guidelines, circular letters, letters of instructions, desk instruction, technical instructions and etc. These forms of control do not constitute as a law under the legislation, but it forms the administrative procedure required to be fulfilled by the practitioners. The administrative controls may be introduced by the regulators from time to time to facilitate the administration of the practice of its members. The administrative controls should not be implemented in any way contrary to the Acts or gazetted rules, regulations or by-laws.

### **3.3 Regulations in Delivering Professional Services to Construction Industry**

Through this review, MPC is expected to collect data on the issues related to Professional Services to Construction Industry from the setting up of the professional practice to the final completion or termination of the professional practice. Various Acts and regulations imposed at different stages of registration and approval required to be adhered by these Professionals as illustrated in the following table (Figure 3.1).

Several registration processes are required at different stages in setting up and delivering the services by the said Professional. The process of professional registration with the governing board for delivering of professional services may vary between the professions. However, the statutory registration requirement for non-professional task such

as registration for collecting government service tax and registration of company would be similar with other services.

**Figure 3.1 Various Acts and regulations imposed on professionals at different stages of registration and approval for delivering professional services.**

Profession	Architect	Engineer	Quantity Surveyor	Town Planner	Land Surveyor
<b>Processes:</b>	Relevant regulations				
<b>Setting up of practice</b>	Architects Act 1967	Registration of Engineers Act 1967	Quantity Surveyors Act 1967	Town Planners Act 1995	Licensed Land Surveyors Act 1958
<b>Registration of business</b>	Registration of Business Act 1956, Companies Act 1965, Partnership Act 1961, Limited Liability Partnerships Act 2012, Companies Regulations 1966, Registration of Business Rules 1957, Limited Liability Partnerships Regulations 2012				
<b>Service registration with gov.</b>	Financial Procedure Act 1957, Government Contracts Act 1949, Ministry of Finance - Treasury Instructions - (AP) 166 to 206 and 229 to 300, Treasury Circular Letter 2/2011- S/K.KEW/PK/P/1100/000000/165/23 Jld. 9 SK 1 (4),				
<b>Non-professional statutory registration</b>	Tax related: Service Tax Act 1975, Service Tax Regulations 1975, Service Tax Order 2000 Goods and Services Tax Act 2014, Income Tax Act 1967, etc. General: Personal Data Protection Act 2010, Local Government Act 1976, Business Premise and Signage Licensing, Employment Act 1955, Immigration Act 1959/63, Foreign workers permit, East Malaysia work permit				
<b>Delivery of professional services</b>	Architects Act 1967 & other regulations under the Act	Registration of Engineers Act 1967 & other regulations under the Act	Quantity Surveyors Act 1967 & other regulations under the Act	Town Planners Act 1995 & other regulations under the Act	Licensed Land Surveyors Act 1958 & other regulations under the Act
<b>Dealing with const. permit</b>	National Land Code 1965, Street, Drainage and Building Act 1973, Town and Country Planning Act 1976, Uniform Building By-laws 1984, Occupational Safety and Health Act 1994, Local Government Act 1976, Construction Industry Development Board Act 1994, Various utilities services acts and other rules and regulations under these acts.				
<b>Completion</b>	Architects	Registration of	Quantity	Town Planners	Licensed Land

or termination of practice	Act 1967	Engineers Act 1967	Surveyors Act 1967	Act 1995	Surveyors Act 1958
	Registration of Business Act 1956, Companies Act 1965, Partnership Act 1961, Limited Liability Partnerships Act 2012,				

### 3.4 Professional Services Regulating Body

Through the provisions of the relevant Acts, the professional boards are empowered to make rules and regulations to self-regulate the practise of these Professionals. The members of professional boards consist of professional members of the profession. In a way, the professions are governed by their own appointed professional members. These professional boards are also the custodians of the respective professional Acts. The professional boards also have the authority to prescribe academic qualifications and practical experience requirements for the graduates to register as the professional members. After obtaining professional registration approval from the Boards, these Professionals may establish their practices in accordance with the rules and regulation set by the Boards.

With the approval of registration of the professional practice, these Professionals are allowed to offer professional services to the industry. In addition to the requirement for registration under the professional Acts, there are more registration requirements, rules and regulations imposed by various parties and agencies that also need to be fulfilled by these Professionals. Some of these regulations and registration are required in fulfilling the specific objectives of the respective agencies which has resulted in multiple registration with several agencies.

### 3.5 Intervention by Government and Agencies

The present professional Acts govern the practise of these Professionals and are also intended to protect the interest of the public. The basic philosophy of a self-regulation is that if there is no risk of harm to the public, there is no need for any form of government intervention<sup>14</sup>. However, in some cases, the professional boards do not enforce some aspects of these Acts, thus, the Government through various agencies imposes extra

<sup>14</sup> Randall, G. E. (2000). Understanding Professional Self-Regulation. *Ontario Association of Veterinary Technicians*. [http://www.oavt.org/self\\_regulation/docs/about\\_selfreg\\_randall.pdf](http://www.oavt.org/self_regulation/docs/about_selfreg_randall.pdf)

regulations on the Professionals. As an example, a Civil Engineer registered with the Board of Engineers Malaysia is qualified to deliver the civil engineering services in Malaysia, however, in some cases there are other regulations that require the Civil Engineer to be registered with a local authority and National Water Services Commission (SPAN) before he can deliver the water related services.

Where the Government considers regulation by the professional boards is lacking, it may introduce additional measures, often to protect the interest of the public and to improve the administration of the professionals. However, sometimes they may not work as intended. Under the new Regulatory Impact Assessment (RIA) requirements, the regulators need to analyse any proposal for new regulations before their implementation to avoid overlapping regulations by multiple agencies which may be unnecessary burdens to Professionals and the public.

Through this review, the respondents are encouraged to give feedback and suggestion to the MPC on their experience and concerns in dealing with these regulations.

### **3.6 Market Failure**

Market Failure is an economic situation when the quantity of a product supplied by supplier does not equate the demand by consumers. This usually happens as a result from a lack of certain economically ideal aspects, which prevents equilibrium in demand and supply. Extensive controls and monopolisation by an interest group may sometimes have a greater effect to the community and causes market failure.

Sometimes, freely operating markets, fail to provide the optimum level and quality of output. In professional services to the construction industry, the most common sources of market failure are:

- barriers to entry which reduce competition
- principal-agency problems due to information asymmetry

#### **3.6.1 Barriers to entry**

Self-regulation by professional boards allows discretion to restrict entry and imposes additional requirements in terms of training programmes and other qualifications in selection of prospective candidates. The rules and regulations are frequently set up by the professional bodies, reflecting the better capacity of the bodies to know what is required to establish competency.

While professional bodies have the greatest capacity to judge competency, they can face two types adverse incentives: one is to be too lenient on its members when assessing poor performance; and the other is to apply entry requirements which are too stringent in order to reduce competition and to increase capacity of current members to charge higher fees due the resulting lower numbers of professionals.

Over-regulating with stringent requirements imposed for the graduate to register as the professional members or preventing other occupational group from delivering the similar service by an occupational group will groom unhealthy growth of monopoly by a particular interest group. This will restrict competitions in offering the professional services and causes unnecessary increase in compliance costs for building development projects, resulting in higher prices for their customers.

In a cases where the profession is over protected, entry to the profession are controlled and number of professional practitioners to serve the needs of the people will be too low, thus, it create higher demand for the services which directly increase the competition in getting the services, subsequently, will results in higher cost to the people. In a situation where the market equilibrium is broken, government's intervention are required to put the public interest back to priority and to restore the balance between the supply and demand for the services. There is another conceivable outcome where a market participant may be made better-off without making someone else worse-off.

The governing body should give priority to the public interest and not the interest of the profession, although it is frequent that the public interest and profession interest can be the same. Some professions establish separate professional associations to protect the interests of their professions, whereas, the governing bodies regulating the profession protect the interest of the public. Due to the intermittently conflicting interest between the public and the profession, government usually requires a separation between profession governing body and professional association. As an example, in Malaysian architectural profession setup, Board of Architect Malaysia is the governing body to protect interest of the

Public, whereas Malaysian Institute of Architects is the professional association established to promote the good practice of its members and for further development of the profession.

Therefore, the regulators have to be cautious in prescribing selecting criteria for entry to these professions and in regulating the delivery of professional services, thus to carefully differentiate the useful barriers from the anti-competitive barriers. If there is such element of control imposed through any regulation contributing to these effects unnecessarily, the professionals or the people need to highlight for further review of the regulation.

### **3.6.2 Problem with asymmetric information**

Purchasers of buildings and hirers of construction professionals are not able to fully assess the quality of a building or the capacities of construction professionals, respectively.

There is also the principal–agent problem which occurs when the ‘agent’ is able to make decisions that impact on another person or entity - the ‘principal’. The dilemma exists because sometimes the agent is motivated to act in his own best interests rather than those of the principal. For example, a developer (the principal) may wonder whether his architect (the agent) is recommending expensive building material because it is truly necessary for the project commissioned by the developer, or because it will generate more income for the architect.

The problem arises where the two parties have different interests and asymmetric information (the agent having more information), such that the principal cannot directly ensure that the agent is always acting in its (the principal's) best interests. Conflict of interest may arise.

In general, society has addressed this information asymmetry by providing some guarantees as to the capacities of the Professionals. This is a prime role played by the Professional Boards mandated via the Professional Acts listed above. However, these guarantees about the capacities of the Professionals may prevent some competent producers to bid to get contracts - which may result in higher fees than otherwise would be the case.

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While it is necessary to impose requirements for entrants, if the requirements are overly stringent for a graduate to register as a member of the Professional Association this will result in fewer people being able to perform the services and lead to unnecessarily high compliance costs for building development projects, resulting in higher prices for their customers. Similar unnecessary costs arise where other competent occupational groups are prevented from delivering similar services.

Therefore, the regulators and professional associations have to be cautious in prescribing selecting criteria for entry to these professions and in regulating the delivery of professional services, thus to get the balance right between protecting clients and others from their incapacity to assess the competency of Professionals while not making the barriers to entry overly stringent. It may be important that Government play some role in ensuring the public interest is given sufficient weight and to achieve the right balance between competing interests.