

5.0 General Issues Concerning Professional Practice

5.1 Controls on 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 Acts, the relevant boards regulate the practice of its professional members and makes rules and regulations to be adhered by its members. Amendments to the Acts must be formalised by a gazette in Parliament. Rules and regulations made by the Boards can be gazetted under the minister and do not required to be tabled in parliament, though they must be formalised through Minister's approval.

Although the Federal Government holds the highest authority in the legislative structure, state and local governments are also empowered to issue gazetted state and municipality regulations, rules and by-laws as long as they do not contradict the Act of Parliament. Besides the Acts of Parliament, gazetted regulations and rules, it is also common for 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, and technical instructions. These controls shall not constitute a law under the legislation but form the administrative procedure required to be fulfilled by practitioners. The administrative controls may be introduced by the regulators from time to time to facilitate the administration of the practice of its members. Nevertheless, the administrative controls should not be implemented in any way contrary to the Acts or gazetted rules, regulations or by-laws.

However, there are practice guidelines, technical instructions, circulars and other forms of administrative controls implemented by the regulators are not gazetted.

Concern 1: Some local governments make regulations related to planning permission application following the administrative circulars issued either by the state planning authority or the states Town and Country Planning Department. The current practice by most local authorities in Peninsular Malaysia restrict the landowner and other professionals from submitting the application for planning permission without engaging a registered town planner. This restriction contravenes Town Planners Act 1995 (Act 538), Town and Country Planning

Act 1976 (Act 172), Architects Act 1967 (Act 117), Registration of Engineers Act 1967 (Act 138), Street, Drainage and Building Act 1974 (Act 133).

In resolving the issue over the application for Planning Permission, the options and recommendation are suggested as follows:-

Option 1A

- i. To allow Architects, Engineers, Registered Town Planners or Registered Land Surveyors, with the written consent from the landowner, to submit Planning Permission application of behalf of the landowner as per the provision of existing laws;
- ii. To enforce Section 19(1), 21(1),(2) of the Town and Country Planning Act 1976 – Act 172, to accept the application for Planning Permission application by the landowner and plan prepared by Architects, Engineers or Registered Town Planners; and
- iii. To issue a new circular to supersede and withdraw all the previously issued administrative circulars contrary to the laws.

Option 1B

- i. To amend the existing Town and Country Planning Act 1976, Architects Act 1967, Registration of Engineers Act 1967 and Street, Drainage and Building Act 1974 to allow only Registered Town Planner to submit application for planning permission;
- ii. To improve competencies of local planning authority, therefore detail technical drawings (i.e. Engineering plans, telecommunication plans, utility plans etc.) shall not be necessary to be prepared by engineers for planning permission application. Therefore, the planning permission application can be prepared solely by the Registered Town Planners; and

- iii. To reduce the unnecessary requirement for planning permission application such as perspective drawings, building plans, landscape plan, lighting plan etc.

Option 1C

- i. To do nothing, status quo; and
- ii. To let the regulation being administratively controlled and implemented by the local planning authority as it is.

Recommendations

The gist of the concern is the refusal of local planning authority to accept the plans and planning report prepared by the Architect, Engineer and Land Surveyor without an endorsement by a Registered Town Planner. The current practice is not in accordance with the laws, hence, the options earlier proposed to deal with the concerns can be categorised into three options:-

- Option A – Maintain the laws, and change the practice; or
- Option B – Change the laws, and maintain the practice; or
- Option C – Change nothing, remain as it is.

Option A, is easier to implement as there is no necessity for amendment of the existing Acts, i.e. Town and Country Planning Act 1976, Architects Act 1967, Registration of Engineers Act 1967, Town Planners Act 1995 and Street, Drainage and Building Act 1974. The needs are on the law enforcement to ensure the process and procedure in planning permission are practiced in accordance to the laws. Option A is also predicted as the option that will reduce the compliance cost, reduce paper works and reduce time in dealing with the planning permission. The plans prepared by the Architects and Engineers can be submitted without the need for Registered Town Planners endorsement. Most importantly, this option can be immediately implemented without the need to amend the laws.

Whereby in Option B, many acts and laws need to be amended to legalise the current practice by planning authority. Amending too many laws concurrently may not be a simple task, moreover, the change of laws will affect the progress of national development.

Most of the planning permission for the projects under the Ministry of Works are prepared either by the Architects or Engineers. Selecting Options B means only the Registered Town Planners are entitled to prepare the document for planning permission, thus, Ministry of Works need to engage private planners to endorse the document for their planning permission application. The developers or land owners will have to bear additional cost for endorsement of the plan without receiving any added value to the projects.

Although Option C is the easiest approach where nothing change, this option will not address the concern, thus, it will not give any improvement to the situation. Moreover, this will encourage the administrator to introduce more and more unnecessarily one-sided regulations that form protection to certain interest group. Therefore, Option A is recommended in addressing the concern raised by the industry.

5.2 Professional Services Regulators

Through the provisions of the respective Acts, the professional boards are empowered to make rules and regulations to self-regulate the practice of the Professional. The members of professional boards consist of professional members of the profession, in effect, the profession is governed by its 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 approval of professional registration from the Boards, Professionals may establish their practice in accordance with the rules and regulations set by the Boards.

With the approval of registration of the professional practice, the Professionals are allowed to deliver professional services to the building industry. In addition to the requirement for registration under the professional Acts, there are a lot more registration requirements, rules and regulations imposed by various parties and agencies that also need to be fulfilled by Professionals. Some of these regulations and registration are used to fulfil the specific objectives of the various agencies. This has resulted in multiple registration requirements with several agencies.

5.3 Intervention by Government and Agencies

In addition to the enforcement of the professional Acts by the professional boards, some Government agencies have written extra regulations affecting the practice of the Professionals. As an example, although a Civil Engineer registered with the Board of Engineers Malaysia is qualified to deliver civil engineering services in Malaysia, 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.

Frequently, when the Government introduces additional measures to stiffen the regulation, they are meant to protect the interest of the public and to improve the administration of the professionals. Although the professional boards have power to enforce and take action against its member, they have been very conservative in taking actions against others who are not their members. BAM, BEM and BQSM are of the opinion that they are not empowered to enforce the Act to the non-registered 'professional'. However, it is observed that the provision under Section 7 of the respective professional Acts prohibit others from 'assuming' and 'acting' as the professionals, but the Boards has yet to take any action against them. To date, it has never been tested in court and the question whether the professional board has the authority to enforce the regulations on others or not has never been ascertained.

Therefore, SPAN came out with rules that required another level of registration which includes plumbers, specialist contractors and other parties who are not registered under BEM. However, before finalising this report, SPAN through discussion with professional boards, has agreed to withdraw the additional registration requirement for the professionals that governed by the professional boards.