

6.0 Burdens in Qualifying for Setting up Professional Practice

6.1 Entry Requirement of Professional Registration

Prior to acceptance of registration as professional member with the professional boards, a graduate must undergo specialised training consisting of recognised education programme, practical experience and professional examination or interview to qualify for the registration. Professional boards may prescribe their own entry rules and requirements to be fulfilled by the prospective professional.

Professional boards set the criteria for assessment and accreditation of programmes offered by institutions of higher learning. Graduates who have accomplished their study from the accredited programme are allowed to apply for registration as professional members after fulfilling the practical experience and examination requirement prescribed by the professional boards. Other graduates who have completed their study from unrecognised programmes will not be able to register as the graduate members of the professional boards, unless they undertake either additional training, courses, examination or interview as determined by the professional boards. For example, the Board of Quantity Surveyors Malaysia requires graduates from unrecognised programme to attend 'topping up' courses before they can be admitted as graduate members of the profession.

Upon registration as Graduate Members, or 'Articled Pupil' in the case of land surveyor, the graduates in Architecture, Engineering, Town Planning or Land Surveying are required to gain practical experience and sit for the written or oral examination. Most of the examinations and interviews are conducted by the professional boards. However, for town planning graduates, the examination and interview are conducted by Malaysian Institute of Planners (MIP). After passing the written examination, MIP shall conduct interviews to select the qualified Graduate Town Planner candidates for professional registration. In the case of architects, the Board of Architects Malaysia (LAM) conducts the interview for professional registration prior to written examination, a Graduate Architect need to pass the interview to be eligible to take the written examination for professional registration.

Concern 2: The academic qualifications and practical experience prescribed by the professional board put barriers to the professional registration entry. Some

professional boards such as LAM, BEM, BQSM and LPBM only recognise educational programmes based on the boards' accreditations. The programme accredited by other agency is not recognised by the local professional boards, hence, a special exemption programme or examination is required before a graduate can be registered with the board as a graduate member. For example, all architecture programmes offered by universities in the United States are not automatically recognised by LAM although some of the programmes are internationally known.

The options and recommendation for Concern 2 are:

Option 2A

- i. To automatically recognise all the professional course programmes locally and abroad based on the accreditation by the home country accreditation agency; and
- ii. Subject to the country subscription to the international union of the profession recognised by our country; or
- iii. The Government to initiate government to government arrangement for mutual or reciprocal education programme recognitions agreement between countries.

Option 2B

- i. To cancel all automatic recognition of professional course programmes locally and abroad; and
- ii. All institution of higher learnings have to periodically apply for accreditation from the professional boards regulating the profession in Malaysia; or
- iii. The foreign institution of higher learnings through their country's education regulator and accreditation agency to sign Mutual Reciprocity Agreement (MRA)

with our country to automatically recognise the professional course programmes accredited by the home country accreditation agency.

Recommendations

Option A shall automatically recognise all the professional course programmes locally and abroad based on the accreditation by the home country accreditation agency. This shall give envelope recognition to all the professional course programmes offered by the universities in the country which subscribed to the international union of the profession recognised by our country, such as Union of International Architects, Union of International Operating Engineers, and International Federation of Surveyors.

However, this option is single a directional option whereby our country may recognise foreign universities programmes, but the foreign accreditation boards may not recognise our local programmes. This shall not resolve discrimination of academic qualification issues and may not encourage the growth of local universities if their programmes are not recognised by foreign accreditation boards. This option can only give added advantage to our country if the principle accreditations are done through Mutual Reciprocity Agreement.

Option B shall cancel all automatic recognition of professional course programmes and every institution of higher learnings have to periodically apply for accreditation from the professional boards regulating the profession in Malaysia if they want their programmes to be recognised in Malaysia. This is to ensure that the quality of the programmes offered for professional courses achieved the minimum standard set by the accreditation agencies and the professional boards. However, the accreditation process has to be done on individual professional programme offered by the universities which requires the qualifying agency to evaluate and accredit the programme one by one.

Alternatively, for a foreign institution of higher learnings' programmes which are accredited by their home country qualifying agency, a Mutual Reciprocity Agreement (MRA) between their country and our country can be signed to recognise the programmes offered by the participating countries.

Option A is recommended in addressing the concern as it approach is more practical and holistic in accrediting international education programmes. Besides, it also give

opportunity for Malaysia to strengthen its education agenda to be internationally recognised through MRA with participating countries.

Concern 3: The interview conducted by MIP and BQSM after a graduate passing the written examination may be biased where the interviewer has a tendency to limit the entry to the profession to limit competition. Candidates who have passed the written examination should be allowed entry without the need to take the interview.

For concern 3, the options and recommendation are:

Option 3A

- i. To allow a special exemption from the requirement to sit for the oral examination or interview for the candidates who have passed the written examination; and
- ii. Oral examination or interview shall only be conducted for the candidates who have failed the written examination; or
- iii. To conduct oral examination or interview before the written examination and to see the interview process to evaluate professionalism of candidate prior to his qualification to sit for the written examination.

Option 3B

- i. To cancel oral examination or interview; and
- ii. Professional assessment shall be conducted only based on practical experience and/or written examination.

Recommendation

Option A is preferred to avoid unnecessary barrier to entry and conflict of interest. Professional examination should not be conducted by a third party agency with interest in the profession. Professional examination should be conducted by the regulating board itself,

otherwise, it has to be conducted by an independent agency who has no specific interest in the profession.

In option B, if the regulating board do not have capacity to conduct the professional examination on its own, an independent agency is allowed to conduct the examination on behalf of the board, however, oral examination or interview may not be possible to be conducted by a third party who has no knowledge on the profession.

Option A is preferred over option B as it allow flexibility for the professional boards to conduct professional examination. However, there should be some form of controls to ensure that oral examination or interview not to be abused to fail candidates.

Concern 4: Professional examination and interview conducted by association such as MIP has the element of bias where the associations 'limit the entry' to the profession to limit competition. Professional examination should be conducted by the professional regulating board not the institution.

Option 4A

- i. To prohibit third party agency with interest in the profession from conducting the professional examination or the interview on behalf of the regulating body; and
- ii. The professional board to conduct the professional examination on their own.

Option 4B

- i. To cancel oral examination or interview; and
- ii. To allow written examination to be conducted by independent agency who has no specific interest in the profession.

Recommendation

Option A is preferred to avoid unnecessary barrier to entry and conflict of interest. Professional examination should not be conducted by a third party agency with interest in the profession. Professional examination should be conducted by the regulating board itself, otherwise, it has to be conducted by an independent agency who has no specific interest in the profession.

In option B, if the regulating board do not have capacity to conduct the professional examination on its own, an independent agency is allowed to conduct the examination on behalf of the board, however, oral examination or interview may not be possible to be conducted by a third party who has no knowledge on the profession.

At present, most professional boards in Malaysia are exercising the first option, whereby professional examinations are conducted by the board itself.

6.2 Setting up of Practice

There are several forms of professional practice that can be set up in accordance with the professional Acts. The provisions under the Acts allow the professional boards to register individual entitlements as a professional. A registered Town Planner and a Licensed Land Surveyor are allowed to practise under their personal capacity, just like a doctor. Contrarily, Professional Architects, Engineers and Quantity Surveyors cannot offer their professional services to others without registering their professional practices (firm) in addition to their individual registrations.

The type of professional practices that are acceptable for registration with BAM, BEM and BQSM are sole-proprietorship, partnership, body corporate and multi-disciplinary practice. The registration of professional practice as a partnership or multi-disciplinary practice are not mentioned in the Town Planners Act 1995 and the Licensed Land Surveyors Act 1958.

Professional Acts prohibit a public corporation or a public listed company to be registered as a professional practice, thus it limits the numbers of shareholders to the maximum as allowed under the Companies Act. A shareholder in a professional practice has to be a natural person, hence, it prevents corporations or firms from being a shareholder in the professional practice. This indirectly restricts mergers to form larger companies and the formation of professional consortiums with big numbers of shareholders.

Concern 5: Some professional boards requires double registrations on a single person. For example, a professional architect who has individually registered as a professional architect with LAM still need to register his sole-proprietorship practice with LAM although he has no other partner in the firm.

Option 5A

- i. To waive payment of registration of a sole-proprietor practice; and
- ii. The registration for sole-proprietorship practice shall be combined with individual registration.

Option 5B

- i. To leave it as it is; and
- ii. To allow professional board to impose double registration for practice registration and individual professional registration.

Recommendation

In option A, the practice registration and individual professional registration are combined under a single registration and the fee for sole-proprietorship practice is waived. This shall make the registration process for individual with sole-proprietorship practice

easier. However, for individual professional with more than a single setup, the practice may not be any easier, thus, not give any benefit to them.

In option B, if the professional boards is allowed to implement double registration for the sole-proprietorship and individual professional registration. This will allow easier control for the professional board to differentiate between the practicing individual and non-practicing individual. Some of the individual professional choose to work in the government sector and institutions of higher learning which does not require them to have a practicing license. This option is preferred over option A as it separates the registration for individual professional registration and practising registration. It also allow easier control for the professional board to regulate the individual professional and the firms.

6.3 Registration of Business

Besides registration with the professional board for the professional practice, companies and business entities are required to be registered with the Companies Commission of Malaysia (*Suruhanjaya Syarikat Malaysia* - SSM). Exemptions are only given to sole-proprietorships where the registration with SSM is not necessary if the practice is registered with the professional board. The Acts and regulations dealing with the registration of a company or business are:

- i. Registration of Business Act 1956;
- ii. Companies Act 1965;
- iii. Partnership Act 1961;
- iv. Limited Liability Partnerships Act 2012;
- v. Companies Regulations 1966;
- vi. Registration of Business Rules 1957; and
- vii. Limited Liability Partnerships Regulations 2012.

The usual type registration of professional firms with SSM are either partnership or body corporate, whereby the registration of sole-proprietor practice with SSM is optional. Conventionally, the registration of body corporates (private limited companies) are governed under the Companies Act 1965, and the registration of a partnership is governed under the Registrations of Business Act 1956. The conventional partnership setup has no limitation of

liability, however, a recently enacted Limited Liability Partnerships Act 2012 will give options for practitioners to setup their partnership practices with limited liability under the Limited Liability Partnerships Act. Although the Act has been enacted, the professional Boards have yet to accept the registration of professional practices under the Limited Liability Partnerships Act 2012.

Concern 6: Although professional practice are registered with the professional boards, the Company Act requires the firms to be registered with SSM. Double registrations have sometimes lead to delays in registration and confusion over the selection of company names as the two governing bodies have different criteria for company names guidelines. It will be better for professional firms' registration to be registered under the professional boards rather than registering for both.

Option 6A

- i. To waive the requirement for registration under SSM and to allow single registration of partnership and body corporate under the professional board;
- ii. To allow professional board to give first refusal and coordinate internally with SSM for the selection of company names; and
- iii. Professional board to submit particulars of the company registered under the professional board to SSM to update SSM's record.

Option 6B

- i. Professional board to issue detail guideline on company name selection to SSM; and
- ii. To allow single company registration to be done by SSM.

Recommendations

In option A, the body corporate registration and partnership registration will be done under the professional board. Professional board shall set the criteria for registration and regulate the registration of these practices.

In option B, where the registration of company will be done by SSM, the company registered by SSM may not fulfil the criteria prescribed for professional practices. Hence, the company may not be able to obtain their license to practice as professional firm.

Option A is recommended as it will be better for professional firms' registration to be registered under the professional boards and it will allow the professional boards to regulate according to prescribed requirement set by the professional board.

6.4 Service Registration with Government

Besides registration with the professional board for the professional practice, the firms also need to be registered with the Ministry of Finance (MOF) as a prerequisite for delivering professional services to the government and its agencies. The registration for supply of goods and services can be done online through electronic procurement system (*e-perolehan and e-perunding*). Upon completion of registration, the professional firm is issued with a certificate of registration detailing the type of services that the firm is entitled to offer to government.

The hurdle in the registration system is the limitation to a single registration entitlement for every individual person. Any person or business owner who is registered with MOF under any company names, shall be prevented from being registered with another company name, hence, the second company cannot be registered unless the company appoints new directors and these directors are not previously registered with MOF. Further details are available at <http://porteperunding.treasury.gov.my/>.

Concern 7: MOF's policy to limit single registration entitlement for every professional person has discourage merger of companies and establishment of bigger firms. MOF should recognise professional registration with the professional boards and should revoke the requirement for another registration with different agency.

Option 7A

- i. To waive the requirement for registration with MOF to provide professional services to the Government;
- ii. MOF to accept the professional registration with the board as the registration to provide professional services for construction industry to the Government; and
- iii. To allow multiple registrations for professional person in accordance with professional rules and guidelines set by the professional board.

Option 7B

- i. To allow limited number of registration (at least three) with MOF for professional person as prescribed by MOF; and
- ii. To allow only single company represented by the professional to participate in the Government procurement.

Recommendations

In option A, a professional person is allowed to register more than one practice with the professional board. All the practices registered with the professional board are automatically recognised by MOF. Therefore, additional registration with MOF is not necessary. All the practices registered with the professional board are entitled to participate with the Government contract. In this option, a professional person may submit more than one proposal for government tender as long as all the practices are registered with the professional board.

In option B, additional registration with MOF is still required and a professional person may register more than one company with MOF. However, a professional person may only use one company at a time to participate in the Government contract.

Option A is recommended as it will allow more participants in the tender and shall give the benefit of competitiveness to the government. At the same time, this option

abolishes the requirement for additional registration with MOF. Therefore, merging of practices to form bigger establishment will not jeopardise the opportunity for the firm to participate in the Government contract. Before finalising this report, a series of discussion was held with MOF whereby in principle MOF has agreed to implement the registration as recommended in Option A. However, the actual implementation has yet to be done. It is expected that by early 2016 MOF shall implement the new registration system that allow multiple registrations for professional person in accordance with professional rules and guidelines set by the board.