

7.0 Burdens in Operating Professional Practice

7.1 Non- professional Statutory Registration

In conducting business, the Professionals are also required to comply with other statutory requirements and registrations, including registration for collection of Government Service Tax, GST registration, registration of business premise, registration of company signboards, registration of international foreign workers permits, registration of workers permit from west Malaysia, employee income tax collection and deduction, and etc.

Concern 8: A professional firm has to comply with various statutory registration with the government and its agencies. Some of the registration requirement such as business premise registration has been lifted for a professional firm, however, there are local authorities who continue to charge the annual business premise registration on professional firms.

Option 8A

- i. Government to enforce the decision to lift the registration of business premise for professional firms; and
- ii. Circulars need to be sent to remind local authorities of the decision.

Option 8B

- i. To retract the decision on charging annual business registration for professional firms;
- ii. New circulars to be issued to all local authorities informing the retraction of previous waiver; and
- iii. Enforcement by local authorities need to be done on the annual business registration charges.

Recommendations

In option A, the decision to lift the annual business registration has been made and most local authorities have complied with the waiver. Reminder circulars need to be sent to local authorities who are yet to comply with the waiver.

Option B involves retraction of a previous decision to lift the annual registration of business premises, whereby many local authorities have complied and lifted the requirement. Retracting the decision will involve sending circulars to all local authorities to notify the changes and further enforcement need to be done periodically to ensure professional firms register their business premise annually.

Option A is recommended as it requires no enforcement by local authorities once the waiver is affirmed. However, reminder or circular need to be sent the local authorities who have yet to waive registration requirement for professional business premise.

7.2 Collecting taxes for the Government

The Professionals are required to collect on behalf of the Government, the government service tax, and Goods and Service Tax (GST) due for the services received by the client. Before they are able to collect the service tax on behalf of the Government, the Professionals are required to obtain the licence from the Royal Malaysian Customs Department. The obligation to pay the Government Service Tax falls on the client, however, the obligation to collect the service tax lies on the Professional. Under the regulations, regardless whether the Professional has actually collected the service tax or not, they are obliged to pay the tax on behalf of the client within a stipulated period.

Concern 9: The regulations that professional firms has to pay the GST upfront regardless the firm managed to collect the fee on time or not is giving a lot of financial pressure to the professional firms which affect their cash flow. It will be more practical if the firms are only required to pay the GST after collecting their fee from the client. In event of client fail to pay the bill after six months, then the firm can report to the agencies to take action against the client for GST offence.

Option 9A

- i. MOF to allow professional firms to pay GST only after receiving fee from client within 6 months of bill issued to client; and
- ii. In the event a client fails to pay their bill within 6 months, the professional firms MUST report the defaulting party to the Royal Customs Department of Malaysia (Customs).

Option 9B

- i. Within 3 months upon delivery of services to the client, the professional firm MUST notify Customs of the service provided and the fee amount; and
- ii. Customs will directly collect GST from client.

Recommendations

In option A, the professional firms will collect GST from client only after receiving the fee, for up to a period of 6 months after bill issuance. If the bill is still not paid after 6 months, the professional firms shall report the defaulters to Customs.

In option B, the GST is directly payable by the client to Customs based on fee amount notified by the professional firms to Customs.

Option B is recommended as it will put pressure on client to pay their GST promptly since they will pay directly to Customs. Concern 9 requires immediate attention since the upfront payment of client GST by the professional affects the professionals' cash flow. Furthermore, due to the nature of professional services and depending on the project size, the GST amount could be a big sum and may be the cause of financial downfall to smaller professional firms. This will also prevent smaller firms from bidding for bigger projects.

7.3 Dealing with Construction Permits

All modern economies regulate the use of land and the construction of buildings for several reasons including to keep incompatible land uses apart and ensure cities can deliver many different sorts of facilities and services. The objectives are achievable through rigorous control of building codes, zoning and land use.

Dealing with construction permits is one of the main tasks delivered by the Professionals. Due to continuous delays in dealing with construction permits, in 2010, PEMANDU initiated the Property Development Lab to study and analyse REHDA's concerns in dealing with property development. This resulted in 22 key initiatives, four of which relate directly to building permits²¹:

- Initiative 1: Streamlining Approval Process,
- Initiative 3: Pre-consultation,
- Initiative 10: Building Plan Approval Elimination,
- Initiative 11: PSP Self-Certification.

While most of the initiatives have been implemented by various agencies, the highlighted four initiatives were not implemented pending detail deliberation and setting up mechanisms for implementation. Various technical working groups and focus groups have also been established to coordinate the efforts of the public and private sectors to further improve construction and property development. For example, the Focus Group on Dealing with Construction Permits (FGDCP) was established by PEMUDA²² and the OSC 3.0 plan submission system was introduced in June 2014. In addition to the OSC procedures in dealing with construction permit, the Professionals need to deal with various regulations related to land development, planning permission and construction permit including the following Acts:

- i. National Land Code 1965 (Act 56)
- ii. Town and Country Planning Act 1976 (Act 172)
- iii. Street, Drainage and Building Act 1974 (Act 133)

²¹ REHDA. (2010, 31 May 2014). PEMANDU Property Development Lab Report. 2010.

²² PEMUDA. (2012). *PEMUDA Annual Report 2012* (1).

The three main Acts on land, planning and buildings empower the regulators to formulate various regulations, by laws and orders in regulating the activities related to land developments, planning permission and building constructions. However, these are not the only Acts empowering the establishment of regulations governing the land development and building construction, there are also provisions under other Acts empowering the regulator to establish several regulations related to land development and building construction.

Concern 10: The 22 initiatives formulated from PEMANDU Property Development Lab 2010 were not implemented properly and there is no positive impact to the industry. Government should relook at the initiatives and implement it progressively.

Option 10A

- i. To implement all the initiatives identified under PEMANDU Property Development Lab 2010;
- ii. To establish a formal committee or recognise FGDCP with executive authority to implement the initiatives;
- iii. To seek for agreement from all the states and local authorities in Malaysia to subscribe to the initiatives; and
- iv. To notify all technical agencies and stakeholders through Federal Government gazette on the implementation of these initiatives.

Option 10B

- i. To leave the initiative as it is and subject to each state and local authority's administration to implement it; and
- ii. The role of Federal government is limited to setting up the policy and initiatives but shall not involve in the implementation by local authority.

Recommendations

In option A, the policies and initiatives formed during the Property Development Lab 2010 shall be implemented and monitored through an executive authority assigned to a special task force group.

Presently in option B there is no seriousness in changing the system to improve dealing with construction permit. After five years of its implementation, there is no significant improvement to the industry. Developers and construction industry professionals still do not feel the benefit or improvement from the initiatives.

Option A is preferred as it will allow the initiatives to be implemented and enforced. Presently the developers and construction professionals are waiting for the implementation, however, without the executive power to implement the initiatives, many initiatives are not implemented by local authority and technical agencies. An executive authority is required by a task force group to enforce its implementation.

Concern 11: Dealing with construction permit is very tedious. Implementation of OSC and OSC 3.0 system were not properly implemented. Lack of consistency in local authorities practice and it leads to more confusion to the professional and industry.

Option 11A

- i. To fully adopt and implement the OSC 3.0 system;
- ii. To prepare a comprehensive reference manual for both the regulators and construction industry professional to be used as main reference;
- iii. To seek for agreement from all the states and local authorities in Malaysia to subscribe to the initiatives; and
- iv. To notify all technical agencies and stakeholders through Federal Government gazette on the implementation of these initiatives.

Option 11B

- i. To leave the initiative as it is and subject to each state and local authority's administration to implement OSC 3.0; and
- ii. The role of Federal government is limited to setting up OSC 3.0 system but shall not involve in the implementation by local authority.

Recommendations

Option A is preferred as it will allow OSC 3.0 be implemented and enforced. Presently the developers and construction professionals are misled by inconsistencies of practise by local authorities and technical agencies. However, to successfully implement the system, an executive authority is required by FGDCP to enforce and monitor its implementation.

With the establishment of a comprehensive reference manual in Option A, all parties including the submitting person and the technical agencies shall have a single reference which shall also standardise the processes and procedures in dealing with construction permit. With this standardisation, the process can be done more efficiently, thus improve the construction industry.

Concern 12: Uniform building by-laws (UBBL) revision 2012 has not been gazetted in many states. As a main reference to the building codes, the UBBL should be accepted at national level and be gazetted in every states to standardise the building codes.

Option 12A

- i. To set deadline and urge all states to gazette UBBL 2012;
- ii. To notify all technical agencies and stakeholders through State Authority gazette on the enforcement of UBBL 2012; and

- iii. To publish / print UBBL 2012 for professional and public reference.

Option 12B

- i. To leave it as it is and let the State Government decide the date for UBBL 2012 implementation; and
- ii. The state government to print and publish gazette upon implementation.

Recommendations

There are printing errors detected in UBBL 1984 which led to major confusion related to fire prevention requirement. Therefore, Option A is preferred as it will allow the UBBL to be updated and implemented in all states. This will prevent confusion in adoption and implementation of UBBL by local authorities, technical agencies and SP/PSP.

7.4 Issuance of the Certificate of Completion and Compliance

The Certificate of Completion and Compliance (CCC) system was launched on 12 April 2007, to replace the Certificate of Fitness for Occupation (CFO) issued by the local authorities under the Street, Drainage and Building Act 1974 (SDBA). CCC is issued by a Principal Submitting Person (PSP) who is defined in SDBA as a Professional Architect, Professional Engineer or building draughts man registered with the Board of Architects Malaysia.

It is the Government's view that CCC would cut down on red-tape and ensure that house buyers and building owners get to move in as quickly as possible without compromising their safety. This is consistent with the Government's desire to encourage self-regulation, which was introduced in the National Economy Growth Planning strategy to continuously enhance the delivery system.

The CCC system also ensures that Vacant Possession (VP) for housing projects can be issued together with CCC. This is intended to overcome problems previously associated

with CFO where home buyers receive the house keys (upon submission of Form E)²³ but cannot move into the houses because the CFO has not been issued.

Before CCC can be issued, the project works need to be completed in accordance to the approved Building Plans and PSP has supervised the works accordingly. All G Forms duly filled and certified, clearances or confirmation of supply and connection to six essential services agencies – TNB (confirmation of electrical supply), state water services company (confirmation of water supply), sewerage services company (confirmation of connection to sewerage treatment plant or mains), Department of Safety and Health (clearance for lifts and machinery installations), Fire and Rescue Services Department (clearances for passive design and active firefighting systems installation except for residential buildings not more than 18m high) and Local Government's Roads and Drainage Department (clearance and acceptance of road and drainage works).

While the objective of obtaining clearance from the relevant departments is good, it may causes unnecessary burdens if all clearances are not obtained in a timely manner and the PSP may have to make several follow ups with the relevant departments.

Concern 13: Issuance of form F (CCC) is one of the professional obligation of architects and engineers as the Principal Submitting Person. However, to support the certification of CCC, there are 21 G forms need to be signed by the contractor. Sometimes it is very difficult to get all the form to be signed. In some cases the G forms should not be considered as compulsory as it is only the supporting certification for certifying CCC by the PSP.

Option 13A

- i. In the event contractor do not signify any of the G forms, the PSP/SP shall be allowed to certify the supervision part of the CCC. Hence, the signature of the contractor for the particular G Form can be waived and the PSP/SP shall take the whole responsibility.

²³ Form E is a gazetted form under Uniform Building By Law for Certificate of Fitness application during CFO regime.

- ii. To optionally allow CCC issuance by PSP without contractor signature on the G form; PSP/SP and project owner shall be fully responsible for the CCC.

Option 13B

- i. To maintain the current compulsory contractor signature requirement
- ii. A time limit to be imposed for the submission of the signed G form.
- iii. In the event if G form is not signed by the contractor after the time limit, the project owner shall report to CIDB. Then CIDB shall take action against the contractor and instruct the contractor to fulfil their obligations.

Recommendations

It is recommended to maintain the present compulsory requirement for the contractor to sign form G. However, in the event if the contractor refuses to fulfil their obligations, then CIDB has to take firm action against the contractor. Subsequently, a letter should be issued by CIDB confirming that the works was done by the contractors and contractor shall be responsible for their works. With this letter from CIDB, the requirement for the contractor to sign the form G can be waived, and the contractor still be responsible for their works.

This is a better approach as it will not delay the issuance of CCC indefinitely. This option will also encourage the contractor to fulfil obligation as they know that CIDB can take a stiff action against them if they fail to fulfil their obligations to sign the form G.

7.5 Green Technologies

A Green building focuses on increasing the efficiency of resource use energy, water, and materials while reducing building impact on human health and the environment during the building's lifecycle, through better siting, design, construction, operation, maintenance, and removal. International research confirms that green building consume less energy, less

water and generate less waste, and create a healthy and productive environment for employees.

Malaysia has also embarked on initiatives for sustainable development. Malaysia's framework for energy development in terms of energy diversification and efficient utilisation as well as emphasis on sustainable environmental started when the National Energy Policy 1979 (NEP79), National Depletion Policy 1980 (NDP80), Four Fuel Diversification Policy 1981 (4FDP81) and Fifth Fuel Policy 2000 (5FP2000) were formed²⁴.

The launch of the National Green Technology Policy (NGTP) in 2009 is a manifesto of the government's seriousness in implementing "green" initiatives for the country. These include, among others, intensification of green technology research and innovation towards commercialisation, promotion and public awareness of green technology. Specifically, for buildings, the government promotes the application of renewable energy (RE) and energy efficiency (EE) in buildings such as solar photovoltaic (PV), rainwater harvesting, phasing out of incandescent lights, and the application of green building index. Green Technology Financing Scheme (GTFS) was announced in the National Budget 2010 that supports GT and green buildings.

In April 2009, Malaysian Institute of Architects (PAM) and the Association of Consulting Engineers Malaysia (ACEM) supported by Malaysia Green Building Confederation (MGBC), together with the building industry launched the Green Building Index (GBI) to enable green grading and certification of Malaysian buildings. GBI which was formulated and promoted by PAM and ACEM, assesses the impact of a new building on its environment based on six criteria namely; energy efficiency, indoor environment quality, sustainable site and management, materials and resources, water efficiency, and innovation.

While these initiatives are intended to pursue important goals, it is important to ensure that they are effective and do not impose unnecessary regulatory burdens on business nor restrict competition.

Concern 14: In dealing with construction permit, some local authorities imposes compulsory green building rating at planning approval stage. It is the preference of the building owner whether to have the green rating or not, therefore, complying

²⁴ Chua, S. C., & Oh, T. H. (2011). Green progress and prospect in Malaysia. *Renewable and Sustainable Energy Reviews*, 15(6), 2850-2861.

with green building requirement at planning stage is meaningless if the building is not maintain green rated after completion or during operation of the building. It will be better for local authority to enforce after completion and to maintain green rating during operation of the building.

Option 14A

- i. Enforcement of green building rating to be done after completion of building.
- ii. Enforcement of green building rating to commence at commencement of building construction, when green practice and initiatives can be monitored.
- iii. Local authorities to standardise this practise.

Option 14B

- i. Maintain current practices where green building rating is compulsory at planning approval stage and local authority to have a consistent criteria on green building rating requirement.
- ii. Public awareness programs on green building rating and on the local authorities' requirement are to be conducted.

Recommendations

For this concern, the recommended option is Option A. Instead of imposing the requirement on green building rating at planning stage, it is better to impose the green building requirement at Building Plan submission stage. However, the guidelines and criteria for green building rating has to be established to avoid inconsistence requirement during building plan submission. This shall avoid the situation where the green building has been falsely declared during the planning but not implemented during building plan submission. Furthermore, during planning submission stage, there is nothing for local authority to inspect for green building rating compliance because there is no detail plan submitted at planning stage.