

1.0 ABOUT THE REVIEW

1.1 Overall Purpose

In the Tenth Malaysia Plan (2011-2015), Malaysia Productivity Corporation (MPC) is commissioned to review the regulations currently practiced by the Government and agencies in which includes the regulations governing the professionals servicing the building industry. These regulations must be adhered to by the professionals, regardless of their effectiveness, productiveness and the costs involved. The regulations are assessed and analysed with the focus on modernising business regulations. Any redundancy, unnecessarily burdensome or outdated regulations will be identified and amended while retaining efficient ones in order to reduce unnecessary burdens.

Effective regulatory reform provides direct or indirect economic, social and environmental benefits to the citizens and businesses, where the government carefully considers the cost and benefits to the public to maximise benefits to the public.

The services sector is a major contributor to the growth of the Malaysian economy and plays an important intermediary role in supporting business and trade in all sectors of the economy. The sector generates the largest number of employment opportunities. The professional services sub-sector is another important driving contributor to the services sector.

Professional services covers the activities of various professions. The scope of review covers professional services that are directly related to the building industry: **Architects, Engineers, Quantity Surveyors, Town Planners and Land Surveyors**. These professionals provide services to the building industry and also other sectors such as education, transportation, infrastructure, tourism etc. Any improvements in regulation of these professional services will add value to these sectors and ultimately to the whole economy.

1.2 The Tenth and Eleventh Malaysia Plan

The services sector was the biggest contributor to the Malaysian Gross Domestic Product (GDP) throughout the Tenth Malaysia Plan¹. Its contribution was 53% of the GDP, with a 6.3% annual increase². During this time, 18 services subsectors were autonomously liberalised³. The small and medium enterprises from the services sector holds a 90% share of the total number of SME in the country and contributed 20% to the national GDP. To complement the liberalisation exercise, the Competition Act was introduced in 2012 with the aim to undertake regulatory reforms and improve business processes.

To sustain the rapid development, the 11th Malaysia Plan further continued its focus on the services sector since it is still expected to be the driver of economic growth for the country. If the 10th Malaysia Plan focused on the liberalisation of the services sector, the 11th Malaysia Plan focuses on strengthening the services sector competitiveness by encouraging high value and knowledge intensive service activities⁴.

1.3 Conduct of the review

The study was carried out by MPC staff and associates based on the structured methodology under the guidance of a regulatory expert Ms Sue Holmes, formerly attached with Australia Productivity Commission (AGPC). The team interviewed professional board and institutions providing engineering, architecture, planning and surveying services to the building industry across the country, in order to identify the regulatory issues of concern to them.

Based on the principles of good regulatory practice, the team has formulated feasible options for further deliberation. These issues and options will be subject to further consultation with relevant stakeholders in order to develop concrete recommendations that

¹ Malaysia, G. o. (2010). *Tenth Malaysia Plan 2011-2015*

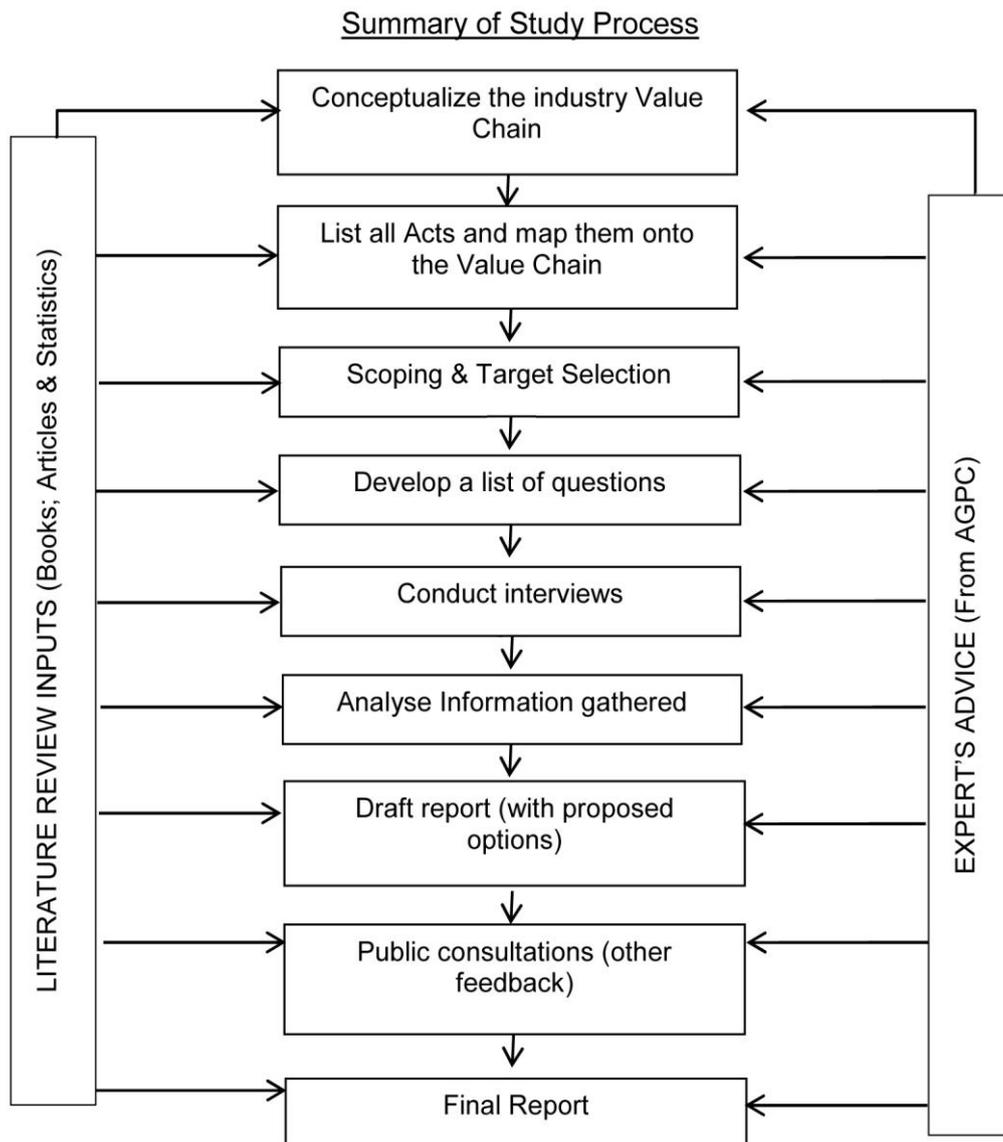
² Malaysia, G. o. (2014). *Gross Development Product 2005-2013*. Kuala Lumpur: Department of Statistics, Malaysia

³ PEMANDU. (2012). *Economic Transformation Programme Annual Report 2011*. (1). Putrajaya: Performance Management and Delivery Unit (PEMANDU).

⁴ Malaysia, G. o. (2015). *Eleventh Malaysia Plan 2016-2020*

will reduce unnecessary regulatory burdens. The figure below summarises the study process for this review.

Figure 1: Summary of Study Process



This review commenced in 2014 with several meetings with the Boards of Engineers Malaysia, Board of Architects Malaysia, Board of Land Surveyors Malaysia, Board of Quantity Surveyors Malaysia and Associations of Consulting Engineers Malaysia. This

Report is released for the reference of interested parties in formulating policies related to professional services to construction industry.

1.4 Structure of the report

This report for regulatory review of professional services to the construction industry is structured into 9 chapters including this introductory **Chapter One** which provides an overview background, purpose of the review and its study process.

Chapter Two provides a more detailed background of the professional services involved in the construction industry, the laws governing each profession and also discussed the contribution of these professional services to economic development.

Chapter Three explains the terms 'unnecessary regulatory burden' and its implication to the professional services. The chapter also discussed on other forms of control imposed on the professionals by regulators such as rules and regulations, policies and guidelines. Additionally, the chapter discussed about market failure and barriers to entry due to over-regulation.

Chapter Four describes the value chain of the professional service process starting from the setting up of a professional practice, to its termination. This process is linked to liberalisation by virtue of the foreign equity stipulation to set up professional practice in Malaysia.

Chapter Five discusses the general issues concerning professional practice in Malaysia such as control on professional administration, and issues such as who are the regulators for professionals. The chapter ends with an explanation on the intervention by government and agencies that further adds to the limitation of professional practice.

Chapter Six describes the challenges encountered by professionals in setting up their practice. The chapter starts with outlining the stringent requirement imposed on those who aspire to become professionals. The chapter then describes the requirements encountered by professionals in setting up their practice, including the need to register with Companies Commission and MOF if they wish to provide services to the government or its agencies.

Chapter Seven explains that apart from professional requirement, professional practice need also observe the non-professional statutory regulations such as registration for GST, registration on foreign workers and dealing with construction permits. This chapter also discusses on the replacement of Certificate of Fitness for Occupation (CFO) with the Certificate of Completion and Compliance (CCC) system to ease regulatory burdens.

Chapter Eight highlights that for architecture professionals, the responsibility of their works continues until after they have terminated their practice or service. This is in contrast to the Company Act 1965.

Chapter Nine wraps up the report by listing some other policies that have an effect on the growth of professionals.

Chapter Ten concludes the report and summarily provides an overview of the kind of concerns due to unnecessary regulatory burdens that professionals in the construction industry are facing today.

Throughout the report, identified concerns to ease regulatory burdens on professionals are highlighted, followed by proposed options and recommendations. These will be clearly marked as Concerns, Options and Recommendations.

2.0 PROFESSIONAL SERVICES TO CONSTRUCTION INDUSTRY

2.1 The Professionals Servicing Construction Industry

In this report, the professionals servicing construction industry shall include the professions which can be described as follows:

Architect – An architect is a registered professional who provides architectural consultation services that include preparation of layout plan and building designs, submission of layout plans for planning approval, and supervision of construction works to ensure they accord with the approved building plan. Architects also perform as the lead consultant in a building project, and act as the Principal Submitting Person in obtaining building plan approval and issuing Certificate of Completion and Compliance (CCC) upon completion of a building construction. Additional services provided by architects may include landscape plan design and submission, cost management, and interior design.

Engineer – An engineer is a registered professional who provides engineering services in various fields of works include building constructions, infra-structures, manufacturing, mining, automotive and etc. In building industry the field of engineering services are divided into civil engineering, structure engineering, mechanical engineering and electrical engineering. A consulting engineer is entitled to provide engineering services and advice in connection with project feasibility studies, planning, survey, design, construction, commissioning, operation, maintenance and management of engineering works or projects⁵. In certain categories of buildings, engineers also perform as the lead consultant and act as the Principal Submitting Person in obtaining building plan approval and issuing CCC. In construction, engineers supervise construction works to ensure they accord with the approved building plan, and the engineering plan designed and endorsed by the relevant engineer.

⁵ Registration of Engineers Act 1967 (Act 138).

Quantity Surveyor – A quantity surveyor is a registered professional, qualified and trained to advise on all aspects of construction costs, financial and contractual administration. Quantity surveyors provide expertise on the cost and management of construction projects, whether building, civil or heavy engineering⁶.

Town Planner – A town planner is a registered professional who works in the field of land use planning for the purpose of optimising the effectiveness of a community's land use and infrastructure. A town planner formulates plans for the development and management of urban and suburban areas, typically analysing land use compatibility as well as economic, environmental and social needs. The majority of town planners are employed by the government and local authorities, although some large company such as house-builders, supermarkets and utility companies employ planners to deal with their planning work⁷.

Land Surveyor – A land surveyor is a licensed professional with the academic qualifications and technical expertise to practise the science of measurement; to assemble and assess land and geographic related information; to use that information for the purpose of planning and implementing the efficient administration of the land, the sea and structures thereon; and to instigate the advancement and development of such practices⁸.

Often the project owner will appoint the architect or engineer to project manage the construction phase under a conventional contract arrangement, however, for design and build contract or for turnkey contract arrangement, the project management task will be done by the main contractor.

⁶ Royal Institute of Surveyors Malaysia, QS Division – (<http://www.rism.org.my/ContentPages/QSDivisionBackground.aspx>).

⁷ Malaysia Institute of Planners – (<http://www.mip.org.my/career.aspx>)

⁸ Royal Institute of Surveyors Malaysia, GLS Division – (<http://rism.org.my/ContentPages/GLSDivisionBackground.aspx>).

Under the laws of Malaysia, the practice of these professions are governed by their respective Acts listed as follows:-

- i. Architects Act 1967 (Act 117)
- ii. Registration of Engineers Act 1967 (Act 138)
- iii. Quantity Surveyors Act 1967 (Act 487)
- iv. Town Planners Act 1995 (Act 538)
- v. Licensed Land Surveyors Act 1958 (Act 458)

Figure 2.1 The professional regulators, relevant Acts, institutions and associations.

Profession	Regulator	Relevant Acts	Institution / Association
Architect	Board of Architects Malaysia	Architects Act 1967	Malaysian Institute of Architects (PAM)
Engineer	Board of Engineers Malaysia	Registration of Engineers Act 1967	Institute of Engineers Malaysia (IEM), Association of Consulting Engineers Malaysia (ACEM)
Quantity Surveyor	Board of Quantity Surveyors Malaysia	Quantity Surveyors Act 1967	Royal Institution of Surveyors, Malaysia (RISM)
Town Planner	Board of Town Planners Malaysia	Town Planners Act 1995	Malaysian Institute of Town Planners (MIP), Malaysian Town Planners Association (PERSADA)
Land Surveyor	Board of Land Surveyors Malaysia	Licensed Land Surveyors Act 1958	Royal Institution of Surveyors, Malaysia (RISM), Association of Authorised Land Surveyors Malaysia (PEJUTA)

The registrations and practice of these professionals are governed by their professional boards through the provisions of the above Acts. Under the Acts, no person shall be allowed to practise or assume the practise of these profession without prior approval from their respective Boards. The Acts also empower the Boards to make rules and regulations governing the practise of these Professionals. Most of the time the Boards also draft the bills for amendment of the existing Acts to be tabled in the Parliament.

The main objectives of these professional Acts are to govern the practise of professionals for the interest of the public and the nation in ensuring safety, health and environmental protection. In the process of delivering professional services, professionals may encounter numerous regulations, including those on the registration of the professional practice, charging professional fees, rules in delivering services, contract administration, professional risk and indemnity, etc.

Over-regulating of these professions can lead to unnecessary burden to the business and public. Unnecessarily burdensome Acts, rules and regulations need to be reviewed to make business easier and to boost the growth of productivity.

2.2 Demand in the Construction Sector

In the 2012 World Development Indicators, the services sector accounted for almost 72% of global GDP in 2010 and is expanding at a faster rate than the agriculture and manufacturing sectors⁹. Generally, this indicates that the world GDP has changed from agriculture and manufacturing to services industry. Services has been acknowledged as the main contributor to domestic product. Since 1978, the services have been the largest sector in the Malaysian economy, with its share of GDP rising from 36% in 1980 to 55.2% in 2013¹⁰, although services in most developed nations on average contribute 70-80% to GDP. In the 10th Malaysia Plan, the services sector is targeted to contribute 65% of the GDP by 2020¹¹.

⁹ World Bank. (2012). *World Development Indicators 2012*: World Bank Publications.

¹⁰ Malaysia, G. o. (2014). *Gross Development Product 2005-2013*. Kuala Lumpur: Department of Statistics, Malaysia

¹¹ Malaysia, G. o. (2010). *Tenth Malaysia Plan 2011-2015*

In the strategy paper for the 11th Malaysia Plan - Professional Services, in order to achieve a high income economy by the year 2020, Malaysia services sector need to grow at a rate of 5.4% per year. The growth target is also in line with the Third Industrial Masterplan 2006-2020 (IMP3)¹² to achieve long-term global competitiveness through transformation and innovation in the manufacturing and services sectors. In order to achieve this target, the contribution of the services sector needs to be increased. Professional services sub-sector is recognised as important driving contributor to the services sector and identified as one of the prioritised services sub-sector in the 11th Malaysia Plan.

Although it is forecasted that the service sector will be the major contributor to the future world economy, in Malaysia the professional services sub-sector may not be the biggest contributor. The demand in professional services serving the building industry fluctuates depending on economic climates and it varies from one profession to another. However, the professional services serving the building industry are important contributors in driving the services sector and in moving up the income scale for the economy.

Besides their direct contribution to the GDP, the construction Professionals play major roles in national development through their contribution to other various sectors. Hence, any improvements in these professional services will add value to the respective sectors and this linkage will ultimately generate multiplier effects for the economy. As an example, a service rendered by a Professional in a hotel project may not be seen as a major contribution to the economic development, but the multiplier effect from the hotel project is providing the platform for other economic activities and future economic opportunities through hospitalisation services, tourism, transportation, retails, manufacturing and etc.

Professional services that have been identified for future growth include the professional services to the building industry. The selected professional services identified to be the focus for growth includes:-

- i. engineering services;
- ii. architectural services;
- iii. legal services;
- iv. accounting services;

¹² MITI. (2006). *Third Industrial Master Plan (Imp3) 2006 – 2020*. Kuala Lumpur, Ministry of International Trades and Industry

- v. surveying services; and
- vi. project management consultancy services.