Foreword

Since the Tenth Malaysia Plan (2011-2015), Malaysia Productivity Corporation (MPC) was mandated to carry out regulatory review to make it easier to do business in Malaysia. Professional services sector is one of the larger contributor that stimulate the performance of many other sectors in our economic growth. Although professional service in construction industry it is not one of the 12 National Key Economic Areas (NKEAs) identified by the Government, but their services contribute to infrastructure development and construction of buildings which are needed by all economic sectors. In relation to this, Malaysia Services Development Council (MSDC) has placed this task on MPC to review the regulations affecting the professional services servicing the construction industry.

Besides improving regulatory review process, MPC has also established two major tools for designing and implementing regulations, known as Regulatory Impact Assessment (RIA) and Best Practice Regulation Handbook. In the Eleventh Malaysia Plan (2016-2020), MPC was mandated with a bigger role in reviewing regulations affecting the business. With the establishment of RIA as the tool in assessing any new regulations before its implementation, regulatory review process can be done more efficiently at earlier regulatory design stage. This opportunity to have early review of new regulations will filter out any unnecessary regulatory burdens that may affect the business.

Through collaborations between MPC, MPC associates, and many experts, a structured methodology was established in reviewing existing regulations. This report is among various other analyses and reports that were done in accordance with the methodology established at MPC.

Lastly, I would like to take this opportunity to thank all MPC associates, subject matter experts, the professional boards and professional institutions for their commitments and contributions in producing this report.

Thank you.

Dato’ Mohd Razali Hussain
Director General,
Malaysia Productivity Corporation
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Regulatory Review Final Report

on

The Professional Services to the Construction Industry

MALAYSIA PRODUCTIVITY CORPORATION

16 Dec 2015
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 Plan\(^1\). Its contribution was 53% of the GDP, with a 6.3% annual increase\(^2\). During this time, 18 services subsectors were autonomously liberalised\(^3\). 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 11\(^{th}\) 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 10\(^{th}\) Malaysia Plan focused on the liberalisation of the services sector, the 11\(^{th}\) Malaysia Plan focuses on strengthening the services sector competitiveness by encouraging high value and knowledge intensive service activities\(^4\).

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

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


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 work including building constructions, infrastructures, 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 projects. 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 engineering.

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 work.

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 practices.

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.

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6 Royal Institute of Surveyors Malaysia, QS Division – (http://www.rism.org.my/ContentPages/QS Division Background.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/GLS Division Background.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.

<table>
<thead>
<tr>
<th>Profession</th>
<th>Regulator</th>
<th>Relevant Acts</th>
<th>Institution / Association</th>
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<tr>
<td>Architect</td>
<td>Board of Architects Malaysia</td>
<td>Architects Act 1967</td>
<td>Malaysian Institute of Architects (PAM)</td>
</tr>
<tr>
<td>Engineer</td>
<td>Board of Engineers Malaysia</td>
<td>Registration of Engineers Act 1967</td>
<td>Institute of Engineers Malaysia (IEM), Association of Consulting Engineers Malaysia (ACEM)</td>
</tr>
<tr>
<td>Quantity Surveyor</td>
<td>Board of Quantity Surveyors Malaysia</td>
<td>Quantity Surveyors Act 1967</td>
<td>Royal Institution of Surveyors, Malaysia (RISM)</td>
</tr>
<tr>
<td>Town Planner</td>
<td>Board of Town Planners Malaysia</td>
<td>Town Planners Act 1995</td>
<td>Malaysian Institute of Town Planners (MIP), Malaysian Town Planners Association (PERSADA)</td>
</tr>
<tr>
<td>Land Surveyor</td>
<td>Board of Land Surveyors Malaysia</td>
<td>Licensed Land Surveyors Act 1958</td>
<td>Royal Institution of Surveyors, Malaysia (RISM), Association of Authorised Land Surveyors Malaysia (PEJUTA)</td>
</tr>
</tbody>
</table>
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 sectors. 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 2013, 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 2020.

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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)\textsuperscript{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 though 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;

v. surveying services; and
vi. project management consultancy services.
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*\(^\text{13}\). This booklet can be downloaded from 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

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.**

<table>
<thead>
<tr>
<th>Profession</th>
<th>Architect</th>
<th>Engineer</th>
<th>Quantity Surveyor</th>
<th>Town Planner</th>
<th>Land Surveyor</th>
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<td><strong>Processes:</strong></td>
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<tr>
<td>Delivery of professional services</td>
<td>Architects Act 1967 &amp; other regulations under the Act</td>
<td>Registration of Engineers Act 1967 &amp; other regulations under the Act</td>
<td>Quantity Surveyors Act 1967 &amp; other regulations under the Act</td>
<td>Town Planners Act 1995 &amp; other regulations under the Act</td>
<td>Licensed Land Surveyors Act 1958 &amp; other regulations under the Act</td>
</tr>
<tr>
<td>Completion</td>
<td>Architects</td>
<td>Registration of</td>
<td>Quantity</td>
<td>Town Planners</td>
<td>Licensed Land</td>
</tr>
</tbody>
</table>
Through the provisions of the relevant Acts, the professional boards are empowered to make rules and regulations to self-regulate the practice 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 practice 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. However, in some cases, the professional boards do not enforce some aspects of these Acts, thus, the Government through various agencies imposes extra

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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 of 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 to 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.
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 of 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.

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.
4.0 Regulatory Overview

In the whole process of delivering professional services, the Professional may encounter numerous regulations other than the registration of the professional practice. These may include the regulations on charging professional fees, rules in delivering services, dealing with construction permits, contract administration, professional risk and indemnity, etc.

The main regulatory issues faced by construction Professionals are related to the processes in dealing with construction permits. These processes consist of a wide range of procedures from application for planning permission to certification of building completion by the Principal Submitting Person (PSP). In many cases the process may also include the application for approval related to land matters such as land conversion, sub-division, amalgamation, surrender and alienation of land. A special task force - Focus Group in Dealing with Construction Permit (FGDCP) - was set up to look into improving the procedures in dealing with construction permits in Peninsular Malaysia.15

4.1 Value Chain in Professional Services

The value chain in process of delivering professional services to construction industry begin with the setting of professional practices, then shall be followed by other processes summarised as follow:-

i. Setting up of practice.
ii. Registration of business.
iii. Service registration with government.
iv. Non-profession statutory registration.
v. Delivery of professional services.
vi. Dealing with construction permit.
vii. Completion or Termination of practice.

The value chain of the process in professional services regulations at different stages of registration and approval required to be adhered by these Professionals as illustrated in the following figure 4.1.

**Figure 4.1 Professional services regulation value chain diagram from the setting up to the closure of professional practice.**

<table>
<thead>
<tr>
<th>PROCESS</th>
<th>PARTIES</th>
<th>PROCEDURES</th>
</tr>
</thead>
</table>
| Setting up of Practice| Professional Boards                    | • Comply with academic qualification, practical experience and examination requirement.  
                                  |                                        | • Obtain practice registration approval from the board.                        |
| Registration of Business | Companies Commission of Malaysia (SSM) | • Registration of business or company with SSM before commencement of body corporate or partnership practice. |
| Service Registration with Gov. | Government Agencies                   | • Registration with MOF for delivery of service to government and its agencies.  
                                  |                                        | • Registration of service with various agencies.                               |
| Non-Professional Statutory Registration | Custom Dept., Inland Revenue Board (IRB) | • Registration with Custom Dept. service tax collection  
                                  |                                        | • Registration with (IRB) for personal tax deduction.                         |
| Delivery of Professional Service | Professional Boards, Gov. Agencies, Local Government | • Registration with various agencies other than professional board in delivering professional service i.e. SPAN, JPBD, ILAM, Local Authority etc. |
| Dealing with Construction Permit | Tech. Agencies, Local Government       | • Various issues on Dealing with Construction Permit is dealt under Focus Group on Dealing with Construction Permit (FGDCP) |
| Completion/Termination of Practice | Professional Boards, SSM               | • Deregistration of Practice by Professional Board  
                                  |                                        | • Closing / winding up of company under the Company Act.                      |
The figure shows a general summary of the stages of process involving various regulators and government agencies in registering and regulating these Professionals in delivering their services. The diagram also show the major processes in delivering the professional services value chain, where these Professionals sometimes faced unnecessary regulatory burdens.

4.1.1 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 board may prescribe their own entry rules and requirement to be fulfilled by the prospective professional.

Professional boards through its professional accreditation council or agency shall 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 shall be allowed to apply for registration as professional members after fulfilling the prescribed practical experience and examination requirement by the professional boards. These institutions of higher learning are obliged to maintain the quality of their programmes and to comply with the accreditation requirement to maintain validity of the programmes. Generally, the validity period of accreditation for these professional programmes are between one to five years term. Subsequently, the institutions are required to apply for renewal of the accreditation validity before expiring of the terms to ensure continuous validity of the programme.

Other graduates who have completed their study from unrecognised programme will not be able to register as the graduate members of the professional boards, unless after going through additional trainings, courses, examination or interview as determined by the professional boards. For example, 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. Board of Architects Malaysia provides alternative route for the graduates from unrecognised programme where the candidates can sit for Part I and Part II examination, hence, upon passing the examination the graduates are entitled to register as graduate members of the profession.
## Figure 4.2 Entry requirement for different professional board registration.

<table>
<thead>
<tr>
<th>Field of Study</th>
<th>Architecture *1</th>
<th>Engineering *2</th>
<th>Quantity Survey *3</th>
<th>Town Planning *4</th>
<th>Land Survey *5</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entry requirement for professional registration</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Higher Education</strong></td>
<td>B. Architecture or equivalent (min 5 years)</td>
<td>B. Engineering or equivalent (min 4 years)</td>
<td>B. Quantity Surveying or equivalent (min 4 years)</td>
<td>B. Town Planning or equivalent (min 4 years)</td>
<td>B. Surveying or equivalent (min 4 years)</td>
</tr>
<tr>
<td><strong>Under Grad. Practical Experience</strong></td>
<td>Compulsory (min 6 months)</td>
<td>Compulsory (min 8 weeks)</td>
<td>Compulsory (min 6 months)</td>
<td>Required (min 6 months)</td>
<td>Compulsory (min 6 months)</td>
</tr>
<tr>
<td><strong>Post Grad. Practical Experience</strong></td>
<td>Compulsory (min 24 months)</td>
<td>Compulsory (min 36 months)</td>
<td>Compulsory (min 24 months)</td>
<td>Compulsory (min 24 months)</td>
<td>Compulsory (min 24 months Articled Pupil after Part I)</td>
</tr>
<tr>
<td><strong>Oral Examination/Interview</strong></td>
<td>Part III Oral Examination</td>
<td>YES – various disciplines</td>
<td>Compulsory interview after passing written exam.</td>
<td>Compulsory interview after passing MIP written exam.</td>
<td>Compulsory Viva during Part III</td>
</tr>
<tr>
<td><strong>Written Examination</strong></td>
<td>Part III Professional Examination</td>
<td>Professional Assessment Exam. (PAE)</td>
<td>Joint Test of Professional Competency</td>
<td>MIP Course and MIP Exam.</td>
<td>Part I, II &amp; III LJT Examination</td>
</tr>
</tbody>
</table>

*Source:* *1 – Board of Architects Malaysia*  
*2 – Board of Engineers Malaysia*  
*3 – Board of Quantity Surveyors Malaysia*  
*4 – Malaysian Institute of Planners*  
*5 – Board of Land Surveyors Malaysia*

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.

4.1.2 Setting up of Practice

The initial task by these Professionals in delivering the professional services is the requirement to be registered with the professional board and to set up a professional practice. There are several forms professional practice can be set up in accordance with the respective professional acts.

Figure 4.3 Provisions under the professional acts empowering the boards to register individual entitlement and different types of professional practice.

<table>
<thead>
<tr>
<th>Profession</th>
<th>Architect</th>
<th>Engineer</th>
<th>Quantity Surveyor</th>
<th>Town Planner</th>
<th>Land Surveyor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Practice:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Professional Entitlement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual / Sole Proprietor</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sec. 7A, Act 117</td>
<td>Sec. 7A, Act 138</td>
<td>Sec. 7A, Act 487</td>
<td>Sec. 11(1)(a), 15, Act 538</td>
<td>Sec. 10, Act 458</td>
<td></td>
</tr>
<tr>
<td>Partnership</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sec. 7A, Act 117</td>
<td>Sec. 7A, Act 138</td>
<td>Sec. 7A, Act 487</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Body Corporate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sec. 7B, Act 117</td>
<td>Sec. 7B, Act 138</td>
<td>Sec. 7B, Act 487</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Multi-disciplinary / Consortium</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not allowed</td>
<td>Not allowed</td>
<td>Not allowed</td>
<td>Not allowed</td>
<td>n/a</td>
<td></td>
</tr>
</tbody>
</table>

Provisions under the professional acts:
- Architects Act 1967 (Act 117)
- Registration of Engineers Act 1967 (Act 138)
- Quantity Surveyors Act 1967 (Act 487)
- Town Planners Act 1995 (Act 538)
- Licensed Land Surveyors Act 1958 (Act 458)
The provisions under these Professional acts allow all the boards to register the individual entitlement as a professional, however, the registration of practice as partnership and multi-discipline practice are not available in the Town Planners Act 1995 and the Licensed Land Surveyors Act 1958. A Registered Town Planners and a Licensed Land Surveyor are allowed to practice under individual registration capacity, contrarily, the Professional Architect, Engineer and Quantity Surveyor are required to setup a firm (professional practice) before the service can be offered to other party. This causes double registration for a single service to be offered. The original intention for double registration practiced by BAM, BEM and BQS is to prevent irresponsible certification by non-practicing professional (salaried-professional). However, it creates duplication and redundancy in registration as the professional liability remain with the individual professional, not the firm.

The professional acts prohibit the registration of public corporation as a professional practice, thus it bound the numbers of shareholders to the limit as allowed under the Companies Act. A corporation or a firm is also prevented from being a shareholder in the professional practice. Hence, indirectly imposes restriction to the merging of large company and formation of professional consortium with big numbers of shareholders. In a way, it restricts formation of bigger firms that are able to compete with international giant establishments. In example, most of the successful Malaysian developers or construction companies that are venturing into international market are public listed company, however, the present professional acts have no provision for establishment of public professional services company, thus limit the opportunity to have Malaysian own international professional competitors.

4.1.3 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 (CCM). Exemption are only given to sole-proprietorship setup where the registration with CCM is not necessary if the practice is registered with the professional board. The list of acts and regulations in registration of company or business are as follow:-
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

Figure 4.4 Registration requirements for setting up business.

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Professional Board</th>
<th>CCM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulations</td>
<td>Professional Acts</td>
<td>Reg. of Business Act 1956</td>
</tr>
<tr>
<td>Individual / Sole Proprietor</td>
<td>Compulsory Registration</td>
<td>Optional Registration</td>
</tr>
<tr>
<td>Partnership</td>
<td>Compulsory Registration</td>
<td>Compulsory Registration</td>
</tr>
<tr>
<td>Body Corporate</td>
<td>Compulsory Registration</td>
<td>n/a</td>
</tr>
<tr>
<td>Multi-disciplinary / Consortium</td>
<td>Compulsory Registration</td>
<td>n/a</td>
</tr>
<tr>
<td>Public Corporation</td>
<td>Not allowed</td>
<td>n/a</td>
</tr>
</tbody>
</table>

The usual type registration of professional firm with CCM are either partnership or body corporate, whereby the registration of sole-proprietor practice with CCM is optional. Conventionally, the registration of body corporate (private limited company) are governed under the Companies Act 1965, and the registration of partnership practice is under the Registrations of Business Act 1956.
The conventional partnership setup has no limitation of risk of liability, however, a recently enacted Limited Liability Partnerships Act 2012 shall give options for practitioner to setup their partnership practice with limited liability under the Limited Liability Partnerships Act.

**Figure 4.5 Numbers and types of practices registered with the professional boards.**

<table>
<thead>
<tr>
<th>Profession</th>
<th>Architect</th>
<th>Engineer</th>
<th>Quantity Surveyor</th>
<th>Town Planner</th>
<th>Land Surveyor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Professional Members</td>
<td>1,980</td>
<td>11,194</td>
<td>1,010</td>
<td>437</td>
<td>444</td>
</tr>
<tr>
<td>Sole Proprietor</td>
<td>1,076</td>
<td>1,013</td>
<td>165</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Partnership</td>
<td>99</td>
<td>203</td>
<td>48</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Body Corporate</td>
<td>244</td>
<td>994</td>
<td>110</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Multi-disciplinary</td>
<td>41</td>
<td>24</td>
<td>15</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total Registered Practices</td>
<td>1,460</td>
<td>2,234</td>
<td>338</td>
<td>n/a</td>
<td>369</td>
</tr>
</tbody>
</table>

*Source of data:*  
*1 – Board of Architects Malaysia  
*2 – Board of Engineers Malaysia  
*3 – Board of Quantity Surveyors Malaysia  
*4 – Board of Town Planners Malaysia  
*5 – Land Surveyors Board Malaysia  
n/a – Information was not available.

### 4.1.4 Service Registration with Government

Besides registration with the professional board for the professional practice, the firms also need to be registered with 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 could be done online through electronic procurement system
(e-perunding). Upon completion of registration, the professional firm will be issued with a certificate of registration detailing the type of services that the firm are entitled to offer to government.

The hurdle in the registration system is the limitation of 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 to be registered with another company name under the system, hence, the second company will not be able to be registered unless the company appoints new directors and these directors are not registered with MOF. Further details are available at http://porteperunding.treasury.gov.my/.

4.1.5 Non-profession Statutory Registration

In carrying out the business, the said Professional also required to comply with other statutory requirement and registrations, i.e. registration for collection of Goods and Services Tax, registration of business premise, and signboard with local authority, registration of international foreign workers permit, registration of workers permit from west Malaysia, employee income tax collection and deduction etc.

Other than dealing with professional works, the firms also need to deal with these statutory administrative procedures and tax collections on behalf of government. Some of these tasks are mandatory to be implemented by the said Professional in their day to day practice such as the Government Service Tax which is legislated tax at rate of 6% imposed under the Service Tax Act 1975.

As an example, the said Professional are required to collect on behalf of the Government, the service tax due for the services received by the service getter (the client). The obligation to pay the Government Service Tax lies on the service getter, however, the obligation to collect the service tax lies on the said Professional. Under the regulations, regardless whether the said Professional has actually collect the service tax or not, they are obliged to pay the tax on behalf of the service getter within a stipulated period. Before the said Professional are able to collect the service tax on behalf of the Government, the said Professional are required to be registered and obtain the license from the Royal Malaysian Customs Department.
4.1.6 Delivery of Professional Services

The main business of the said Professional are delivering the architectural services, engineering services, quantity surveying services, planning services and town planning services. Most of the rules and regulations related to professionalism of the practitioners in delivering these services are regulated by the professional boards. Besides the professional regulations on practice, these Professionals are also required to abide the regulations and by laws related to application for land development, planning permission application and dealing with construction permit.

In delivering the services, there are possibility occurrence of overlapping terms and scope of services, ambiguities in rules and regulations, and also subjective definitions of terms and by-laws which need to be adjudicated. Issues may also arise in development proposal which involves the following stages which require approval:

i. Application for land matters
ii. Application for planning permission
iii. Application for building plan approval

Resolving the conflicting issues at the beginning of project planning and approval application process are crucial to ensure the smooth delivering of the services and proper project implementation. The success of a project as a whole is crucial to all the stakeholders who primarily are the developers, the land owners and property buyers. The timely completion of a project in accordance to specifications and the stakeholder’s satisfaction shall benefits both the developer and the property buyers.

4.1.7 Dealing with Construction Permit

Construction permits allow the local authorities to protect the interests of both individuals and the community as a whole. Through plans review process, Planning Permission application and Building Plan approval application can be checked and verified compliance with:
i. Local planning requirement, land use, development intensity, building height and other planning controls;

ii. Uniform Building By Laws, which sets standards for the design and construction of buildings to meet objectives such as health, safety, fire protection and accessibility; and

iii. Other requirement which may include socio-economic policy, national security, conservation of resources and protection of environment.

All modern economies regulate the use of land and the construction of buildings for several reasons. The objectives are achievable through rigorous control of building codes, zoning and land use. During the development planning stage, a good development control is very important in ensuring a harmonious society development and to keep the balance between the economic growth and the social growth. Through planning control, any land development can be planned not to negate the surrounding development; such as noisy nightclubs or environmentally risky industrial activities should not be permitted to be built in residential areas, thus dedicated zone are required to be provided to cater for that purpose.

During building plan approval and construction stage, the first and most obvious reason for regulating the construction of buildings is to ensure worker and public health and safety. Worker health and safety needs to be addressed while construction takes place and public health and safety concerns ensuring the completed building satisfies minimum constructional standards, energy conservation requirements and accessibility.

Good regulations ensure safety is addressed, while minimising burdens on business such as making permitting approval process efficient, transparent and cost effective. Dealing with construction permits is one of the indicators in the World Bank’s ease of doing Business 201216.

Dealing with the construction permit is one of the major task under delivery of professional services. Due to continuous delays in dealing with construction permit, Real Estate and Housing Developers Association (REHDA) through its Institute has insisted a thorough study to be done in solving the issues. PEMANDU, therefore, had initiated the Property Development Lab to study and analyse REHDA’s concerns and industry’s

16 PEMUDAH (2012), e-Bulletin issues 2/2012, Putrajaya, PEMUDAH.
problems. In 2010, PEMANDU Property Development Lab were implemented which resulted in 22 key initiatives have been presented to the Prime Minister\textsuperscript{17}. Four out of the 22 initiatives relate directly to the building permit, which are:

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

Most of the 22 initiatives have been implemented by various agencies under the federal government including Ministry of Housing and Local Government, and Federal Department of Town and Country Planning. However, the highlighted four initiatives were not implemented pending detail deliberation and setting up of proper mechanism for implementation.

The push for improvement in construction and property development environment further continues with the establishment of various technical working groups and focus groups that collaborate the efforts of the public and private sectors. An example of tight collaboration between private and public sector is demonstrated through the establishment of Focus Group on Dealing with Construction Permit (FGDCP) by PEMUDAH and later the introduction of OSC 3.0 plan submission system in June 2014.

The implementation of OSC 3.0 commencing in June 2014 is the result of close collaboration between the public and private sector in finding a better approach in dealing with planning approval for development and construction permit. However, a few local governments and state governments have indefinitely differed the implementation of OSC 3.0. Some of the local governments adopt the OSC 3.0 programme partially and implement it concurrently with the previous OSC programme launched in 2007.

Besides the OSC procedures in dealing with construction permit, the said Professional need to deal various regulations related to land development, planning permission and construction permit which includes the following acts:

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. In general, the list of regulations is tabulated in

Figure 4.6 List of main acts and other relevant regulations governing land development, planning permission and building construction process.

<table>
<thead>
<tr>
<th>Process</th>
<th>Main Acts</th>
<th>Other Relevant Acts and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Development</td>
<td>National Land Codes 1965</td>
<td>Land Development Act 1956</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Land Acquisition Act 1960</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Land Conservation Act 1960</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Strata Title Act 1985</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Local Government Act 1976</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Environmental Quality Act 1974</td>
</tr>
<tr>
<td>Building Construction</td>
<td>Street, Drainage and Building Act 1974</td>
<td>Uniform Building By Laws 1984</td>
</tr>
<tr>
<td></td>
<td></td>
<td>States Building By Laws</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Local Government Act 1976</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Earthwork By Law 1996</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Drainage Works Act, 1954 (Rev. 1998)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sewerage Services Act 1993</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Water Services Industry Act 2006</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fire Services Act 1988</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Electricity Supply Act 1990</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Electricity Supply (Successor Company) Act 1990</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Communications and Multimedia Act 1998</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Occupational Safety and Health Act 1994</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Environmental Quality Act 1974</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Environment Quality Regulation 1978</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Construction Industry Development Board Act 1994</td>
</tr>
</tbody>
</table>
4.1.8 Completion / Termination of Practice

Upon retirement or termination of professional practice set up, the practitioner may opt to terminate their practice license with consent from the respective professional boards. Termination of practice license may be in form of voluntary termination of practice by the professional or by regulatory enforcement by the professional boards. Professional boards may exercise its power to cancel the professional registration through provisions of the Acts as listed in the following table (Error! Reference source not found.).

Figure 4.7 Provisions under the professional acts empowering the boards to suspend and terminate the registration of professional practice.

<table>
<thead>
<tr>
<th>Profession</th>
<th>Architect</th>
<th>Engineer</th>
<th>Quantity Surveyor</th>
<th>Town Planner</th>
<th>Land Surveyor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
<td>Architects Act 1967 (Act 117) Sec. 5</td>
<td>Registration of Engineers Act 1967 (Act 138) Sec. 5</td>
<td>Quantity Surveyors Act 1967 (Act 487) Sec. 5</td>
<td>Town Planners Act 1995 (Act 538) Sec. 11, 16</td>
<td>Licensed Land Surveyors Act 1958 (Act 458) Sec. 8, 10</td>
</tr>
<tr>
<td>Suspension of Registration</td>
<td>Sec. 25, Act 117</td>
<td>Sec. 15, Act 138</td>
<td>Sec. 15, Act 487</td>
<td>Sec. 32, Act 538</td>
<td>Sec. 17, Act 458</td>
</tr>
<tr>
<td>Cancellation of Registration</td>
<td>Sec. 25, 26, Act 117</td>
<td>Sec. 15, 16, Act 138</td>
<td>Sec. 15, 16, Act 487</td>
<td>Sec. 25, 27, 28, 36, Act 538</td>
<td>Sec. 17, Act 458</td>
</tr>
</tbody>
</table>

Voluntarily termination by these Professionals can be done by informing to the respective professional boards his intent for retirement, cancellation of registration or closure of practice. Supporting document such as evidence for completion of all works under his supervision, and discharge from responsibility from the ongoing works (Letter of Release) are required to be presented together with the application. Voluntarily cancellation of registration may also be opted by the said Professional by not renewing the annual subscription, thus results the cancellation of registration by professional boards through enforcement of regulations.
Upon acceptance of application to terminate professional registration, these Professionals shall cease practice and discontinue the professional services. However, the Architects and Engineers, remains individually responsible for the completed works that they have previously certified even though after they ceased operation. Although the Company Acts 1965 allow limited liability imposed on private limited company (body corporate), under present laws, individual Architect or Engineer performs the role of Submitting Person (SP) shall carry professional liability personally for life.

4.2 Liberalisation of Professional Services

In a move to spur economic growth and attract foreign direct investment (FDI), the Government has taken measures to ensure an efficient and competitive business environment via its Competition, Standards and Liberalisation (CSL) Strategic Reform Initiatives (SRI). The Ministry of International Trade and Industry (MITI) is entrusted to lead all efforts pertaining to the liberalisation exercise. Covering the services and financial services sector, the liberalisation exercise was undertaken in stages. The initial stage commencing in 2009 saw nine sub-sectors being liberalised and a further 18 sub-sectors were liberalised in 2011, allowing up to 100% foreign equity participation in phases. The 18 sub-sectors include the Architectural, Engineering and Quantity Surveying services.18

In 2012, BAM, BEM and BQSM submitted proposals to amend the present Acts to allow liberalisation by opening some shares in local firms to be held by foreign investors. The proposed amendments to the Acts were debated and passed in Parliament in November 2014. Although the Town Planners and Land Surveyors are not included under the 18 sub-sectors, with liberalisation of the Architectural, Engineering and Quantity Surveying services, the former may also be indirectly affected.

Globally, the Organisation for Economic and Cooperation Development foresees a substantial increase in foreign investment if foreign equity restrictions are removed. At the end of 2013, Malaysia’s share of FDI is below par compared to other ASEAN countries. Based on figures for the first half of 2012, 67.5% (RM 52.5 billion) of total foreign investment came from the service sector investment. Any Acts and regulation for each professional service needs to be in line with and in support of the liberalisation move. As examples, the

recent amendment to the Architect Architects Act 1967, Registration of Engineers Act 1967 and Quantity Surveyor Act 1967 allows a body corporate professional practice in this professional fields to be held by foreign party up to 30% of the total equities. When implementing such changes, the government foresee a bigger capital growth through international investment which will make local firms to be more competitive at international arena.

The Organisation for Economic and Cooperation Development (OECD) foresees a substantial increase in foreign investment if foreign equity restriction is removed. As at end 2013, Malaysia’s share of FDI is below par compared to other ASEAN countries. By 2015, the services sector is expected to contribute up to 70% of the country’s gross domestic product (GDP) with targeted average real annual growth rate to be 7.2% between 2011 and 2015. Based on figures for the first half of 2012, 67.5% (RM 52.5 billion) of total investment toward the GDP came from the service sector investment\(^\text{19}\).

With such a high percentage contributing to the national GDP, a smooth liberalisation process for the professional services sub-sector is crucial for the country to achieve its aspiration as a developed economy by year 2020. Any acts and regulation for each respective professional service need to be in line with and in support of the liberalisation move.

An example of an existing act which may impede the liberalisation exercise is the restriction on the number of firms that an architect is allowed to register. This restriction limits the formation of mergers between smaller architectural firms to be able to compete with foreign firms. Government project procurement process which allows for project to be awarded based on rotation not only goes against the Competitions Act but will also turn away potential foreign architectural firms.

On the matter of professional recognition, Mutual Recognition Agreement (MRA) is aimed to facilitate liberalisation among ASEAN countries whereby it enables professional service providers registered or certified in member countries to be equally recognised in other member countries. Despite being party to seven MRAs, local service providers have not been successful in providing their services outside Malaysia. The MRAs are:

i. MRA on Engineering Services (signed on 9 December 2005 in Kuala Lumpur, Malaysia)

ii. MRA on Nursing Services (8 Dec 2006 in Cebu, Philippines)

iii. MRA on Architectural Services and Framework Arrangement for the Mutual Recognition of Surveying Qualifications (19 Nov 2006 in Singapore)

iv. MRA on Medical Practitioners, MRA on Dental Practitioners and MRA Framework on Accountancy Services (26 Feb 2009 in Cha’an, Thailand)

An EPU study discovered that only 14.9% of services firms in Malaysia are aware of free trade agreements and the utilisation rate of such FTAs are even worse at a mere 2.9%. Such poor utilisation of FTAs does not sit well for local service sub-sector as it does not ensure a balanced trade.

Institute of Engineers Malaysia (IEM) highlighted concerns on professional, safety and ethical aspects with respect to the liberalisation process. In a press statement, IEM remarked:

“Aligning with common practices in free trade, the laws relating to engineering practice are also being amended to allow anyone, including the possibility for non-professional engineers, to invest in and to own 100% of Engineering Consultancy Practices (ECP). All that is needed is just to ‘employ’ or appoint two or three professional engineers as directors to take full responsibility for the decisions taken. If this is to happen, business interests will be expected to take precedence over professional concerns and profits will supersede the need to ensure health, safety and quality.”

The Government had further liberalised an additional 18 services sub-sectors in 2011 to allow up to 100% foreign equity participation in phases. These sub-sectors are:

i. Telecommunication services (Network Service Providers and Network Facilities Providers licences);

ii. Telecommunication services (Application Service Providers licence);

iii. Courier services;

iv. Private hospital services;

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v. Medical specialists services;
vi. Dental specialists services;
vii. Private higher education institution with university status;
viii. International schools;
ix. Technical and vocational secondary education services;
x. Technical and vocational secondary education services for students with special needs;
xi. Skills training centres;
 xii. Accounting and taxation;
 xiii. Architectural services;
 xiv. Engineering services;
xv. Legal services;
xvi. Departmental stores and specialty stores;
xvii. Incineration services; and
xviii. Quantity surveying services.
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

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.
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 bias where the interviewer has tendency to limit the entry to the profession to limit competition. Candidates who has 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

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 fulfill 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.

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 permits:

- 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...

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construction and property development. For example, the Focus Group on Dealing with Construction Permits (FGDCP) was established by PEMUDAH\(^{22}\) 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)

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 it is 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 draughtsman 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) 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 cause 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

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

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 formed.

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

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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 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.
8.0 Burdens in Leaving or Closing Down Professional Practice

8.1 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.

8.2 Completion / Termination of Practice

Upon retirement or termination of professional practice, the practitioner may opt to terminate his/her practice licence with consent from the respective professional boards. Termination of practice licence may be by voluntary termination by the professional or by regulatory enforcement by the professional boards. Professional boards may exercise their power to cancel the professional registration through provisions of the Acts.

Voluntarily termination can be achieved by the Professional informing to the relevant professional board his/her intent to retire, cancel registration or close the practice. Supporting documents such as evidence for completion of all works under supervision, and discharge from responsibility from the ongoing works (Letter of Release) are required to be presented together with the application. Voluntarily cancellation of registration may also be chosen by the Professional by not renewing the annual subscription.

Even after the application to terminate professional registration has been accepted, architects and engineers remain individually responsible for the completed works that they have previously certified, carrying professional liability personally for life. This contrasts with the Company Act 1965 which allows limited liability.
8.3 Liberalisation of Professional Services

In a move to spur economic growth and attract foreign direct investment (FDI), the Government has taken measures to ensure an efficient and competitive business environment via its Competition, Standards and Liberalisation (CSL) Strategic Reform Initiatives (SRI). The Ministry of International Trade and Industry (MITI) is entrusted to lead all efforts pertaining to the liberalisation exercise. Covering the services and financial services sector, the liberalisation exercise was undertaken in stages. The initial stage commencing in 2009 saw nine sub-sectors being liberalised and a further 18 sub-sectors were liberalised in 2011, allowing up to 100% foreign equity participation in phases. The 18 sub-sectors include the Architectural, Engineering and Quantity Surveying services.

In 2012, BAM, BEM and BQSM submitted proposals to amend the present Acts to allow liberalisation by opening some shares in local firms to be held by foreign investors. The proposed amendments to the Acts were debated and passed in Parliament in November 2014. Although the Town Planners and Land Surveyors are not included under the 18 sub-sectors, with liberalisation of the Architectural, Engineering and Quantity Surveying services, the former may also be indirectly affected.

Globally, the Organization for Economic and Cooperation Development foresees a substantial increase in foreign investment if foreign equity restrictions are removed. Malaysia’s foreign investments in the services sector increased from RM12.2 billion in 2012 to RM19 billion in 2013\(^{25}\). Based on the figures in 2013, RM 19 billion (24.4%) of total foreign investment of RM 59.5 billion came from the service sector investment. However, at the end of 2013, Malaysia’s share of FDI is still below par compared to other ASEAN countries.

Therefore, to encourage the growth of professional services, any Act and regulation imposed over the business of professional services needs to be in line with and in support of the liberalisation move.

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9.0 Other Policies Affecting the Growth of Construction Professional

9.1 Expectation in Professional Service Serving Construction Industry

Professional services serving the building industry provide designs and link fragmented building industrial production processes between manufacturing and services. Continuous improvement of this knowledge intensive workforce is consistent with Malaysia’s aspiration to become a high income nation by 2020. There are pressures on the professionals to be able to compete in a bigger market.

These Professionals need to prepare themselves to achieve high level of competitiveness and to be able to compete in a bigger market base. Furthermore, with the availability of today’s technology, the expectation of the service getters or the clients are very high in comparison to the clients’ expectation 20 years ago. The clients expect these Professionals to deliver services in matter of days and weeks, no more months and years as it was before. Thus, it makes the construction industry Professionals depending so much on technology.

Since late 80’s most of the professional serving building industry migrated from manual drawing to Computer Aided Design and Drafting (CAD) where computer software are widely used replacing the conventional drafting tables and typewriters. The CAD software has changed the way people do their works, where drawings can be easily transferred through diskettes or CD ROM, and today even easier with the flash drives and emails. Although CAD technology and computer spread sheet make working and sharing information became easier, it has a major setback where copying are beyond control, thus creates a new issue with intellectual copyright control.

CAD is the technology that are widely used in the practice of these Professionals, but soon it will be replaced with the new paradigm of technology which is known as Building Information Modelling (BIM). BIM provides a new integrated working platform where the planning, architecture, engineering, quantity surveying and land surveying function to be integrated in a single working file. This mean that all disciplines of the said Professional need to have the software and must know how to operate the software.

Larger corporations and government agencies insist on the use of Building Information Modelling (BIM) in their development projects. Although some architects and engineers have started using BIM in their offices, currently, the use of BIM is not regulated
and there is no national standard. Agencies and professionals use their own ways of implementing BIM or adopt some foreign BIM protocols. Unless a BIM standard for Malaysia is agreed, there is likely to be confusion and inconsistency, especially once local authorities impose compulsory use of BIM in building plan submissions.

The Geographic Information System (GIS) is another new technology in Land Surveying and Land Planning. Both BIM and GIS are the future potential information technologies with high potential for integration. How well these technologies are integrated will be have a significant influence on how construction professionals do their work in the future.

9.2 Investment in Technology

Among the major investment made by the said Professional is the investment in technology which include the computer hardware and software. The future professional services to building industry will be very much depending on technology and it will not be an option anymore. Currently, some professionals serving the building industry have reservation in the type of software to purchase as there are issues with inter-platform compatibility and in some cases the sale of the software are monopolised by certain dealer or supplier.

In this case the Government should play a role as an enabler to stimulate growth for the professional services, by creating a good policy and infrastructure to allow competition and development of open platform software to provide a good environment for the industry.

9.3 Demand in Professional Service Serving Building Industry

The expected demand in the said Professional services can be estimated by comparing the professional to population ratio in studied country.

There is clear evidence of a global skills shortage that is particularly acute in the developing world. In 2011, Manpower Group’s annual Talent Shortage Survey found that 45% of Asia-Pacific employers had difficulty filling job vacancies due to a lack of available talent. About three-quarters of employers globally cited a lack of experience, skills or knowledge as the primary reason for this struggle to hire appropriate workers.
Figure 9.1 Professional to population ratio at selected countries.

<table>
<thead>
<tr>
<th>Profession</th>
<th>Architect</th>
<th>Engineer</th>
<th>Quantity Surveyor</th>
<th>Town Planner</th>
<th>Land Surveyor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia (Popl: 30.3m)</td>
<td>1:15,150</td>
<td>1:2,680</td>
<td>1:29,700</td>
<td>1:68,650</td>
<td>1:67,560</td>
</tr>
<tr>
<td>United Kingdom (Popl: 64.1 m)</td>
<td>1:1,880</td>
<td>1:340</td>
<td>1:1,600</td>
<td>1:2,790</td>
<td>1:20,810</td>
</tr>
<tr>
<td>Australia (Popl: 23.7 m)</td>
<td>1:1,975</td>
<td>1:430</td>
<td>1:8,620</td>
<td>1:4,940</td>
<td>1:7,557</td>
</tr>
<tr>
<td>New Zealand (Popl: 4.5 m)</td>
<td>1:2,467</td>
<td>1:280</td>
<td>1:2,580</td>
<td>1:2,250</td>
<td>1:2,250</td>
</tr>
<tr>
<td>USA (Popl: 318.8 m)</td>
<td>1:1,300</td>
<td>1:390</td>
<td>1:39,750</td>
<td>1:19,870</td>
<td>1:69,100</td>
</tr>
<tr>
<td>Singapore (Popl: 5.5 m)</td>
<td>1:3,734</td>
<td>1:1,510</td>
<td>1:7,590</td>
<td>-</td>
<td>1:51,890</td>
</tr>
<tr>
<td>Thailand (Popl: 64.8 m)</td>
<td>1:24,923</td>
<td>1:2,590</td>
<td>n/a</td>
<td>-</td>
<td>n/a</td>
</tr>
</tbody>
</table>


In Malaysia, PAM has reported that the ratio of architects to population is 1:15,000. This is far below the ratio of architects to population in most developed countries. Members of PAM have raised their concern about shortage of architects to serve the need of the growing population. The research commissioned by Union of International Architects (UIA)
shows that ratio of architects to population is between 1:500 to 1:2500 in European countries and close to 1:3000 in the US\textsuperscript{26}. Some engineering professionals consider they face similar shortages in man power. Contrarily, during the interview with Board of Quantity Surveyors Malaysia and Board of Land Surveyors Malaysia, it was noted that the resources in quantity surveying and land surveying professions are not worrying the professions as the source of talents in both field of works are at the professions’ comfort level\textsuperscript{27}.

Based on UNESCO’s Engineering Report 2010, the demand for engineering talent is increasing and experts predict the global market for climate change solutions such as low carbon products and renewable energy systems will rapidly reach US$1 trillion dollars and continue to grow. At the same time, the shortage of engineers is marked in many countries.

Germany reports a serious shortage of engineers in most sectors, and in Denmark, a study showed that by 2020 the labour market will be lacking 14,000 engineers. And although in absolute numbers the population of engineering students is multiplying world-wide, percentages are dropping compared to enrolment in other disciplines. In Japan, the Netherlands, Norway and the Republic of Korea, for example, enrolment decreases of 5 to 10\% have been recorded since the late 1990s\textsuperscript{28}.

UNESCO reported that in the past 150 years, engineering and technology have transformed the world, but the benefits they have brought are unevenly distributed throughout the world, nearly three billion people do not have safe water and nearly two billion people are without electricity.

Based on UNESCO global engineering report, the demand for engineering talent is increasing and is estimated that 2.5 million new engineers and technicians will be needed in sub-Saharan Africa alone if the region is to achieve the UN Millennium Development Goal of improved access to clean water and sanitation. Meanwhile experts predict the global market for climate change solutions such as low carbon products and renewable energy systems will rapidly reach US$1 trillion dollars and continue to grow.

\textsuperscript{28} Ibid.
9.4 Time Limit for Professional Liability

Although the Limitation Act 1953 does impose a time limit for the plaintiff to carry out lawsuit against the defaulter, it does not provide specific time period to architects’ and engineers’ liabilities. Architects and engineers will be responsible for their design for the entire duration of the construction period and the ‘building life span’ period. Unfortunately, there is no specific definitions on building life span period. Several attempts to define a building life span ended inconclusive. Building life span varies on different building structural design and material used.

A research by Costmodelling Limited in UK revealed that different building components has different life expectancy period which can be summarised as follow:

Engineering:

Concrete Structure 81 years to 110 years.

Architecture:

Roof 21 years to 84 years
External Wall 25 years to 86 years
Internal Wall 29 years to 31 years
Stairs 59 years to 76 years

Hence, it reveals that it is not wise for the legislation system to impose unlimited time burden of liabilities on the Architects and Engineers. A list of building components such as roof and external wall will start giving way after twenty years. Some of the building materials such as waterproofing and weather seals may deteriorate as early as ten years. Architects and engineers should not be burdened with life-time liability on something that cannot last forever.

In some European countries, professional liabilities are limited to certain number of years. France for example, adopted the concept of decennial liability derived from the French Civil Code of 1804, where the liability for defects in a building is limited to ten years.
from when the building is completed. The French Civil Code influences many other African, Middle Eastern and Far Eastern countries.

The provision of Article 880 of UAE Civil Codes allow for both architect and contractor to be jointly liable to compensate owner for the defect that affects the stability and safety of a building for the buildings which are to last for more than ten years. There are instances where the courts have construed the stated design life span of a structure as equating to the limitation period of the designer’s liability.

In the US, American Institute of Architects (AIA) Statute of Repose revision January 2011 tabulates the limitation period allowed by each state for lawsuit against professional works which varies from 4 years in Tennessee to 15 years in Iowa, and most of the states imposed a limitation of 10 years period.

In many cases, architectural products have no estimated life span. There is a need to define a period of time after which the architect can no longer be held liable for personal injury or injury to property. The liability should be limited to the period when the architect has control of the property or until the potential deficiencies in the design would have been discovered.

Without legislation to protect design professionals from unlimited liability, an architect is exposed to litigation by any individual who might has suffered an injury in or around a building that was designed many years ago, even when the injury is a result of improper maintenance or other causes beyond the architect’s control. Even where a plaintiff receives no damages, court costs and attorneys’ fees alone will be substantial.

As a professional, architects and engineers’ activities are bounded by code of professional ethics and also bounded by law. The Limitation Act 1953 is one of the many articles of law that is related to an architect’s works and knowing what the Act entails is an advantage. Depending on situation, an architect could be a plaintiff or a defendant in a legal suit. The time period for an action to commence can differ or can be renewed, according to the knowledge of the law.
Concern 15: Architects and engineers will be responsible for their design for the entire duration of the construction period and the ‘building life span’ period. Unfortunately, there is no specific definitions on building life span period. Life-time responsibility of the architect and engineers are not justified in order to achieve accountability. There should be a time limit to professional liability.

Option 15A

i. A time limit to be imposed on the responsibility of architects and engineers based on ‘building life span’ period;

ii. A clear definition of ‘building life span’ has to be established;

iii. The Street Drainage and Building Act and UBBL need to be amended; and

iv. The public should be made aware of the changes and educated on avenues to take after such time limit has expired.

Option 15B

i. To impose a fixed time limitation similar to Statute of Repose proposed by American Institute of Architects which shall imposed a specific time limit e.g. 10 years for the Architects and Engineers, whereby the liability will be transferred to the building owner for the subsequent period; and

ii. The Street Drainage and Building Act and UBBL need to be amended.

Options 15C

i. The current practices is held whereby architects and engineers have life time responsibility; and

ii. Maintain the Act as it is.

Recommendations
Option C, maintaining the present Act will not address the concern raised by the affected professional. Hence, the architect and engineer will be responsible for their design for life. Consequently, this will impose a very high risk to these professionals which will cause high insurance premiums to cover the risk in their professional services. Maintaining status quo shall also give the misconception that the building owner is not responsible for the building, therefore, the building owner will not allocate sufficient budget for building maintenance. This will entail to premature building failure.

After considering suitable time limitation period subscribed by most European countries, UAE and the US, Option B is recommended where a suitable time limit between 10 years to 15 years to be imposed on architects’ and engineers’ professional responsibility after a building completes. Once a building is in operations after several years, many other aspect contributes to a building wellness such as maintenance and usage. Therefore, the building owner should be responsible for maintaining the building and to ensure the safety and health to its occupant and the property itself.
10.0 Conclusion

This report provides a review of regulations that affects professional services in the construction industry by providing a background summary of the construction industry role in the 10th and 11th Malaysia plan and details out who are the professionals involved. The review of regulation follows the process from inception of a professional practice to the termination of practice.

This report concludes that while regulating professional practice is necessary to protect the public, over-regulating the professionals can have a detrimental effect to the professionals and the services they offer. This report identifies 15 concerns based on feedbacks from the professional community. The concerns range from matters such as the sustainability and longevity of professional practice (Concerns 5, 6, 7, and 8), barriers to entry into the profession (Concerns 3, 4 and 5) and ease of the professional work process that has impact on cost (Concerns 11, 12 and 13). There are also concerns on regulatory matters that are not related to the professional service but they still apply to professional practice, which further add to the professionals’ regulatory burden (Concern 6 and 9).

For each of the concern, options are suggested together with a recommendation based on professional best practice best suited to the local construction industry. Recommendations for the concerns are based on evaluation of each concern and takes into consideration the sustainability of the profession in the face of liberalisation which was discussed in Chapter 4.2. Some recommendations require no changes to the law such as Concern 1, 4, 8 and 10 where the law already addressed the concerns, however it need only to be enforced. There are also concerns that can be addressed only by changing the way things are currently done, some requiring amendment to the law and some requiring only changes in rules and regulations.

No matter what the concerns and the steps taken to address them, the recommendations served to ease the regulatory burdens shouldered by construction industry professionals. The changes, if accepted, are hoped to place local professionals on the same footing with architects from more advanced economy especially in light of liberalization.