

## **Paper 4: Architects self-regulation in Malaysia: Is it possible?**

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### **1.0 Introduction**

Prior to construction of any building in Malaysia, a 'Qualified Person' is required to submit plan to obtain written approval from the local authority. No structure can be erected without prior written approval from the local authority. The Street, Drainage and Building Act 1974 (Act 133), cites 'Qualified Person' as an architect, engineer or a building draughtsman registered under any written law relating to the registration thereof. These qualified persons are governed by professional bodies through the respective Architects Act (1967) and Engineers Registration Act (1967).

The present laws that require the plan to be submitted and to obtain written approval from local authority prior to commencement of building works are inherited from the British legislation. In 1921, Charles Compton Reade was appointed as the first Government Town Planner for the Federated Malay States to promote the activity of town planning and introduce the planning control. Due to incompetency and lack of understanding of the 'local owners' and builders, British administrators had imposed a planning control to overcome the unresolved sanitary and drainage problems in earlier settlement areas. In 1923, Reade introduced the Town Planning Enactment (1923) with the provision that required plan to be approved by the local council prior to erection of any building. This marked the beginning of British legislation and control in local building construction. The provision under the present Street, Drainage and Building Act 1974 (Act 133) that requires plan to be approved by local authority is inherited from these colonial legislations.

Today, the Qualified Persons are regulated by their professional boards as competent persons to deal with building design and construction. With the provision under the respective professional acts and regulations, the problems faced by Reade ninety years ago is no longer an issue, but the legislation framework set by him still remains.

### **2.0 Self-Regulation**

Self-regulation can be defined as the process whereby an organisation voluntarily observes and governs its own adherence to their code of ethics, rules, regulations or standards, rather than have a third party such as a governmental entity to regulate and enforce those standards.

In addition, professional self-regulation is when a professional body or a committee under the organisation regulates over their members' ethics, practice and act to the standards of which they are required to maintain their competency and professionalism. Professional self-regulation sometimes involved government intervention via legislation or an agreement between the government and the professional body that grants self-regulatory status. The arrangement typically done between the government and a professional body through a structured legislation framework by delegating the authority to this professional body.

## **2.1 General Misperception**

There is general misperception that 'professional self-regulation' is a way of 'monopoly of power' that promotes self-interest and benefits members of certain professions, instead of promoting the national interest and preserving the public safety and health. Professional self-regulation is also frequently misunderstood as 'deregulating' of business, where business entity has freedom to carry out activities at their own discretion without any governing authority. This negative perception arises from lack of understanding of the professional self-regulation concept.

## **2.2 The Need for Self-Regulation**

Presently, there is no complete model in dealing with building construction that offer wholly solutions to improve the process and procedure that expedite the building plan approval process, therefore, the searching for a better system has to continue. Today, many systems have been used by world economies to improve the system. It is becoming very challenging for Malaysia to be world class competitor in offering its home ground for foreign investment. A new revolution in the way building construction being regulated is very much in need. This new regulatory model would not just facilitate the process and improve the efficiency in construction industry, but potentially be the way forward in dealing with construction permit.

## **3.0 The current issues with Building Plan approval by local authority**

Government's effort to improve Malaysia's competitiveness frequently clogged when comes to building construction. Furthermore, the three-tier administration of federal government, state government and local government (local authority) worsen the situation when come to implementation of policies set up by federal administration. Among the major problems hindering the smooth process of development and dealing with construction permits are:

### **Inconsistency of Practice by Local Authority**

The current practice by local authority requires Architect to submit building plan for approval prior to construction. Contrarily, the engineering plans submitted by Engineers are deemed accepted as deposited plan for records and future reference.

### **Incompetency to Evaluate Plans**

Local authority chooses not to issue approval to the engineering plan as it contains complex engineering calculations beyond the competency of the evaluating personnel. In some cases, the requirement for getting building plan and engineering plan approval from local authority is no longer practical due to incompetency of local authority personnel to evaluate the plans.

### **Legislation Disparity**

The practice of local authority selecting to evaluate and approve only building plan submitted by Architect but not the engineering plan submitted by Engineer is an act of 'legislation disparity' by practice.

### **Dangerous Compromise on Safety and Health**

Local authorities' act of not evaluating the engineering plans without a proper establishment of self-regulation procedures and regulations is a dangerous compromise to public safety and health. The requirement for local authority approval should not be waived without being backed up with a complete set of professional self-regulation procedures.

### **Irregularity of Practice by Local Authority**

Submitting persons also face irregularity of practice by different local authorities which hinder the smooth process of obtaining building plan approval.

### **Bureaucracy Exertion and Abuse of Power**

The plan submission and approval bureaucracy entails to delay in getting building construction permit and affects the constructions industries. The abuse of power by some local authority personnel has also worsened the situation.

## **4.0 How Architect Self-regulation Benefits the Industry**

Among the direct benefits from the implementation of architects' self-regulation are:

### **Faster Process in Obtaining Building Plan Approval**

Self-regulation possibly is a better way of regulating the procedures and process in obtaining building plan approval and issuance of building certificate for occupation. The survey indicates that, self-certification of building plan by the Architects will shorten the time required in obtaining construction permit by approximately 3 months to 18 months for every project.

### **Elimination of Bureaucracy Exertion and Abuse of Power**

The professional self-certified building plan will not require local authority's approval; hence, it eliminates excessive dealing with local authority, bureaucracy exertion and abuse of power by local authority.

### **Improvement of Professional Architects Competency Level**

An accreditation council for self-regulation shall be set up under the professional governing bodies which will be responsible to ensure the competencies and professionalism of its members through professional discourses, trainings and education. Competency benchmarking and testing will be carried out prior to enabling self-regulation of its members. Only accredited professional members are allowed to self-certify building plan.

### **Preservation of Public Safety and Health**

The present practice by local authorities to accept and deem approve the structural plan, plumbing layout and sanitary plan (engineering plans) submitted by engineers without proper self-regulating measures is a dangerous compromise to public safety and health. With the new self-regulation, the governing professional bodies are obliged to ensure the competency of its members to protect the public.

### **Practical Enforcement of Building Codes Compliancy**

Currently, local authority check the building codes compliancy through the submitted plans, it is not a compulsory requirement for local authority to inspect the newly completed building. The new self-regulation model will shift the roles of local authority, instead of checking the plan; the local authority can use their resources to audit the physical building

periodically to ensure compliancy to building bylaws and to prevent illegal renovation and modification after completion.

### **Improvement of Workforce Efficiency**

With less bureaucracy in getting building plan approval, developers and the professionals can utilise their resources more efficiently to research, design and develop better solutions for the projects. Local authorities shall then focus more on preparing clear regulations and guidelines to be adhered by PSP and SP, thus reduce the ambiguity in building guidelines.

### **Reduction of Project Cost and Unnecessary Expenditure**

Efficient utilisation of resources and shorter lead time in getting construction permit will save the project overall cost. Based on the Property Industry Survey 2013 by Real Estate and Housing Developers Association (REHDA), in a housing development project, compliance cost can be 15% to 25% of the purchase price.

### **Avoidance of Work Redundancies**

Self-certification of building plan by the Architect will avoid the plan from being unnecessarily changed and amended to suit personal opinions and preferences of the local authority's personnel.

## **5.0 Self-Regulation Implementation**

### **5.1 Organisational Self-Regulation Approach**

The basic philosophy of a self-regulatory model is that if there is no risk of harm to the public, there is no need for any form of government intervention, including self-regulation, which might limit who can provide a service<sup>1</sup>. The common setback in self-regulating professions is the high degree of potential harm to both individuals and society when they are practiced incompetently or dishonestly. Therefore, the profession require rigorous regulation to protect the public interest<sup>2</sup>.

### **5.2 Professional Self-Regulation Implementation in Developed Countries**

In New York, self-certification known as "professional certification" was initiated in 1995 to help ease a permit backlog and stimulate developments. This initiative allows architects and engineers to confirm that their plans are compliant with applicable laws, rather than submit plans to local authority for approval. However, from an audit conducted by the New York Department of Building (DOB) in 2006 revealed that 57 percent of self-certified new building plans in that particular year failed to comply with building codes<sup>3</sup>. To curb the problem, a new 'self-certification bill' was proposed which enables the DOB to prevent architects from self-certifying if they have misrepresented plans in the past.

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<sup>1</sup> Randall, Glen E. (2000). Understanding Professional Self-Regulation. *Ontario Association of Veterinary Technicians*. [http://www.oavt.org/self\\_regulation/docs/about\\_selfreg\\_randall.pdf](http://www.oavt.org/self_regulation/docs/about_selfreg_randall.pdf)

<sup>2</sup> Douglas, Darryl. (2010). *The Architects Act - General Regulations and Bylaws* (D. Douglas Ed.). Alberta: Alberta Associations of Architects.

<sup>3</sup> Davis, Dorian (Producer). (2007, 30 May 2013). Architectural Record Daily News. *Architectural Record Web Site*.

United Kingdom implements a competent person scheme to self-certify certain types of building work without the need of getting building plan approval from authority, and the building owners benefit from lower prices as there are no building control fees. The competent person will be assessed to make sure he meets the level of competency required before accepted under the competent person scheme<sup>4</sup>.

In Chicago self-certification programme simplifies and streamlines the permit review process for eligible projects by allowing qualified architects and structural engineers to self-certify plans filed with the department do not contain any false information and are in compliance with the requirements of the Chicago Building Code<sup>5</sup>. In the 70s there are several regulatory reforms happened in the UK and US. Many regulations have been reform across the party lines, as well as regional and states influences. Self-regulation and deregulation of business policy became symbol of progressive economic thinking<sup>6</sup>.

## **6.0 Conclusion**

There are several models of building permit self-certification being practiced around the world. The characteristic of the models are shaped by local building codes, level of awareness and competency of the professionals. The model should be customised and tailored to meet the needs of the city. Standardisation of the model isn't practical until the building legislation and level of professional competency are standard. In Malaysia context, it is predictable that the political will and government policies will be the main determining factors in shaping self-regulation model besides the level of awareness and competency of our professionals.

The way forward in improving the dealing with construction permit, i.e getting building plan approval, works inspections, testing for clearance and issuance of CCC, is by implementing professional self-regulation system. In 2007, the move towards self-certification and self-regulation was implemented by the government when self-certification of building completion and compliance by the Professional Architects and Professional Engineers was introduced replacing the traditional certification by local authority. The government just need to move another step forward in dealing with building plan approval, to allow the building plan submitted by Professional Architects to be deemed approved and accepted as deposited plan. Local authorities have been practicing this for decades in accepting the structural plan submitted by Engineer, hence, the practice should be formalised and applied to both structural and building plan, **isn't that possible?**

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<sup>4</sup> Service, Government Digital (Producer). (2013, May 30). Government of UK - Housing and Local Services : Competent person scheme. *Government of UK*.

<sup>5</sup> Emanuel, Rahm. (2009). Rules and Regulation for Self-Certification Program. *City of Chicago official website*. Retrieved from An Overview of Self-Certification Program

<sup>6</sup> Gow, David John. (1997). Business and Government as Regulation *Business-Government Relations: Concepts and Issue* (pp. 101-123). Melbourne: Nelson ITP.