



# **4<sup>th</sup> ASIAN FORUM**

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**CODES AND REGULATIONS  
OF MALAYSIA –  
RECENT CHANGES TO  
IMPROVE THE BUILDING APPROVAL AND  
ISSUANCE OF  
CERTIFICATE OF FITNESS  
FOR BUILDING**



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# INTRODUCTION

- **The building industry in Malaysia is one of the most regulated industries**
- **Many acts, laws and regulation controlling the delivery process to protect the quality of the built environment, safety and health of the public**
- **The overly regulated delivery processes with many bureaucratic red tapes have caused unnecessary delay and add cost to the development**
- **The lengthy delivery process has rendered Malaysia uncompetitive and deterred foreign investments into the country**



**The government announced the Economic Stimulus Package in May 2003 to stimulate economic growth of the country. Under 'Measure 70c', the processing and approvals for Building Plans and the Certificate of Fitness for Occupation (CFO) will be expedited through the following measures :-**

- a) Establishing a two-tier 'One-Stop Center' (OSC) at the Local authority and at the State Government level to coordinate the building plans approval and CFO issuance;**
- b) Local Authorities will comply with existing Guidelines on approving Building Plans within 12 weeks and issuing CFOs within 4 weeks;**
- c) The no of technical departments involved in certifying CFOs will be reduced from 7 to 2, namely Sewerage Services Department and Fire Services and Rescue Department (for buildings with active fire fighting system). The consultants are responsible in ensuring the electricity and water supplies are ready for connection.**

- d) Exempting CFO requirement for several categories of buildings to promote self-regulation through appropriate certification by relevant professional bodies.**
- e) Giving priority to applications for Building Plans and CFOs for the manufacturing sector and related services.**
- f) Local Authorities and technical departments will approve CFOs without the requirement for developers or applicants to settle all payments; and**
- g) Disseminating information on Building Plans and CFOs through guidebooks and the electronic media.**

# RECENT DEVELOPMENT

- **Prime Minister called for the replacement of the issuance of the Certificate of Fitness of Occupation (CFO) by the local authorities with the certification by the professionals in June 2004**
- **The intention is to improve the efficiency of the building delivery system further**
- **The Ministry of Works (MOW) and Ministry of Housing and Local Government (MOHLG) initiated meetings and discussions with the industry players to seek their respective feedback and to prepare proposals for this to be implemented**
- **Most of the industry players support the call for de-regulation and for the professionals namely the Architect and Engineers to take on the role and responsibility of self-certification**

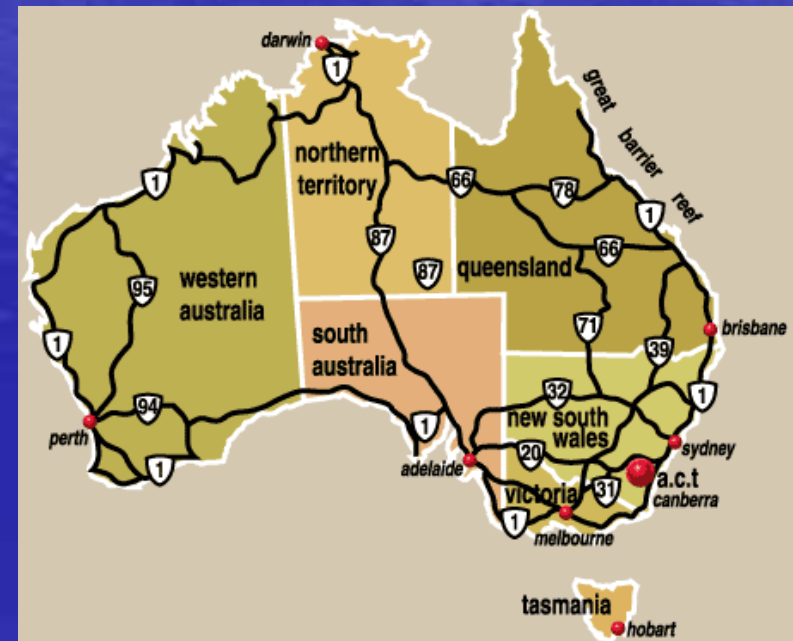




# STUDY VISIT TO AUSTRALIA

MOHLG organised a working visit to Australia covering the following three main cities to study the Australian's system and experience of self-certification :-

- **Sydney (NSW)**
- **Canberra (ACT) and**
- **Brisbane (Queensland)**



# **Observations of the Delivery Process in Australia**

- 1. The submission of building plans can be by any persons. In NSW, Architect's involvement is only mandatory for multi units' development**
- 2. The whole of Australia adopts Building Code of Australia with some modification from state to state**
- 3. The applicant has an option of getting a Private Certifier (PC) or the City Council to approve the building plans and to certify that the building is fit for occupation. All the states and territories in Australia have introduced private certification except West Australia**
- 4. Private certification is to create competitiveness between private sector and City Council to reduce the building approval / certification process**

- 5. The appointment of the PC can be by the owner or the Builder. In ACT and NSW, the City Council is amending the law not to allow the builder to appoint the PC**
  
- 6. As long as the safety aspects is in place and fully operational, and the building is substantially completed, the certificate for occupation can be issued even when some of finishes, painting, fittings etc are not completed. The following to be noted :-**
  - The role of PC is only to certify compliance of building codes and safety aspects and they are not responsible in ensuring quality**
  
  - Quality issues are the responsibility of the Builder. In Queensland, planning issues relating to amenities and landscape etc are not considered by PC in the certification**

- 7. There is no limit as to the number of projects that the PC can undertake**
- 8. The land title will only be issued when the main infrastructure serving that land is in place**
- 9. The Builders including the tradesmen are strictly regulated and are held liable and responsible for their works under various Acts and regulated by government agency. Only licensed Builder is allowed to build. Demerit system is implemented to monitor the performance of the Builder. The Builders are required to take up insurances**
- 10. The PCs are usually Building Surveyors registered with the Institute of Building Surveyor**
- 11. In Queensland, the PC is involved from design to certification of building plan, inspections during construction right up to issuance of certificate for classification. However, in NSW, the role of design and certification are kept separate**

- 12. The Principal PC may not have the expertise covering all aspects of the building and the Principal PC will have to rely on other PCs or professionals to certify compliance for the respective areas before he certifies completion**
- 13. In NSW, the government is introducing an Independent Statutory Authority called Building Professional Board (government agency) that will come into effect in Jan 2005 to accredit, audit and regulate the PC due to problems encountered with PCs. In Queensland, Building Services Authority (BSA) regulates PC**
- 14. All PCs must undertake Professional Indemnity Insurance. However, it was recognised that this has failed resulting from the collapse of the insurance system**
- 15. Victoria has introduced private certification since more than 10 years ago but NSW and Queensland introduced private certification only in 1998. The feedbacks are as follow :-**

- **Most of the Principle PCs are Building Surveyors who left the City Councils. This has caused problems within the City Council for losing their personnel to the private sector and they are unable to fulfill their duty initially**
- **Currently, more and more PCs are returning to the City Council, as the certification process and the penalty are getting too onerous due to literal interpretation of the requirement and the individual risk is getting too high. The insurance coverage is often inadequate**
- **Certification by City Council carries less risk as the City Council can take a more sensible stand in certification**
- **City Council is making it difficult for PC to access to information due to competition**
- **Collapse of the insurance system**

# **The Certification by a private certifier in Australia is not a suitable system to be adopted for Malaysia :-**

- **The context of practice between Malaysia and Australia varies greatly**
- **In Australia, the Builders and Tradesmen are regulated but the professionals are not so regulated whereas in Malaysia, the professionals are all regulated under the respective Boards established under the Act of Parliament but the contractors are not regulated**

# **The various models of certification and related implications**



# **Model 1 – Certification of CFO by Independent Certifier (Non Architects and Engineers)**



- **Availability and qualification of such person**
- **A new Act and law have to be put in place to regulate the conduct of such group of people**
- **What will be the responsibility and liability of the independent certifier against those of the submitting persons?**
- **Additional cost will be incurred for having to pay extra to engage such person to carry out the work and to bear the responsibility**

- **As the certifier is paid directly by the client, there is still this perceived conflict of interest**
- **This person has to be involved in the project from beginning to the end (ie. Design through to construction and completion) before he is able to certify properly**
- **This will create a serious drain of resources from the local councils. In Malaysia, the local authorities are already facing problems in getting adequate qualified personnel to carry out their basic duty**
- **The introduction of independent certifier will require a major change in the delivery system, acts, regulations and by-laws**

# **Model 2 – Certification of CFO by Independent Certifier (By Architects and Engineers Who Are Not the Submitting Person)**



- **2 sets of consultants will have to be engaged, one set as the designer, and the other set as the independent certifier. This will add to the cost of the project, which has very little added value**
- **The Independence of such independent certifier is also questioned as the client also pays him. There is still this perceived conflict of interest**
- **There will not be sufficient architects and engineers who are prepared to take up the role of Independent Certifier especially if he has to bear part of all the responsibility and liability**

- **It will be difficult to define the responsibility and liability between the independent certifier and submitting person**
- **Conflicts and problems between the submitting persons and the Independent Certifier for the entire process with regard of who has the final authority in all issues (from design to site matters)**

# Model 3 – Certification of CF by Submitting Persons



- **Certifications of Completion for individual detached houses by Architect to replace CFO issued by local authorities has already been implemented under the Uniform Building By-Law (UBBL). The call by PM only accelerates the process of self-certification by the submitting persons based on the established framework**
- **The OSC introduced under the Economic Stimulus Packages is already a move towards self-certification. Self Certification of CFO by submitting person is only a mere extension of the current role of the submitting person**
- **Under UBBL, the submitting persons are already fully liable and responsible. The Local authorities do not carry any liability. The switching of role certification of CFO from the local authority to the submitting person is only administrative in nature**

- **For housing projects, the Professional Architects are already been entrusted with the responsibility and liability of certifying various stages of works under the Housing Development Act and Regulations. With self-certification, the house purchaser will benefit, as certification by the Architect for handing over of vacant possession by the developer can now be concurrent with issuance of CFO**
- **Minimum changes required in the Acts and regulations, as these are existing provisions in UBBL for self-certification by Architect**
- **Architects and Engineers are very well regulated in Malaysia and the disciplinary framework is already in place. The Boards are given the power to reprimand, suspend and deregister members. The process can be easily reviewed and improved to strengthen its efficiency**
- **Complaints received from the house purchasers are mostly related to workmanship. Construction Industry Development Board (CIDB) has to seriously regulate the performance of the contractor and make them accountable and responsible for the construction like all the other parties in the whole delivery chain**

# CONCLUSION



- **MOHLG has in principle agreed to adopt self-certification of CF by the original submitting professionals, namely Architects and Engineer**
- **Many meetings were also held to prepare the necessary framework, working paper and the flow chart for approval and certification. Opportunity is also taken to streamline and improve the entire approval and certification process**

**The following proposed flow chart has been adopted in principle :-**



- **Cabinet paper has been prepared by MOHLG and will be tabled for adoption by the parliament soon**
- **The Building industry players and the professional institution in Malaysia hope that the proposal for self-certification will be implemented and we believe that it will improve the overall delivery system**





**END OF PRESENTATION**



**THANK YOU**

