

CONSEQUENCES AND FLAWS TO THE CERTIFICATE OF COMPLETION AND COMPLIANCE - COMPARATIVE ANALYSIS WITH PROPOSED SOLUTIONS¹

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I. EXECUTIVE SUMMARY

The aim of this article is to undertake an objective analysis of the implementation of the CCC in 2007 which was aimed at replacing the Certificate of Fitness for Occupation (“CFO”) previously issued by the local authorities under the Street, Drainage and Building Act 1974 (“SDBA”).

Under the former system, the CFO was issued by the local authority (LA) under the Uniform By-Laws of the Street, Drainage and Building Act 1974 (Act 133). The rationale behind this was that the former system was overly cumbersome, time-consuming and subject to abuse.

It was not unusual for inordinate delays to occur due to many factors including: non-compliance by the developer for the submission of Form E and its enclosures to the LA, additional conditions imposed by the LA at the time of application of CFO, the involvement of many technical agencies and the lack of technical officers to process the CFO.

¹ ‘The Certificate of Completion and Compliance (CCC) In the Building Industry -- Bugbear or Bunkum?’ by Ir. Harbans Singh and Sundra Rajoo [2008] 1 MLJ cix.

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Purchasers of properties encounter numerous problems whenever vacant possession is delivered to them by developers and the purchasers could not occupy or renovate their properties because the CFO was not issued.

Back in 2007 when the Certificate of Completion and Compliance (CCC) was implemented, self-certification, self-regulation, cutting down red-tapism and corruption were intended to be the plausible solutions for the problems posed by the certification process prevailing at that time. Bearing these in mind, a new system was proposed and eventually implemented.

Due to unending complaints particularly from developers that the local authorities were not adhering to the directives issues, the Government was concerned that such apprehensions would presumably translate into a loss of votes at the ballot box. Hence, the Government approached the problem with the implementation of the CCC. This was intended to rejuvenate the public's confidence and to give assurance to the public that the newly implemented procedure would be more streamlined and structured.

However, 10 years into its implementation, the CCC has proven to be more of a bane than boon. The reasons for this are many. For starters, the PSP holds a prevalent number of responsibilities and liabilities, including and not limited to criminal and statutory liabilities. The arduous strict liabilities vested upon PSP, residual powers of the local authorities, ambiguity in approach and the lack of effective check-and-balance mechanism in the issuance of CCC process are the major flaws of the CCC regime. The present trend has also indicated that the CCC regime proves to be an implosion which I will deal with in detail in this article.

The supporters of the CCC regime appear to have not scrutinized the liability issue in the haste to implement this method of public delivery system. This could be due to sheer ignorance or inadvertence. This view is reinforced by the fact that the liability issue has not been substantially addressed but merely polished. It is fairly apparent that the individuals and bodies responsible in the implementation of the CCC system have been zealous in their approach.

In the midst of this, there are calls for an implementation of a self-regulation approach in dealing with construction permit in Malaysia. The aim of this is purportedly to curb bureaucracy issues which currently plague the industry. However, whilst it is acknowledged that the issues in obtaining building plan approval are a cause for concern, this does not negate the need for the local authorities to hold liability for checks and balances and setting standards.

This proposal for a self-regulation system does not take into account the various practical difficulties owing to the wide array of liabilities sufferable by the PSP under the current CCC system. As set out in greater detail in this article, self-regulation only exacerbates the current state of affairs, as it deleteriously adds liability on the professionals. On the outset, self-regulation may seem like the predominant solution to current issues, but in reality, it would prove to be more detrimental than beneficial for the betterment of the building industry.

There are areas of concern with regards to the professional liability of the CCC certifier when the entire delivery system is examined together with the amended relevant laws. Exponents and proponents of the system have, however, sold this system on the basis that the professionals carry the same liability as the previous CFO system. This view is a grave misconception.

This article will further elucidate how the CCC regime works and its inadequacies. It is pertinent to note that all these gaps and more had been underscored by an article I have written with Ir. Harbans Singh back in 2008 “*The Certificate of Completion and Compliance (CCC) In the Building Industry -- Bugbear or Bunkum?*”².

II. Issues regarding Certificate of Fitness for Occupation (CFO)

Prior to the implementation of the CCC, the CFO used to be issued by the local authorities [See s 3, The Street, Drainage & Building Act 1974 (Act 133) and the Uniform Buildings

² [2008] 1 MLJ 109

By-Laws for definition of the Certificate of Fitness for Occupation ('CFO')]. As mentioned above there were a series of problems around the CFO issuance, largely due to the alleged unnecessary layers of bureaucracy in the certification process and the alleged rampant acts of gratifications in the local authorities³.

It was a normal occurrence that many developers give vacant possession without the CFO being issued. This has caused considerable difficulties to house buyers for such vacant possession does not mean beneficial takeover and ability to use of the relevant building lawfully.

The situation was the same for the commercial buildings and industrial premises. Disgruntled purchasers have complained to the Ministry of Housing & Local Government ('MOHLG'), other governmental authorities, activist consumer and non-governmental organizations such as the Consumer Association of Penang and FOMCA whenever there was delay or failure to issue CFO by local authorities. In the main, most of these complaints are well grounded and not frivolous.

III. CFO PROCEDURE

Following are the brief steps involved in the CFO procedure-

- i. **Building plan approval:** Following the procurement of the Development Order (DO) approval, for buildings, the next approval under the CFO procedure in order of precedence is the Building Plan approval.
- ii. **Plan submission by Qualified Person:** The plans must be endorsed by a qualified person (QP) for building plan approval. The endorser of the plan is responsible for the proper execution of the works until completion, subject to his removal and replacement with the consent of authority concerned.

³ 'Self-Certification versus private certification doctrines on the issuance of the Certificate of Completion and Compliance for buildings in Malaysia' by Kamarudin Mohd Nor (2008), Journal of Building Appraisal (Vol. 4, No.2, pages 125-131).

- iii. **Notification prior to commencement of work:** Commencement of any work should be immediately preceded by notifying the relevant authority through the issuance of the prescribed forms, failing such may attract applicable sanction.
- iv. **Supervision:** The qualified person is obligated to supervise the work through the life of the project.
- v. **Authority Inspection:** Upon the completion of the works, the relevant technical agencies inclusive of the local authority had to carry their respective inspections. Having satisfied that the relevant conditions of the plans approval had been met, the completion certification is proceeded with.
- vi. **Certification by Qualified Person:** The qualified person certifies in Form E that he had supervised the erection of the building and that he accepts full responsibility for those portions which he was respectively concerned with.
- vii. **Confirmation from Local Authority:** The vacant possession of a dwelling can be handed over to a purchaser when all the above conditions had been satisfied, and the local authority had to issue the CFO.
- viii. **Certificate of fitness and occupation:** In addition to the issuance of the full CFO, the local authorities were empowered to issue Temporary Certificate for Occupation (TCFO) and Partial Certificate for Occupation (PCFO). As the name suggests these are temporary certificates.

IV. THE CCC REGIME

CCC is defined as the certificate given or granted under any by-laws made under the Street, Drainage & Building Act (SDBA) and is meant to replace the previous Certificate

of Fitness for Occupation (CFO) issued by the local authorities under SDBA. (see s 2(b), SDBA (Amendment) Act 2007). This has been effective since 12th April 2007.

The initial steps of the approval process ie, for Building Plan Approval, Earthworks Approval, etc are similar to the CFO regime, save for the introduction of the term 'Principal Submitting Person' (PSP). SDBA defines PSP as a qualified person who submits building plans to the local authority for approval and includes another qualified person who takes over the duties and responsibilities of, or acts for the first mentioned qualified person in particular circumstances permitted by the applicable by-laws. Effectively speaking the PSP is meant to be a Professional Architect, Professional Engineer or Building Draughtsman.

Under the CCC system, the local authorities may inspect the building site at any time on its own initiative or due to complaints. In the event of failure to comply with the approved plans, the Act or by-laws in the erection and construction of the building, the local authorities may issue to the PSP:

- (a) a written notice requiring compliance within a period specified in the notice, as the Local Authority thinks fit, in order that the non-compliance be rectified; and
- (b) a directive in writing to withhold the issuance of CCC until such non-compliance has been rectified.

The LA may itself cause any work to be executed or any measure to be taken if it considers such work or measure is necessary. Even though the local authorities are vested with such umbrella powers, their liabilities are zilch. It is the PSP who has to ensure that all the technical conditions as imposed by the local authority have been complied with and in case he fails to do so, severe penalties can be imposed on him, described in detailed below. As such these demonstrable issues make this onus difficult for the PSP to bear.

V. CHANGE IN LIABILITY

With the move towards self-certification, it is inevitable that there is a parallel shift in liabilities away from local authorities to the professionals, in particular, the PSP. The bulk of the liability unfairly falls on the PSP. A number of statutes have been amended to increase the penalties to discourage wrongful certification and to expressly prohibit fraudulent certification by the PSP, making it much more onerous on the professionals.

Here are a few pointers elucidating the increased liability of the PSP under the current regime-

- i. **Statutory Liabilities:** With regard to his statutory liability, the recent amendments to the relevant laws and in particular the SBDA, impose additional duties and responsibilities with attendant sanctions which are heavier in terms of nature and content for e.g. custodial/penal in certain instances. Section 70(27) SBDA (Amendment) Act 2007 provides for an imprisonment of up to 10 years where the PSP permits to be occupied any building without a CCC.
- ii. **Liability under SBDA (Amendment) Act 2007:** If a person who is not the PSP issues a CCC; or if the CCC is issued without all the relevant forms prescribed by the by-laws made under the SBDA; or issues a CCC in contravention of a direction given by the local authority to withhold such issuance pending rectification of any non-compliance; knowingly makes or produces or causes to be made any false or fraudulent declaration, certificate, application or representation of any form prescribed in any by-laws made under the SBDA knowing the declaration, certificate, application or representation has been forged, altered or counterfeited; or permits to be occupied any building or any part of a building without a CCC shall be liable on conviction to a fine not exceeding RM250,000 or to imprisonment for a term not exceeding ten years or both (see s 70(27)(a) to (f), SBDA (Amendment) Act 2007). Both civil and criminal liabilities run concurrently making this a very severe liability for the PSP.
- iii. **Liability under Uniform Building By- Laws (Amendment) 2007 Act:** Where the PSP fails to deposit a copy of the CCC or PCCC (as the case may be) within the

period stipulated in by-law 25(3) with the local authority and the Board of Architects, Malaysia or Board of Engineers, Malaysia (as the case may be); or fails to comply with the notice issued by the local authority in respect of the rectification of any failure to the building or non-compliance with the by-law 25(4), shall be guilty of an offence (see By-law 28(1), UBBL (Amendment) 2007)

- iv. **Liability under Housing Development (Control and Licensing) Act:** A various other legislations have also been amended to impose increased liabilities on the PSP. For instance- under Section 22F of the Housing Development (Control and Licensing) Act 1966, any architect or engineer, as the case may be, who issues a progress certification knowing that the works therein referred to have not been completed in accordance with the provisions of the Sale and Purchase agreement, shall be guilty of an offence and shall on conviction be liable to a fine which shall not be less than RM10,000 but shall not exceed RM100,000.00, or to imprisonment for a term not exceeding five years or both.
- v. **Liability under the various Disciplinary Boards:** In addition to all the statutory liabilities discussed hereinabove the PSP may also be subjected to disciplinary action by the Board of Architects, Malaysia or the Board of Engineers, Malaysia as the case may be (see Section 17-19, the Architects (Amendment) Act 2007). Should there be wrongful or negligent or false certification by the PSP of the CCC or any other disciplinary offence committed by the PSP in the process of implementing the CCC procedure, under the Architect's Act 1967 (Amendment) Act 2007 or Registration of Engineer's Act 1967 (Amendment) Act 2007, these professional bodies are empowered to investigate and take the necessary disciplinary action against him.
- vi. **Increase in the quantum of penalties:** The relevant regulatory bodies concerned can mete out heavier penalties in the form of bigger fines, longer periods of suspension of registration and even custodial sentences (see Section 7A, 5(d), 24 and 25, Registration of Engineers (Amendment) Act 2007). As part of the 'self-

policing' or 'self-regulating' obligation, these professional bodies have been given more clout in the process and ultimately the sanctions they can mete out for disciplinary breaches and offences committed under the respective Acts by a professional of the like of PSP. There is a tremendous increase in the penalties under the CCC regime:

- The amendment to SDBA Act provides for penalty for the offence of not abiding by the orders of PBT is increased for general penalty and includes imprisonment for term not exceeding three years and a fine of up to RM10,000
- The Uniform Building By-Laws provide that the parties that issue Forms G and CCC without complying with the provision can be charged and conveyed to the respective professional bodies. Having said that the ultimate responsibility stays with the PSPs as they are the ones who finally issue CCC.
- The Architects Act 1967 and the Registration of Engineers Act 1967 have been amended to provide stricter disciplinary action by increasing fines, extending the duration of membership suspension and even cancellation.

vii. **Declaration of Responsibility:** The declaration as stated in form E (under CFO) and form F (under CCC) have similar language. However, the 2007 amendments subjects the PSP to sole responsibility for Forms G1 to G21. The PSP is compelled to look to the employer for assistance in sanctioning delinquent or dilatory third parties so that the CCC procedure is not derailed. And in case of any delay, the PSP can be held liable. However, under the CFO procedure, aggrieved parties rarely ever proceeded against the local authority as the latter was protected by immunities granted statutorily and under the relevant case law. The new system thus makes the PSP onerously liable for not only his faults but also because of the other parties, making the whole system unfair and prejudicial.

- viii. **Inspection during construction:** The claim by the supporters of CCC, of no more delays in having to schedule inspection for CFO by LA does not stand on solid ground. The inspection by LA can be managed and scheduled in such a way that does not have any bearing upon ongoing activities. Further, assuming that LA generally does not inspect, it gives to PSP and SP a free play ground, increasing the probability of biased and compromised outcome, which in turn renders the PSP severely liable.
- ix. **Inspection upon completion:** Again, the question of compliance of non-technical issue comes into play. As mentioned above, CCC leaves the non-technical issues to be resolved between the developer and the local authority concerned or through any other alternate mechanism to be worked out between the parties. The non-technical conditions cater mainly to the socio- economic needs, to name a few-
- a. The construction of low-cost houses in mixed housing development;
 - b. The bumiputra quota
 - c. The developer's financial contribution for the provision of social facilities
- These are issues of prime importance and have been completely marginalized under the new regime.
- x. **Regulation of Builders and Tradesman (Individually):** It is commendable that under the new system the builders and tradesman are required to sign individual declaration. However, it does not differ from the previous system in terms of accountability. Non-signing of a declaration does not negate accountability of individual contracts for the work they have executed. The best example in this regard would be the Neighbor principle under torts wherein the manufacturer is directly liable to the customer.

All these amended laws and by-laws have left the PSP vulnerable to direct complaints from the interested and affected parties such as purchasers, lenders and the like. To sum up, the PSP holds civil liabilities, criminal liabilities, statutory liabilities, professional liabilities and liabilities under tort. This is in addition to the fact that the other parties

involved in the certification process like contractor, sub-contractor, Consultants' site supervisors. It is also worth mentioning at this juncture, that the protection of double jeopardy does not apply to the PSP under his duties. Therefore, he holds concurrent liability for all of the above. Also to be taken into consideration is the loss of reputation and time defending these proceedings which cannot be quantified or replaced.

It must also be emphasised that the Courts will not treat a breach of these duties and responsibilities imposed by the various legislations lightly, as the liability for such breaches is strict. This position is reinforced by the case of *Pendakwa Raya -Iwn- Chew Weng Leong* [2015] MLJU 1238, whereby the Penang High Court reversed the Sessions Court's decision on appeal, and held that the prosecution had made out a *prima facie* case against Chew Weng Leong, the PSP who was allegedly to have illegally issued the CCC despite the fact that the Local Authority had withheld such issuance pending rectification of non-compliance.⁴ In this case, the MPPP had withheld the issuance of CCC and requested the developer to carry out the required "Full Scale Load Test" on the subject building which had allegedly settled.

The developer did not carry out the said test as required. Despite that, the PSP issued the CCC, in contravention of Section 70(27)(c) of the Street, Drainage and Building Act 1974. Breach of Section 70(27)(c) is a criminal offence and upon conviction, the PSP would be liable to a fine of not exceeding RM250,000.00 or to imprisonment for term not exceeding 10 years or both. In this case, the Penang High Court held that ***such statutory offence attracted strict liability, and the mens rea for committing the breach was presumed.***

The local authorities are absolved from most of the liabilities and cannot be made a party to the suits. Even if they are made parties to the suit, the chances of obtaining an order against them are bleak. This can be demonstrated in the recent High Court decision in *Aini bt Ismail & Ors v OSK Properties Sdn Bhd & Ors* [2017] MLJU 104. In this case, the purchasers of singly built detached houses sued the developer, the local authority and the PSP involved in the Project.

⁴ The PSP was eventually acquitted with no further appeal filed against him.

The High Court allowed the application made by the local authority to strike out the claim against it on the grounds, in the main, that there was no contractual relationship between the purchasers and the local authority, and that more importantly, By-Law 25A of the Uniform Building By-Laws 1984 [G.N. 5178/84] had vested full power to the PSP to issue CCC. By-Law 25A of the UBBL 1984 provides **that the PSP accepts full responsibility** for the portions that he is concerned with, which includes the supervision of the erection and completion of the singly built detached houses.

The High Court took note that under the CCC regime, the duty to ensure compliance with regard to CCC rested fully with the PSP, and that even though the Local Authority may also inspect the building, it was not mandatory for them to do so, Although the High Court also struck out the claim against the PSP in this case, it was done so due to incomplete / technical faults in pleading issues.

The PSP has no immunity unlike the local authorities under the previous and present regime⁵, as demonstrated in the case of *Aini bt Ismail & Ors v OSK Properties Sdn Bhd & Ors* [2017] MLJU 104. This opens up 'flood-gates' of cases and has proven to be of detriment to the professionals, though it has benefitted the long suffering aggrieved parties such as purchasers.

VI. COMPARISON OF PSP LIABILITY IN CCC REGIME *vis-à-vis* CFO

It may so appear on the face of it that the PSP carries similar responsibilities and liabilities as the qualified person in the previous CFO regime at least in terms of civil liability. However, it is in fact far from the truth in practice.

- i. **Increase in Administrative Role:** Under the CCC procedure, the PSP has much more administrative obligations to perform *vis-a-vis* the other building professionals namely, mechanical & electrical engineers and quantity surveyors, main contractors, trade/subcontractors, etc to ensure that statutorily prescribed Forms G1 to G21 are duly signed/endorsed, collated and checked before the CCC

⁵ *Majlis Perbandaran Ampang Jaya v Steven Phoa Cheng Loon* [2006] 2 MLJ 389, F.C.

is issued. This is in addition to his existing duties of to supervise the construction process and taking all the adequate means to ensure care.

- ii. **PSP reliant on employer for help:** Having no direct contractual control over such parties, to fulfill his statutory liability especially in regard to the Forms G1-G21, the PSP has to look to the employer for help in sanctioning delinquent or dilatory third parties so that the CCC procedure is not derailed. Hence, though ultimately directly liable to his employer, the scope of his duty of care is considerably wider by carrying out more duties and liabilities
- iii. **PSP liable to other interested parties:** Furthermore, as for the previous CFO regime, the PSP is potentially liable to other interested parties such as purchasers, lenders, etc for any breach in his duties vis-à-vis the issue of the CCC. Here again he can be subjected to claims under the tort of negligence; a very real possibility in view of the PSP undertaking self-certification. In the event of either the non-issue or late issue of the CFO under the previous procedure, aggrieved parties rarely ever proceeded against the local authority concerned as the latter was protected by immunities granted statutorily and under the relevant case law.
- iv. **PSP has no Immunity:** However under the CCC procedure, since the PSP has no such immunity, many an aggrieved party would be tempted to proceed against him either directly or as a joint defendant with the developer or vendor under the law of tort should he default in his prescribed certification duties. It is even more likely when the PSP is seen to have 'deep pockets' and/or is adequately covered by a Professional Indemnity Insurance Policy. The sum total of which would be the opening up of the 'flood-gates' of cases much to the detriment of the professionals, however more to the benefit of long suffering aggrieved parties such as purchasers.

VII. INADEQUACIES OF THE CCC PROCEDURE

Although much hyped as the definitive solution to the contemporary incompetent and unfavorable CFO regime, the CCC system in its existing form, nevertheless is far from perfect and suffers from a wide range of shortcomings, fluctuating from measly trivial deficiencies at one end of the spectrum to very serious lacunae that may render the procedure in practice a minefield of disputes and claims.

- i. **Inadequate Check and Balance:** The power to issue CCC rests predominantly upon the PSP, without an adequate mechanism for check-and-balance. The perception of the public is that the PSP would act more in the interest of their clients, who are the developers / employers, than that of the purchasers and end-users. This, and the emergence of case laws and rise in complaints by the public pertaining to the abuse or alleged abuse of the system and breach of PSP in the issuance of CCC has seriously dampened the confidence of the purchasers / public at large in the CCC system. Given the current state of affairs, the implementation of a self-regulation system will only heighten the need for a more effective checks-and-balance system due to increased power and responsibility vested upon the PSP.
- ii. **Non- technical issues left unaddressed:** CCC leaves the non-technical issues to be resolved between the developer/vendor and the local authority concerned or through any other alternate mechanism to be worked out between the parties. It effectively means that after the issuance of CCC, local authorities cannot ensure that the PSP meets his obligations vis-À-vis the relevant non-technical issues.
- iii. **No quality control mechanism:** CCC regime does not preclude the issuance of certificate on the grounds of quality nor does it provide a forum to do so. Such matters will have to be taken up as a cause of action in breach of contract or tort of negligence through arbitration or litigation.
- iv. **Lack of flexibility in implementation:** Construction projects spread over a period of time and may witness change in circumstances from initial approval

to ultimate realization calling for review of technical and non- technical conditions. The PSP has no such powers, for non-technical conditions the Local Authorities still retain some residual power but its ambit remains ambiguous.

- v. **Consultants' site supervisors not included in CCC Procedure:** the consultant's site supervisors are precluded from the matrix of responsibility under the CCC regime. The site supervisors play a crucial role during the execution and construction stage of a building and are the real 'eyes and ears' of the respective consultants. The very essence of CCC is to make all parties including PSP fully responsible and accountable for their respective scope of works gets defeated by the preclusion of site supervisors.
- vi. **Matrix of responsibility not effective:** the CCC does not provide for the registration and regulation of the parties such as contractors, sub-contractors. It seems that the instant matrix of responsibility appears to be hastily constituted without having sorted out its effectiveness as to its enforceability.
- vii. **Ambiguity in approach:** On certain occasions, the local authority still need to approve the forms submitted before the PSP. This breaches the spirit of the new system. Complaints have been received from various quarters about local authorities wanting to conduct a physical inspection of the building before they accept the CCC. This causes delays in the rolling out of the certificate, unrest in the public, confusion amongst the buyers as they were made to understand that local authorities do not have a say in CCC issuance.

VIII. NEED FOR LOCAL AUTHORITIES TO RESUME LIABILITY

The reason for introduction of CCC was to address the unnecessary layers of bureaucracy in the CFO system, the alleged rampant gratifications in the local authorities, the delays in certification by technical agencies of the local authorities at the time of the

CFO application and the lack of technical officers to process the CFO. However, despite being in effect for the last 10 years, the CCC is still a dark issue to many. Below are the reasons that portrays that the CCC system is defective and local authorities should resume the responsibility of issuing the certificates preceding vacant possessions.

- i. **Lack of check and balances:** Under the current system, the PSP enjoys the total freedom to design, produce plans and documents for the purposes of production without having to obtain prior approval from the local authorities. It is like giving all three powers namely, legislative, judicial and executive to one body. It often increases the probability of biased decision and prejudices the principle of checks and balances thus compromising on fairness. Whilst it has been argued that this self-regulation process is the best way forward as it is efficient utilization of resources and shorter lead time in getting construction permit – saves overall project costs, this would ultimately render the PSP liable for more aspects of the project, leaving them vulnerable to legal action.
- ii. **Lack of transparency and accountability:** PSP has substantial financial interest in the project, risking transparency, accountability, liability, neutrality and fairness of the process. Often developers have expressed their struggle with the architects over the fees rather than having issues with the local authority in obtaining the Certificate of Completion and Compliance. This suggests that some developers would rather deal with the local authority that they knew rather than paying fees to the consultants which might cost more. Abuse of power by local authorities were cited to be one of the foremost factors behind the need for a self-regulation system. On the flip side however, a self-regulation system would essentially subject the PSP to more abuse of power leading to deeper issues such as loss of reputation.

IX. URGENT NEED IN SETTING UP OF A TASK FORCE

Due to the problems inherent in the CCC system, the Malaysian construction industry is in dire need of a revamp. As such, it is recommended that a Task Force be set up involving

all the relevant parties to address these issues, and to propose solutions and improvements to the system. Amongst others:

i. Revert to the earlier regime where LA hold liability

The bulk of the liability should rightfully rest on the LA as was the case under the previous regime. On the outset, it would seem like the PSP carries similar liabilities as the qualified person in the previous CFO regime in terms of civil liability. This view is a fallacy. The PSP holds more administrative obligations, is more reliant on employers for help and are also liable to other interested parties under the CCC regime. This system should immediately be revamped or reverted to the previous system in which the liability was fairly set out.

ii. Statutory regulation of contractors

For the CCC procedure to be well executed, all parties should also be statutorily regulated in terms of registration, conduct and practice. Under the current procedure, such breaches are met merely by the developer or vendor withholding payments contractually due, imposing liquidated and ascertained damages (LAD). There have been laments by some parties with regards to legislation disparity in the local authority's practice towards approving building plans etc. Allowing a self-regulation system to be implemented will only give rise to more disparities such as these. Much work needs to be done in this area to curb this deficiency.

iii. Need for independent complaints body

It is important to have a positive political will on the part of the authorities and respective professional boards to reassure the public that all complaints are properly managed and investigated in a transparent manner. If public confidence cannot be restored by such mechanisms, it will then be imperative for authorities to set up an independent body for necessary checks and balances.

iv. Professional bodies disciplinary proceedings

Recent strengthening of the disciplinary proceedings vis-à-vis any complaint pertaining to breach of the CCC procedure has become an answer to the public's fears. This however, has not attempted to assuage any of the concerns of the public as they tend to view the disciplinary proceedings as a mere internal process.

The above suggestions are not exhaustive, but are only some of the issues that should be thoroughly considered. A more comprehensive study and report thereof must be conducted by a Task Force.

X. CONCLUSION

The CCC system strives to eradicate the inadequacies in the CFO regime that it replaces. The success of the same largely depended on the ability of the professionals to coordinate the activities of the many parties involved in any construction project. This is not by any means to say that the PSPs are ill-intended or lacking in integrity and professionalism towards their profession. The highest standards of professionalism is always attributed to the PSPs. However, the question does not rest on issues of professionalism but a mere legal issue as to the extent of liabilities that is not appropriately distributed.

Standing witness to the ten years the CCC system has been at play and the plethora of case laws it's safe to say that the time is ripe for a push back and dismantling of the present system.

The CCC system does have a number of deficiencies that are substantive in nature, as mentioned above. If these deficiencies are not addressed, they can potentially compromise and derail the very object the CC was meant to overcome. A mere patchwork revision of the existing system cannot address this problem systemically. Rather, the pertinent practical difficulties have to be opened to debate to find a practicable solution that does not affect or hinder efficiency in any way. The purpose of this article is only to imply that there is an urgent need to balance the scale of liabilities. To say the very least, there is an imminent need for open discourse and debate to rectify problems in the coming

years. This will in turn will greatly benefit all stakeholders including the PSP's and greatly aid the construction industry at large.

APPENDIX

TABULAR REPRESENTATION OF PREVIOUS AND CURRENT REGIMES

Sr.	Subject	CFO	CCC
i.	Effective date	Replaced by CCC - redundant	12th April 2007
ii.	Applicability	<p>CFO continues to apply where:</p> <p>a) work of erection has not commenced within 12 months from date on which plans and specifications of building were approved; if work commenced on or after April 12, 2007 (Commencement Date),</p>	<p>CCC can only be issued for projects that have obtained their Building Plan approvals after 12th April 2007. There are six essential services for the issuance of CCC:</p> <ul style="list-style-type: none"> • Confirmation of electrical supply (TNB)

		<p>b) work suspended immediately before coming into operation of Act and is to resume on or after Commencement Date; and</p> <p>c) erection of building without approval of plans and specifications by the LA under the Act immediately before Commencement Date provided that an application for approval is made to the local authorities on or after Commencement Date and the application is approved.</p>	<ul style="list-style-type: none"> • Confirmation of water supply) (water authorities) • Confirmation of connection to sewerage treatment plant or mains (JPP) • Clearance from lifts and machinery department, if applicable (JKKP) • Clearances for active fire fighting systems except for residential buildings not more than 18m high) (Bomba) • Roads & Drainage
iii.	Vacant Possession	Under CFO homebuyers used to receive the house keys (upon submission of Form E) but could not move into the houses because the CFO had not been issued.	The CCC system also ensures that Vacant Possession (VP) can be issued together with CCC.
iv.	Effective change in responsibilities	PSP has a statutory duty and responsibility to supervise the erection of the building to ensure that the erection is in	PSP has two-pronged duty – i) to employer to ensure that the contractor has executed the works in compliance with the

		<p>conformance with the approved under SBDA and the by-laws and that all technical conditions that have been imposed by the local authority have been duly complied with and that the building is safe and fit for occupation.</p>	<p>particular building contract ; ii) he has to ensure that all the prescribed Forms G1 to G21 in respect of stage certifications have been duly certified by the respective parties and received by him. Upon issuance of the CCC, the PSP accepts full responsibility for the issuance of the said certificate and he certifies that the building is safe and fit for occupation</p> <p>The PSP also has added responsibilities as compared to the Qualified person under the CFO regime.</p>
v.	Civil liability	<p>Qualified person owes duty of care both under his professional services agreement and the law of tort to his employer. Civil suits can be filed against the local authorities however, they are given immunity under section 95(2) of Street, Drainage and Building Act.</p>	<p>PSP is liable for CCC issued wrongly, for failing to deposit CCC, non-compliance with the approved plans and provisions of the SBDA or any by-laws made thereunder.</p>
vi.	Governing authority	<p>Certificate of Fitness for Occupation (CFO) was issued by the local authority.</p>	<p>The CCC is issued by the project's Principal Submitting Person (PSP), can be a Professional Architect, Professional</p>

			Engineer or a Registered Building Draughtsman.
vii.	Procedure	<ul style="list-style-type: none"> • Building plan approval • Plan submission by Qualified Person • Notification prior to commencement of work • Obligations of Qualified Person • Authority inspection • Certification by Qualified Person • Confirmation from LA • Certificate of fitness and occupation 	The initial steps of the approval process ie, for Building Plan Approval, Earthworks Approval, etc are similar to the CFO regime other than the introduction of PSP.
viii.	Flexibility while implementation	The Local Authorities as the ultimate issuers of the relevant CFOs, had the necessary power to review the non-technical and technical conditions prior to the issue of the CFOs and, in some cases, grant waivers, exemptions or dispensations as necessary.	With self-certification, the PSP has no such power, even in regard to the technical conditions. For non-technical conditions the Local Authorities still retain some residual power but its ambit remains ambiguous.
ix.	Non- obstante clause		Under the CCC regime, authority for the issuance of relevant completion certificate has been shifted from the local authorities to the professionals, the

			<p>former nevertheless retain a significant statutory power, either on a default or residual basis.</p> <p>Refer 70(22) of the SBDA (Amendment) Act 2007.</p>
x.	Statutory liability	Local authorities enjoy the wide statutory protection given to them under Section 95(2) of the SDBA.	<p>Recent amendments to the relevant laws and in particular the SDBA, impose additional duties and responsibilities with attendant sanctions which are heavier in terms of nature and content for e.g. custodial/penal in certain instances. Section 70(27) SBDA (Amendment) Act 2007 provides for an imprisonment of up to 10 years where the PSP permits to be occupied any building without a CCC.</p>