

IMPLICATION OF LIABILITY TRANSFER TOWARDS ARCHITECT IN THE
ISSUANCE OF CERTIFICATE OF COMPLETION AND COMPLIANCE (CCC)
IN BUILDING INDUSTRY

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DEDICATION

Specially dedicated to my beloved mother, my dearly husband and son.

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ABSTRACT

Building certification in Malaysia has undergone a transition phase in April 2007. It was the month that saw a momentous change in our building industry delivery system. The Certificate of Fitness for Occupation (CFO) regime was phased out and it was replaced by a new Certificate of Completion & Compliance (CCC) regime. Implication from this transition was the role of local authorities reduced while the responsibilities of a Principal Submitting Person (PSP) especially architect, seemed to have increased. It has said that the function and responsibilities of an architect under the new CCC regime was not going to be very different from what it was under the old system. What was merely required was increased vigilance on the part of an architect and professionalism to ensure that the CCC is issued only when the conditions for its issuance have been met according to law. However, 10 years into its implementation, the CCC has proven to be more of a bane than boon. This study is carried out to identify the implication on liability transfer towards architects as the PSP in the issuance of Certificate of Completion and Compliance (CCC) in building industry. This study will be focusing on implication of liability issues towards projects that involved more than one PSP based on real-life project and real-life court case. The main instrument of data collection was interview with experts in the construction industry. From the findings, the PSP who are also the front liner of a project are liable towards the building as a whole. From the lesson learnt of what have been practices in other developed country such as private certification can be apply in our building delivery system to enhance the existing building certification of CCC.

ABSTRAK

Persijilan bangunan di Malaysia telah mengalami fasa peralihan pada bulan April 2007. Ia merupakan bulan yang menyaksikan perubahan besar dalam sistem pensijilan bangunan dalam industri pembinaan. Sijil Kelayakan Menduduki (CFO) telah dihentikan dan ia digantikan dengan sistem Sijil Penyiapan dan Pematuhan (CCC) yang baru. Implikasi dari peralihan sistem ini adalah peranan pihak berkuasa tempatan (LA) telah dikurangkan sementara tanggungjawab seorang arkitek terutamanya Orang Utama Yang Mengemukakan (PSP) telah meningkat. Pihak berwajib menyatakan bahawa fungsi dan tanggungjawab seorang arkitek di bawah sistem CCC yang baru tidak terlalu berbeza sebagaimana di bawah sistem lama. Perkara penting yang perlu diutamakan adalah meningkatkan tahap kesedaran di pihak arkitek dan profesionalisme bagi memastikan bahawa CCC hanya boleh dikeluarkan apabila syarat-syarat pengeluarannya telah dipatuhi menurut undang-undang. Walau bagaimanapun, setelah 10 tahun pelaksanaannya, CCC telah terbukti lebih banyak kekurangan berbanding sistem terdahulu. Kajian ini dijalankan untuk mengenal pasti implikasi terhadap pemindahan liabiliti terhadap arkitek sebagai PSP dalam pengeluaran CCC di dalam industri pembinaan. Kajian ini juga akan lebih bertumpu kepada implikasi ke atas isu-isu liabiliti terhadap projek-projek yang melibatkan lebih daripada satu PSP berdasarkan projek sebenar di tapak dan kes-kes mahkamah yang sebenar. Instrumen utama yang digunakan bagi pengumpulan data adalah temu bual bersama pakar di dalam industri pembinaan. Daripada penemuan itu, PSP yang juga tunggak utama projek adalah bertanggungjawab sepenuhnya ke atas bangunan yang diperakui melalui CCC. Berdasarkan kaedah pensijilan bangunan yang diamalkan di negara majuyang lain, apa yang dapat dipeajari adalah kaedah pensijilan persendirian boleh digunapakai dalam sistem penyampaian bangunan di negara ini bagi meningkatkan taraf pensijilan bangunan sedia ada iaitu CCC.

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LIST OF ABBREVIATIONS

AI	-	Average Index
CCC	-	Certificate of Completion and Compliance
CFO	-	Certificate of Fitness for Occupation
D&B	-	Design and Build
DBB	-	Design-Bid-Build
LA	-	Local Authority
PAM	-	Pertubuhan Akitek Malaysia
PSP	-	Principle Submitting Person
RS	-	Rating Scale
SD	-	Standard Deviation
SoMF	-	Scale of Minimum Fees

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CHAPTER 1

INTRODUCTION

1.1 Introduction

In Malaysia, a building needs to be certified through a building delivery system set by the government prior to occupying it. This rule was set by the government to protect the public interest and at the same time to ensure it comply to safety, health, amenity and sustainability specified in legislation and by-law. Accident might happen anytime at any place without any warnings. Therefore, this set of rules are strongly necessary in building delivery system to certify a building. A building certification must go through a proper process according to law and regulations, with proper inspection prior to building certification in order to ensure its safety and fit for its purpose.

Building certification in Malaysia has undergone a transition phase in April 2007 to improve the building delivery system and also to enhance the competitiveness of Malaysia globally. Certificate of Completion and Compliance (CCC) was introduced to replace Certificate of Fitness for Occupation (CFO), which has been traditionally practiced before. CFO is a building certification previously issued by the local authorities under the Uniform Building By-Laws 1984 (UBBL) of the Street, Drainage and Building Act 1974 (Act 133). According to by-law 25, CFO should be granted once the qualified personnel have certified the Form F as set out in Second Schedule of UBBL, who acknowledged that the erection of the building was supervised throughout and accept full responsibility for any portion under their scope of works and the local authority will authorize and acknowledge that the building has gone through a thorough inspection, in writing.

CCC is a self-certification building delivery system issued by Principal Submitting Person (PSP) who is an Architect, an Engineer or a Building

Draughtsman who is registered under the relevant Act. PSP is the person who submits the building plan to local authority for approval. According to UBBL Amendment 2007, a PSP is fully responsible towards the building certification and acknowledge that the building is safe and fit for occupancy upon the issuance of CCC under his/her jurisdiction in accordance to relevant law and legislation.

1.2 Background of Study

April 2007 was the month that witnessed a vital change in our building industry delivery system. The Certificate of Fitness for Occupation (CFO) regime was phased out and it was replaced by a new Certificate of Completion & Compliance (CCC) regime. This new regime was implemented by the government officially on 12 April 2007 by The Honourable Malaysia 5th Prime Minister, Tun Abdullah Ahmad Badawi. Together with the implementation, it was announced on 13th April 2007 that One Stop Centre (OSC) and Commissioner of Building (COB) would also take effect. He stated that all pertinent laws and regulations had been suitably amended and put in place for the implementation of the said procedure and as of 12 April 2007, the CCC would replace the CFO and will be issued by professionals (Singh and Rajoo, 2008).

This radical change was implemented due to numerous problems occurred during the CFO regime where it was reported that a lot of buildings had been handed over to clients or even developers granted vacant possession to purchasers prior to obtaining CFO from the local authority. Such complaints related to this issue was lodged by purchasers to the Ministry of Housing & Local Government since the vacant possession is not beneficial and hence the building is occupied illegally. The delay in the issuance of CFO by local government is due to the old system that was overly cumbersome, time-consuming and subject to abuse by some parties (Ping, 2007). The shortage of the accomplice in the government also increases the delay in the issuance of CFO (Singh and Rajoo, 2008).

Therefore, CCC that is self-certification regime by professionals had been introduced and implemented to expedite the process and reducing unnecessary problems. The implication from this transition was the role of local authorities reduced while the responsibilities of a Principal Submitting Person (PSP) especially architect, seemed to have increased. What was being promoted during the implementation was that the function and responsibilities of an architect under the new CCC regime was not going to be very different from what it was under the old system (Singh and Rajoo, 2008). What was merely required was increased vigilance on the part of an architect and professionalism to ensure that the CCC is issued only when the conditions for its issuance have been met according to law.

This research will scrutinize the implications arising from the implementation of the CCC including possible conflict that may arise based on relevant act, rules and regulation that was said had been amended and gazetted during the implementation of new system. The issue is to enhance the building delivery system and at the same time to protect the professional liabilities.

1.3 Problem Statement

During the transformation period from CFO to CCC, the government promoted that there will be no change in the aspect of liability that a Principle Submitting Person (PSP) had to bear. Matrix of responsibilities was introduced by the government to complete the building certification in a form of Form G1 to G21 by relevant Submitting Person (SP), contractors and relevant parties involved in building delivery system. It provides an overview of sharing responsibilities between all parties, which is considered fair and equitable in the new building delivery system.

Under the former regime of CFO, the certificate was issued by local authority that is immuned to any lawsuit. According to section 95 (1) & (2), Street Drainage and Building Act 1974 (Act 133) – local authority and any officer employed in the administration of the Act had been statutorily given a protection against any lawsuit.

Nevertheless, the new regime of CCC is a self-certification doctrine issued by professionals who are PSP of the project. A PSP is definitely not immuned to lawsuit. They can sue and be sued for any misleading (Singh and Rajoo, 2008).

After 10 years of implementation, what is needed to be borne and faced by PSP is completely different from what is being promoted. The transformation of building delivery system has transferred the liability of building certification from the local authority to the professionals (Nor, 2008). According to Uniform Building By-Law (UBBL) 1985 Amendment 2007 on a replacement of by-law 25 stated that when a Certificate of Completion and Compliance (CCC) is issued, the principle submitting person accepts full responsibility for the issuance of the certificate of completion and compliance and he acknowledges that the building is safe and fit to be occupied.

This is a big different in the aspect of liabilities that a PSP needs to bear as compared to previous building delivery system where it is stated in Form E in Second Schedule of UBBL 1985 that a qualified person accepts full responsibility towards the portions under his scope of works. These two differences show that the liability as a certifier has changed; as the key person and also as a frontliner in certifying a building certification, despite what is being promoted with regards to the matrix of responsibilities in the issuance of CCC.

Question arise:

1. What will happen on liability for a project that involves more than one PSP?
Who will bear the liability for that project?
2. Is it fair for a PSP to take full responsibilities for other parties that does not have any connection directly?
3. What is the best solution for the matter arise in order to enhance the building delivery system of CCC?

1.4 Aim and Objectives of the Study

The aim of this study is to explore the implication on liability transfer towards architects as the PSP in the issuance of Certificate of Completion and Compliance (CCC) in building industry. To achieve the above aim, there are three objectives that have been established as follow:

- i. To investigate the implications on liability transfer of CCC for a project that using traditional delivery method, which involve more than one PSP.
- ii. To investigate the implications on liability transfer of CCC for a project that using design & build delivery method, which delivered in package deals.
- iii. To propose improvement in building delivery system to enhance CCC.

1.5 Scope of Study

The main thrust of this research is on implication of Certificate of Completion and Compliance in building industry towards architect as Principle Submitting Person (PSP) particularly on project that involves more than one PSP. The scope of this research will be confined to a project that involves more than one PSP, building projects implemented using design & built type of procurement and implication of liabilities towards PSP for the above-mentioned project to be delivered.

1.6 Significance of Study

This research is very important in discovering the effect and implication towards Principle Submitting Person (PSP), particularly architect in delivering a building to be occupied. The reality that a PSP needs to bear and face is truly beyond the expectation as what had been promoted during the implication of new CCC

system implemented in 2007. Full awareness on the implication and effect towards liability and responsibility will definitely change the mind-set of a PSP in the future. The burden that they have to carry with the liability will direct them to make sure that the building is erected according to statutory requirement.

For a project that involves more than one PSP, it is important to discover a clear demarcation on liability transferred between PSP. However, it is not reasonable for a PSP to take full responsibility for all the parties involved in certifying Form G1 to G21 which some parties are not directly tied to them. Therefore, a proposal in improving the processes is needed in enhancing the CCC system.

1.7 Method of Study

Generally, this subtopic will explain briefly on the research methodology applied throughout the study period entirely. The method used in this study will focus on the research aim and objectives. It also explains the strategies and approaches applied in order to achieve the objectives of the study. Figure 1.1 shows the flow chart of research methodology used in this study.

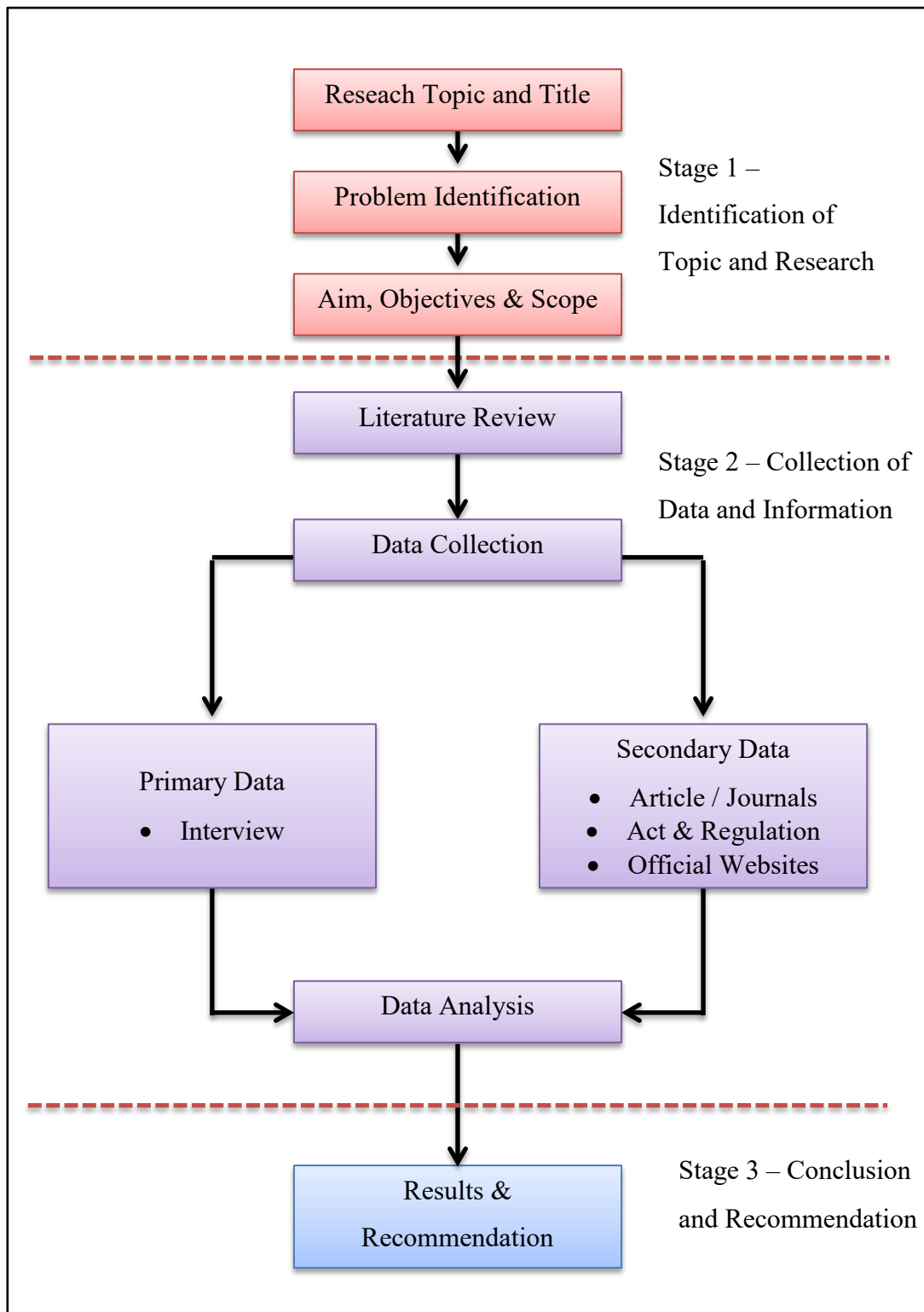


Figure 1.1 Flow Chart of Research Methodology

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