

SERVICE DELIVERY BY LOCAL AUTHORITIES: ISSUES AND CHALLENGES

Compilers

**Worran Kabul
Hilmi Abdul Rahman
Mat Zin Mat Kib
Jasman Jaafar
Geeta Sammanthan
Hamidah Hashim**



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An Overview on the Certificate of Fitness for Occupation (CFO) and the New Proposed Certificate of Completion and Compliance (CCC) in Malaysia

*Azlinor Sufian
International Islamic University Malaysia*

Introduction

There are three types of certificates that will be issued by a local authority before the purchaser is allowed to occupy the building; namely the certificate of fitness for occupation, temporary certificate of fitness for occupation and partial certificate of fitness for occupation.¹ In the housing industry in Malaysia, the issue of sub-standard quality of houses and delay in issuance of CFO are among the most common complaints that are attended and recorded by the Ministry of Housing and Local Government as well as consumers' associations. There are many cases where constructions of houses have already completed but buyers are unable to occupy the houses due to the non-issuance of CFO. Conversely, notwithstanding the issuance of CFO of houses, many house buyers complain that their houses do not meet the acceptable standard and specifications as agreed in the sale and purchase agreement.² The government has taken several initiatives to remedy the situations. Among others by establishing the One-Stop Centre system and reducing the number of requirements of the certification from the relevant technical agencies.³ The most recent suggestion for the improvement of the process of the CFO is through the CCC. It is the aim of this paper to discuss the following issues:

1. Requirements and processes in the issuance of the CFO;
2. Identify the legal and non-legal impediments to treat the CFO as synonymous with acceptable quality of houses;
3. Highlight the process of issuance of the CCC; its strengths and weaknesses; and
4. Some points for improvement.

Does CFO Signify Quality of Houses?

Schedule G and H of the Housing Development (Control and Licensing) Regulations 1989, provides that the delivery of vacant possession by the vendor-developer shall be supported by a certificate signed by the vendor's architect (named as qualified person) certifying that the said building has been duly constructed and completed in accordance with the all relevant Acts, by-laws and regulations and that all conditions imposed by the Appropriate Authority in respect of the issuance of the CFO have been duly complied with.⁴ A vendor-developer is allowed to hand over vacant possession of a house to a purchaser when a letter of confirmation from the Appropriate Authority certifying that the Form E of the Uniform Building By Laws 1984 (a statutory form used for the application of the CFO) has been duly submitted and accepted by the Appropriate Authority.⁵ If construction of houses has been properly supervised by the relevant authorities or bodies, the

submission of Form E may be treated as a final certification of a vendor's architect on the quality of houses. However in the Malaysian context, the issuance of CFO to the house will not automatically stand as a guarantee for quality. The reason why one cannot simply assume that the CFO is a mark of quality of houses may be due to the following state of affairs:

The nature of the inspection for the issuance of the CFO is based on the requirement of the Uniform Building By Laws 1984 which lays emphasis on health and safety (from fire) norms rather than quality in terms of house buyers' satisfaction.⁶ Consequently, a mere defect found in a house which does not affect the health and safety (from fire) will not be a ground for refusal of the CFO.

The CFO will not be issued only when the defects of found in a house are clearly visible and having a direct consequence to the health and safety (from fire) aspect. Conversely, under certain circumstances CFOs are issued despite the existence of clear defects of the houses that could directly affect the health and safety (from fire) of the occupants. In this situation the conduct, practice and credibility of the respective local authority, the qualified person who submitted the Form E (the form that is used for the application of CFO) and the developer itself are one of the barriers for house buyers to treat the issuance of the CFO as a mark of quality of a house.

In relation to the above points, in general the duty to supervise the construction works lies on the same person who submits the plans and specifications for building approval. Under the Uniform Building Laws 1984, the responsibility to supervise the construction works until its completion lies on the qualified person who has submitted and certified the plans and specifications for building approval.⁷ A qualified person here is engaged by a developer. Due to this fact, from the buyers' perspective it is the party having a financial interest in the progress of the project which does the supervision of works.⁸

Requirements for the Issuance of CFO

Delay in issuance of the CFO is one of the highest complaints received by Consumer associations such as the House Buyers Association and the Consumer Association of Penang.⁹ Many house buyers simply were handed the keys to their houses but are unable to occupy it unless and until a CFO is issued. Similarly as far as sub-divided buildings are concerned, strata titles will not be issued without the CFO. On the other hand from the developers' perspective delay in issuance of CFO for houses may affect the reputation of its development company. Thus the delay of issuance of the CFO or non-issuance of the CFO will cause inconveniences to many parties.

The problems pertaining to delays in issuance of the CFO may be due to the following situations:

1. Failure on part of developers to comply with the requirements necessary for the issuance of the CFO such as letters of clearance from the relevant technical agencies¹⁰; and
2. Inefficiency of the local authority.¹¹

A survey conducted by the Department of Building (Technical) of the Ministry of Housing and Local Government has revealed that among the reasons for the delay of issuance of the certificate of fitness for occupation is failure of the developer to comply with the approved plans

and preparation of the infrastructure plans, no letter of certification from the relevant agencies, failure to pay the required deposit, structural failures, problems concerning land and the developer's company. On the contrary developers complained that some of the requirements imposed by the local authorities for the issuance of the CFO have nothing to do with the requirements of the building by laws or planning guidelines.

Due to these situations, a modification was introduced in the process of issuance of the CFO i.e. by reducing the requirements of the certification from the relevant technical agencies from seven to one through the One-Stop Centre system on August 2003.¹² The local authorities shall function as the co-ordinating body for the issuance of the CFO within 14 days after the submission of Form E.¹³ This new process seems to be speed up the process of issuance of the CFO. However it has no contribution towards promoting quality of houses. Thus after about three (3) years of the implementation of this One Stop Centre system, the issue of the CFO is still debatable. It is due to this reason that the CFO is to be succeeded by the CCC.

Certificate of Completion and Compliance

It is believed that the replacements of the CFO with the CCC are among the measures taken in order to cut red tape and bureaucracy in the housing industry.¹⁴ Under the CCC issuance process, a certificate will be issued by any architect, building draughtsman or engineer upon completion of the construction of a house according to its plan and specifications as approved by the local authority. In other words in the CCC process, responsibility of the local authority is transferred to the professionals. It seems that the CCC is a move towards self-regulation in the process of the issuance of the certificate of fitness. Clearly, most likely the CCC will diminish the bureaucratic problems as mentioned above. On the other hand the more important issue would be on the extent of independency of the professional who has been empowered to issue the CCC.

As earlier said, the CCC is a move towards an international practice of private certification which is the norm in other developed countries. For instance in the United Kingdom, apart from control and supervision by the local authority over buildings upon the notices issued by the person carrying out building works who shall inform the respective authority of the stages of the construction, there is an approved inspector who works through a private system of certification. The system operates under a separate set of regulations known as the Building (Approved Inspectors, etc.) Regulations, 1985.^{15 16} An approved inspector is an independent party to the construction work and it can be a corporate or non-corporate approved inspector. The supervision of works by an approved inspector must follow certain standards and he is required to take out insurance cover in accordance with a scheme approved by the Secretary of State. The Construction Industry Council (which is more or less having functions similar to that of the Construction Industry Development Board in Malaysia. (CIDB) is the designated body for the approval of non-corporate approved inspectors. The approved inspectors must be knowledgeable in building regulations and statutory controls, construction technology and materials, law, fire studies, foundation and structural engineering, building services and environmental engineering.¹⁷

On the other hand, the corporate approved inspector may include home insurance providers such as the Municipal Mutual Insurance and the National House Building Council (NHBC).¹⁸ The NHBC imposes stricter rules than the UK Building Regulations. In addition, in the United Kingdom the certificate of fitness is not a problem since supervision by the local authority on the construction

work is done from the beginning until completion of the building. Besides that there is a home warranty insurance to cover any building defects.¹⁹ The financier will refuse to offer financing for the purchase of a house if the house is not covered by such insurance.

Likewise, in the United Kingdom it is the conveyancing practice that the purchase deed between a developer and a purchaser shall contain the provision that if the buyer is buying with the aid of a mortgage, the lender will not release the mortgage advance to developer's stakeholder until the property has been completed to the satisfaction of the lenders surveyor. Apart from that, the deed also contains clauses that provide for the rights of buyers (together with buyers lender to inspect the property during its construction and when it is finished.²⁰ In other words in the United Kingdom, the issue of Certificate of Completion of building is not only the concern of developers and buyers, but it will be taken care of by other parties who has interest in the property (house).

Another example of a country which implements the private certification system is New Zealand. This system is mentioned in Part VII of the New Zealand Building Act 1991 which provides for building certifiers. The building certifier must possess certain qualifications and he may issue a code compliance certificate if he is satisfied that the building works has complied with the provisions of the building code. Section 56(6) of New Zealand Building Act 1991 clearly stipulates that no building certifier shall issue a building certificate or a code compliance certificate if he has a professional or financial interest. This restriction is important in order to ensure the independence of a building certifier.

Comparatively, Singapore which has almost a similar process of issuance of the Certificate of Statutory Completion (CSC) that is identical to CFO, do not have many problems. The Building and Construction Authority of Singapore that is empowered to issue the CSC also imposes several requirements to be complied with by the Qualified Person. Among others, approval from technical departments for instance Fire Safety Bureau, CBPU (Pollution Control/Sewerage) and URA (Conservation Unit) and Certificate of Supervision for various types of works.²¹ However it should be noted that in Singapore, the Building and Construction Authority implements the Construction Quality Assessment System (CONQUAS). CONQUAS is an assessment system which sets out acceptable standards and measures by which a building could be assessed to conform or not conform to these standards.²² Even though there is no legal enforcement on the implementation of CONQUAS, many developers have surrendered their projects to be assessed through the CONQUAS system. This is due to the merits given to developers and builders who obtained a high score in CONQUAS. Indirectly, developers will ensure that its projects will be completed according to the schedule, obtained the CSC and conform to the plan and specifications as well as comply with the standards set out in the CONQUAS.

Besides CONQUAS, widely practiced in Singapore, another method of assessment is Quality Mark. This is the scheme where the Building Control of Singapore will assess every unit of newly completed residential projects. The Quality Mark for Good workmanship will be issued to the individual unit, which has achieved the stipulated quality workmanship standard set by the Building Control Authority. Every unit assessed for the Quality Mark will be issued with the Quality Mark certificate together with the CSC.²³

Some Points for Improvements

It is understood that in the construction industry, participation of many parties either professionals or semi professionals are essential. In the CCC the responsibility is solely passed to the professional who will certify the completion of the building. It is suggested that semi professionals such as contractors should be held liable too in case of any defects to buildings irrespective of the CFO/ CCC having been issued. At present the Construction Industry Development Board Act 1994 merely regulates the licensing of contractors but not their responsibilities on the quality of construction. Since the conduct and practices of other professionals such as architects and engineers are already regulated by the Architects Act 1967 and Registrations of Engineers Act, 1967 respectively, it is logical that the conduct and practices of contractors should be statutorily controlled too. Thus, the Construction Industry Development Board Act 1994 may be amended to include such a provision.

In addition to this, in order to avoid the potentiality of conflict of interest between a client-developer and professional that is involved in the issuance of CCC, an independent audit may be formed as a check and balance on the certification done by the professional. Another point for suggestion is to include a requirement in the clause to Schedule G and H of the Housing Development (Control and Licensing) Regulations 1989 for a developer to deliver vacant possession of houses together with CFO. This requirement would encourage developers to be more committed with its project. The present position that allows developers to hand over vacant possession of a house without a CFO to some extent has placed developers in the comfort zone. On the other hand, it would be an injustice to allow developers to remain affected by the inefficiency of local authorities. Thus, the local authorities should be equipped with sufficient manpower to cater to the development of the housing industry.

Besides, that it is timely for the Malaysian CIDB to take a pro active step to encourage developers to surrender their project for assessment through QUALITY.²⁴ Some incentives should be offered to developers. Serious implementation of the scheme will assist the CCC to achieve its objective. Nevertheless it should be noted that the successful of CONQUAS in Singapore and Quality Mark may be related to the fact that the schemes are managed and controlled by the BCA which is also a body that responsible for the approval of building plan as well as the issuance of CSC. In other words there is a close connection and direct monitoring over the compliance of building regulations and implementation of the two schemes by the same body. Thus, certain mechanisms should properly be studied on how the QUALITY may properly be implemented since it will involve two different bodies ie. the CIDB and local authority.

Conclusion

It is hope that the new system of CCC will be able to solve the problem of delay in issuance of the certificate of fitness and completion, and simultaneously will promote the quality of houses. The most basic element to ensure the success of the new system of CCC is the integrity of the professional involved.

Notes

- ¹ Uniform Building By Laws, 1984.
- ² See the records of complaints received by the Ministry of Housing & Local Government Malaysia: [Http://www.kpkt.gov.my](http://www.kpkt.gov.my)
- ³ The approval of this system was made in the Meeting of “Panel Memajukan Perkhidmatan Awam” on 18th. August, 2003 chaired by the office of the Deputy Prime Minister. Clause 24 and 27 of the schedules G and H respectively.
- ⁴ Ibid and by law 25(1) of the Uniform Building By Laws, 1984.
- ⁶ Basically this is the nature of all building by laws or regulations of any of the country. For the discussions on the background of the introduction of the Street Drainage and Building Act, 1976A and Uniform Building By Laws, 1984 in particular, refer to Kingtoon Loo, The Uniform Building By Laws, 1984 and National Development, *Ministry of Housing and Local Government Executive Talk*, Kuala Lumpur, 2000, 23rd. September. Lim Yau Lee, The Uniform Building By Laws: A Town Planner’s View Points, a Seminar of Implementation and Implications of the Uniform Building By Laws, 1984, Malaysian Professional Center, Kuala Lumpur, 1986.
- ⁷ By Laws 5 of the Uniform Building By Laws, 1984. The above duties are quite similar with the duties of a qualified person under the Singapore Building Control Act, 1989 and Building Control Regulations, 1989. However the standard of duty imposed by section 9(4)(a) and (b) of the Singapore Building Control Act, 1989 is higher than the Uniform Building By Laws, 1984 where the former provides that a qualified person must take *reasonable steps and exercise due diligence* either in supervising and inspecting works or in giving immediate supervision in the absence of the site supervisor. In Section 10 of the Singapore Building Control Act, 1989, besides a qualified person, the same standard of duty is imposed on the site supervisor. Thus comparatively, there is a statutory requirement for double supervision of construction works in Singapore, which is better than the Malaysian building law that statutorily relies on the qualified person alone. Even though in practice, besides an architect there would be a site supervisor, their appointment is under the building contract. Thus if there is any case of defective work, the local authority only has power to act against the architect and not the site supervisor. Besides this as a comparison under section 6(1)(c) of the Building Control Act, 1989 of Singapore, the application to the building authority for building plan approval, besides the requirement that the application must be submitted by a qualified person, it must also be accompanied with the certificate of the accredited checker in respect of plans relating to the structural elements of the building. It means that there is a double inspection of plan and specifications of the building.
- ⁸ Under the standard sale and purchase agreement of Schedules G and H of the Housing Development (Control and Licensing) Regulations, 1989 the progress billing that is certified by the architect will be issued to the purchaser or his financier for the release of progressive payments of the purchase price of the house. In practice, the developer will make a payment to the architect according to this progress billing.
- ⁹ See fn.2 above.
- ¹⁰ The example of technical agencies here are Sewerage Services Department, Public Works Department, Fire and Rescue Department and Department of Occupational Safety and Health.

- ¹¹ This would be related to the problem of lack of man powers of the local authority.
- ¹² The approval of this system was made in the Meeting of “Panel Memajukan Perkhidmatan Awam” on 18th. August, 2003 chaired by the office of the Deputy Prime Minister
- ¹³ Even before the establishment of One Stop Centre, By Laws 25(1) of the Uniform Building By Laws, 1984 (Amendment 1999) already provided that CFO shall be issued within 14 days after the submission of Form E.
- ¹⁴ Actually this system has already been practiced in the process of issuance of the CFO for the construction of a bungalow where the architect himself will apply for the CFO and personally answerable for it.
- ¹⁵ Vincent Powell-Smith and M.J.Billington, *The Building Regulations, Explained and Illustrated*, 11th. Ed., Blackwell Science, London, 1999, p. 4.1.
- ¹⁶ Ibid.
- ¹⁷ Ibid. p. 4.3.
- ¹⁸ Ibid.
- ¹⁹ Robert Abbey & Mark Richards, *A Practical Approach to Conveyancing*, 2nd Ed. Blackstone Press Ltd., London, 2000, p. 340.
- ²⁰ Ibid.
- ²¹ See Robinson, Nigel M & Llavers, Anthony P, *Construction Law in Singapore and Malaysia*, Butterworth, Singapore, 1998.
- ²² Teng Wye Ann, Quality Development in Singapore’s Construction Sector, a *Conference on Towards Quality in Construction*, Construction Industry Development Board, 3rd.-4th. May, 1994, Kuala Lumpur, p. 2.
- ²³ The scheme was launched on the 1st July, 2002. For further information refer to brochure on BCA Quality Mark for Good Workmanship issued by the Building Control Authority Singapore and [wywsiwyg://frmMain.4/http://www.bca.gov.sg...ent/conquas/Qualitymark/Quality_mark.html](http://www.bca.gov.sg/ent/conquas/Qualitymark/Quality_mark.html)
- ²⁴ An assessment of quality of construction which are almost identical to the CONQUAS that practiced by the Building Control Authority of Singapore.