

Benchmarking Identification of Work in other countries

Abstract

Identification of Work refers to provisions in legislation which specify that certain aspects of professional work can only be carried out by persons who comply with specific competency requirements. However, when the Council for the Built Environment (CBE) submitted recommendations regarding their identification of work policies, it was rejected by the Competition Commission as being in contravention of the Competitions Act. In order to have a clearer picture of the state of practice in other countries regarding identification of work, including policies and trends with respect to this, a desktop study was carried out to provide the CBE with a clear understanding of the situation in other countries in order to provide a benchmark that can be applied to the South African situation. The desktop exercise utilised qualitative content analysis to gain an in-depth understanding of the practice around the identification of work in other countries. 20 countries classified as developed countries, emerging economies and some BRICS countries were sampled. The findings indicated that the architectural and engineering profession is universally recognised as a full profession in all countries. Furthermore, in more advanced countries the law is used in lieu of Identification of Work (IDoW), such as insistence of professional insurance, regulation of building sites and the remedy of negligence lawsuits. In conclusion, the study identifies several critical factors that are applicable when benchmarking the identification of work across countries.

Introduction

Identification of Work (IDoW) refers to provisions in legislation which specify that certain aspects of professional work or functions can only be carried out by persons who comply with specific competency requirements, for example those registered under a certain professional body. This is intended to ensure that professional functions are performed by persons with the necessary competence, thus providing protection to the public.

IDoW is however a debatable policy as it can be deemed to restrict consumer choice and is anti-competitive. It is also likely to exclude some practitioners from carrying out work that they previously have done, it will increase professional

fees and that there are other alternatives of addressing IDoW targets.

The CBE developed a policy in 2008 to guide the Built Environment Professional Councils (BEPCs) in their identification of work. Subsequently, the BEPCs submitted their recommendations to the CBE after consultation with various stakeholders. The CBE submitted these to the Competition Commission in 2014 as applications for exemption, but, after consideration, the Competition Commission in 2016 rejected the applications as it viewed the IDoW as being in contravention of the Competition Act.

In order to get a better understanding of this problem, the CBE undertook a desktop study to provide insight of the practice around the identification of work in other countries.

Methodology

The study utilised qualitative content analysis which is useful in illustrating an in-depth understanding of content relevant to the phenomenon being studied. The study first identified relevant countries with which to review and benchmark the practice around the identification of work in other countries. Thus, twenty countries were sampled and the selection included both international and regional countries, i.e. developed countries, emerging economies and some BRICS countries. The sample size allowed for the collection of in-depth content. The sampled countries are: Australia, Bangladesh, Brazil, Canada, China, Cote d'Ivoire, Egypt, Spain, France, Germany, Ghana, India, Kenya, Nigeria, Philippines, Sweden, UK, USA, Zambia and of course South Africa. The key policies and regulatory frameworks governing the BE professions in these countries were then reviewed, with emphasis on identification or reservation of work, registration and licensing requirements. A comparative matrix was then developed for each BE profession across the countries that were reviewed.

Professions cannot be fully understood without reference to the field where such professions practice and gain their abstract knowledge. The Built Environment not only includes the physical environment but also the interaction of those structures with society and human activities.

The Built Environment is an interdisciplinary field which has as its key product the delivery of projects through multiple and temporary project-based organisation. These professions encompass various disciplines that are responsible for the design, planning, construction, management and use of the Built Environment's products.

Regulation refers to any policy actions taken by or on behalf of governments to influence and promote the economic and social well-being of its members' behaviour. Regulation of professions takes various forms such as regulations protecting professional titles, etc, the types and levels of regulation of professions differ from country to country depending upon the culture, history, economy and social factors.

In South Africa the regulation of professions is seen as an instrument for social reform, to improve professional competence and standards and support the government in achieving its developmental objectives. The economic effects of social regulation may be significant and may result in restrictions on competition which increases costs.

Reservation of work, or as referred to in South Africa, identification of work, refers to those who have a license to do certain work. It determines which professions, and which categories of registration within those professions, are competent to perform certain tasks in the BE processes.

A number of acts and municipal by-laws reserve work in favour of certain professions by, for example,

refusing applications of work that is not carried out by those professions. IDoW goes a step further and uses regulation to ensure that professional work is reserved to persons defined competent and qualified. The main rationale is to protect the public and the members of the profession.

The following possible negative aspects of IDoW are: increasing the fragmentation of BE professions; market closure where the profession prevents other from practising that trade; reservation of functions may stifle competition and infringe on the right to choose; it may violate the constitution that guarantees the right to freely choose and practise a trade.

However, studies found that the reservation of certain functions is necessary because it: reflects the natural and desirable differentiation and specialisation in occupation division of labour and function; helps to ensure the protection of health, safety and economic interests of the public; manages boundaries around the BE professions and their interaction; allows government to implement national policy and interventions through the professions; allows for measures to limit poor quality of professional services.

In South Africa the IDoW or reservation of work can only be done through an act of parliament and supporting regulations, though the relevant professional bodies should determine what work may be performed. In addition, the Competition Commission has concurrent jurisdiction over all professions created as an act of parliament.

Research Findings

The following can be noted from the benchmarking exercise carried out across the 20 countries.

1. The architectural profession is universally recognised as a full profession in all countries reviewed. It is typically publicly regulated, with the government or a public body in charge of registration and licensing. In very few countries is there reservation of work, and this is usually conditional (only certain kind of projects identified by size or complexity). Where identification of work exists, there is consideration of the rights of other professions (civil engineers, landscape architects, technicians) to carry out the work (mutual recognition of overlaps).
2. In developed countries the construction management / construction project management professions are typically recognised, while in emerging economies the profession is either in the process of being established or not recognised. Only in China certain functions of the above professions' scope of work have been reserved for the profession.
3. The engineering profession, as with the architectural profession, as it relates to the BE enjoys universal recognition as a full

profession. Only in a few advanced economies (France, Sweden) it is self-regulated while in all other countries a government body regulates the profession. In most countries there is no reservation of work; instead organisations, institutions and the public sector specify roles for the profession (e.g. municipalities will not accept building permits without a structural engineer's involvement). In more advanced countries the law is used in lieu of identification of work (IDoW), such as insistence of professional insurance, regulation of building sites and the remedy of negligence lawsuits.

4. The landscape architectural profession is in the process of recognition in most countries. Where it is fully recognised, the profession is typically self-regulated and there is no identified or reserved work. In most countries the profession is struggling to become independent of the architectural profession and South Africa is more advanced in this aspect.
5. The property valuation profession has been widely recognised as a profession in most countries, largely because of the need for independent valuers because of the importance of the property sector in most countries. The profession has a high level of societal status and a recognised exclusive body of knowledge. This has not translated to reserved work, but the profession's work has been made mandatory by several institutions, most notably courts and financial institutions.
6. The quantity surveying profession (grouped together with building/construction economists, cost engineers, cost estimators) is either recognised or well on the way to full recognition as a profession in all countries. In some countries it is however subsumed under the architectural, engineering or project management professions. In no country has work been identified or reserved for the profession.

Conclusion

Based on the above review, there are several critical factors when benchmarking the identification of work across countries. These are the following:

1. Do the equivalent professions in other countries meet the commonly accepted definitions of a profession:
 - A system for certifying individuals
 - The existence of a professional body that can certify the competence of members of the profession
 - A code of conduct for high ethical standards
 - Autonomy and occupational control within their professional jurisdiction
 - A high level of societal status, esteem and legitimacy
- High intellectual skills levels and advanced learning, represented by higher education qualifications
2. Is the profession self-regulated or publicly regulated?
3. Where are they along the professionalisation process and do they have:
 - Recognition as a full-time occupation
 - A professional association
 - A written code of ethics
 - A system of formal education
 - Protection of practise
 - Protection of job title
 - Regulation requiring licencing/identification of work
4. What reasons are given for licencing / identification of work?
5. What is the strength of the regulatory environment and is it feasible to use private law instruments in lieu of identification or reservation of work?
6. What alternative remedies exist in case of professional negligence?

Areas for Future Research

How advancements in technology (e.g., AI, automation) might influence the need for or the structure of IDoW in the BE professions.

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This research brief draws its origins from the CBE Research Report: Benchmarking identification of work in other countries. Available at the CBE Knowledge Hub.

Approved

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