

Legislative Impact Assessment Report

Construction Bill

1. Title of the proposal: Construction Act of the Kingdom of Bhutan

Lead Ministry: Ministry of Works and Human Settlement

Date of approval of Legislative proposal: 2nd September 2019 (33rd Lhengye Zhungtshog held on 13th August 2019)

Expected date of adoption: July 2022

2. The background of the proposal

The construction sector is a fundamental economic sector which permeates most of the other sectors as it transforms various resources into constructed physical, economic and social infrastructure necessary for socio-economic development. It embraces the process by which the physical infrastructure is planned, designed, procured, constructed or produced, altered, repaired, maintained, and demolished. Thus, the socio-economic development depends on the existence of a reliable and competitive construction industry that is capable of delivering quality services and value for money in the development and maintenance of the physical infrastructure.

Recognizing the importance, the government has allocated significant outlays in the past Five-Year Plans for infrastructure development. The government appropriations reveal that 60 percent of the total 11 FYP outlay was allocated for procurement, out of which 80 percent accounts for procurement of works. The construction sector employs more than 2700 contractors, more than 67 consultants, contributes about 16 percent of GDP and employs 2.56 percent of the Bhutanese workforce.

However, the construction industry in Bhutan is confronted with challenges such as lack of professionalism and technical capacity, lack of research and development, low mechanization, poor quality construction, poor motivation amongst construction professionals, poor construction safety practices, lack of social responsibility, lack of proper procedure for design and implementation, cost and time overrun, lack of legal and regulatory framework, amongst others.

Further, construction is the largest sector importing 85 percent (68,279 on an average) of the total foreign workers annually. However, studies show that there were no transfer of skills and knowledge to our local workers.

To address the challenges, the government approved the National Construction Industry Policy in February 2020 to give clear guidance to the sector. In order to provide legal support to the policy, it is imperative to have an appropriate legislation so as to regulate, revitalize and bring about fundamental changes in the construction industry of Bhutan.

3. Main objective of the proposal

The main objectives of the proposed Act, amongst others are as follows:

- i. to professionalize the construction sector and to ensure resilience, quality and safety of infrastructure in the country;
- ii. to provide for the development of the construction sector and to regulate contractors, engineering professionals, construction personnel, including *zohs*, consultant firms and such other persons;
- iii. to formalize and standardize the activities of the construction sector and to provide for the settlement of disputes;

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- iv. to provide legal status to agencies like the Construction Authority (Construction Development Board) to carry out their regulation mandates effectively and the Engineering Council for regulation and professional development of the construction professionals.

4. Policy rationale for the proposal

The absence of a specific legal framework to regulate construction industry has led to numerous contractual issues and challenges.

This proposed Act will address challenges mentioned in the background as follows:

- a. Professionalize the construction industry through:
 - i. Capacity development of contractors, consultants, construction professionals and skilled workers in the construction industry;
 - ii. Enhance regulation and recognition through the Engineering Council and the Construction Authority;
 - iii. Improvement of Contract Management/ Administration;
 - iv. Promote code of ethics and conduct;
 - v. Harmonization of procurement process.
- b. Improve construction quality through:
 - i. Development and enforcement of standards, guidelines and codes;
 - ii. Specialization in particular skills & trades; and
 - iii. Quality assurance and control mechanisms.
- c. Improve coordination through:
 - i. Clarity of roles, responsibilities and accountabilities of key actors in the industry; and
 - ii. Harmonization of all provisions of the relevant Acts, policies and regulations.
- d. Abolition of fronting and unauthorized sub-letting in construction industry:
 - i. This Act will streamline fronting and illegal sub-letting of works in the construction industry.
 - ii. Formulate guidelines/protocols for undesirable practices.
- e. Create employment opportunities by making construction jobs attractive to the local workforce;
- f. Foster innovation through:
 - i. Promotion of appropriate construction technologies;
 - ii. Encourage use of local construction materials;
 - iii. Research and Development; and
 - iv. Promote appropriate mechanization.

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- g. Foster collaboration through:
 - i. Public Private Partnership in infrastructure development; and
 - ii. FDI and Joint Venture in construction industry.
- h. Promote safety in construction industry through:
 - i. Professional liability and insurance;
 - ii. Contractual liability;
 - iii. Enforcement of regulation on Occupational Health, Safety and Welfare; and
 - iv. Enforcement of standards, codes and guidelines.
- i. Define rights, duties and accountabilities of key players in the construction industry.
- j. Legitimize Bhutan Building Regulation and Codes.

The proposed Construction Act, therefore will be an overarching umbrella Act to regulate the construction industry in the country.

5. Options to achieve the objectives

Since the implementation of the 1st FYP in the 1960s, the construction industry of Bhutan has been contributing significantly to the economic growth of the nation, apart from being an important contributor in the employment generation. Recognizing the importance of the construction industry, the government has made attempts to streamline the processes and systems to enhance efficiency in delivery of services. Some notable efforts of the government to bring about changes are:

- Establishment of the Construction Development Boards in 1987
- Establishment of Construction Association of Bhutan in January 2000
- Development of Construction Manual in 2007

Despite the efforts of the government to enhance the construction industry, the construction industry has not been able to reach an optimum level of performance in the absence of a specific Construction Act. Therefore, the National Construction Industry Policy 2020 recommends for a Construction Act to support the efforts of the government to achieve its objectives for the construction industry.

6. Impacts expected from the different options identified

The anticipated impacts of the proposed Construction Act are as follows:

Positive impacts

The following are some of the key positive impacts, amongst others:

- Provide the required legal status to the Authority to conduct its regulatory functions more effectively.
- Establish Engineering Council to professionalize and regulate the engineering professions within the sector
- Define clear roles and responsibilities among the key actors within the sector

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- Professionalize construction sector
- Improve quality of construction
- Improve coordination
- Regulate construction practice
- Create employment opportunities to Bhutanese
- Capacity building of engineering professions and contractors
- Promote mechanization
- Foster innovation through R&D
- Promote quality and safety
- Promote accountability

Negative impact

- Establishment of Secretariat office for Engineering Council will entail cost.

7. Justification of the preferred option

Given the highest potential to generate wealth, employment and sustainable growth, the construction industry has been identified as one of the priority sector in the revised Economic Development Policy 2016.

The absence of Construction Act has led to various issues (as aforementioned) impeding the growth of the industry. Without the Act, Construction Authority (CDB) is unable to perform its regulatory functions effectively and efficiently.

The interim Engineering Council is currently housed under the Ministry of Works and Human Settlement. The key objective of the Council is to regulate and professional development/capacity of the Engineering professionals, for which the Council has to be independent. The Engineering Council cannot be established as an independent body without an Act.

To address the issues confronting the construction sector, the National Construction Industry Policy 2020 clearly states the need for a Construction Act to professionalize, bring necessary changes in the construction sector and achieve its policy objectives.

8. Powers and functions, decision makers, delegates and review of decisions

The Construction Act gives powers and functions to the various actors at different levels within the construction sector. While it is not feasible to specify all in this report, a few notable ones are summarized as follows:

The Act gives powers and functions to the Ministry of Works and Human Settlement to oversee implementation of the proposed Act. It further mandates the Ministry to formulate/amend policies and strategies to bring necessary changes in the construction sector.

The proposed Act will provide legal status to Construction Authority and give various powers and functions to the Board and the Authority to carry out its regulatory mandates effectively. While the Board will have powers mostly related to policy issues and strategy, the Authority will have functions related to implementation of the Board decisions.

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Similarly, the Act will provide legal status to the Engineering Council. The Act gives powers and functions to the Council related to professional development and regulation of the Engineering professionals within the construction industry.

9. Stakeholder consultation

Given the importance and cross cutting nature of the proposed Act, a multi-sectoral taskforce was constituted with representation from relevant government and private agencies. The main responsibility of the taskforce was to guide the local consultants and provide strategic direction in drafting the Bill, amongst others.

In addition, with the support of the World Bank, a multi-national consultancy firm and an international consultant was recruited to provide international perspective and guide our consultants in shaping the Construction Bill.

Stakeholders consultations were conducted at various stages of drafting and finalization as follows:

Zero draft (Construction Bill)

After the finalization of the inception report, the PPD, MoWHS along with the local consultants had bilateral consultation with the following stakeholders to hear out their issues and concerns:

- Ministry of Works and Human Settlement
- Construction Development Board
- Thimphu Thromde
- Natural Resources Development Corporation Limited
- Ministry of Labour and Human Resources
- Bhutan Chamber of Commerce and Industry
- Bhutan Alternative Dispute Resolution Centre
- Construction Association of Bhutan
- TVET Council
- Ministry of Economic Affairs
- Bhutan Standards Bureau
- Ministry of Home and Cultural Affairs
- Ministry of Finance
- Anti-corruption Commission
- Royal Audit Authority
- Various rounds of consultations with the construction professionals – Engineers, Architects and Planners (both government and private)

The zero draft was developed after the stakeholder consultations, with additional inputs from the international consultants. The international consultants presented on their literature review of global construction industry legislation (Australia, Canada, France, Germany, Sweden, The Netherlands, India, Japan, New Zealand, Philippines, Singapore, UK, USA) and provided recommendations for Bhutan.

First Draft

- Multi-sectoral workshop was conducted to review the zero draft thoroughly.

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- Various rounds of virtual meetings were held with the international consultants to discuss, brainstorm and validate the zero draft.
- After the workshop, the zero draft was revised and presented to the Ministry of Works and Human Settlement as first draft.

Final Draft

After the endorsement of the first draft by the Ministry of Works and Human Settlement and by the multi-sectoral taskforce, another round of virtual consultation was conducted with the following stakeholders to validate the first draft:

- Central Agencies (RAA, ACC, NRDCL, BSB, ADRC, MoEA, MoH, MoE, MoF, MoLHR)
- 20 Dzongkhags (Dzongkhag Engineers and relevant officials)
- 9 Regional Offices, DoR (Chief Engineers and relevant officials)
- 4 Thromdes (Thrompons, Executive Engineers and relevant officials)
- Contractors (large, medium and small groups)
- Bilateral with Construction Development Board
- Bilateral with MoHCA – DLG & DoC
- Engineers, Architects and Planners (both government and private)
- The international consultants reviewed the Bill at different stages of drafting and provided their feedback

The feedback received from the stakeholders were brainstormed and comments were incorporated after vetting. The details of the feedback received during the stakeholder meetings are included in the Background document. Some notable comments received as follows:

- The need for a Construction Act was long overdue.
- The concept of Engineering Council seemed new to some of the construction professionals. They expressed their concerns of Council regulating their code of ethics and professional conducts as this was non-existent till date. Therefore, many rounds of stakeholder consultations were conducted separately for Engineering Council to sensitize the professionals and seek their concerns and feedback.

After the validation meetings with the stakeholders, the Bill was finalized.