Abstract:
The new enforcement strategies in business operation have challenged the control by regulatory mechanism where it evidences the emergence of self-regulation as a new enforcement mechanism in doing business. This recent trend is seen as the response to the critics that bureaucracy and laws limit businesses’ freedom and autonomy. Construction industry is also one of which that receive the imperative handling of self-regulation and one that manifests this, is the formulation of code of ethics for the contractors within this industry. Code of ethics for the contractors is viewed as crucial given that the level of disputes involving them in construction project are high and their profession is often tainted with the reputation of involving in unethical behaviours or at least highly seen as such by the community. However, the impact of implementation of the codes at times is debatable due to its self-regulatory status. This paper will discuss the code of ethics for the contractor as a mechanism for the self-regulation in the perspective of Malaysian construction industry with special reference to the practices of good ethics for the contractors as highlighted in Malaysian standard form of contracts.

Keywords:
self-regulation, construction, code of ethics, standard form of contracts, Malaysia.

1 Introduction

1.1 Background of study

It is generally accepted that self-regulation brings the benefit to various industries in terms of its flexibility in the mechanisms adopted by particular specific industries or associations. Nevertheless, some perceive it as only a myth and are sceptical on its enforcement (Mustapha Kamil, 2009). Construction industry, being very complex and integrated by many aspects and institutions; which is commonly subject to various disputes is seen to benefit a lot from this self-regulation approach if it is enforced efficiently. The business industries in most countries approach self-regulation voluntarily, even though under certain circumstances and methods, it is backed by legislative sanctions. This allows the industry to accommodate its own types and operation in preparing mechanism for self-regulation for example, the Code of Ethics. However, as a result, the industry tends to be lackadaisical in its enforcement. Therefore, this paper is aimed to examine the Code of Ethics as a mechanism of self-regulation in Malaysian construction industry and determine what can be the legal pressures for the Code of Ethics to be enforced. Data analysis has been made by reviewing the contents of literature on self-regulation and code of ethics. Interview also has been performed to obtain practical insights of Code of Ethics enforcement. This study is hoped to pave the way for further researches regarding the Code’s enforcement in Malaysian construction industry.
1.2 Construction Industry in Malaysia and Self-Regulation

Construction industry has become among the major concerns for Malaysia in recent decades. For example, in 2011, the Government has intensified Public-Private Partnership through implementation of several projects with the allocation of RM1 billion from the Facilitation Fund which amounted to GBP206 million. Such projects for example are construction of more highways, power plant in Kimanis, Sabah, health academic centre and facilities project such as International Islamic University Malaysia Teaching Hospital, Women and Children's Hospital and Integrated Health Research Institute Complex. Government's commitment in development is further observed in the implementation of growth corridors development such as Iskandar Malaysia, North Corridor Economic Region (NCER), East Coast Economic Region (ECER), Sarawak Corridor of Renewable Energy (SCORE) and Sabah Development Corridor (SDC). For the development expenditure of the corridors in the Midterm Review of the 9th Malaysian Plan, RM6 billion is provided in the 2009 Budget which amounted to GBP 1.2 billion. Major construction projects are involved to deliver these growth corridors. This is further accelerated in 2011 where RM850 million has been allocated for their infrastructure support which amounted to GBP175 million.

The move towards self-regulation in construction industry is treated as significant in Malaysia. The Malaysian Construction Industry Master Plan 2006-2015 (CIMP) developed seven strategic thrust envisioned to place the Malaysian construction industry as a world-class, innovative and knowledgeable global solution provider. The second strategic thrust of CIMP is to strengthen the construction industry image that had been criticised for many weaknesses such as abandonment of government projects, shoddy work, discriminatory awarding of contracts, not being environmentally-conscious and others (Construction Industry Development Board Malaysia. (2006). Thus, self-regulation is recommended to achieve this thrust. Among the key initiatives are professional bodies and association self regulating, tightening the particular schemes and licences as well as establishing code of ethics by construction-related associations. Malaysia goes further by providing 'Strategic Recommendations For Improving Environmental Practices in Construction Industry' and promotes self-regulation as one of its recommendation.

Various parties are involved in the construction industry. The owner (employer), the designer (design professional) and the contractor are the key players in a construction project. Meanwhile, the authorities (regulators), subcontractors, material vendors and others are the supporting players. These players are governed by various legislations, guidelines and policies for example the Town and Country Planning Act 1972, the Street, Drainage and Building Act 1974, the Uniform Building By-Laws 1984 and the Environment Quality Act 1974. An important institution, Construction Industry Development Board has been established under Malaysian Construction Industry Development Board Act 1994 (CIDB) whereby the Act establishes a Board to promote, stimulate, improve and expand the construction industry. Various tasks have been undertaken by this Board for instance, carrying out research, providing consultancy research, accrediting and registering the contractors (Natkunasingham I. et al, 1999). This Board is also responsible in regulating the conduct of the contractors by providing many seminars, trainings as well as developing Code of Ethics as guidance for the contractors.

Other important institutions are such as Malaysian Institute of Architects that controls, promotes and organizes in the matters of architecture, Board of Architects Malaysia which is a statutory authority responsible for the enforcement of the Architects Act 1967, Board of Engineers as well as the Board of Quantity Surveyor in Malaysia which operates similar functions. As the key players in

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the construction industry, these institutions play important role in promoting self-regulation by being given the tasks to develop schemes and incentives as well as various codes of ethics to increase construction performance.

2 Self-Regulation as a New Mode of Governance in Industries

The role of coercive and punitive methods found in regulatory mechanisms as the important enforcement system has attained a challenge by the wake of new enforcement strategies. Through regulatory method of governance, private individuals and businesses lose their freedom and autonomy to bureaucracy and laws. The development of globalization views the role that is being played by the market or private parties in rule making and its enforcement. This gradually shows the emergence of business entities at the place where it surpasses the legal and economic control by the government. Self-regulation is one of the evidence that proves this new trend.

The term of self-regulation is widely known to exist in various fields. Religion, philosophy, education, health, law, policy and corporate are among those fields that receive self-regulatory treatment thus, various definition can be found in accordance to each respective area. It literally means acting according to one's own volition and not as a response to an external constraint (Carver and Scheier, 2000). This meaning is also commonly used in psychology where self-regulation is an important area of human behavioral studies. On a more specific perspective, Ogus, (1999) interprets that the concept of self-regulation _covers an infinite number of self-imposed behavioural standards, including those determined internally by the management of a firm’. It also can be determined as _variety of attempts by corporations to establish rule-based constraints on behavior without direct coercive intervention of states or other external actors’ (Graham and Woods, 2006). Meanwhile, Sorsa, (2010) establishes that self-regulation is a collaborative effort where it demands the collaboration between various industry partners at various levels as well as with other stakeholders. This is evident in the industry self-regulation where it _entails collective action by member firms to improve the reputation of the industry as a whole’ (Lenox, 2006). Thus, to limit self-regulation meaning into a single, standard definition is definitely might not be possible. As a result, the concept of self-regulation itself becomes complex and diversified. Furthermore, its compliance may be subjective and vary according to particular approach in the industries or areas.

The types of self-regulation can be found in various approaches. Van den Heuvel, 1994 as cited in Van der Heijden, 2007 for example, defines the types as follows. Firstly, pure self regulation where initiatives are left totally with the parties by the government which become neutral if no law has been offended. Secondly, substitute self-regulation where the government has right to legislate if public interest is insufficiently served even though parties have their own initiatives. Thirdly, conditioned self-regulation where the government sets conditions to the results despite leaving the initiatives with the interested parties and lastly, covenants or contracts where the government is the participant in setting rules of conduct.

Meanwhile, Price and Verhulst, 2000 as cited in Van der Heijden, 2007 categorise its types into firstly, mandated self-regulation where the government defines the framework and requires the industry to formulate and enforce the norms. Secondly, sanctioned self-regulation where collective groups formulates the regulation that later subject to the government approval. Thirdly, the coerced self-regulation where a collective group itself formulates and imposes regulation due to the reaction on threats of statutorily imposed regulations by the government. Finally, voluntary self-regulation where there is no active state involved.

From the above definitions, it is observed that most types of self-regulation require the intervention of government legislation regardless of how and at what stage it is required. It is argued here that even in voluntary self-regulation, the enforcement also depends on the principles of general law as its background.

The emergence of self-regulation as a mode to govern the industries is due to many reasons as can be seen today. It can be legal, political, social and economic reasons for the industries to self-regulate. Mainly, it is due to the perceived shortcomings in the enforcement of legislation, seen by
the industrial community as a barrier to efficacy. The rapid growth of global economy creates many emerging complex modes of transactions, administrations and leaves huge venues for disputes in the markets. Many are skeptical to the sufficiency and ability of the legal infrastructures to cope with these market explosions where for an instance, they are perceived as ‘too-slow, cumbersome, and complicated (and hence too costly)’ (Hadfield, 2010, as cited in Sorsa, 2010). The expansion of companies’ businesses globally especially in countries with a weaker regulatory systems also demands that the industries need to be governed with the private regulator’s hand rather than ‘old-fashioned’ legal infrastructure. In some developing countries, self-regulatory chances put up by the government in their unwillingness to regulate, might become incentives for the multinational corporations that are attracted to their weak regulatory systems to invest in these countries. (Haufler, 2001 as cited in Graham and Woods, 2006). Thus, it is submitted here that self-regulation emerges in these countries, politically motivated in the need of changes in their economy as a mechanism for the country’s growth.

Self-regulation also emerges as response from the industries to the pressure from the society members such as consumers, activists and NGO. (Graham and Woods, 2006). Strikes, boycotts and campaigns adversarial to the companies which involve in particular unethical practices are commonplace. Hence, many standards, schemes, management systems or codes are being developed or complied with to avert criticisms by public.

Public regulations normally involve some lengthy process of formalities than private self-regulation. Thus, more time is involved, higher costs are required and more expenses as regard to the technicalities as well as expertise also need to be spent. In contrast, costs of formulation, preparation and enforcement within the self-regulation mechanisms are much lower since these activities are mostly centralized around the experts within the industries themselves. Williams, (2004) suggests that ‘the emergence of self-regulatory regimes within selected industries is a rational response to external pressures in the marketplace and the broader societies in which firm operates’.

3 Self-Regulation and Code of Ethics for the Contractors

The construction industry has familiarly associated with the image of being "Dirty, Dangerous and Difficult". Many problems have been associated with construction industry. For examples, according to the statistic released by the Ministry of Housing and Local Government, until 31 December 2009, the construction of 281 housing projects in the country were categorized as sick projects, involving 40,686 buyers meanwhile 148 projects were abandoned projects involving 31,824 buyers. Meanwhile, a survey regarding how professional ethics including by the contractors impact on construction quality demonstrates that ‘ethical standard in Malaysian construction industry is considered lower’, while ‘quality-related issues are found to have correlation with unethical conducts of the construction players’. (Abdul Rahman, et al 2010). It is thus pertinent to transform this perception in order to ensure the sustainability of construction industry and self-regulation is seen as significant in changing the way business is done. Obviously, it departs from the usual approach since through self-regulation, industry is more flexible in the enforcement frameworks within its own sphere.

Self-regulation can be enforced through various tools. Among them are the codes of conduct, reporting activities, environmental, social and sustainable management systems, certification schemes, CSR values, labelling schemes, transparency and disclosure guidelines as well as stakeholder engagement and dialogue and rating agencies. (Albareda, 2008). Reviews on the literature on the subject of code of ethics somewhat found out that in many occasions, the term of

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"code of ethics" has been used interchangeably with or defined inclusively as "code of conduct". For example, Anon. (2003) refers corporate codes of behavior as "corporate codes of ethics, corporate codes of conduct, or less frequently, as standards of a corporation". Meanwhile, Langlois and Schlegelmilch, (1990) as cited in Mcdonald, (2009) describe that codes of ethics as "a statement laying down corporate principles, ethics, rules of conduct, code of practice or company philosophy, concerning responsibilities to employees, shareholders, consumers, the environment and society' and they expand the discussion of "code of ethics" to include ethical guidelines, ethical policy, codes of conduct and governance directions. Further, their study highlights the difference between corporate code of ethics and professional codes whereby the former affects within the particular organization and the latter works within members of a professional body.

To achieve second strategic thrust of Malaysian CIMP 2006-2015, namely through self-regulation in addressing construction problems, the Government is aware of the necessity to have a specific code of ethics for the contractors. Based on the resolution of the Forum on Integrity in the Construction Industry in September 2005, CIDB has been given the task to develop this code and the Code of Ethics for Contractors (The Code) became effective on 1 March 2008. It outlines six key principles regarding the contractor's ethical practices as below:

Principle 1: Honesty in carrying out responsibilities.
Principle 2: Compliance with the laws and regulations.
Principle 3: Respect for individual and community
Principle 4: Importance of quality, skills and standards.
Principle 5: Importance of safety and health.
Principle 6: Importance of environmental preservation.

The Code is accepted and adopted by all building contractors in Malaysia, whether local or foreign contractors, in accordance with the definitions in Act 520 (Construction Industry Development Board Act, 1994 whereby all contractors are obligated to abide by this Code of Ethics. (Clause 1.2 (i) and (ii), Code of Ethics For Contractors, 2009). The wordings in the Code itself are thus unclear as regard to its compliance and enforcement and it has to be studied further to look at these issues. Stevens, (1994) illustrates that the intent behind an application of a corporate code of ethics can be determined based on the following issues such as the manner of how the codes are communicated to employees and the extent of how the code is enforced as well as the impact of violation. These can lead to the answer whether the intent is "self-protection, an attempt at promoting ethical leadership or management of a public image". In this study, review of several corporate codes of ethics studies has been made and it shows that most codes are having little information on the issue of how they are communicated in the companies. Meanwhile as regard to enforcement, it discloses that the degree of code's enforcement varies for these companies where some codes did not have enforcement and implications mechanism while the others do have them for examples, requirement to sign affidavit of compliance (Cressey and Moore, 1983 as cited in Stevens, 1994), termination on code's violation (Pitt and Groskaufmanis, 1990 as cited in Stevens, 1994) and even some minority are having discussion as to legal prosecution (Matthews, 1987 as cited in Stevens, 1994). Regarding this, Sandersen and Varner, (1984 as cited in Stevens, 1994) appeared to conclude that the codes of ethics in their study were not effective given the general and non-descriptive language in the code regarding enforcement.

This study can be explored in comparing the Malaysian code of ethics for the contractors where focus should be made to look on how the Code is applied and enforced against these construction companies. As mentioned above, all building contractors including foreign contractors under the definition in Act 520 are required to accept and adopt the Code under clause 1.2. However, it provides for the application in general as no wording such as "shall" has been used. The Code also outlines all obligations by using the word "must", Nevertheless, there is nothing in the Code that provides for the implication in the event any violation arises albeit clause 1.2 (ii) that provides for the obligation of all contractors to abide by the Code. It also appears that no method of application
is provided in the adoption of the Code. Thus it is not clear whether the construction companies have to adopt the Code in their policy framework or not for the purpose of application. Likewise, the Code also does not provide for the administrative procedures for the handling of any violation. In the absence of such provisions, it can be deemed that the compliance of the Code on its wordings is very much voluntary in nature. Based on the language of the Code regarding enforcement and application, it can be assumed that the Code is a collection of mere guiding principles for the contractors to ensure their ethical behaviours that have no binding effect.

To inculcate the ethical principles among contractors, CIDB in practice has nevertheless taken steps for examples, mandatorily requiring the contractors to attend integrity courses in applying or renewing licenses. Even though, there is no specific monitoring Board has been set up under the Code presently, however at internal level, an informal enforcement team will be put up by CIDB that functions to provide advices for the contractors if any unethical case has been reported against them. Practically, the contractors will normally alert on this step since they have the reputation to be taken care of with CIDB as their regulatory body. (Ahmad Mahyadin, personal communication, June 21, 2011). In addition, the registration of contractors is also subject to specific conditions that also include ethical aspects where the registration can be cancelled, suspended or revoked if they involve in any fraud or misrepresentation in obtaining the certification or fail to execute any work unreasonably. However, it is submitted that these ad-hoc based actions should be completed with a formal task-force enforcement mechanism.

4 Application of general law against the Code of Ethics

The above analysis shows that there is no mandatory requirement for the construction companies to implement the Code of Ethics as a self-regulatory mechanism for contractors. The question thus arises as to how does compliance to ethical practices could be safeguarded? It is noted that self-regulation operates within the backdrop of the law. Therefore, it is necessary to examine construction contract as mechanism of ethics compliance in construction industry and some principles of general law to look at their applicability as background legal redress for non compliance of self-regulatory mechanisms. In fact, some ethical practices for the contractors have been found mandated but are scattered throughout various pieces of legal mechanism. The rights and obligations of construction key players are guarded by the construction contract they entered into. To date, the main construction contracts applicable in Malaysia are Standard Forms such as Public Works Department 203A (PWD 203A) (Revised 2007) which is applicable to government projects and Persatuan Arkitek Malaysia (PAM) Contract 2006 which is applicable to the private projects. As the main tool that controls the relationship between these players which includes contractors, it should also be an important mandating mechanism for ethics implementation pertaining to contractors. Therefore, some important express and implied terms of the Standard Forms should be analysed.

4.1 Express terms in Standard Forms of Construction Contracts

4.1.1 Performance of the Contract.

There are many obligations of the contractors that reflect the required ethical practices. Nevertheless, there are some important obligations that must be carried out for example, in the PWD 203A where bills of quantities form part of the contract, clause 9.2 (a) provides that the contractor undertakes that it shall comply with all requirements, statutory or otherwise, regulating or relating to the conduct, trade, business or profession of a contractor, and the contractor shall be fully and solely liable for all costs incurred thereby. This clause is thus arguably refers to all requirements including the Code of Ethics which is not statutory that regulating the conduct of

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1 CIDB Malaysia, Contractor Registration Certificate.
contractors. Based on this clause, any breach of Code of Ethics should be treated as breach of this contract.

In clause 10.1(b) of PWD 203A, it is provided that the contractor shall perform the works in a proper manner and in accordance with good management practice and to the best advantage of the Government and clause (d) provides among others that the performance shall be done with the exercise of professional judgment and practice, requisite skill, care and diligence.

PAM 2006 Contract also provides that the employer may determine the employment of the contractor if the contractor fails to proceed with the works regularly and diligently under clause 25.1(c). These in fact imply that the contractor shall take the responsibility and use the skill, care and diligence to exercise construction activities that is more responsible towards the stakeholders. These clauses are thus reflecting the principle 4 outlined by the Code of Ethics where the contractors must uphold quality, skills and standard in their works.

4.1.2  Compliance with the Law

The contractor also shall comply with the relevant laws. This is provided in clause 21.1 of PWD 203A whereby it states that the contractor shall comply with any law, regulation or by-law, or any order or directive issued by any public authority or public service company relating to the works or in the case of public authority or public service company, with those systems the same are or will be connected. Government also should be indemnified against all penalties and liabilities if the contractor breaches any such statutory requirements.

Similar obligation can be found in clause for of PAM 2006 Contract whereby clause 4.1 provides that the contractor shall comply with and submit all notices required by any laws, regulations, by-laws, terms and conditions of any appropriate authority and service provider in respect of the execution of the works and all temporary works. Meanwhile, PAM 2006 Contracts clearly by clause 4.4, places liability against the contractor to pay and indemnify the employer in respect of any fees, levies and charges including any penalties which may arise from the contractor’s non-compliance with any law, regulations, by-laws, terms and conditions.

These obligations are in line with second principle of the Code of Ethics, namely compliance with the laws and regulations. There are many legislations or rules involved in the procedures and process of construction projects. For example, the Environmental Quality Act 1974 imposes prohibition and restriction on main pollution activities into a specific environmental medium. Here, it implies the ethical practices as required in sixth principle of the Code, whereby all contractors must preserve the environment in carrying out their works.

Regarding the workmen, the contractor also shall comply with the Employment Act 1955, Employee’s Provident Fund Act 1951 and the Industrial Relations Act 1967. For instance, clause 17.1 of PWD 203A provides for duty of the contractor to register local employees that includes permanent resident workers under the Employee’s Social Security Scheme in accordance with the Employee’s Social Security Act 1969. In the default to comply this, the government or the superintending officer may withhold an amount from any money which would otherwise be due to the contractor and which in the opinion of the superintending officer will satisfy any claim for compensation by workmen that would have been borne by the scheme had the default was not occurred. The Government may also pay for such contributions which are due and unpaid and deduct it from the amount due to the contractor by the Government.

PAM 2006 Contract provides similar obligation in clause 19. Since foreign workers are allowed to be engaged in private projects unlike the government projects, it further provides for the duty of the contractor to take out and maintain insurance policy for these workers. These reflects the fifth principle of the Code where among others, the contractors must pay attention to the welfare of their workers on humanitarian grounds in all circumstances throughout the period of their services as required by law.\(^1\)

\(^1\) CIDB, Code of Ethics for Contractors.

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4.2 Implied Terms in Construction Contracts

The implication of terms into contract is one of the important elements in contract law. In many occasions, courts are required to determine these by implying the terms into the contract necessary to give effect to the contract apart from its express terms. In *The Moorcook case* (1899) 14 P.D. CA., Bowen LJ explained that the implication made was derived from the presumed intention of the parties, with the object of giving business efficacy to the transaction that should have been intended by the parties. The construction contract is similar to the other types of contract in its application of common law rules. Courts will imply terms in construction contract to make the contract works.

This study submits that implied terms that applicable in construction contracts which underlie the notion of ethics are as follows:

4.2.1 Workmanship.

The contractor must use proper skill and care in carrying out his obligation under the contract, which means one of workmanlike standard. The workmanship exercised by the contractor is the ordinary skill and care that can be expected from a reasonably competent contractor. It has been suggested that this is a continuing duty during construction process, not only upon completion (Furst and Ramsey, 2001). Thus, as the ethical competent contractors, in performing the construction works, all measures should have been reasonably observed to ensure a socially safe built environment. Construction companies should ethically control and monitor many aspects in their works, for example construction waste management, where they need to professionally scheduled the minimization and recycle of waste program that affect the soil, water and air largely, especially in major projects. Those in fact are the ethical practices within the scope of contractors’ works.

4.2.2 Duty of Good Faith

The application of the duty of good faith, has received different treatment in commercial world. The courts in England hardly acknowledge this duty but on the other hand, other common law countries such as Australia and New Zealand are willing to accept this duty while US recognizes it in contracting. Even though no unanimous definition of good faith has been upheld, nonetheless, the concepts such as fairness, honesty and reasonableness have been associated with the proposition to acknowledge the duty. There are three notions which embrace the doctrine of good faith as suggested by Sir Anthony Mason. Firstly, an obligation on the parties to co-operate in achieving the contractual objects (loyalty to the promise itself), compliance with honest standards of conduct and compliance with standards of conduct which are reasonable having regard to the interests of parties. (Peden, 2003). It is viewed that this duty can be strongly held as the basis for ethical compliance. Construction companies and the employers should be responsible, reasonable and honest in their works. They should govern their relationship ethically to give effect to win-win situation including to the other stakeholders. Good ethical governance thus is reflected through the duty of good faith owed by them towards each other.

4.3 Law Relating to Criminal Offences

In self-regulatory method, nothing should be tolerated if any law has been offended, for example as regard to corporate crime. Corporate crime is defined as ‘the offences committed by corporate officials for their corporation and the offences of the corporation itself’ (Clinard and Quinney, 1973 as cited in Shuan, ca 2011). As an example, it is an ethical practice that the contractors should be honest as provided by the Code, thus they have to abide by the rules of proper tendering process. In the event of non-compliance, this may trigger fraudulent and unfair transaction and if the contractors involve in unscrupulous acts that are against these rules, the criminal law can be used...
for example by using the Penal Code.\textsuperscript{1} If any issue of bribery is involved, then anti-corruption legislations could also be invoked.\textsuperscript{2} This shows that the autonomy given to the self-regulation is always safeguarded by the laws, particularly if it involves serious breach or misconduct.

5 Conclusion

It is obvious that where the Code comprises a broader context of stakeholders where ethical practices should be upheld, the construction contract merely binds and covers the parties in the contract. Therefore, problem will arise where unethical practices are being complained against the contractors by parties outside the contract (Ahmad Mahyadin, personal communication, June 21, 2011).

Tay, (2009) views that implementation of code of ethics should be made compulsory for the companies where instead of being mere guidance, it should be made rules to follow. Meanwhile, Jenkins, (2001) views that to have real impact, it is significant that provisions should be made for the implementation of a particular code and effective monitoring. In addition, there is a suggestion by Judge Thornton that relevant parts of ethical code of Society of Construction Law, UK could be incorporated into among others, standard forms of contract (Uff, 2005). Comparatively, code of ethics for the contractors should be made compulsory for the construction companies to implement. It can also be part of our Standard Form of Contract. This can ensure that the Code does not serve as a mere window-dressing. It is also viewed that the Code can play the role as an important tool for self-regulation in construction industry, but needs to be mandated. Additionally, it is argued that even though no mandatory requirement has been provided regarding the Code, application of general law comes in hand to safeguard the compliance of ethical practices among contractors. However, to secure effective compliance, express provision mandating it should be in place.

The debates regarding the mandatory and voluntary nature of implementation of ethics in construction industry might never ends. The types of self-regulation as discussed above also illustrate that intervention of government regulation is required regardless of how and at what stage it is needed. Even for the voluntary self-regulation, the enforcement should also depend on the principles of general law as its background. The advantages of having mandatory ethical practices in fact are beyond doubt. By having these mandated, the construction companies will have ethical obligations to preserve and liabilities to answer. Even if Code of Ethics is practiced by construction companies, lackadasical enforcement is expected due to its voluntary nature. Thus, it is possible to examine the situation in the construction contracts since the contracts govern the relationship between the construction players. It is submitted that clauses in construction contracts regarding the performance and compliance of law by the contractor as well as the implied terms of workmanship and good faith are the basis of ethics in the construction contracts, thus placing ethics on the mandatory nature in these contracts. However, this is insufficient as other stakeholders outside the contract will not be safeguarded against unethical practices of contractors. This study is limited in its scope to look at the impact of the Code of Ethics for the Malaysian contractors. In a nutshell, emphasis should be given to extend future researches on how this Code is adopted, communicated and complied within the construction companies since they involve complex issues that provide prolific grounds for discussions. It seems that in near future, this self-regulatory mechanism should not be treated as a mere catalyst in its functions anymore but rather the weaponry substance for the construction businesses to succeed in their "business battlefield".

\textsuperscript{1} Under Malaysian Penal Code ( Act 574) Cheating is provided under section 415 :Whoever by deceiving any person, whether or not such deception was the sole or main inducement,—(a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property; or (b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation, or property, is said to "cheat".

\textsuperscript{2} Anti Corruption Act 1997 (Act 575) provides for anti-corruption offences including bribery.
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Problems arise in complaints of unethical practices against the contractors by parties outside the contract according to Mohd Nazli Ahmad Mahyadin (personal communication, June 21, 2011).
Steps taken by CIDB for unethical practices complained against the contractor despite no specific monitoring board according to Mohd Nazli Ahmad Mahyadin (personal communication, June 21, 2011).

8 Appendix

Problems arise in complaints of unethical practices against the contractors by parties outside the contract according to Mohd Nazli Ahmad Mahyadin (personal communication, June 21, 2011).