1. About the review

Regulations have grown at an unprecedented pace in Malaysia over recent decades. There are regulations that were formulated way back even before the independence which are still being enforced. Until recently, no systematic effort has been made to review the relevance and efficacy of existing regulations, even though new regulations are being formulated. This has been a response to the needs and demands of an increasing affluent and risk-adverse society and an increasingly complex global economy. Good and well implemented regulations have brought economic, social and environmental benefits, but there are substantial costs. Some costs have been the unavoidable secondary impact of pursuing legitimate policy objectives although a significant proportion has not. In many cases the costs have exceeded the benefits. Moreover, regulations have not always been effective in addressing the objectives for which they were designed, including regulations designed to reduce risk.

The growing recognition of these costs and other deficiencies of regulations have led the government to recognise that major reforms have to be made. An early focus of such efforts was the removal of many regulations that are obsolete and no longer relevant. Further waves of reform will follow, and this review is one of such that is focussed on the regulation of key economic initiatives and regulatory compliance burdens generally.

Box 1.1 **Business regulation in various forms [1]**

Box 1.2 **Business regulation in various forms**

Formal regulation involves governments exerting control or influence over business conduct through legal requirements, monitoring or inspection programs and, in the case of non-compliance, punitive sanctions. This form of regulation is generally based on:

- primary legislation — which consists of Acts of Parliament that set out the regulation-making authority
- subordinate legislation — which comprises laws and rules made by authorities under the delegated powers of the legislature to spell out details of policy decisions embodied in primary legislation, as exemplified by statutory rules, ordinances, by-laws, and disallowable instruments
- administrative decisions or discretions — which are requirements imposed by public officials entrusted with the relevant powers and duties
- international treaties and agreements — which can be ratified with legislative backing.

Apart from formal regulation, governments can influence business conduct by means of *quasi-regulation*. This encompasses policies, rules, standards and other instruments that do not have the force of law but effectively impose compliance requirements on business through government involvement in their development. Examples include government-endorsed industry codes of practice, government-issued guidance notes, government–industry agreements, and national accreditation schemes. Quasi-regulation is also implicit in licensing and government procurement requirements.

Further, business conduct can be subject to *co-regulation*. This involves industry and other non-government stakeholders jointly developing and administering particular codes, standards or rules, with government providing legislative support for the enforcement of those arrangements.

Sources: Banks (2001); Commonwealth of Australia (1997); OECD (2003).

1.1 The 10th Malaysia Plan: Modernising business regulation

The government recognises that the regulatory environment has a substantial effect on the behaviour and performance of business entities. Private sector participation in the economy and innovation requires a regulatory environment that provides the necessary protections and guidelines, while promoting competition. Too often, Malaysian firms face a tangle of regulations that have accumulated over the years and now constrain growth. At the same time, regulations that would promote competition and innovation are absent or inadequate.

Based on the World Bank's Ease of Doing Business 2014 report, Malaysia ranked 6th among 185 countries [2]. This is a significant improvement from its 12th position in 2013. This not only enhances Malaysia's global competitiveness, but also makes it one of the best places in Asia in which to do business. The country must therefore continuously improve its regulatory performance to maintain its ranking.

To achieve this goal, the government will begin with a comprehensive review of business regulations, starting with regulations that impact the National Key Economic Areas (NKEAs). Regulations that contribute to improved national outcomes will be retained, while redundant and outdated regulations will be eliminated. This review will be led by the Malaysia Productivity Corporation (MPC). MPC will be comprised of relevant experts from business and academia. Its work will complement the efforts of PEMUDAH, the special task force set up to facilitate business.

1.2 What the MPC has been asked to do

The 10th Malaysia Plan has mandated MPC to carry out regulatory review in view of making it easy to do business in Malaysia. This review process will draw on the expertise and perspectives of public sector and private sector leaders, who will help identify key issues and the appropriate solutions.

Mandated in the 10th Malaysia Plan specifically, MPC will [3]:

- Review existing regulations with a view to removing unnecessary rules and compliance costs. Regulations affecting NKEAs will be prioritised;
- Undertake a cost-benefit analysis of new policies and regulations to assess the impact on the economy;
- Provide detailed productivity statistics, at sector level, and benchmark against other relevant countries;
- Undertake relevant productivity research (e.g. the impact of regulations on growth of SMEs);
- Make recommendations to the Cabinet on policy and regulatory changes that will enhance productivity; and

- Oversee the implementation of recommendations.

1.3 The approach and rationale of this review

The government has identified 12 NKEAs to help propel Malaysia towards a high-income status. An NKEA is defined as a driver of economic activity that has the potential to directly and materially contribute a quantifiable amount of economic growth to the malaysian economy. [4]

The NKEAs were chosen on the basis of their contribution to high income, sustainability and inclusiveness. An initial set of 12 potential NKEAs have been identified comprising 11 sectors and one geographic area - Kuala Lumpur. Kuala Lumpur was chosen because it accounts for almost one-third of Malaysia's total GDP and urban agglomeration can be a major driver of economic growth. One of the NKEAs is oil and gas industry which is the focus of this study.

A significant portion of this study will be based on literature reviews of laws and regulations in the country, past studies made by more mature regulatory review agencies such as the Australia Productivity Commission, policy papers and reports, statistical reports and research literatures within the country and official web-sites of relevant professional bodies, NGOs, regulatory agencies and business organisations. The other portion of the study will come through direct interviews and consultations with businesses, professional bodies, associations and regulatory agencies involved in the sector.

The first part of the study will be to establish the key areas of the oil and gas industry viewed as the more burdensome. This will record the views and experiences on the regulatory burdens from which improvement options could be formulated. Further consultations will be carried out with private and public sectors in the industry. In addition to that, associations of the industry are also consulted. The consultation process will provide the necessary feedbacks for the final report.

1.4 Conduct of the study

The study started in February 2013. During the early phase of the project, the industry value chain was researched and mapped out. Economic and sector profile data were gathered from secondary data sources.

A comprehensive study of existing regulations governing the oil and gas industry and their regulators was conducted. The regulations were correlated to the value chain.

The subsequent stage of the study was to gather issues faced by businesses. Focus group engagements and one to one interviews were used in the study. Issues pertaining to regulations were selected and documented in the study report.

The investigations involved collection, review and analysis of data and information from two sources: secondary data from literature reviews and primary data from interviews with key stakeholders.

Secondary data reviewed and used as inputs for this study are from many sources and are classified as follows:

a) Research papers published by international agencies and other countries such as the World Bank, the Australian Productivity Commission.
b) Local research papers and reports commissioned by the government such as EPU commissioned reports and MITI commissioned reports. Reference to these papers will be cited in this report.
c) Laws of Malaysia, the various Acts and Regulations.
d) Statistical data relating to the industry from regulators.
e) Information from local government agencies, quasi government bodies, professional bodies, private businesses and the relevant associations on policy matters, news, reports and statistics for analysis and inputs to this study. Much of this is accessed from their web-sites and the sources will be listed in the final report.

The report is to be circulated to key stakeholders for their final comments. The inputs will be incorporated into the final report.

1.5 Structure of the report

The sector profile, value chain and economics performance of Malaysia's oil and gas industry, and focus of the study are described in chapter 2. Chapter 3 describes unnecessary regulatory burdens in general. Chapter 4 provides an overview of the regulatory framework, including its historical background, existing legislative and institutional arrangements, and mapping of the value chain to regulations.

The next few chapters are devoted to detailed discussion on regulatory burdens in specific downstream businesses. Chapter 5 discusses regulatory burdens faced by petrochemicals manufacturers. Chapter 6 highlights regulatory burdens encountered by petroleum retailers, i.e., petrol station service providers while chapter 7 focuses on regulatory burdens experienced by LPG distributors and retailers.

1.6 References

[1] Australia Productivity Commission, *Identifying and Evaluating Regulation Reforms, Research Report*, December 2011

[2] World Bank's Ease of Doing Business Report 2014

[3]Government of Malaysia (2010), *Tenth Malaysia Plan: 2011-2015*, the Economic Planning Unit, Prime Minister's Department

[4] Economic transformation programme. (2011). *A Roadmap for Malaysia*. Retrieved from PEMANDU website: http://etp.pemandu.gov.my/upload/etp_handbook_chapter_1-4_economic_model.pdf