

OVERVIEW

Key points

- The review focuses on three business activities in the downstream sector of Malaysia's oil and gas industry, which are:
 - petrol stations
 - distribution of liquefied petroleum gas in cylinders for the domestic market
 - petrochemicals manufacturing.
- These business activities are bound by several federal Acts on matters such as the environment, land access, occupational safety and health, sale and supplies of controlled goods, transportation and labour.
- Although land matters are subject to federal Acts, state authorities are empowered to regulate them within their respective states. The businesses must also abide by local government regulations pertaining to planning, construction, property taxes, licensing and other matters within their jurisdictions.
- The Ministry of International Trade and Industry is the regulator responsible for issuing permits for the petrochemicals manufacturing activities.
- The Ministry of Domestic Trade, Co-Operatives and Consumerism issues permits for the setting up of petrol stations and for the distribution of liquefied petroleum gas in cylinders.

Currently, problems with overlapping regulations and poor administration are the main source of unnecessary burdens in these business activities.

- Key recommendations for improving the existing regulatory arrangements include:
 - reduce regulatory burdens in relation to factories and machinery, and commercial vehicle licensing as they are prescriptive and have unclear objectives
 - reduce delays in getting approvals (particularly over extending certificates of fitness for plants and machinery, and issuing commercial vehicle licences)

About the study

The study focuses on regulatory burdens affecting two areas in the downstream segment of the value chain of the oil and gas industry. They are:

- aspects of the retail trade of petroleum products in the domestic market, namely:
 - petrol stations
 - the distribution of liquefied petroleum gas (LPG) in cylinders
- the manufacturing activity in the petrochemicals industry.

The Malaysian oil and gas industry

Malaysia is a significant producer of oil and gas. According to the 2012 Petroleum and Natural Gas Statistics report by the Department of Statistics, the petroleum and natural gas mining industry contributed 8.7 per cent of the Gross Domestic Product (GDP) in 2011 and 9.7 per cent in 2010. The total value of gross output in 2011 was RM109.2 billion, while that of 2010 was RM98.1 billion.

In 2011, Malaysia produced 207 million barrels of oil, compared to 233 millions barrels in 2010. The natural gas production in 2011 and 2010 were 2,165 million standard cubic feet (MMSCF) and 2,159 MMSCF respectively.

Malaysia exports petroleum-based products which are crude petroleum, liquefied natural gas and petroleum products. The exports of petroleum-based products in 2011 amounted to RM117.5 billion, equivalent to 16.8 per cent of total export in Malaysia. The major buyers of Malaysia's crude oil in 2011 were Australia with a share of 31.4 per cent, India (18.8 per cent), Thailand (16.6 per cent), and Japan (7.5 per cent). Japan was the leading importer of Malaysia's liquefied natural gas in 2011 at 68.3 per cent, followed by Taiwan (15.5 per cent) and Republic of Korea (11.6 per cent).

Malaysia also imports crude petroleum and petroleum products for its domestic consumers. In 2011, the largest import commodity was petroleum product with a value of RM32.7 billion, followed by RM24.0 billion of imports of crude petroleum. Saudi Arabia and Qatar were the two primary exporter countries of crude petroleum to Malaysia in 2011,

accounting for 38.4 per cent. This was followed by Vietnam (15.1 per cent), and Gabon (12.1 per cent).

Petrol stations

Petrol stations are operated by dealers who are appointed by oil companies like PETRONAS, SHELL, PETRON, BHP, and CALTEX. As of August 2013, there were 3291 petrol stations and 332 mini stations. There were 200 petrol service stations selling NGV in Malaysia.

Distribution of liquefied petroleum gas (LPG)

LPG is normally bottled in gas cylinders for sale to domestic, commercial and industrial consumers. LPG for cooking in homes is available either in 10kg, 12kg or 14 kg cylinders. LPG in 50kg cylinders is meant for commercial and industrial users.

Petrochemicals industry

There are three integrated petrochemicals complexes (IPCs) established in Kerteh, Terengganu; Gebeng, Pahang, and Pasir Gudang-Tanjung Langsat, Johor. The total investment in the petroleum and petrochemicals industry stood at RM60.7 billion in 2011.

The petrochemicals industry has foreign and local investors. There are multinational corporations (MNCs) from the USA, Germany and Japan. There are also joint-ventures between local investors and MNCs. PETRONAS is the major domestic investor in the industry.

Malaysia is an exporter of major petrochemicals products within ASEAN, exporting both commodity grade polymers and petrochemical derivatives. The People's Republic of China is the largest market for Malaysia's export of petrochemicals products. There is considerable potential for higher value-added products such as petrochemicals derivatives.

The current legislative arrangement

The main Acts governing the oil and gas industry in Malaysia are *the Petroleum Development Act 1974 (Act 144)* and *the Gas Supply Act 1993 (Act 501)*.

The purpose of *the Petroleum Development Act 1974* is to regulate the oil and gas and petrochemical industries. The Act applies to all activities in the value chain of the oil and gas industry in Malaysia, except for the supply of gas through the pipelines to consumers, which is regulated by *the Gas Supply Act 1993*.

The Petroleum Development Act 1974 grants the national oil company, PETRONAS (Petroliam Nasional Berhad), ownership and control of the nation's petroleum resources.

The establishment of the Petroleum Regulations 1974 (amended in 1975, 1981, and 1991) divided the upstream and downstream activities to different entities: PETRONAS; the Ministry of International Trade and Industry (MITI); and the Ministry of Domestic Trade, Co-Operatives and Consumerism (MDTCC).

As well as having a monopoly in upstream production, PETRONAS is the regulator of all upstream activities, from which companies intending to participate in such activities must obtain approval.

MITI and MDTCC are vested with powers to regulate all downstream activities. MITI is responsible for the issuance of permits for the refining of crude petroleum, the processing of natural gas and the manufacture of petroleum products and petrochemicals products from petroleum.

MDTCC issues licences for the sale and distribution of petroleum and petrochemical products, which include the setting up and operation of petrol stations and the LPG distribution business.

The Energy Commission (EC) is empowered to regulate activities related to the supply of gas through pipelines under *The Gas Supply Act 1993*.

The Petroleum (Safety Measures) Act 1984 (Act 302) is applicable to the transportation, and storage and utilisation of petroleum with regard to safety matters. Modes of transportation of petroleum prescribed by the Act are water, roads, railways and pipelines.

The Petroleum Income Tax Act 1967 (Act 543) imposes a tax on income derived from petroleum operation.

Other Acts which are applicable to the oil and gas industry at the federal level include *the Continental Shelf Act 1966 (Act 83)*, *National Land Code 1965 (Act 56 of 1965)*, *Land Acquisition Act 1960 (Act 34)*, *Environmental Quality Act 1974 (Act 127)*, *Occupational Safety and Health Act 1994 (Act 514)*, *Factories and Machinery Act 1967 (Act 139)*, *Merchant Shipping Ordinance 1952*, *Land Public Transport Act 2010 (Act 715)*, *Road Transport Act 1987 (Act 333)*, *Industrial Co-ordination Act 1975 (Act 156)*, *Excise Act 1976 (Act 176)*, *Customs Act 1967 (Act 235)*, and *Petroleum and Electricity (Control of Supplies) Act 1974 (Act 128)*.

Labour laws relevant to the oil and gas sector include *the Employment Act 1955 (Act 265)*, *Immigration Act 1959/ 1963 (Act 155)*, *Minimum Retirement Age Act 2012 (Act 753)*, *Minimum Wages Order 2012*, and *Workmen's Compensation Act 1952 (Act 273)*.

Land matters in the Peninsular Malaysia are governed by Acts such as *the National Land Code 1965*, and *Land Acquisition Act 1960*. Although these are federal law, state authorities are empowered to make rules for carrying out the objects and purposes of the Act within their respective states.

Matters pertaining to local regulations are bound by: *the Local Government Act 1976 (Act 171)*; *the Town and Country Planning Act 1976 (Act 172)* and *the Street, Drainage and Building Act 1974 (Act 133)*. The Acts empower local governments with authority on local planning, licensing, property taxes, construction of buildings, housing and commercial, public utilities and traffic management.

Summary of issues and recommendations

Petrochemical manufacturers

- **Certificate of fitness**
 - *The Factories And Machinery (Notification, Certificate Of Fitness And Inspection) Regulations, 1970*, requires that a petrochemicals manufacturer has to obtain Certificates of Fitness (CF) for their machinery and plants from the Department of Occupational Safety and Health (DOSHS), under the Ministry of Human Resource (MOHR).
 - The CF is valid for 15 months and must be renewed. DOSHS guidelines require that petrochemicals manufacturers apply for an extension six months prior to the expiry of the existing CF.
 - The overall process from the submission of application to the approval by the highest authority may sometimes take longer than 6 months.
 - The delay in the issuance of CF to business means that there is a period when the petrochemicals manufacturing plant is forced to continue its operation without a CF. This is a serious concern as it has a direct impact on insurance coverage especially in cases of fire or fatal accidents.

RECOMMENDATION 5.1.5

- DOSHS review and re-engineer its entire process in issuing Certificates of Fitness to speed up the process. The implementation of the Special Scheme of Inspection (SSI) will help address this issue. This should result in shorter and less frequent shutdowns, reducing costs related to direct inspection as well as costs due to loss of production.
- The provision for SSI is already incorporated into the *Factories and Machinery Act 1967* (Section 40 (5)) and has been recently approved by the Ministry of Human Resources (MOHR).

- **DOSH inspection**
 - The Factories And Machinery (Notification, Certificate Of Fitness And Inspection) Regulations, 1970, requires inspections of petrochemicals manufacturing facilities by DOSH officers. There is an initial inspection, followed by inspections at regular intervals so long as the plant remains in operation.
 - Manufacturers complain of poor enforcement and administration of regulations due to inadequate and inexperienced resources of regulators. The high turn over of DOSH officers further contribute to the issue as new officers tend to be inexperienced.
 - Poor quality of inspection may affect the safety of workplace and hence the safety of workers and others.

RECOMMENDATION 5.2.5

- DOSH should adopt risk-based inspections, the Special Scheme of Inspection (SSI) so that only high-risk business facilities and machinery receive frequent and stringent inspections. The provision for SSI is already incorporated into the *Factories and Machinery Act 1967* (Section 40 (5)) and has been recently approved by the Ministry of Human Resources (MOHR).
 - DOSH should improve the inspection and technical competencies of its workforce through qualifications, training and continuous learning programmes. This would ensure that inspection resources are competent to carry out their duties.
- **Authorised gas tester**
 - Authorised Gas Testers are competent persons who carry out atmosphere tests for confined space. According to the Industry Code Of Practice For Safe Working In A Confined Space 2010 (under *the Occupational Safety and Health Act 1994*), they have to attend a training programme on “safe working in a confined space” and pass an examination before they are allowed to work in the area. In addition, they must also be registered as a Competent Person

with DOSH. Authorised Gas Testers have to undergo a refresher course every two years using the module approved by the Director General of DOSH.

- The industry code of practice imposes an additional requirement that an authorised gas tester must have a minimum grade C for science in Sijil Pelajaran Malaysia (SPM).
- Experienced Authorised Gas Testers, who do not possess SPM grade C for science subject, are no longer allowed to carry out the job.
- It is not only a waste of resources but also a burden on businesses as they have to hire new staff and send them for training. In the meantime they have to redeploy the existing Gas Testers. This results in the increase in the operational cost of doing business.

RECOMMENDATION 5.3.5

- DOSH allows those without grade C in Science but have passed the examination to continue work as Authorised Gas Testers. This option is recommended as it is more practical to implement and ensure fairness to those who have passed the examination prior to this new regulation.

- ***Person in charge***
 - The Factories And Machinery (Person-In-Charge) Regulation 1970 requires that a competent person be in charge of machinery.
 - The regulation unnecessarily constrains how companies use their competent people such as requiring a different competent person for each location.
 - Some big companies have several petrochemicals manufacturing set ups. Instead of having a specific team of staff for each set up, they want to use the same people as a support services unit to a number of manufacturing set ups and thus reduce costs.
 - With the advance in technology, managing the performance of the petrochemical facilities and machinery can be conducted with fewer people.

RECOMMENDATION 5.4.5

- DOSH has confirmed that companies can apply for an exemption from the requirement on a competent person. It is therefore suggested that DOSH communicate the option to companies and provide a clear guideline on how companies can qualify and apply for such exemption.

Petrol service stations

- ***Quota of foreign workers***
 - Petrol stations in Malaysia have problems with hiring staff and experience a very high turn over of employees.
 - Hence, petrol station operators have resorted to hiring foreign workers.
 - However, petrol station operators are in the dark over the quota of foreign workers. They are unclear how many foreign workers they can hire at one time and why some stations can hire more than others. There is no clear statement or guideline from the Labour Department (JKTSM) on the number of foreign workers for petrol service stations.

RECOMMENDATION 6.1.5

- It is recommended that the Labour Department (JKTSM) look into the matter and issue a guideline on hiring foreign workers for petrol stations.
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- ***Operational licence for controlled goods***
 - Most petrol stations in Malaysia operate convenience stores that sell items which may include controlled goods such as sugar, all purpose flour and cooking oil. A single composite licence obtained from MDTCC allows the sale of petrol fuel and diesel fuel and any or several of these goods.

- Rice is another controlled item sold at petrol station convenience stores but the retail licence must be obtained from the Ministry of Agriculture (MOA) rather than MDTCC.
- Applying for retail licences from two different ministries is considered **duplication of regulations**. This causes inconvenience and unnecessary paperwork to petrol station operators.

RECOMMENDATION 6.2.5

- Since petrol station operators are managed by the principal oil companies such as Petronas and Shell, MOA could award licences to sell rice to the principal companies instead of individual petrol stations.

○ ***Subsidised diesel management***

- Diesel is a subsidised item for vehicle consumption. MDTCC allocates a monthly quota of subsidised diesel to each oil company based on projected sales. The quota is divided among stations based on their projected sale for that month. Each dealer must manage the sale of subsidised diesel to ensure that it is within the limit of the allocated quota. The dealer must also write an appeal to MDTCC via the oil company if the allocated quota is less than the projected sale of that month.
- Petrol stations risk running out of subsidised diesel should MDTCC reject the appeal or give a delayed response, as is often the case. This results in the affected dealer being heavily penalised by the principal oil company.

RECOMMENDATION 6.3.5

- MDTCC could allow appeals for additional subsidised diesel to be made through an online system and respond quickly to such requests.

- ***Health, safety and the environment***
 - Petrol stations are hazardous places because they store and sell a highly flammable liquid. Safety rules must be observed when filling up fuel at petrol stations to prevent potentially fatal accidents.
 - There is no standard of procedure (SOP) in dealing with customers who flout safety rules. Apart from giving them a warning and refusing to serve them, there is not much that can be done. Lack of enforcement emboldens these law breakers because they know they can get away with it.
 - The health and safety of customers and employees are at risk. Employees face verbal and physical abuse when they attempt to uphold safety rules.

RECOMMENDATION 6.4.5

- It is recommended that a public awareness campaign be carried out while formulating a SOP that enables immediate action on law breaking customers as well as protect employees from harm.

- ***Abuse of subsidised diesel***
 - Subsidised diesel is generally meant for domestic vehicle consumption. Commercial enterprises such as factories are not eligible for subsidised diesel and have to pay the full price.
 - The significant difference between the commercial and subsidised prices can lead to abuse of subsidised diesel.
 - **Poor enforcement of the regulations** results in some customers purchasing large amount of diesel at the subsidised price and then selling it to commercial enterprises for a profit.

RECOMMENDATION 6.5.5

- The most effective option which could be employed immediately would be to limit the amount of diesel per transaction.

Note: Response from MDTCC

MDTCC has decided on four steps to be implemented in its effort to prevent the abuse of subsidised diesel and petrol (Utusan Malaysia dated 29th June 2014) . The four steps are:

- A monthly sales quota of 600,000 litres of diesel and petrol will be imposed on all petrol stations in the East Coast of Sabah. This will affect 72 petrol stations in the area between Kudat and Tawau.
- As of 1st August 2014, approval for sales quota for each petrol station will be decided by the relevant state MDTCC instead of the principal oil company.
- Beginning 1st January 2015, it will be compulsory for oil tankers carrying subsidised diesel or petrol to be painted in standard blue and have a large written sign “Minyak Subsidi” on it. These requirements will be included in the approval letter for licence, PDA3 (approval for distribution of petroleum products). This is meant to prevent attempts to smuggle or make illegal sales of subsidised diesel and petrol.
- To prevent illegal sales of subsidised diesel and petrol, a limit of 500 litres will be imposed on the second application (additional quota) for “Fleet card” holders in the public transport category (school busses, express busses, mini busses, cars for hire, taxis). Applications for additional quota must be made to the relevant state MDTCC. Currently these “Fleet card” holders enjoy unlimited additional quota.

○ ***Unauthorised purchase of subsidised diesel by farmers***

- It is a regulatory requirement that subsidised diesel must be delivered to vehicles and not be collected in containers.
- Smallholding paddy farmers use tractors to till their lands. As it is not possible to bring the tractors to the petrol stations, they want to purchase subsidised diesel in containers such as drums and barrels to take back to the farms.
- Petrol stations make allowances for them as paddy farmers have no other means of getting their supply of diesel.

- Preventing farmers from putting diesel in containers results in them not being able to obtain subsidised fuel for their tractors. On the other hand, allowing use of containers can result in abuse of the provision because the diesel may be sold to commercial enterprises.

RECOMMENDATION 6.6.5

- MDTCC should make special allowance for farmers to make non-vehicle purchase of subsidised diesel based on their needs upon getting authorisation from MDTCC.

Note:

MDTCC has verified that it has already implemented this option. However, it is likely that most farmers are not aware of such policy. Information on the policy should be accessible to the public in order for it to be effective. The followings are suggestions for the dissemination of information on the policy:

- MDTCC could make the relevant information on the policy available on its official website.
- MDTCC could seek the cooperation of relevant authorities such as the MOA and its agencies to ensure that farmers are well informed.

- ***Time constraint in signing dealership agreement***
 - Principal oil companies such as PETRONAS, Shell, and Petron appoint dealers to operate their respective petrol stations. Upon appointment, each dealer enters into a dealership agreement with the relevant principal oil company.
 - The potential dealer is not given sufficient time to study and understand the terms of the agreement. There is no opportunity for the potential dealer to seek legal advice due to the time constraint put upon by the principal oil company.
 - Entering into a dealership agreement without fully comprehending its legal consequences puts the dealer at a disadvantage. This is considered unfair trade practices.

RECOMMENDATION 6.7.5

- A standardised dealership agreement should be made available on the website of the principal oil company. It is only fair to allow potential dealers the opportunity to study and understand the terms of the dealership agreement.
- In the longer-term, the Government could consider establishing trade practices legislation which ensures fair trading.

LPG distribution business

- **Commercial vehicle licence**
 - Commercial vehicles, such as lorries and trailers, are the common transportations used in LPG distribution business. These vehicles require commercial vehicle licences issued by the Land Public Transport Commission (SPAD) in compliance with the *Land Public Transport Act 2010*.
 - Other regulators involved in the process of issuing a commercial vehicle licence for a new vehicle are the local government (PBT), JPJ (the Road Transport Department) and PUSPAKOM (Pusat Pemeriksaan Kenderaan Berkomputer).
 - Two issues arise in getting a commercial vehicle licence for a new vehicle:
 - delays in issuing the licence — one distributor had to wait six months for a commercial vehicle licence
 - Restriction on the number of vehicles per company.

RECOMMENDATION 7.1.5

- In issuing a commercial vehicle licence, it is recommended that all regulators re-engineer their respective processes with the objective of

having faster, cheaper and fewer interactions between business and regulators.

- The Land Public Transport Commission (SPAD) lifts the restriction on the number of vehicles that a business can purchase. SPAD should not base its decision on the type of business entity, but rather on the capability of the company to finance the purchase of the vehicles and operate the business.

- ***Goods delivery licence for business owner***
 - A GDL is issued to the driver of a commercial vehicle by the Road Transport Department (RTD) in accordance with the *Road Transport Act 1987*.
 - As a pre-requisite to issuing a commercial vehicle licence, SPAD requires that the business owner have a Goods Delivery Licence (GDL). The requirement has no relevance as a GDL is meant for the driver of the commercial vehicle, who is often the employee of the business.

RECOMMENDATION 7.2.5

- SPAD should remove the requirement for a business owner to have a GDL in issuing a commercial vehicle licence.

- ***Routine inspection on commercial vehicles by PUSPAKOM***
 - It is mandatory for all commercial vehicles to undergo a road worthiness inspection every six months. Currently, PUSPAKOM is the only vehicle inspection company appointed by the Government to carry out inspections for commercial vehicles in the country.
 - A routine vehicle inspection by PUSPAKOM is time consuming as there is usually a long queue. A single vehicle takes a few hours to process, although the actual inspection does not require that long to complete.
 - The delay caused by PUSPAKOM inspection translates to a loss of revenue to business. A day's loss for a trailer could be worth RM1,000.

RECOMMENDATION 7.3.5

- PUSPAKOM plans its resources to match its workload.