CHAPTER ONE

1 About the Review

The number of regulations has grown at an unprecedented pace in Malaysia over recent decades. There are regulations that were formulated way back even before independence which are still being enforced. Until recently no systematic effort has been made to review the relevance and effectiveness of existing regulations, even though new regulations are being formulated. This has been a response to the needs and demand of an increasingly affluent and risk-adverse society and an increasingly complex global economy. Good and well implemented regulations deliver economic, social and environmental benefits but they also impose substantial costs. Some costs are the unavoidable secondary impact of pursuing legitimate policy objectives although a significant proportion is often not. In many cases, costs exceed the benefits. Moreover, regulations have not always been effective in addressing the objectives for which they were designed, including some regulations designed to reduce risk (APGC 2011).

The growing recognition of these costs and other deficiencies of regulation have led the Government to decide that major reforms are needed and has mandated MPC to review regulatory burdens including for construction as reflected by this review of the costs imposed by regulation, both written and as implemented.

1.1 The 10th Malaysia Plan: Modernising Business Regulation

The Government recognized that the regulatory environment had a substantial effect on the behaviour and performance of companies. Innovation and private sector participation in the economy require a regulatory environment that provided the necessary protections and guidelines, while providing flexibility for businesses to choose the best ways to operate. Too often, Malaysian firms faced a tangle of regulations that have accumulated over the years and now constrained growth.

Malaysia has consistently improved its regulatory performance over the last few years as can been seen from its ranking in the World Bank Report on Doing Business, see
Table 1.1. To maintain a top-10 overall competitive ranking the country has to continuously improve its regulatory performance. The 2016 report, shows Malaysia overall ranking drop one position from seventeenth to eighteenth. This has been the result of efforts in reforming regulations in areas such as construction permits, starting a business, electricity and insolvency. Although the overall ranking in *doing business* has improved there is much to do to ensure its position in the top-ten ranking (Malaysia 2010a).

*Table 1.1: Malaysia’s Competitiveness Performance in Doing Business Report*

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Malaysia’s ranking with other countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>18</td>
</tr>
<tr>
<td>Starting a business</td>
<td>14</td>
</tr>
<tr>
<td>Dealing with construction permits</td>
<td>15</td>
</tr>
<tr>
<td>Getting Electricity</td>
<td>13</td>
</tr>
<tr>
<td>Registering property</td>
<td>38</td>
</tr>
<tr>
<td>Getting credit</td>
<td>28</td>
</tr>
<tr>
<td>Protecting Minority Investors</td>
<td>4</td>
</tr>
<tr>
<td>Paying taxes</td>
<td>31</td>
</tr>
<tr>
<td>Trading across borders</td>
<td>49</td>
</tr>
<tr>
<td>Enforcing contract</td>
<td>44</td>
</tr>
<tr>
<td>Resolving</td>
<td>45</td>
</tr>
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To achieve this goal, the Government began with a comprehensive review of business regulations, starting with regulations that impact on the NKEAs. Regulations that contribute to improve national outcomes will be retained, while unnecessarily burdensome, redundant and outdated regulations will be eliminated. These reviews are led by MPC and its work complements the efforts of PEMUDAH.
1.2 What has MPC 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 has drawn on the expertise and views of public sector and private sector leaders to help identify key issues and proposed possible solutions. Figure 1.1 shows MPC’s regulatory review framework.

As mandated in the 10th Malaysia Plan, MPC has been (Malaysia 2010a):

- reviewing existing regulations with a view to removing unnecessary rules and compliance costs. The priority has been on regulations affecting NKEAs;
- undertaking cost-benefit analysis of new policies and regulations to assess the impact on the economy;
- providing detailed productivity statistics and benchmarking them against other countries;
- undertaking productivity research (e.g. the impact of regulations on growth of small-medium enterprises (SME));
- making recommendations to the Cabinet on policy and regulatory changes that will enhance productivity; and
- overseeing the implementation of recommendations.
The Government formalized and institutionalized mandate given to MPC with the introduction of a national regulatory policy through the policy document *National Policy on the Development and Implementation of Regulations*. This document was launched by the Chief Secretary of the Government of Malaysia in July 2013.

The objective of the national policy is to ensure that Malaysia’s regulatory regime effectively supports the country’s aspirations to be a high-income and progressive nation whose economy is competitive, subscribes to sustainable development and inclusive growth. The policy is to ensure a regulatory process that is effective, efficient and accountable and to have greater coherence among policy objectives (Malaysia 2013).

**The 11th Malaysia Plan Strategy A2: Implementing Comprehensive and Integrated Governance Reform**

In the Eleventh Malaysia Plan, coordination and collaboration between ministries, agencies and other relevant stakeholders will be strengthened to improve their effectiveness and efficiency. The Special Committee on the Services Sector will oversee the implementation of the services sector development strategies and action plans, particularly the Services Sector Blueprint, the Logistics and Trade Facilitation
Master Plan (LTFMP), and the Construction Industry Transformation Programme (CITP). The Committee will also ensure cross-sectoral policy coherence with national development objectives. For the logistics industry, the National Logistics Task Force will be set up to lead the implementation of the LTFMP.

Comprehensive and integrated governance reforms will be pursued to ensure a thriving and competitive environment for the services sector. The National Policy on the Development and Implementation of Regulations (NPDIR) to modernise the current regulatory regime will be fully implemented to include states and local governments. The capacity of regulatory coordinators in ministries and agencies will be strengthened to ensure adherence to the NPDIR. The regulatory reform will also be aligned to Malaysia’s commitments in existing free trade agreements and unilateral liberalisation initiatives. A regulatory portal will be established to improve access to and transparency of regulations.

This review will contribute to the 11th Plan by identifying areas where the regulation and governance of the construction sector could be improved and thus contribute to:

- improved coordination and consistency across ministries and agencies;
- ensuring the regulatory environment for construction facilitates its development and efficiency;
- consistency across federal, state and local government regulation;
- regulatory transparency and accessibility; and
- alignment to free trade agreements and trade liberalisation, in general.

### 1.3 The approach and rationale of this review

The construction industry makes up an important part of the Malaysian economy due to the number of industries linked to it, such as basic metal products and electrical machinery and because it impacts on every industry. It plays a significant role in terms of its contribution to revenue, capital formation and employment which ultimately supports gross domestic product (GDP). The construction industry could be described as a substantial economic driver for Malaysia.
The construction industry creates a multiplier effect to other industries, including manufacturing, financial and professional services. It provides the infrastructure for industrial growth and production and basic amenities such as accommodation, buildings, parks, playgrounds and stadiums, health care units, roads, highways, railways, ports, airports, dams, power generating and supplying stations, communication utilities, as well as the other basic infrastructure which is necessary for the country and to develop and improve living standards of the society.

1.4 Conduct of the study

The investigations have 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 (see References) which were 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 Government Productivity Commission.

b) Local research papers and reports commissioned by the government such as Economic Planning Unit (EPU) commissioned reports, Ministry of International Trade, Industry (MITI) commissioned reports and Bank Negara Report. Reference to these papers will be cited in this report.

c) Laws of Malaysia, the various Acts and Regulations relevant to construction sector.

d) Statistical data relating to the construction sector will be from international sources and local sources, primarily the World Bank, CIDB (Construction Industry Development Board) publications, Department of Statistics Malaysia publications.

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 was accessed from their web-sites and the sources will be listed in the final report.
Primary data has been collected through the interviews of key stakeholders comprising business players, the relevant associations, representatives of professional bodies and the regulators. The business players in this study are primarily the construction and construction related companies which are licensed by the CIDB and MUHLG/KPKT (Ministry of Urban Wellbeing, Housing and Local Government).

Through consultation, the review has established the key areas which the construction industry views as the more burdensome. Some options to reduce regulatory burdens are listed, based on inputs from the stakeholders. Feedback on these will inform the final report and further improve MPC’s final recommendations.

The study is carried out in two stages: the exploratory stage to prepare the draft paper and the option stage to verify the feasible options formulated to achieve the aim of the study. An interview brief was prepared for dissemination to the selected respondents (construction companies and related associations) and with the assistance of the AGPC expert, and a list of relevant questions was developed for the one-on-one interviews with the respondents. The respondents were selected from the members of Master Builders Association of Malaysia (MBAM), Persatuan Kontraktor Melayu Malaysia, Persatuan Kontraktor India Malaysia, Penang Master Builders Association and Building Materials Association, Johor Master Builders Association, Sabah Builders Association, Sarawak Building and Civil Engineering Contractors Association, Dewan Perniagaan Melayu Malaysia Sabah, Kuching Samarahan Division Building & Civil Engineering Contractors Association, Malaysia, Malaysian Heavy Construction Equipment Owner’s Association and Association of Projects Managers Malaysia. The listing of these key stakeholders interviewed will be included in the final report. The interviews were carried out until a saturation level was reached, that is when no new issue was raised.

From these inputs, detailed analysis was made at three levels:
a) at the individual level, where the principal researcher carried out her analysis on the inputs and drafted this draft report for further deliberation.
b) at the team level (various researchers), where the inputs and draft report were further analysed to achieve further insights.
c) with the expert from AGPC, Ms. Sue Holmes then provided her expert’s inputs and insights.

Figure 1.2 below summarizes the study process for this research.

*Figure 1.2: Study of Summary Process*

![Diagram of study process]

*Source: Malaysia Productivity Corporation (MPC)*

1.5 Structure of the report

This report on the Review of Unnecessary Regulatory Burdens (RURB) has been organized into **eight** chapters, starting with this introductory chapter. Here, the rationale of the review is highlighted and the approach to the study follows the Australian Government Productivity Commission (AGPC) methodology. An Australian expert previously with the AGPC was engaged by MPC to provide the advisory input to the study team throughout the study duration.
In Chapter Two, the construction sector is analysed via the value-chain concept. The value chain for the construction industry is mapped out and used to identify the businesses in the industry. Reference is made to the *Malaysia Standard Industrial Classification 2008 Version 1* on this. The chapter also shows the macro-economic performance of the construction sector from *2005 to 2014*.

Chapter Three deals with the rationale for regulating the construction sector by looking at reasons why businesses may not deliver the best outcomes without intervention by the government. This chapter also looks at the sources of regulatory burdens and those which may be unnecessary.

Chapter Four gives an overview of the development of the regulatory regimes for construction in the country. The chapter gives some background on the overarching intent of the Government in regulating the construction industry and concludes showing where various regulations impact on the different stages of the construction industry’s value chain.

Chapters Five, Six, Seven and Eight present the unnecessary regulatory burdens identified by the industry and suggests possible options to reduce them. The study identified twenty two issues as being the most pertinent regulatory issues.

Chapter Five covers the issues relating to *pre-construction*. Seven interrelated issues that pose heavy regulatory burdens are analysed and potential options to ameliorate them are proposed. Chapter Six analyses four regulatory issues relating to the *construction* phase and potential options to ameliorate them are proposed. Chapter Seven analyses issues on Importing Machinery and Materials, while Chapter Eight analyses other issues related to construction along with possible options.

Chapter Nine reports the public consultation exercise which includes the feedbacks from the principal regulator and other key stakeholders of MPC on the findings and proposed options covered in Chapters Five, Six, Seven and Eight.

All the key findings of the nine chapters are summarized in the overview and the recommendations at the beginning of this report. Appendices are included at the end.
of the report in the Appendix section for easy reference of the reader. The last section of the report lists the references used.