PRODUCTIVITY AND REGULATION

Productivity is the only driver of income growth that is unlimited, as opposed to resource exploitation or increase in population and labour force participation, each of which faces natural limits. The potential for productivity growth to generate higher income for Malaysians makes it a natural and important consideration for decision makers. As such the continuing need to stimulate productivity rightly remains at the forefront of government policies.

Regulation is the lifeblood of a modern, well-functioning economy. Almost all regulations have the potential to impact on productivity, either through the incentives which they provide to businesses to change operating and investment decisions, or more directly through their impacts on compliance costs. It is inconceivable to think of a modern economy functioning without regulation. However, poor regulation can cause frustration and unintended consequences, or simply add red tape that adds nothing useful to the economy, society or the environment.
Forewords

Through regulation the government can leverage its policy implementation on businesses. Regulation can contribute to a range of social, environmental and economic goals. However, in practice, many regulations are not implemented efficiently or cost-effectively, and some regulations do not even adequately achieve the ends for which they are designed. Poor regulatory regimes invariably result in unnecessary regulatory burdens, which will stifle business growth.

In the 10th Malaysia Plan, the Malaysia Productivity Corporation (MPC) is mandated to review those regulations affecting the conduct of business in Malaysia with the view to modernise business regulations. This is crucial in order for the country to move towards its aspiration of becoming a high-income nation. MPC has thus embarked on the review of existing business regulations with the focus on the 12 National Key Economic Areas (NKEA), which have been identified as having high growth potential. The Regulatory Review Directorate led by Mr. Zahid Ismail is responsible for carrying out the regulatory review.

In this study, the research team led by Dr. Noorazlin Saat was asked to examine the regulatory regimes of the palm oil sector with the aim of recommending options to remove unnecessary regulatory burdens. A regulatory expert previously working for the Australian Government Productivity Commission (AGPC), Ms. Sue Holmes served as an advisor to the team.

For this particular study, the focus was on the upstream segment of the palm oil sector, which is labour intensive. The study emulated the approach used by AGPC. A comprehensive study of existing regulations governing the palm oil industry and their regulators was conducted. The regulations were correlated to the value chain. 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.

From these issues and using principles of good regulatory practices, feasible options were then formulated for further deliberation. These issues and options will be subjected to public consultation with relevant stakeholders in order to develop concrete recommendations to reduce unnecessary regulatory burdens.

In the course of the study, MPC benefited greatly from discussions with some government organisations, private companies and industry associations. Valuable input and feedback were received from the AGPC expert, members of the Agriculture Consultative Panel of MPC and other interested parties. MPC is grateful for their assistance and contribution.

Dato’ Mohd Razali Hussain
Director General, MPC
## CONTENTS

**Foreword**  
ii

**Abbreviations**  
xii

**Glossary**  
xv

**Overview**  
xix

**Recommendations**  
xxiii

### 1 About the review

1.1 The 10th Malaysia Plan: Modernising business regulation  
2

1.2 What the MPC has been asked to do  
3

1.3 The approach and rationale of this review  
4

1.4 Conduct of the study  
5

1.5 Structure of the report  
6

1.6 References  
6

### 2 Palm oil sector

2.1 Palm oil industry in Malaysia  
7

2.1.1 History  
7

2.1.2 The oil palm  
9

2.1.3 The oil  
11

2.1.4 Uses of palm oil  
12

2.2 Industry value chain  
14

2.2.1 Upstream  
15

2.2.2 Downstream  
19
3 \textbf{What is an unnecessary regulatory burden?} 34

3.1 Sources of potential unnecessary regulatory burdens 34

3.1.1 Problems with regulations themselves 34

3.1.2 Poor enforcement and administration 35

3.1.3 Unnecessary duplication and inconsistency 36

3.2 What is best practice regulation? 36

3.2.1 Good regulatory design 37

3.2.2 Regulatory impact statements and ‘good’ process 38

3.3 Costs of regulation 39

3.3.1 Compliance costs 40

3.3.2 Lobbying costs 40

3.3.3 Production and consumption losses 41

3.3.4 Delays and the potential for ‘lost’ investment 42

3.4 References 42

4 \textbf{Regulatory overview} 43

4.1 Historical development of the existing framework 43

4.2 Current legislative arrangements 43

4.2.1 Other regulations 45
4.3 Regulators and other relevant bodies 49
  4.3.1 MPOB 49
  4.3.2 MPIC 51
4.4 Impact of regulations on upstream segment of the value chain 51
4.5 References 54

5 Workforce issues 56
  5.1 Minimum retirement age 56
    5.1.1 Issues 57
    5.1.2 The objective of the Minimum Retirement Age Act 2012 58
    5.1.3 What are the impacts of these regulatory arrangements? 58
    5.1.4 Options to resolve the issues 58
    5.1.5 Recommendations 59
  5.2 Minimum working days of 24 days/month 60
    5.2.1 Issues 61
    5.2.2 The objective of minimum working days 61
    5.2.3 What are the impacts of these regulatory arrangements? 61
    5.2.4 Options to resolve the issues 61
    5.2.5 Recommendations 62
  5.3 Minimum wage for piece-rate workers 63
    5.3.1 Issues 64
5.3.2 The objective of minimum wage for piece-rate workers

5.3.3 What are the impacts of these regulatory arrangements?

5.3.4 Options to resolve the issues

5.3.5 Recommendations

5.4 Termination and lay-off benefits (when plantation ownership is changed)

5.4.1 Issues

5.4.2 The objective of termination and lay-off benefits

5.4.3 What are the impacts of these regulatory arrangements?

5.4.4 Options to resolve the issues

5.4.5 Recommendations

6 Taxation

6.1 Property assessment tax

6.1.1 Issues

6.1.2 The objective of property assessment tax

6.1.3 What are the impacts of these regulatory arrangements?

6.1.4 Options to resolve the issues

6.1.5 Recommendations

6.2 Foreign worker levy

6.2.1 Issues
6.2.2 The objective of foreign worker levy 73
6.2.3 What are the impacts of these regulatory arrangements? 73
6.2.4 Options to resolve the issues 73
6.2.5 Recommendations 74

7 Foreign workers’ recruitment 75
7.1 Issues 75
7.2 The objective of foreign workers’ recruitment process 75
7.3 What are the impacts of these regulatory arrangements? 76
7.4 Options to resolve the issues 76
7.5 Recommendations 78

8 Workers’ housing and amenities 79
8.1 Housing 80
8.1.1 Issues 80
8.1.2 The objective of these regulatory arrangements 80
8.1.3 What are the impacts of these regulatory arrangements? 81
8.1.4 Options to resolve the issues 81
8.1.5 Recommendations 82
8.2 Water 83
8.2.1 Issues 83
8.2.2 The objective of these regulatory arrangements 83
8.2.3 What are the impacts of these regulatory arrangements? 83
arrangements?

8.2.4 Options to resolve the issues 83
8.2.5 Recommendations 83

8.3 Electricity 84
8.3.1 Issues 84
8.3.2 The objective of these regulatory arrangements 84
8.3.3 What are the impacts of these regulatory arrangements? 84
8.3.4 Options to resolve the issues 84
8.3.5 Recommendations 84

8.4 References 85

9 Estate hospital assistants 86
9.1 Issues 87
9.2 The objective of the *Workers’ Minimum Standards of Housing and Amenities Act 1990* 88
9.3 What are the impacts of these regulatory arrangements? 88
9.4 Options to resolve the issues 88
9.5 Recommendations 89

10 Driving company vehicles on plantation ground 90
10.1 Issues 90
10.2 The objective of the *Road Transport Act 1987* 91
10.3 What are the impacts of these regulatory arrangements? 91
10.4 Options to resolve the issues 91
10.5 Recommendations

Appendix

A List of application forms for new licences
B List of Environmental Quality regulations
C List of Occupational Safety and Health regulations
D List of Factories and Machinery regulations

Boxes

1.1 Business regulation in various forms
3.1 Principles of good regulatory practice
3.2 Importance of benefit-cost analysis
4.1 Malaysian Palm Oil Board (Licensing) Regulations 2005
4.2 Land Acquisition Act 1960
5.1 Minimum Retirement Age Act 2012
5.2 Collective Agreement (CA)
5.3 Minimum Retirement Age Act 2012 (Section 18)
5.4 Employment Act 1955
5.5 Guidelines on the implementation of the Minimum Wages Order 2012
5.6 Employment (termination and lay-off benefits) regulations 1980
6.1 Local Government Act 1976
6.2 Workers’ Minimum Standards of Housing and Amenities Act 1990
8.1 Workers’ Minimum Standards of Housing and Amenities Act 1990 (Sections 5 and 6)
8.2 Workers’ Minimum Standards of Housing and Amenities Act 1990 (Act 446) (Section 2 (2)) 82

9.1 Workers’ Minimum Standards of Housing and Amenities Act 1990 (Estate hospital assistants) 86

10.1 Road Transport Act 1987 90

Figures

2.1 Fresh fruit bunches 9
2.2 Cross-section of a fruitlet 10
2.3 Production of tenera 10
2.4 The value chain in the palm oil industry 14
2.5 Palm oil milling process 18
2.6 Refining process of crude palm oil (CPO) 20
2.7 Stakeholders in palm oil industry in Malaysia 21
2.8 CPO price between October 2011 and October 2013 32
3.1 Costs of regulation 41

Tables

2.1 Industry performance status 2011 26
2.2 Oil palm planting material licensees (active) by state 2011 26
2.3 Oil palm planted area : 1975-2011 (hectares) 27
2.4 Oil palm areas (mature and immature) by state 2011 (hectares) 28
2.5 Summary on the performance of the Malaysian oil palm industry, 2012 29
2.6 Yield of fresh fruit bunches, crude palm oil and palm kernel : 1975 – 2011 (Tonnes/Hectare) 30
2.7 Fresh fruit bunches (FFB) yield by state: 1990 – 2011 (Tonnes/Hectare)

2.8 CPO yield by state: 1990 – 2011 (Tonnes/Hectare)

4.1 Regulations for upstream activities in the palm oil industry
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPKO</td>
<td>crude palm kernel oil</td>
</tr>
<tr>
<td>CPO</td>
<td>crude palm oil</td>
</tr>
<tr>
<td>DOE</td>
<td>Department of Environment</td>
</tr>
<tr>
<td>DOSH</td>
<td>Department of Occupational Safety and Health</td>
</tr>
<tr>
<td>EFB</td>
<td>empty fruit bunches</td>
</tr>
<tr>
<td>EHA</td>
<td>Estate Hospital Assistant</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EMPA</td>
<td>East Malaysia Planters’ Association</td>
</tr>
<tr>
<td>EPU</td>
<td>Economic Planning Unit (Unit Perancang Ekonomi)</td>
</tr>
<tr>
<td>ETP</td>
<td>effluent treatment plant</td>
</tr>
<tr>
<td>FELCRA</td>
<td>Federal Land Consolidation and Rehabilitation Authority</td>
</tr>
<tr>
<td>FELDA</td>
<td>Federal Land Development Authority</td>
</tr>
<tr>
<td>FFA</td>
<td>free fatty acid</td>
</tr>
<tr>
<td>FFB</td>
<td>fresh fruit bunches</td>
</tr>
<tr>
<td>GDL</td>
<td>Goods Vehicle Driving Licence</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>IRPA</td>
<td>Intensification of Research in Priority Areas</td>
</tr>
<tr>
<td>IMP</td>
<td>Industrial Master Plan</td>
</tr>
<tr>
<td>JTKSM</td>
<td>Jabatan Tenaga Kerja Semenanjung Malaysia (Labour Department)</td>
</tr>
</tbody>
</table>
KLCE  Kuala Lumpur Commodity Exchange
KPKT  Kementerian Perumahan dan Kerajaan Tempatan
(Ministry of Housing and Local Government)
MAPA  Malayan Agricultural Producers Association
MEOA  Malaysian Estate Owners Association
MEOMA  Malaysian Edible Oil Manufacturers’ Association
MITI  Ministry of International Trade and Industry
MNRE  Ministry of Natural Resources and Environment
MOA  Ministry of Agriculture
MOF  Ministry of Finance
MOHA  Ministry of Home Affairs
MOHR  Ministry of Human Resources
MOMG  Malaysian Oleochemical Manufacturers’ Group
MOT  Ministry of Transport
MPC  Malaysia Productivity Corporation
MPIC  Ministry of Plantation Industries and Commodities
MPOA  Malaysian Palm Oil Association
MPOB  Malaysia Palm Oil Board
MPOC  Malaysian Palm Oil Council
NASH  National Association of Smallholders
NBDPO  neutralised bleached deodorised palm oil
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>NBDPKO</td>
<td>neutralised bleached deodorised palm kernel oil</td>
</tr>
<tr>
<td>NKEA</td>
<td>National Key Economic Areas</td>
</tr>
<tr>
<td>NUPW</td>
<td>National Union of Plantation Workers</td>
</tr>
<tr>
<td>PDRM</td>
<td>Polis Diraja Malaysia (Royal Malaysian Police)</td>
</tr>
<tr>
<td>PEMANDU</td>
<td>Performance Management &amp; Delivery Unit</td>
</tr>
<tr>
<td>PEMUDAH</td>
<td>Pasukan Petugas Khas Pemudahcara Perniagaan (Special Task Force to Facilitate Business)</td>
</tr>
<tr>
<td>POMA</td>
<td>Palm Oil Millers' Association of Malaysia</td>
</tr>
<tr>
<td>POME</td>
<td>palm oil mill effluent</td>
</tr>
<tr>
<td>PORAM</td>
<td>Palm Oil Refiners' Association of Malaysia</td>
</tr>
<tr>
<td>PORIM</td>
<td>Palm Oil Research Institute of Malaysia</td>
</tr>
<tr>
<td>PORLA</td>
<td>Palm Oil Registration and Licensing Authority</td>
</tr>
<tr>
<td>PMF</td>
<td>palm mid-fraction</td>
</tr>
<tr>
<td>RBDPO</td>
<td>refined bleached deodorised palm oil</td>
</tr>
<tr>
<td>RBDPKO</td>
<td>refined bleached deodorised palm kernel oil</td>
</tr>
<tr>
<td>RTD</td>
<td>Road Transport Department</td>
</tr>
<tr>
<td>SPAD</td>
<td>Suruhanjaya Pengangkutan Awam Darat (Land Public Transport Commission)</td>
</tr>
</tbody>
</table>
### Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biodiesel</td>
<td>vegetable oil- or animal fat-based renewable diesel fuel for use in diesel vehicles in its pure form or blended with petroleum diesel</td>
</tr>
<tr>
<td>Biofuel</td>
<td>substitute for fossil fuel that contains energy from geologically recent carbon fixation that occurs in living organisms such as plants and microalgae</td>
</tr>
<tr>
<td>Biomass</td>
<td>biological material derived from living or recently living organisms, most often plants or plant-derived materials</td>
</tr>
<tr>
<td>Cess</td>
<td>a fee imposed on oil palm products produced in or exported from Malaysia as stated in section 35 of Act 582</td>
</tr>
<tr>
<td>Crude palm kernel oil</td>
<td>palm kernel oil obtained by processing palm kernel</td>
</tr>
<tr>
<td>Crude palm oil</td>
<td>palm oil extracted in the milling process of fresh fruit bunches</td>
</tr>
<tr>
<td>Daily rate worker</td>
<td>worker whose wage is paid based on the number of working days</td>
</tr>
<tr>
<td>Downstream</td>
<td>palm oil industry activities encompassing refining, manufacturing, marketing, trading and distribution of palm oil based products</td>
</tr>
<tr>
<td>Effluent treatment plant</td>
<td>plant where palm oil mill effluent is treated before being discharged into the environment</td>
</tr>
<tr>
<td>Elaeis guineensis</td>
<td>oil palm trees cultivated as the principal source of palm oil</td>
</tr>
<tr>
<td>Estate</td>
<td>oil palm holding which is not a smallholding</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>------</td>
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</tr>
<tr>
<td>Estate hospital</td>
<td>a hospital or dispensary maintained by an employer on or in the neighbourhood of any estate for the purpose of providing healthcare to plantation workers</td>
</tr>
<tr>
<td>Estate hospital assistant</td>
<td>a person who has passed any of the examinations prescribed by any regulations made under Act 435. An estate hospital assistant is responsible for providing simple first aid and basic nursing needs to plantation workers</td>
</tr>
<tr>
<td>Federal regulation</td>
<td>Acts enacted by the Federal (or national?) Parliament and are applicable throughout the country</td>
</tr>
<tr>
<td>Foreign worker levy</td>
<td>a tax imposed on a foreign worker</td>
</tr>
<tr>
<td>Fractionation</td>
<td>the process to separate the liquid olein fraction oil from the solid stearin fraction of the refined oil</td>
</tr>
<tr>
<td>Fresh fruit bunches</td>
<td>compact bunches of fruitlets produced by oil palm trees</td>
</tr>
<tr>
<td>Fruitlet</td>
<td>oil palm fruit consisting of a hard kernel (seed) enclosed in a shell (endocarp) which is surrounded by a fibrous mesocarp</td>
</tr>
<tr>
<td>Goods vehicle driving licence</td>
<td>licence required for driving commercial vehicles</td>
</tr>
<tr>
<td>Local government regulation</td>
<td>by-laws specific to the area of jurisdiction of the local government with regard to assessment tax, planning and development, business licences and permits, and provision of basic amenities</td>
</tr>
<tr>
<td>Milling process</td>
<td>a process to extract crude palm oil and palm kernel from fresh fruit bunches</td>
</tr>
<tr>
<td>Minimum retirement age</td>
<td>The minimum retirement age is 60 or as provided under subsection 4(2) of Act 753.</td>
</tr>
<tr>
<td>Minimum wages</td>
<td>Currently, minimum wages are RM900 in Peninsular Malaysia, and RM800 in Sabah, Sarawak, and the Federal Territory of Labuan (Minimum Wages Order 2012).</td>
</tr>
<tr>
<td>Minimum working days</td>
<td>Estate workers must be provided with minimum working days of 24 days (section 16(1) of Act 265).</td>
</tr>
<tr>
<td>Neutralised bleached deodorised palm kernel oil</td>
<td>refined oil produced by chemical refining process of crude palm kernel oil</td>
</tr>
<tr>
<td>Neutralised bleached deodorised palm oil</td>
<td>refined oil produced by chemical refining process of crude palm oil</td>
</tr>
<tr>
<td>Oleochemical</td>
<td>chemicals derived from plant and animal fats</td>
</tr>
<tr>
<td>Palm kernel</td>
<td>edible seed of the fruitlet</td>
</tr>
<tr>
<td>Palm kernel cake</td>
<td>by-product from the extraction process of palm kernel oil</td>
</tr>
<tr>
<td>Palm kernel oil</td>
<td>edible vegetable oil derived from palm kernel</td>
</tr>
<tr>
<td>Palm oil</td>
<td>edible vegetable oil derived from the mesocarp of the fruitlet</td>
</tr>
<tr>
<td>Palm oil mill effluent</td>
<td>remnant sludge resulting from the milling process of fresh fruit bunches</td>
</tr>
<tr>
<td>Palm olein</td>
<td>the liquid fraction of palm oil obtained through fractionation of refined oil</td>
</tr>
<tr>
<td>Palm stearin</td>
<td>the solid fraction of palm oil obtained through fractionation of refined oil</td>
</tr>
<tr>
<td>Piece rate worker</td>
<td>worker whose wage is paid based on his productivity</td>
</tr>
<tr>
<td>Plantation companies</td>
<td>companies with plantation estate ranging from a few hundred hectares to more than 100,000 hectares</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Planted areas</td>
<td>the size of land planted with oil palm trees</td>
</tr>
<tr>
<td>Press cake</td>
<td>compacted mass produced in the milling process of fresh fruit bunches from which palm kernel is extracted</td>
</tr>
<tr>
<td>Refining process</td>
<td>the process to transform crude oil into refined oil</td>
</tr>
<tr>
<td>Refined bleached deodorised palm kernel oil</td>
<td>refined oil produced by physical refining process of crude palm kernel oil</td>
</tr>
<tr>
<td>Refined bleached deodorised palm oil</td>
<td>refined oil produced by physical refining process of crude palm oil</td>
</tr>
<tr>
<td>Smallholders</td>
<td>oil palm growers with land area of less than 50 hectares</td>
</tr>
<tr>
<td>Solid palm mid-fraction</td>
<td>the solid fraction obtained through fractionation of palm olein</td>
</tr>
<tr>
<td>State regulation</td>
<td>enactments passed by the State Legislative Assembly which are only applicable in the particular state relating to matters such as land matters, public works, local government, agriculture and forestry, Islamic law and public holidays</td>
</tr>
<tr>
<td>Super olein</td>
<td>the liquid fraction obtained through fractionation of palm olein</td>
</tr>
<tr>
<td>Upstream</td>
<td>palm oil industry activities involving cultivation of oil palm, production of fresh fruit bunches and production of crude palm oil and palm kernel</td>
</tr>
<tr>
<td>Value chain</td>
<td>the sequential set of activities that transforms fresh fruit bunches into various palm oil based products for end users</td>
</tr>
</tbody>
</table>
OVERVIEW

Key Points

- The upstream segment of Malaysia’s palm oil industry comprises plantations ranging from a few hundred hectares to more than 100,000 hectares, though is dominated by large plantation companies. The industry is labour intensive.
- The upstream industry is highly regulated at the federal, state and local government levels. The industry is bound by several federal Acts on matters such as the environment, land access, occupational safety and health, and labour.
- Although land matters are subject to federal Acts, state authorities are empowered to regulate them within their respective states. The industry must also abide by rules and regulations of the relevant local governments pertaining to planning, construction of building, property taxes, licensing and other matters within their jurisdictions.
- The Malaysia Palm Oil Board is the main regulator which licenses businesses along the palm oil value chain.
- Overlapping regulations and poor administration are the main source of unnecessary regulatory burdens in the industry.
- Key recommendations for improving the existing regulatory arrangements include:
  - reviewing minimum retirement age regulation
  - reducing unnecessary regulatory burdens in workforce matters
  - removing overlap, duplication and inconsistency of regulations, particularly those relating to workers’ housing
  - reducing delays in getting approvals especially in relation to obtaining ‘Calling Visa’ Letters in the hiring of foreign workers.
- Continuous improvement in regulators’ performance requires ongoing monitoring of their effectiveness and the costs they impose on business.
About the Study
The study focuses on the regulatory burdens affecting the upstream segment of the palm oil industry and identifying those burdens which could be reduced without compromising regulatory objectives. The study covers the growing of palm oil or plantation companies.

The Malaysian Palm Oil Sector
Malaysia is currently the world’s largest exporter of palm oil although it is the second-largest producer of the oil after neighbouring Indonesia. Malaysia accounts for 39% of the world’s palm oil production and 44% of the world’s exports.

The palm oil industry is a significant source of employment with a total labour force of 1.16 million people. About 578,000 of them work on oil palm plantations, which represent 40-45% of the employment in agriculture. Foreigners make up 76% of the oil palm plantation workers. The study covers 433,000 workers.

As of 2011, the palm oil industry in Malaysia boasts 426 mills, 56 refineries, 17 oleochemical plants and 15 biodiesel plants.

As at December 2012, 75% of the total planted area is under private companies, while the other quarter of the planted area is under Government land schemes, such as FELDA and FELCRA. Of the private plantings, 80% is owned by large companies many of which have integrated operations covering the entire production process from plantation to refining and consumer products.

The palm oil industry is export oriented and is the fourth major contributor to Malaysia’s national revenue. The total export of oil palm and its related products, consisting of palm oil, palm kernel oil, palm kernel cake, oleochemicals, biodiesel and finished products increased marginally by 1.2% or 0.29 million tonnes to 24.56 million tonnes in 2012 from 24.27 million tonnes recorded in 2011. However, due to lower export prices, the total export revenue declined by 11.2% (RM9.02 billion) to RM71.40 billion compared to the RM80.41 billion achieved in 2011.
Malaysia’s palm oil exports are dominated by processed palm oil (PPO) rather than crude oil (CPO). In 2012, the total export of palm oil was 17.58 million tonnes, of which only 4.64 million tonnes was CPO, compared to 12.93 million tonnes of PPO. The larger size of PPO is in part explained by Malaysia importing CPO from Indonesia and processing it. The major importer of Malaysian CPO is the Netherlands. This is mainly due to major Malaysian acquisitions of Dutch refining facilities in 2002-2005.

China is the largest importer of Malaysian palm oil products with a total of 3.5 million tonnes or 19.9% of the total palm oil export in 2012. Other major markets are India, the EU, Pakistan, the USA, Japan, and Iran. These seven markets combined accounted for 11.83 million tonnes or 67.4% of the total Malaysian palm oil export in 2012.

**The Current Legislative Arrangement**

The main Act governing the palm oil industry in Malaysia is the *Malaysian Palm Oil Board Act 1998 (Act 582)*. The Act applies to all activities in the upstream and downstream segments of the value chain of the palm oil industry in Malaysia. The Malaysian Palm Oil Board (MPOB) serves as the regulator for the palm oil industry under the Act.

The Malaysian Palm Oil Board (Licensing) Regulations 2005 requires that licences from MPOB must be obtained for business activities relating to the planting, supply, sale, purchase, distribution, movement, storage, surveying, testing, inspecting, export and import of oil palm products and the milling of oil palm fruit.

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 laws, state authorities are empowered to make rules for carrying out the objects and purposes of the Acts within their respective states.


The MPOB is responsible for regulating, registering, co-ordinating and promoting all activities relating to the palm oil industry. It is the premier government agency under the Ministry of Plantation Industries and Commodities (MPIC), entrusted to serve the country’s oil palm industry. Its main role is to promote and develop national objectives, policies and priorities for the wellbeing of the Malaysian oil palm industry. MPOB was instituted with the objective of rendering more effective services as well as giving greater national and international focus to the industry.

MPOB also conducts and promotes research and development activities as well as commercialises the findings. A whole spectrum of R&D work ranging from upstream production to downstream processing is carried out by the various research divisions in MPOB.
Summary of issues and recommendations

5. Workforce issues:

5.1 Minimum Retirement Age

- In 2012, a new law, the Minimum Retirement Age Act 2012 (Act 753) was passed to increase the minimum retirement age from 55 to 60 for private sector employees including those on oil palm plantations. The Act took effect on 1st July 2013.

- Section 5 of Act 753 prevents an employer from forcing an employee to retire before the minimum retirement age of 60. Those who violate the Act will face a fine of up to RM 10,000. However, the Act allows employees to choose to retire earlier at the age of optional retirement as agreed in the contract of service or collective agreement (section 6).

- Oil palm plantation owners claim that plantation workers over 55 are not as productive as their younger counterparts. As such, keeping employees over 55 years of age adds to the operational costs of business in terms of wages and benefits. It also means a loss of revenue due to lower productivity.

- If the clause on the age of optional retirement is not included in the contract of service or collective agreement, employees who have not reached the minimum retirement age of 60 are not able to opt for early retirement or risk losing their retirement benefits.

Recommendation 5.1

- The Malayan Agricultural Producers Association (MAPA) should study the possibility of optional retirement at 55 years of age with the option to continue for up to 5 years with no loss of retirement benefits. This
would provide employees the flexibility to retire at anytime between 55 and 60 years of age.

5.2 Minimum working days of 24 days per month

- In accordance with section 16(1) of the Employment Act 1955 (Act 265), oil palm plantation owners must provide each worker who receives a daily rate (but not piece-rate workers), with a minimum of 24 days of work in each month even if they fail to provide work for 24 days. The clause is to ensure that plantation workers receive at least the minimum wage.

- Oil palm plantation owners cannot always provide the minimum working days of 24 days in a month for a number of reasons, such as during the rainy seasons, or low fruit production.

Recommendation 5.2

- Employers and their employees are recommended to formulate win-win solutions. For example, employee could agree to perform other work at the plantation, while the employer would make available such jobs. This option is preferred as it is easier and faster to implement. Employers may have various options depending on their capability and locality to assign other jobs.

5.3 Minimum wage for piece-rate workers

- The Minimum Wages Order 2012, which came into operation on January 2013, requires workers to be paid at least RM900 a month in the Peninsular Malaysia and RM800 in Sabah and Sarawak, and the Labuan Federal Territory. The Order is applicable across all sectors including the
oil palm plantation sector and includes workers whose wages are by piece-rate.

- Fresh fruit bunch (FFB) harvesters and collectors in oil palm plantation sector are usually paid by piece-rates. Unlike daily-rate workers who are paid based on the number of working days, piece-rate workers are paid based on productivity. A hardworking harvester can earn more than the minimum wage. Predictably, those who earn low wages are workers with low productivity.

**Recommendation 5.3**

- Employers set productivity targets for their piece-rate workers which translate into the minimum wage. The target should be acceptable to both employer and employees. This is preferred as both employer and employees would benefit from the arrangement. Employers are still free to reward highly productive workers with bonuses above the minimum wage.

**5.4 Termination and lay-off benefits relating to a change in the ownership of a plantation**

- When the ownership of an oil palm plantation changes, the former owner must give notice of termination to the workers. If the new owner wants the workers to continue working at the plantation, he must give notice of offer to the workers about rehiring within seven days of the change of ownership. However, if the offer to rehire is not made within the stipulated time, the workers are considered to have been terminated. Both former and new owners will then have to jointly pay termination benefits to the workers as stipulated in section 8 of the Employment (Termination and Lay-off Benefits) Regulations 1980.
Most oil palm plantation workers are not affected by the change of ownership of the plantation as they are almost always rehired by the new owner to continue working at the same plantation. However, the seven day period for notification is often too short for a sale transaction to be completed. The new owner is thus unable to make the offer to rehire within the stipulated time resulting in both the former and new owners having to jointly pay termination benefits to the workers.

**Recommendation 5.4**

- Simplify the notification process. Explore the possibility of single notification jointly by former and new business owner. This would reduce the employees’ uncertainty over their employment status and they would not lose their employment service benefits due to them upon retirement.
6. Taxation Issues:

6.1 Property assessment tax

- Property assessment tax applies to those who provide residential properties including those who provide them with accompanying farmland for agricultural purposes. The tax is paid to the local government every six months. According to the Local Government Act of 1976 (section 130 (2)), assessment tax rates may not exceed 35 percent of the value of a property in a given year, though in practice local councils base their estimate on the rental value of a property in a given year. Clearly, a mistake was made in writing this section of the Act.

- Property assessment tax is imposed in return for services provided by the local government. The services include garbage collection, provision of street lights, road and drainage maintenance. Although property assessment tax is collected, the local government fails to provide those services to the oil palm plantation.

Recommendation 6.1

- Amend the words in the Local Government Act 1975 (section 130 (2)) to change the basis on which the maximum property assessment tax is set to the ‘rental value’ of the property rather than the ‘value’ of the property.

- The local government and oil palm plantation businesses enter into agreements on services provided and fees charged for up three to five years. This is recommended as it allows both parties to negotiate the terms of the agreement. Where the local government cannot guarantee service provision for an agreed fee, plantation owners can then save money from the services the local government will not provide. Such savings should be used by the business to pay directly for such services.
6.2 Foreign Worker Levy

Generally two different reasons are given for having a foreign worker levy: one based on the costs of service provision and other concerns controlling the number of foreign workers.

- Collection of a levy from foreign workers was introduced in 1992 to help offset public spending on basic amenities such as clinics, roads and other services that foreign workers may use in Malaysia. However, plantation workers usually do not use publicly provided services because oil palm plantation workers tend to remain within the plantation compound and most of the facilities they use are provided by the oil palm plantation owners.

- Up until 2009, the levy was paid directly by the workers. From April 2009, the government has shifted the responsibility for direct payment of the foreign worker levy to the employers as a way to control the rising number of foreign workers in the country. However, this was changed back again to direct payment by the workers in 2012.

Despite the recent reversion of the policy, oil palm plantation owners are still paying a levy for each of their foreign workers because they would not attract enough workers if their pay was any lower. The levy has been increased from RM360 to RM590 since 2010.

Recommendation 6.2

- If there are two possible objectives there should be different levies – one for covering the cost of services, if justified, and the other to control foreign workers.

- Where oil palm plantation businesses provide facilities to their workers, such as housing and healthcare, they should be able to claim back their costs from the levy charged for public services. For example, if a plantation with 5000 workers, spent RM1.15 million per
year on additional fund benefits for employees then it could claim back RM230 of the levy per foreign worker. JTKSM could be the agency responsible for ensuring the proper utilisation of the funds.

- The issue of a levy to discourage the hiring of foreign could then be assessed separately from cost of service issues and be based on broad policy agendas not only for palm oil but all industries.
7. Recruitment of foreign workers

- As of 2013, there is a demand for 23,500 workers in the upstream sector which cannot be filled at current rates of pay. Usually foreign labours would fill these positions as local workers shy away from hard labour at the current pay and working conditions.

- Delays caused by the recruitment process in getting foreign workers is a key barrier to hiring foreign workers, as it takes about four and a half months to obtain the required “Calling Visa”.

Recommendation 7.1

1. The following suggestions may reduce the total time in processing the recruitment of foreign workers, from 4.5 months to 8 days:

- **Simplify the first two steps of the current procedures by:**
  
  JTKSM and MOHR advertising to local applicants instead of businesses. JTKSM would then allocate potential local applicants to businesses.

  Advertisement by plantation companies for local general workers have proved quite unsuccessful due the jobs generally not being attractive to Malaysians at current conditions and wages. The processing time could be reduced to zero from six weeks.

- **Maintain the one day interview at the One stop Centre, MOHA.**
  
  The “Quota Management” system could be improved by an online system to manage the latest information on the number of workers. Businesses could update the system which would be managed and monitored by the regulators.

- **Processing time for “Calling Visa” letter could be reduced from 12 weeks to seven days** if the Immigration Department played a role as a facilitator in the issuance of “Calling Visa” letter once the OSC, MOHA has approved of the application.
2. The Immigration Department could look into the performance of its new computer system (MyIm) with regard to delays in the processing of Calling Visa. If the MyIm system problem continues, then the Immigration Department may want to consider resorting to manual processing to solve the on-going issue with delays.

3. JTKSM of MOHR and the Immigration Department could use a ‘risk-based approach’ to process foreign workers’ recruitment resulting in faster approval for lower-risk businesses. For example, public listed companies would not have to submit financial statements and land titles since they are strictly regulated by the Security Commission.

4. JTKSM, MOHA and the Immigration Department should remove repetition of submission of similar information to them.

5. The Immigration Department could provide an online system to allow businesses to key-in information on foreign workers (new hiring/renewal), thereby reducing workload of government departments and businesses.

6. JKTSM could provide an online system to enable businesses to upload and update data on foreign workers at their plantations. Such a facility would reduce processing time at the immigration department office. The immigration department staff would then no longer be required to key in data, and instead simply verify the information with the actual documents submitted. The information could be used for “Quota Management” and monitoring purposes.

7. The Immigration Department could allow businesses to pre-check “Senarai Syak” in order to avoid unnecessary application rejection. For example, authorised plantation companies would be able to pre-check the status prior the submission, thus saving effort and time.
8. Workers’ housing and amenities

8.1 Housing

- In compliance with the Workers’ Minimum Standards of Housing and Amenities Act 1990 (Act 446), oil palm plantation owners provide their employees with free housing, water and electricity.

- The objective of these regulations is to guarantee minimum living conditions. As Malaysia is a member of the International Labour Organization (ILO), housing for oil palm plantation workers complies with the ILO specifications.

- Houses for the oil palm plantation workers are built within the plantation. Building plans usually receive approval from the Department of Labour (JTKSM) of MOHR, as long as it follows ILO specifications. Construction of houses can begin upon such approval.

- However, some oil palm plantations are within the jurisdiction of local governments, where construction permits must be obtained from the local government in accordance with the Street, Drainage and Building Act 1976, and Town and Country Planning Act 1974. The approval process is more complicated and costlier. Even though the houses are designed according to the ILO specifications, they do not always meet with the local government’s requirements such as local governments requiring the use of the services of professional architects and professional engineers.

Recommendation 8.1

- Stipulate that JTKSM supervises the application of all planning approvals for the housing of foreign workers instead of local government but that JTKSM refers such applications to the relevant local government to ensure any proposals will not adversely impact
on local communities. This would result in easier, faster and cheaper process for the oil palm plantation businesses.

8.2 Water

- Supplies of water are rated industrial, domestic, and social. The industrial rate is the highest while the social rate is the lowest. Oil palm plantations are charged with industrial rates for the supply of water to the workers’ houses. This contradicts with the government's policy to apply the domestic rate to water supplied to the workers’ houses.

Recommendation 8.2

- Offer rebates based on estimation on water charges for workers’ houses to compensate for industrial rate, unless water service providers would have to bear additional investment in new infrastructure.

8.3 Electricity

- Supplies of electricity are rated industrial, domestic, and social. The industrial rate is the highest while the social rate is the lowest. The rates for the supply of electricity to the workers’ houses vary with plantations.

Recommendation 8.3

- Electricity suppliers should explain the reasons for the different rates charged to different plantations. It may be due to different costs of infrastructure. It would be helpful if there was a clear policy statement by the government as to whether it wants to offer the same rates to all plantations or an approach that allocates payments based on cost of delivery.
9. Estate hospital assistants

- Currently, there is no way for candidates to train as Estate Hospital Assistants (EHAs) as there is no training centre that provides EHA certification. There used to be five training centres under the John Jeffries Scholarship Scheme where candidates could train for two years at estate group hospitals recognised by the Estate Hospital Assistants (Registration) Board. However, those have since closed down. There are only two estate hospitals in operation.

- The previous training programme took too long to complete. The programme offered three levels of training, with Grade III being the lowest. A candidate was required to undergo six months of unstructured training and then work as a probationer EHA for another one and a half year before he/she could sit for the Grade III examination. On average, it took nine years before one could sit for examinations to become a Grade I EHA. This was demotivating and potential candidates were discouraged from taking up the profession.

- In addition, being an EHA is not the most attractive job due to having to work in plantations.

Recommendation 9.1

- The Estate Hospital Assistants (Registration) Board of the Ministry of Health (MOH) conducts EHA training programmes. MOH should have direct control of EHA training centres and monitor their standards and quality to ensure that they can produce EHAs who are efficient.

- MOH should formulate a new curriculum for a training programme which removes the three levels of training to focus on a basic adequate standard. MOH should be able to assess, re-evaluate and improve on the programme over time to maintain the desired standards.
• The Human Resource Development Fund (HRDF) could be used to finance the training of EHA candidates. EHA candidates could apply to the National Higher Education Fund (PTPTN) to finance the training.
10. Driving company vehicles in plantation ground

- Company owned vehicles are vehicles that are used to ferry goods or items belonging to the Company. Section 57 of the Road Transport Act 1987 (Act 333) requires that these vehicles be driven on public roads only by those who have a Goods Vehicle Driving Licence (GDL). Only Malaysians or permanent residents who are over 21 years of age, of reasonable good health and hold Competent Driving Licence (CDL) are eligible to apply for GDLs.

- In oil palm plantations, tractors and lorries are used to ferry fresh fruit bunches. These vehicles are driven around the plantation by workers who are usually foreigners. The drivers have valid driving licences, but they do not hold GDLs since they are foreigners. This poses no problem as long as they drive the company vehicles within the plantation compound which is a private property.

- Problems arise in situations where the plantation is divided by a public road that runs through it. The only way to get the vehicle to the other half of the plantation is to drive it across the public road. The driver is deemed to have committed a traffic violation for driving a company vehicle on a public road without a GDL.

Recommendation 10.1

- The Road Transport Department (RTD) and the Royal Malaysia Police (PDRM) should allow nominated oil palm plantation drivers to obtain Special Permission to drive company vehicles without a Good Driving License (GDL). This is preferred because it would be easier to implement.
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.
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 the palm oil 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 plantation companies, 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 palm oil 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. The economic and sector profile data were gathered from secondary data sources.

A comprehensive study of existing regulations governing the palm oil 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 palm oil 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.

Chapters 5 through 10 are devoted to detailed discussion on regulatory burdens faced by upstream players specifically the oil palm plantation companies.

1.6 References


2. Palm oil sector

This chapter begins with an overview of the palm oil industry in Malaysia. Description of the value chain of the industry is given in section 2.2, followed by the industry’s economic performance in section 2.3. Section 2.4 focuses on the scope of the inquiry regarding issues in the palm oil industry.

2.1 Palm oil industry in Malaysia

This section provides an overview of the palm oil industry in Malaysia.

2.1.1 History

The oil palm tree Elaeis guineensis Jacq is indigenous to West Africa where it grows in the wild and is cultivated as an agricultural crop. The African oil palm was first brought to Malaysia by the British in early 1870’s as an ornamental plant. A Frenchman, Henri Fauconnier was responsible for the establishment of the first commercial oil palm planting in 1917 at Tennamaram Estate, Selangor. [1, 2]

The cultivation of oil palm continued into the early 1960s when it began to increase significantly due to the government’s agricultural diversification programme that promote the planting of oil palm as a means to reduce dependency of the country’s economy on natural rubber and tin. In the same decade, land settlement schemes for oil palm cultivation were introduced with the purpose of eradicating poverty among the rural poor and landless. The Federal Land Development Authority (FELDA) started its oil palm cultivation on 375 hectares of land in such scheme in 1961. The oil palm plantations became largely based on the estate management system and smallholder scheme. In 1966, Malaysia overtook Nigeria as the world’s leading exporter of crude palm oil (CPO). [2]

The palm oil industry expanded further from the 1970s with large scale planting in Sabah and Sarawak. In response to the government’s call for increased industrialisation, the
venture into domestic refining and fractionation activities transformed Malaysia from CPO exporter into producer and exporter of refined products. [2]

The 1980s saw the “Malaysianisation” of three major plantation companies; Sime Darby, Guthrie, and Harrison & Crossfield (later Golden Hope Plantations). These companies were formed by European planters in the late 19th and early 20th century. [1, 2]

The oleochemicals industry began to flourish in the 1980s due to ample supply of palm oil and palm kernel oil. Malaysia has since become a world leader in the oleochemicals industry producing about 20% of the world’s basic oleochemicals. The Kuala Lumpur Commodity Exchange (KLCE) was also founded at around this time. KLCE is the key instrument for price setting, hedging and dissemination of market information to reduce market risk in the trading of palm oil. [2]

The first Industrial Master Plan (IMP) (1986-1995), emphasised on the rationalisation of refining and fractionation to increase efficiency and competitiveness in the world market. This resulted in Malaysia becoming a hub for downstream processing as it was more economical to export refined products than to have them processed in Europe. [2, 3]

Under the second IMP (1996-2005), Malaysian firms were encouraged to venture further into the development and production of more value added downstream products. Malaysia’s processing capacity exceeded the supply of CPO. This led to the expansion of oil palm planted areas in Sabah and Sarawak. There was an increase in R&D activities to meet the call for productivity gains and development of value-added products along the value chain. The Malaysian Palm Oil Council (MPOC) was tasked with developing a comprehensive strategy to position Malaysia as an international leader in the oils and fats market through promotional activities. [2, 3]

During the third IMP (2006-2020), the industry is focussing its effort on oleochemicals, biodiesel, biomass and biogas, as well as development of new markets for Malaysian palm oil [2, italia]. The palm oil sector has been selected as one of twelve national key economic area under the economic transformation programme (ETP) (2011-2020).[3, 4]
Malaysia is currently the world’s largest exporter of palm oil although it is the second-largest producer of the oil after neighboring Indonesia. China, India, and the EU are the main consumers of Malaysia’s palm oil. Two of Malaysian-based companies; Sime Darby and FELDA are the world’s largest plantation companies. [2, 3, 5]

2.1.2 The oil palm

Oil palm is a monocious plant that produces separate male and female inflorescenses. Oil palm is cross-pollinated and the key pollinating agent is the weevil. Each tree produces between eight to 15 compact bunches known as fresh fruit bunches (FFB) per year weighing about 10 to 25 kilograms each with 1000 to 1300 fruitlets per bunch. FFB is shown in Figure 2.1. [1, 6]

Figure 2.1: Fresh fruit bunches [1]

Each fruitlet is almost spherical or elongated in shape. The fruitlet is dark purple, almost black and the colour turns orange red when ripe. It consists of a hard kernel (seed) enclosed in a shell (endorcarp) which is surrounded by a fibrous mesocarp. Figure 2.2 shows the cross section of a fruitlet.
Palm trees may grow up to sixty feet and more. The trunks of young mature trees are wrapped in fronds. The fronds will wither and fall off as the tree grows older leaving the trunk with a smoother appearance. Oil palm trees start to bear fruits 24 to 30 months after planting and continue to be productive for the next 20 to 30 years.

Oil palm trees in Malaysia are of the tenera variety which is a hybrid between the dura and the pisifera varieties (DxP) (Figure 2.3). The tenera variety yields about 4 to 5 tonnes of crude palm oil (CPO) and one tonne of palm kernel per hectare per year.
2.1.3 The oil

There are two types of oil produced from oil palm. The first is crude palm oil (CPO) produced from the fibrous mesocarp and the second is crude palm kernel oil (CPKO) from the palm kernel. The two types of oil differ in terms of chemical composition and nutritional content. Palm oil has a balanced ratio of saturated and unsaturated fatty acids while palm kernel oil has mainly saturated fatty acids. [1, 6]

In the conventional milling process, FFBs are sterilised and stripped of the fruitlets which are then digested and pressed to extract the crude palm oil (CPO). The kernels are separated from the fibrous mesocarp in the press cake and cracked to obtain palm kernels. The palm kernels are then crushed in another plant to obtain crude palm kernel oil (CPKO) and a by-product, palm kernel cake which is used as an animal feed.

The refining process of CPO produces either refined, bleached and deodourised palm oil (RBDPO) or neutralised, bleached and deodourised palm oil (NBDPO). The fractionation of RBDPO or NBDPO results in the respective liquid olein fraction and solid stearin fraction of the oils. Similarly, CPKO undergoes refining and fractionation processes.

Palm oil

Palm oil is rich in carotenoids and vitamin E specifically tocotrienols. The presence of carotenoids causes crude palm oil to appear deep red orange. Tocotrienols offers natural stability against oxidative deterioration. [6]

Palm oil has a natural semi solid characteristic at room temperature with a melting point between 33°C to 39°C. Therefore it does not require hydrogenation for use as food ingredient. Palm oil has a balanced ratio of saturated acid (45% palmitic acid and 5% stearic acid) and unsaturated fatty acid (40% monounsaturated fatty acid, 10% polyunsaturated fatty acid). This composition results in an edible oil that is suitable for use in a variety of food applications. The high content of saturated fatty acids makes the oil more stable and less prone to oxidation at high temperatures.

The fractionation of palm oil produces palm olein and palm stearin whose physical
characteristics differ from those of palm oil. Palm olein is the liquid fraction of palm oil. It is fully liquid in warm climate and has a narrow range of glycerides. Palm stearin is the more solid fraction with a wider range of melting points and iodine values.

**Palm kernel oil**

Palm kernel oil has mainly saturated fatty acids which is quite similar to the composition of coconut oil. The fractionation of palm kernel oil produces palm kernel olein and palm kernel stearin. [1, 6]

**2.1.4 Uses of palm oil**

Oil palm products have a wide range of applications. Biomass products such as plywood and fibre boards can be produced from the oil palm trunks. Wastes produced at the mill are used as animal feed and fertilizers. Palm oil and palm kernel oil are used as ingredients in food applications and as feedstock for non-food applications. [1, 2, 5, 7, 8]

**Food applications**

Refined palm oil and palm olein are used as cooking and frying oil due to their good resistance to oxidation at frying temperature. In food industries, refined palm oil, palm olein and palm stearin are the main ingredients in the production of food items namely shortenings and margarine. Palm stearin is a very useful source of fully natural hard fat component for the production of shortenings and margarine. Vanaspati (vegetable ghee) is made from refined palm oil. Palm olein also blends perfectly with other vegetable oils such as rice bran and groundnut oil.

Palm kernel oil, palm kernel olein and palm kernel stearin are used as ingredients in margarine and non-hydrogenated trans fat free margarine, confectioneries, coffee whitener, filled milk, biscuit cream and coating fats. Palm kernel stearin makes a suitable substitute for the more expensive cocoa butter.

A combination of palm oil and palm kernel oil replaces milk fats in the production of ice cream. A blend of palm oil, palm kernel oil and other fats replaces milk fat for the production of non-dairy creamers or whiteners.
Non-food applications

Applications of palm oil products in non-food sector are mainly in the oleochemical industry and biofuel production. Palm oil products, particularly palm kernel oil have become major feedstocks for the oleochemical industry. The basic oleochemical products are fatty acids, esters, alcohols, nitrogen compounds and glycerol. Oleochemical products are in turn used in the production of other products such as pharmaceutical, cosmetics, candles, soaps, detergents, lubricants and antifreeze. Palm oil can also be used directly in the production of soaps.

Fatty acids are used in the flavour and fragrance industries, the production of candles and soaps, the manufacture of cosmetic products and as processing aids for rubber products.

Fatty esters are used in the production of pure soap and as active ingredients for washing and cleaning products. Palm-based methyl esters are also suitable as a substitute for diesel fuel for vehicles and engines.

Fatty alcohols find their applications in the production of washing and cleaning products. Fatty nitrogen compounds are used in rust prevention products and in producing softeners. Glycerol are used as solvent for pharmaceutical products, humectants in cosmetics and tobacco, stabilisers, lubricants and antifreeze.

In biofuel applications, the use of palm oil in the production of biodiesel is through the oleochemical route. Palm-based methyl esters is used as substitute or additive to diesel fuel for vehicles and engines. A blend of CPO (5%) and diesel (95%) can be used directly to replace diesel as fuel for cars with suitably modified engines. Palm oil finds its uses in the oil and gas industry used as a non-toxic alternative to diesel as a base for drilling mud.

Another non-food application of palm oil is the production of phytonutrients, particularly vitamin E (tocotrienols) and pro-vitamin A (carotenoids).
2.2 Industry value chain

A value chain is the sequential set of activities performed on a raw material causing it to gain value at each consecutive activity and ultimately become a consumable product for end users. In the palm oil industry, fresh fruit bunches (FFB) are the raw material. The value chain in the palm oil industry transforms FFB into various food and non-food end products ready for consumers. The palm oil value chain consists of activities that are divided into two segments [1, 2, 3, 5]:

- Upstream
- Downstream

Figure 2.4: The value chain in the palm oil industry [2]

Figure 2.4 illustrates the palm oil value chain. (Note: For the purpose of this report, midstream segment is incorporated into the upstream segment)

Upstream activities are the cultivation of oil palm, the production of fresh fruit bunches (FFB), and the production of crude palm oil (CPO) and palm kernel. Activities in the
downstream segment include the refining of CPO, the palm kernel crushing, the manufacture of palm oil based products, the manufacture of oleochemical products, and the marketing, trading and distribution of end products to customers.

Transportation and storage activities are present in both the upstream and downstream segments of the value chain.

2.2.1 Upstream

The upstream segment of the value chain involves the cultivation of oil palm, the production of fresh fruit bunches and the production of crude palm oil and palm kernel. [1, 2, 5]

The cultivation of oil palm includes the preparation, establishment and maintenance of the field. The production of fresh fruit bunches involves harvesting, collection and preparation of oil palm fresh fruit bunches for primary market. Harvested FFB are taken to the mills to be processed for the production of crude palm oil and palm kernel.

Cultivation of oil palm

The cultivation of oil palm begins with the establishment of nursery, followed by site preparation, and the establishment and maintenance of field. [1]

At the nursery, DxP oil palm germinated seeds are planted in polybags for about twelve months. There must be sufficient top soil, uninterrupted supply of water, and irrigation. Good nursery practices such as adequate watering, weeding, applying of fertilisers and cullings of bad seedlings are essential for the production of high quality oil palm seedlings.

Site preparation begins with land clearing, followed by the planting of leguminous cover plants, and the establishment of road and effective drainage system. Leguminous cover plants provide many benefits. They help prevent soil erosion, improve soil structure and palm root development.
The establishment of field is basically planting oil palm seedlings at the plantation site. This is followed by maintenance works such as weeding, watering, pruning, pest and disease management and applying of fertilisers. Field maintenance is an ongoing activity that continues well into the lifetime of the trees which is about 20 to 30 productive years.

**Production of fresh fruit bunches**

The production of fresh fruit bunches (FFB) involves harvesting, collection and preparation of oil palm fresh fruit bunches for primary market. The harvesting of FFB commences when they are ripe. Harvesting must be carried out at the right time to maximise productivity in terms of quality and quantity. This is usually when an appropriate quantity of fruitlet becomes detached from the FFB indicating peak ripeness. Fruitlets that have detached from the bunches and fallen to the ground are also collected to minimise wastage. The harvested FFB are transported by truck to the mill to be processed. [1]

**Production of crude palm oil and palm kernel**

The milling process involves the physical extraction of palm products: crude palm oil (CPO) and palm kernel from the FFBs. FFBs must be processed within 24 hours after harvesting to prevent a rapid rise of free fatty acid (FFA) hence maintaining the quality of the extracted CPO. The production of crude palm oil involves sterilisation, treshing, digestion, pressing and purification processes. Figure 2.5 shows the palm oil milling process. [1]

FFB first undergo sterilisation. It is followed by treshing where the FFB are rolled and treshed to strip off the fruitlets. The empty fruit bunches (EFB) are transported to the plantation for mulching. The fruitlets are then placed in a fruit digester where they are mashed to loosen the fibre from the nuts of the fruits. Some oil is produced from this process. The fibre-nut mash is put into a press cage to be pressed to extract oil and moisture. The resulting compacted mass is known as the press cake which requires
further processes to produce palm kernel. The oil extracted during fruit digestion and pressing procedures then undergoes purification.

During purification, the oil is sieved to remove remnant fibre and nut particles, and is collected in a tank. Steam is injected into the tank to create oil-water mixture which is left for a few hours to settle. Upon settling, clean oil collects at the top and oil sludge settles at the bottom of the tank. The clean oil then undergoes centrifuging to separate impurities from it and is subsequently passed through a vacuum drier to reduce moisture content. This results in a purified oil known as the crude palm oil (CPO). The oil sludge is fed into a centrifuge for further oil recovery. The recovered oil is also purified to become CPO. CPO is kept in a storage tanks prior to distribution to customers.

The remnant sludge, known as Palm Oil Mill Effluent (POME) is treated in the effluent treatment plant (ETP).

To produce palm kernel, the pressing cake is fed into a depericarper to separate the nuts from the fibre. The fibre is used as fuel in the boiler at the mill. The nuts are dried in a nut silo before being cracked. The cracked nuts are then fed into a blowing machine to remove lighter shell fragments from the palm kernel. Hydro-clone separation process separates the palm kernel from the remaining portions of the nut shells. The clean palm kernels are dried and stored before delivery to customers.
Figure 2.5: Palm oil milling process [1]
2.2.2 Downstream

Downstream activities in the production of palm oil include the refinement of CPO, the palm kernel crushing, the manufacture of palm oil based edible and non-edible products, the manufacture of oleochemical products, the marketing, trading and distribution of palm oil based products. Figure 2.6 shows the refining process of CPO. [1, 2, 5]

The refining of CPO produces refined, bleached and deodourised palm oil (RBDPO) or neutralised, bleached and deodourised palm oil (NBDPO). Crude palm kernel oil (CPKO) undergoes similar refining processes to become refined, bleached, deodorised palm kernel oil (RBDPKO) or neutralised, bleached, deodorised palm kernel oil (NBDPKO).

Refined oil undergoes fractionation to separate the liquid olein fraction from solid stearin fraction of the oil. The olein fraction can be fractionated for a second time to produce a super olein and a solid palm mid-fraction (PMF) which is the feedstock for production of specialty fats and other products.

Activities in the downstream segment of the value chain of palm oil industry are not described in further detail as they are not within the scope of the study.
Figure 2.6: Refining process of CPO [1]

CRUDE PALM OIL (CPO)

PHYSICAL REFINING

- Degumming
  - Earth Bleaching
    - Deodorising
      - Palm Fatty Acid Distillates
      - Refined Bleached Deodorised PO
        - Fractionation
          - RBD Stearin
          - RBD Olein

CHEMICAL REFINING

- Alkali Neutralisation
  - Soap Stock
  - Earth Bleaching
    - Deodorising
      - Neutralised Bleached Deodorised PO
        - Fractionation
          - NBD Stearin
          - NBD Olein

PO = Palm oil
R = Refined
B = Bleached
D = Deodorised
N = Neutralised
2.2.3 Industry players

Figure 2.7: Stakeholders in the palm oil industry in Malaysia[1]

Figure 2.7 shows the stakeholders in the industry. The major players in the palm oil industry in Malaysia are grouped under the following clusters: [1]
- Upstream producers – essentially involved in the cultivation of oil palm, production of fresh fruit bunches (FFB) and processing them into crude palm oil and palm kernel.
- Downstream producers – palm oil refiners, palm kernel crushers, manufacture of palm-based edible products and specialty oils and fats,
- Exporters and Importers of palm oil
- Customers - institutional buyers and retail customers and investors
- Industry organisations representing the interests of the upstream and downstream producers
- Government agencies associated with the oil palm industry, particularly in respect of research and development and regulatory functions.
- Other players who have an interest and/or stake in the oil palm industry (NGOs, unions etc)

The industry players in the upstream segment of the value chains are those involved in the cultivation of oil palm, production of FFB and production of CPO and palm kernel. The private sector has been the main driver in the production of palm oil in Malaysia. Among the major players are Kumpulan Guthrie Berhad, Golden Hope Plantations Berhad, IOI Group, United Plantation Berhad, Boustead Plantation Berhad, and Sime Darby Berhad. FELDA and FELCRA (Federal Land Consolidation and Rehabilitation Authority) are organisations under the Government land schemes while others are individual smallholders.

The two main associations representing these companies are the Malaysian Palm Oil Association (MPOA) and the Malayan Agriculture Producers Associations (MAPA). MPOA was established in 1999 as an umbrella organisation for planters of oil palm, and other estate crops such as rubber, cocoa, and tea. MPOA represents the interests of the planters to government, various statutory bodies, stakeholders and external parties. Individuals or companies with plantation of at least 40 hectares are qualified for membership. MAPA is another organisation that serves the interests of plantation companies in Peninsular Malaysia. It represents 184 plantation companies. [3, 9]
2.3 Industry performance

Malaysia is currently the world’s largest exporter of palm oil although it is the second-largest producer of the oil after neighboring Indonesia. Malaysia accounts for 39% of the world’s palm oil production and 44% of world’s exports.[10]

The palm oil industry is a significant source of employment with a total labour force of 1.16 million people. About 578,000 of them work on oil palm plantation, which represents 40-45% of the employment in agriculture. Foreigners make up 76% of the oil palm plantation workers. [5]

As of 2011, the palm oil industry in Malaysia boasts of 426 mills, 56 refineries, 17 oleochemical plants, and 15 biodiesel plants (Table 2.1).

Most large plantation companies operate their own nurseries, while smallholders obtain seedlings from licensed nurseries. Table 2.2 shows the number of licensed oil palm seed producers and nurseries by state in 2011. There is a total of 602 licensed nurseries and 23 seeds producers in the country. Sarawak has the highest number of nurseries (150) followed by Johor with 113. Johor and Sarawak have the most number of seeds producers with 9 and 7 respectively.

The oil palm planted areas in Malaysia has increased significantly over the years from 0.57 million hectares in 1975 to 5 million hectares in 2011 as shown in Table 2.3. Table 2.4 shows the distribution of planted areas by state in 2011. The largest planted areas are in Sabah and Sarawak with 1.43 million hectares and 1.02 million hectares respectively. In 2012, the total planted area increased to 5.08 million hectares. In the lead is still Sabah, accounting for 28.4% (1.44 million hectares), and followed by Sarawak with 21.2% (1.08 million hectares) (Table 2.5). [11, 12]

As at December 2012, 61.6% of the total planted area is under private ownership, particularly plantation related companies with integrated operations covering the entire
production process from plantation to refining and consumer products. 24.8% of the planted area is under Government land schemes, such as FELDA, and FELCRA while the remaining 13.6% belongs to individual smallholders. [5]

The largest upstream player is FELDA through its private listed company Felda Global Ventures Holdings (FGVH). FELDA was established in 1956 with the socio-economic mandate of developing agricultural land for the rural poor and landless. Felda accounts for 14% of the total planted area in 2012.

Plantation related companies vary considerably in size, from a few hundred hectares to more than 100,000 hectares. The largest companies in terms of planted area are Kumpulan Guthrie Berhad, Golden Hope Plantations Berhad, IOI Group, KLK Berhad and Sime Darby Berhad.

The distribution of the yield of fresh fruit bunches (FFB) from 1975 to 2011 as shown in Table 2.6 maintains a fluctuating trend. The FFB yield reaches its peak of 22.15 tonnes per hectare in 1985. In 2012, the FFB yield is 18.89 tonne per hectare, slightly down from 19.69 tonnes per hectare in 2011 (Table 2.5).

The distribution of the FFB yield by state from 1990 to 2011 (Table 2.7) shows similar fluctuating trend. The consistently lower yield of FFB for Kelantan and Terengganu could be due to factors such as types of soil, and weather, as well as operating and maintenance practices. The 2011 figures show Melaka having the best FFB yield with 23.66 tonnes per hectare, followed by Sabah with 22.31 tonnes per hectare while the yields for Kelantan and Terengganu are 12.20 and 15.63 tonnes per hectare respectively.

Consequently, the distribution of crude palm oil (CPO) yield experiences a similar trend over the same period (Table 2.6 and Table 2.8). The CPO yield for 2011 and 2012 are 4.01 and 3.84 tonnes per hectare respectively (Table 2.5).
Figure 2.8 shows CPO prices between October 2011 and October 2013. It begins with an upward trend from RM2,800 to a maximum of RM3,600 in April 2012. The price declines from then on until December 2012 and stabilises at around RM2,300.

The year 2012 saw the production of 93.27 million tonnes of fresh fruit bunches (FFB) compared to 93.82 million tonnes produced in 2011.

The total production of CPO in 2012 (Table 2.5), decreased slightly by 0.7% to 18.79 million tonnes, from the 2011 figure of 18.91 million tonnes. Similar observation was made with regard to production in Peninsular Malaysia (0.5% to 10.32 million tonnes) and Sabah (5.1% to 5.54 million tonnes). Sarawak recorded an increase of 8.4% to 2.92 million tonnes which was mainly due to new areas coming into production. [11, 12]

The palm oil industry, which is basically export oriented, is the fourth major contributor to Malaysia’s national revenue. The total export of oil palm and its related products, consisting of palm oil, palm kernel oil, palm kernel cake, oleochemicals, biodiesel and finished products increased marginally by 1.2% or 0.29 million tonnes to 24.56 million tonnes in 2012 from 24.27 million tonnes recorded in 2011. However, due to lower export prices, the total export revenue declined by 11.2% (RM9.02 billion) to RM71.40 billion compared to the RM80.41 billion achieved in 2011 (Table 2.5). [12]

Malaysia’s exports are skewed towards processed palm oil (PPO). In 2012, the total export of palm oil was 17.58 million tonnes, of which only 4.64 million tonnes was CPO, compared to 12.93 million tonnes of PPO. However, this was higher than the volume of CPO exported in 2011 (3.48 million tonnes). The major importer of Malaysian CPO is the Netherlands. This is mainly due to the major Malaysian acquisitions of Dutch refining facilities in 2002-2005. [3, 5]

China is the largest importer of Malaysian palm oil products with a total of 3.5 million tonnes or 19.9% of the total palm oil export in 2012. Other major markets are India, the EU, Pakistan, the USA, Japan, and Iran. These seven markets combined accounted for 11.83 million tonnes or 67.4% of the total Malaysian palm oil export in 2012. [3, 5, 11, 12]
Malaysia also imports palm oil to supplement the decline in palm oil production as well as to cater for demand for further processing (local and export). The palm oil import in 2012 was 1.39 million tonnes compared to 1.31 million tonnes in 2011.[12]

Table 2.1: Industry performance status 2011 [12]

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>TOTAL</th>
<th>CAPACITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRUIT MILLS</td>
<td>426</td>
<td>99,852,400</td>
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<tr>
<td>KERNEL CRUSHER</td>
<td>44</td>
<td>3,952,800</td>
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<tr>
<td>BIODISSEL</td>
<td>15</td>
<td>NaN</td>
</tr>
<tr>
<td>BULKING</td>
<td>33</td>
<td>1,532,243</td>
</tr>
</tbody>
</table>

Table 2.2: Oil palm planting material licensees (active) by state 2011 [12]

<table>
<thead>
<tr>
<th>STATE</th>
<th>SEEDS PRODUCER</th>
<th>NURSERY</th>
</tr>
</thead>
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<td>Johor</td>
<td>9</td>
<td>113</td>
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<td>Kelantan</td>
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<td>N.Sembilan</td>
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<td>Perak</td>
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<td>P.Pinang</td>
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<td>Selangor</td>
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<td>Terengganu</td>
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<td>Sabah</td>
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<td>Sarawak</td>
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<td><strong>JUMLAH</strong></td>
<td><strong>23</strong></td>
<td><strong>602</strong></td>
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Table 2.3: Oil palm planted area: 1975-2011 (hectares) [12]

<table>
<thead>
<tr>
<th>Year</th>
<th>P.Malaysia</th>
<th>Sabah</th>
<th>Sarawak</th>
<th>Total</th>
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<td>1975</td>
<td>568,561</td>
<td>59,139</td>
<td>14,091</td>
<td>641,791</td>
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<tr>
<td>1976</td>
<td>629,558</td>
<td>69,708</td>
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<td>1977</td>
<td>691,706</td>
<td>73,303</td>
<td>16,805</td>
<td>781,814</td>
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<td>1978</td>
<td>755,525</td>
<td>78,212</td>
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<td>1979</td>
<td>830,536</td>
<td>86,683</td>
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<td>906,590</td>
<td>93,967</td>
<td>22,749</td>
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<td>100,611</td>
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Source: Department of Statistics, Malaysia: 1975 - 1984
- Malaysia - 1984-2011
Table 2.4: Oil palm areas (mature and immature) by state 2011 (hectares) [12]

<table>
<thead>
<tr>
<th>STATE</th>
<th>MATURE</th>
<th>IMMATURE</th>
<th>TOTAL</th>
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</thead>
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<tr>
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<td>76,443</td>
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<td>Kelantan</td>
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<td>Melaka</td>
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Table 2.5: Summary on the performance of the Malaysian oil palm industry, 2012 [11]

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<th>2012</th>
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Table 2.6: Yield of fresh fruit bunches, crude palm oil and palm kernel: 1975 – 2011 (Tonnes/Hectare) [12]

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Source: Department of Statistics, Malaysia: 1975 - 1984
: MPOB: 1985 - 2011
### Table 2.7: Fresh fruit bunches (FFB) yield by state: 1990 – 2011 (Tonnes/Hectare) [12]

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### Table 2.8: Crude palm oil (CPO) yield by state: 1990 – 2011 (Tonnes/Hectare) [12]

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### Table 2.11: Crude palm oil (CPO) yield by state: 1990 – 2011 (Tonnes/Hectare) [12]

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**Source:** MPOB

*P. Malaysia*
2.4 Scope of the study

The study focuses on regulatory burdens affecting players in the upstream segment of the value chain of the palm oil industry. They are mainly large plantation companies which have been the main drivers in the development and production of palm oil in Malaysia.

Regulatory burdens are associated with matters related to employment, hiring of foreign workers, and taxation issues.

2.5 References


http://www.brandeis.edu/investigate/slavery/docs/palm/From-Seed-to-Frying-Pan_WWF.pdf
http://www.mpoc.org.my/


[8] *Palm oil industrial cluster*. Retrieved from the East Coast economic region website:


[10] *Malaysian palm oil industry*. Retrieved from MPOC website:
http://www.mpoc.org.my/Malaysian_Palm_Oil_Industry.aspx


3. What is an unnecessary regulatory burden?

This chapter discusses what constitutes an unnecessary regulatory burden, and how such burdens can be prevented. The content of this chapter is taken from the research report by the Productivity Commission of the Australian Government. [1]

3.1 Sources of potential unnecessary regulatory burdens

The potential for unnecessary regulatory burdens arises from a number of sources. However, they can typically be categorised under three broad headings:

(1) problems with regulations themselves;
(2) poor enforcement and administration; and
(3) unnecessary duplication and inconsistency.

3.1.1 Problems with regulations themselves

Regulations can unnecessarily increase regulatory burdens in several ways:

- **Unclear or questionable objectives**: a lack of clarity provides uncertainty about what is expected of both those being regulated and those regulating. Moreover, it increases the potential for regulators to use their own discretion in determining the intent and priorities of legislators and can lead to inconsistency between regulators interpreting the same piece of legislation. Regulatory uncertainty acts as a disincentive to invest, as well as potentially increasing compliance costs.

- **Conflicting objectives**: sometimes regulations (possibly enforced by different regulators) can have objectives that are conflicting. Examples might include safety considerations, that suggest generous spacing, and environmental regulations that seek to minimise a facility’s ‘footprint’ and hence its environmental impact.

- **Overly complex regulation**: complex laws are likely to require legal interpretation and therefore compliance is more costly and more time consuming. They also make it harder to determine the expectations of regulators.
- **Excessively prescriptive regulation**: prescriptive regulation is typically more complex and onerous than objective- or performance-based regulation, is less flexible, can stifle innovation, and may not allow businesses to deliver the policy outcome at least cost.

- **Redundant regulation**: regulation may remain in force despite being overtaken by changed circumstances. While providing no benefits, such regulation will still involve compliance costs and could overlap with more recent legislation, causing regulatory confusion.

- **Regulatory creep**: regulations that influence more areas and activities than were originally intended or warranted. This can stem from the use of subordinate legislation, and regulatory guidelines.

### 3.1.2 Poor enforcement and administration

Poor enforcement and administration of regulation can arise from a number of sources:

- **Excessive reporting or recording requirements**: requirements beyond the minimum required to enforce a regulation unnecessarily increase compliance costs.

- **Inadequate resourcing of regulators (including inexperience or lack of expertise)**: can delay the time taken for approvals, and potentially lead to poor regulatory decisions. It can also prompt regulators to seek additional, and potentially spurious, information because of a lack of experience or expertise, or to circumvent statutory time limits (where such limits exist).

- **Overzealous regulation**: can increase compliance costs and represents a disincentive to investment. Inadequate resourcing of regulators can lead to problems, but over-resourcing can also, if it results in imposing excessive regulation or micro-management of regulated businesses.

- **Regulatory bias or capture**: regulators may be ‘captured’ by particular interests that they deal with on a regular basis, and therefore make decisions favourable to those interests. Such interests could include the businesses being regulated (or a
particular business or businesses), or lobby groups such as environmental or community groups.

3.1.3 Unnecessary duplication and inconsistency

Regulatory duplication and inconsistency between jurisdictions is not inherently bad. It may stem from different circumstances between jurisdictions and, from a competitive federalism perspective, can lead to better overall outcomes. However, duplication and inconsistency can impose some costs:

- **Duplication of regulation**: the need to provide information to multiple regulators and go through multiple processes can add unnecessarily to compliance costs. The existence of multiple regulators also creates incentives for ‘forum shopping’, where participants may seek the forum in which they are most likely to obtain a favourable outcome. Further, it can create uncertainties regarding the boundaries of responsibility for each regulator. On the other hand, regulatory duplication can also be seen as a desirable outcome of intergovernmental competition.

- **Inconsistency of regulation**: regulatory inconsistencies can occur within or across jurisdictions, and increase regulatory burdens. Inconsistency is likely to present particular problems for businesses operating in multiple jurisdictions.

- **Variation in definitions and reporting requirements**: variation can occur between regulators within jurisdictions, although it is typically a more significant problem for businesses operating in multiple jurisdictions. Such variation can increase compliance costs.

3.2 What is best practice regulation?

The overarching objective of regulation should be to achieve desired outcomes more efficiently than would be achieved by alternatives, including no regulation (PC 2002). In promoting government objectives, most regulation will also impose costs. The focus of this study is on unnecessary burdens. Best practice regulation imposes the least burden necessary to achieve the underlying policy goals, bringing the greatest possible net benefit to the community.
Box 3.1  **Principles of good regulatory practice**

Six principles of good regulatory practice were:

- Governments should not act to address ‘problems’ through regulation unless a case for action has been clearly established. This should include evaluating and explaining why existing measures are not sufficient to deal with an issue.

- A range of feasible policy options — including self-regulatory and co-regulatory approaches — needs to be assessed within a benefit–cost framework, including analysis of compliance costs and, where relevant, risk.

- Only the option that generates the greatest net benefit for the community, taking into account all the effects, should be adopted.

- Effective guidance should be provided to regulators and regulated parties to ensure that the policy intent of the regulation is clear, as well as what is needed to be compliant.

- Mechanisms such as sunset clauses or periodic reviews need to be built in to legislation to ensure that regulation remains relevant and effective over time.

- There needs to be effective consultation with regulated parties at the key stages of regulation-making and administration.

*Source: Regulation Taskforce (2006), Australia Productivity Commission*

### 3.2.1 Good regulatory design

Good design of regulations is important to minimise unnecessary burdens on business and the community. Elements of good regulatory design relate to:

- clarifying objectives

- simplifying regulation
- reducing levels of prescription (unless this is necessary to clarify requirements or provide certainty about compliance, thereby potentially reducing unnecessary burdens)
- minimising reference to subordinate legislation
- minimising unnecessary inconsistencies between jurisdictions
- including review mechanisms
- completing regulatory impact statements (RISs)
- including sunset clauses — a sunset clause is likely to trigger a review or termination of a regulation, which may reduce unnecessary burdens.

3.2.2 Regulatory impact statements and ‘good’ process

The RIS process is designed to bring together key elements of good regulatory practice. The RIS should cover the problem or issue being dealt with, the objective of government in dealing with the issue, and a range of feasible options. There should be benefit–cost (Box 3.2), impact and risk analyses for each option, together with justification for the preferred option. The RIS should also summarise the consultation process and feedback received, and address how the regulation will be implemented and what review mechanisms are in place (Regulatory Taskforce 2006).

Box 3.2 Importance of benefit-cost analysis

The use of benefit–cost analysis is an important part of the regulatory impact statement process. A proper benefit–cost analysis should account for all the effects of a regulatory proposal on the community and economy (not just direct or easily quantifiable effects). Benefit–cost analysis involves valuing the gains and losses relating to a regulatory proposal in monetary terms. Where the benefits exceed the costs, this suggests the regulatory proposal would bring net benefits to the community.

Benefit–cost analysis is an important part of the regulatory assessment process because it:
• provides decision makers with quantitative information about the likely effects of a regulatory proposal

• encourages decision makers to take account of all the positive and negative effects of a regulatory proposal, and discourages them from making decisions based only on the impact on a single group within the community

• quantifies the impact of regulatory proposals in a standard manner, thereby promoting comparability, and encouraging consistent decision making

• captures the various links between the regulatory proposal and other sectors of the economy

• helps discover cost-effective solutions to policy problems by identifying and measuring all costs

• makes clear and transparent the assumptions and judgments made in those instances where it is difficult to quantify some costs or benefits with precision (Australian Government 2007).

Good regulatory design is important to minimise unnecessary burdens on business and the community. Unnecessary regulatory burdens can potentially arise from problems with regulations themselves, poor enforcement or administration, and unnecessary duplication and inconsistency. Best practice regulation imposes the least burden necessary to achieve the policy goals underlying the regulation, bringing the greatest possible net benefit to the community.

3.3 Costs of regulation

The major costs associated with regulation can be categorised as compliance costs (including the administrative costs to government); lobbying or ‘gaming’ costs; the costs of price distortions leading to consumption and production losses; and the related costs associated with potentially ‘lost’, delayed or suboptimal investment (Figure 3.1).
3.3.1 Compliance costs

The costs of complying with (and administering) regulation are potentially significant. The compliance costs of regulation to businesses potentially include:

- management and staff time (including diversion of management attention from core business, and hiring of additional staff)
- payments to regulators
- purchase and maintenance of specially modified IT systems
- hiring of external expertise (such as consultants and lawyers)
- training costs.

The burden of these compliance costs falls initially on businesses, potentially reducing returns on investment and, therefore, possibly investment levels (in turn generating lower tax revenue). To the extent that higher costs are passed on to consumers in the form of higher prices or restricted consumer choice, the burden of increased compliance costs falls on consumers. Governments also incur significant costs in designing and enforcing regulation. Compliance costs are minimised when good regulatory practices are followed.

3.3.2 Lobbying costs

A further potential inefficiency stemming from regulation — particularly when regulatory outcomes are uncertain — is the diversion of resources into lobbying activity, both by businesses seeking to invest and other interested parties. The greater the discretion given to regulators, the greater the potential for lobbying activity to be employed in an effort to influence regulatory outcomes.
3.3.3 Production and consumption losses

Regulation can potentially lead to price distortions resulting in production or consumption levels deviating from those that would occur in the absence of regulation.
3.3.4 Delays and the potential for ‘lost’ investment

The compliance costs and regulatory uncertainty associated with prospective projects can reduce investor returns and increase risk, potentially threatening their commercial viability. Delays result in out-of-pocket expenses and implicit costs associated with deferred or cancelled projects, such as forgone earnings, lost market opportunities, the costs of standby financing facilities, and the costs of the funds already invested. These losses are compounded if capital costs are rapidly increasing.

Unnecessary compliance costs and delays can act as a deterrent to the entry of small- to medium-sized businesses, which already face high barriers to entry.

3.4 References

4. Regulatory overview

The upstream segment of the palm oil industry in Malaysia is highly regulated according to the law of the land. This chapter describes the legislations governing the upstream segment of the value chain of the palm oil industry. It includes a discussion on the historical development of the existing framework and an overview of current legislative arrangements and regulators.

4.1 Historical development of the existing framework

Prior to the year 2000, the regulatory and licensing functions of the industry were the responsibility of the Palm Oil Registration and Licensing Authority (PORLA). PORLA was set up in 1974 as the first initiative that attempted to encourage oil palm cultivation in co-ordination with private sector actors. The Palm Oil Research Institute of Malaysia (PORIM) which was established in 1979 was responsible for research and development works on palm oil. These two organisations were dissolved following the passing of the *Malaysian Palm Oil Board Act 1998 (Act 582)*.

The Act led to the establishment of the Malaysian Palm Oil Board (MPOB) in 2000 which took over the functions of PORLA and PORIM. The Act empowers MPOB to regulate the palm oil industry and be responsible for all research and development activities on palm oil. [1, 2]

4.2 Current legislative arrangements

The main Act governing the palm oil industry in Malaysia is the *Malaysian Palm Oil Board Act 1998*. The Act applies to all activities in the upstream and downstream segments of the value chain of the palm oil industry in Malaysia. MPOB serves as the regulator for the palm oil industry under the Act.

*The Malaysian Palm Oil Board (Licensing) Regulations 2005* requires that licences from MPOB must be obtained for business activities relating to the planting, supply, sale,
purchase, distribution, movement, storage, surveying, testing, inspecting, export and import of oil palm products and the milling of oil palm fruit. A list of forms for the application of new licences is shown in Appendix A.

Box 4.1  
**Malaysian Palm Oil Board (Licensing) Regulations 2005**

**Activities requiring licence from MPOB**

5. _Prohibition against producing or selling, etc., without licence_

_Prohibition against producing or selling, etc., without licence_

5. (1) No person shall, unless he is a holder of an appropriate licence issued under these Regulations -

(a) produce oil palm planting material;

(b) sell or move oil palm planting material, oil palm fruit, palm oil, palm kernel, palm fatty acids or palm oleochemicals;

(c) purchase oil palm fruit, palm oil, palm kernel or palm fatty acids;

(d) store oil palm planting material, palm oil, palm kernel, palm kernel cake, palm fatty acids or palm oleochemicals;

(e) commence construction of oil palm mill;

(f) mill oil palm fruit;

(g) commence construction of bulking facilities for oil palm products;

(h) survey or test oil palm planting material, oil palm fruit, palm oil, palm kernel, palm kernel cake, palm fatty acids or palm oleochemical; or

(i) export or import oil palm planting material, oil palm fruit, palm oil, palm kernel, palm kernel cake, palm fatty acids or palm oleochemical.

(2) No person, other than a person applying for a licence under the estate and smallholding categories, shall be eligible to be issued a licence unless he has registered his business with the relevant authorities under any written law regulating such business.
4.2.1 Other regulations

The upstream segment of the palm oil industry is also bound by other acts at the Federal, State and Local Government levels.

Federal regulations


The Pesticides Act 1974 is the principal legislation for the control of pesticides in Malaysia. The Pesticides Board, under the Ministry of Agriculture (MOA) which came into existence through the Act, is the sole authority charged with the responsibility of regulating pesticide use in Malaysia. Only pesticides registered by the Pesticides Board, are allowed to be manufactured, sold or used in Malaysia.

The Environmental Quality Act 1974 relates to the prevention, abatement, control of pollution and enhancement of the environment, and for purposes connected therewith. Licences are required from the Department of Environment (DOE), the Ministry of Natural Resources and Environment (MNRE), for upstream activities that give rise to pollutions, such as emission of noise, emission or disposal of wastes into the atmosphere, water, or land. It is compulsory to conduct an Environmental Impact Assessment (EIA) for any proposed project to assess its potential impact on the environment, and subsequently propose measures to control such impact. A list of Environmental Quality regulations pertaining to the upstream palm oil industry is available in Appendix B.

The Occupational Safety and Health Act 1994 is an act to make further provisions for securing the safety, health and welfare of persons at work, for protecting others against risks to safety or health in connection with the activities of persons at work, to establish
the National Council for Occupational Safety and Health, and for matters connected therewith. The Act is enforced by the Department of Occupational Safety and Health (DOSH), under the Ministry of Human Resources (MOHR). The Act is applicable throughout Malaysia to the industries specified in the first schedule. The upstream sector of the palm oil industry falls under the category. Occupational Safety and Health regulations relevant to the industry are listed in Appendix C.

The palm oil industry must abide by the *Factories and Machinery Act 1967*, which provides for the control of factories with respect to matters relating to the safety, health and welfare of person therein, the registration and inspection of machinery and for matters connected therewith. Oil palm mills must be registered with DOSH. DOSH carries out inspection, certification and registration of all machinery prior to their installation. Regulations under the *Factories and Machinery Act 1967* relevant to the palm oil industry are listed in Appendix D.

The Land Public Transport Commission (SPAD) enforces the *Land Public Transport Act 2010* in regulating all land-based public transport such as buses, taxies and trains as well as road and rail-based freight transport. SPAD issues commercial vehicle licences to lorries and prime-movers which transport palm oil products such as FFB and CPO.

The Road Transport Department (RTD) under the Ministry of Transport (MOT) is in charge of the registration and licensing of drivers and all motor vehicles and trailers and the enforcement of the *Road Transport Act 1987* which provides for the regulation of motor vehicles and of traffic on roads and other related matters.

Milling activities to produce CPO by companies with shareholders' funds of RM2.5 million and above or engaging 75 or more full-time paid employees, require a manufacturing licence from MITI under the *Industrial Co-ordination Act 1975*. The act provides for the co-ordination and orderly development of manufacturing activities in Malaysia, for the establishment of an Industrial Advisory Council and for other matters connected therewith or incidental thereto.
Palm oil products are dutiable goods which are subject to excise duty under the *Excise Act 1976*. Export or import of palm oil products are regulated through the *Customs Act 1967*. Both acts are enforced by the Customs Department.


*The Employment Act 1955* is applicable to all employees in the Peninsular Malaysia and the Federal Territory of Labuan whose monthly wages do not exceed RM2,000 and all manual labourers irrespective of their wages. *The Labour Ordinance (Sabah Cap. 67)* and *the Labour Ordinance (Sarawak Cap. 76)* regulate the administration of labour Laws in their respective states. [4]

Under the *Minimum Retirement Age Act 2012*, the retirement age for oil palm plantation workers is 60. They also enjoy a minimum wage of RM900 a month in the Peninsular Malaysia and RM800 in Sabah and Sarawak under the *Minimum Wages Order 2012*.

The employment of foreign workers by oil palm plantations involves immigration procedures under the *Immigration Act 1959/63*. The applications for foreign workers are submitted to the One Stop Centre, the Ministry of Home Affairs (MOHA).

*The Workmen’s Compensation Act 1952* provides for the payment of compensation for injuries in accidents during employment and imposes an obligation on the employers to insure workers. The Foreign Workers’ Compensation Scheme (Insurance) Order 2005 issued under the Workmen’s Compensation Act 1952 requires every employer employing foreign workers to insure with the panel of insurance companies appointed under this order and to effect payment of compensation for injuries sustained from accidents during and outside working hours. [4]
Oil palm plantation owners should provide their workers with free housing, water and electricity in compliance with the *Workers’ Minimum Standards of Housing and Amenities Act 1990*.

**State regulations**

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 laws, state authorities are empowered to make rules for carrying out the objects and purposes of the Acts within their respective states.

<table>
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**Section 3 of the Land Acquisition Act 1960** provides that the State Authority may acquire any (privately owned) land which is needed:

a) For any public purpose;

b) By any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

c) For the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

In Sabah and Sarawak, the main legislations with regard to land matters are the *Sabah Land Ordinance*, and the *Sarawak Land Code* respectively.

Matters related to supply of water are also within the jurisdiction of each state government.

**Local Government regulations**

Local governments are generally within the administration of the respective state governments. However, the Ministry of Housing and Local Government plays a role in coordinating and standardising the practices of local governments across the country. There are currently three types of local governments; City Hall or City Council (e.g. Kuala...
Lumpur City Hall), Municipal Council (e.g. Batu Pahat Municipal Council), District Council (e.g. Hulu Selangor District Council). There are 149 local authorities, consisting of 12 City Halls/Councils, 39 Municipal Councils and 98 District Councils. There are other bodies empowered by state governments to execute the functions of local authority such as Kulim Hi- Tech Local Authority and Putrajaya Corporation. [5]

City Council or City Hall is a local authority which has been upgraded from municipal council status after having successfully achieved certain criteria which include the total population exceeding 500,000 people and an annual revenue exceeding RM100 million. Municipal Council is a local authority in urban or town centre which has a total population exceeding 150,000 people and an annual revenue exceeding RM20 million. District Council is a local authority in rural area. The criteria stipulated for a District Council status is having a total population not exceeding 150,000 people and annual revenue less than RM20 million. [5]


### 4.3 Regulators and other relevant bodies

#### 4.3.1 MPOB

The MPOB is responsible for regulating, registering, co-ordinating and promoting all activities relating to the palm oil industry. It is the premier government agency under the Ministry of Plantation Industries and Commodities (MPIC), entrusted to serve the country’s oil palm industry. Its main role is to promote and develop national objectives,
policies and priorities for the wellbeing of the Malaysian oil palm industry.

The MPOB was incorporated by an Act of Parliament (Act 582) and established on 1 May 2000, taking over, through a merger, the functions of the Palm Oil Research Institute of Malaysia (PORIM) and the Palm Oil Registration and Licensing Authority (PORLA). MPOB was instituted with the objective of rendering more effective services as well as giving greater national and international focus to the industry.

Aside from implementing policies and development programmes to ensure the viability of the palm oil industry, MPOB also conducts and promotes research and development activities as well as commercialises the findings. A whole spectrum of R&D work ranging from upstream production to downstream processing is carried out by the various research divisions in MPOB.

Members of the board are appointed by MPIC. Apart from the Chairman, and the Director-General of MPOB, there are representatives from three ministries; Ministry of Finance (MOF), Ministry of Plantation Industries and Commodities (MPIC), and Ministry of International Trade and Industry (MITI) as well as representatives from Sarawak State Government, and Sabah State Government. FELDA is also represented in the board. There are also representatives from various organisations related to the palm oil industry such as the National Association of Smallholders (NASH), Malaysian Estate Owners Association (MEOA), Malaysian Palm Oil Association (MPOA), Malaysian Edible Oil Manufacturers’ Association (MEOMA), Palm Oil Millers’ Association of Malaysia (POMA), Palm Oil Refiners’ Association of Malaysia (PORAM), Malaysian Oleochemical Manufacturers Group (MOMG), East Malaysia Planters’ Association (EMPA).

MPOB derives its funding from cess imposed on the industry for every tonne of palm oil and palm kernel oil produced. MPOB also receives budget allocations from the government to fund development projects and for approved research projects under the Intensification of Research in Priority Areas (IRPA) programme. [2, 3]
4.3.2 MPIC

The ministry was initially established in 1972 as the Ministry of Primary Industries. It underwent restructuring in 2004 and became the Ministry of Plantation Industries and Commodities (MPIC). The ministry is responsible for commodities that contribute to the nation’s economy, such as palm oil, cocoa, rubber, pepper, timber, tobacco, biofuel, and minerals. The ministry formulates policies and strategies for the overall development of the plantation and the commodity sectors. [7]

4.4 Impact of regulations on upstream segment of the value chain

All activities across the value chain of the palm oil industry are governed by various acts at federal, state and local government levels. Permissions and licences must be obtained from relevant regulators for businesses related to the industry.

Regulations for activities in the upstream segment of the value chain of the palm oil industry are shown in Table 4.1.

Table 4.1 : Regulations for upstream activities in the palm oil industry

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**PRODUCTION OF FRESH FRUIT BUNCHES**

- harvesting, collection and transportation of oil palm fresh fruit bunches (FFB) to the mill labour

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5. Workforce issues

The palm oil industry is a significant source of employment with a total labour force of 1.16 million people. The upstream sector of the palm oil industry is labour intensive. About 578,000 workers work on oil palm plantation which represents 40-45% of the employment in agriculture. 76% of oil palm plantation workers are non-Malaysians indicating a strong dependency on foreign labour.

5.1 Minimum retirement age

In 2012, a new law, the Minimum Retirement Age Act 2012 (Act 753) was passed to increase the minimum retirement age from 55 to 60 for private sector employees. The law also applies to oil palm plantations. The Act took effect on 1st July 2013.

Section 4 of the Act states that the minimum retirement age of an employee shall be upon the employee attaining the age of 60 years.

Section 5 of Act 753 prevents an employer from forcing an employee to retire before the minimum retirement age of 60. Those who violate the act will face a fine up to RM 10,000. However, the Act allows employees to choose to retire earlier at the age of optional retirement as agreed in the contract of service or collective agreement (section 6).

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<th>Box 5.1 Minimum Retirement Age Act 2012</th>
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<td><strong>Minimum retirement age</strong></td>
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<td>4. (1) Notwithstanding any other written law, the minimum retirement age of an employee shall be upon the employee attaining the age of sixty years.</td>
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<td>(2) The Minister may, by notification in the Gazette, prescribe a minimum retirement age higher than the minimum retirement age provided under subsection (1).</td>
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<td>(3) When the Minister prescribes a higher minimum retirement age under subsection (2), the prescribed minimum retirement age shall supersede the minimum retirement age provided under subsection (1).</td>
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**Premature retirement**

5. (1) An employer shall not prematurely retire an employee before the employee attains the minimum retirement age.

(2) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

(3) A premature retirement shall not include an optional retirement under section 6 and a termination of a contract of service for any reason other than on the ground of age.

**Optional retirement**

6. Notwithstanding the minimum retirement age, an employee may retire upon attaining the age of optional retirement as agreed in the contract of service or collective agreement.

5.1.1 Issues

Activities in the upstream palm oil industry include seed nursery, planting, harvesting, collecting and milling. These are labour intensive activities which demand physical strength and fitness. It is generally agreed that physical strength and fitness diminish after a certain age. Health is also another age-related issue that must be considered. Oil palm plantation owners claim that plantation workers over 55 are not as productive as their younger counterparts. As such, keeping employees over 55 years of age adds to the operational costs of business in terms of wages and benefits. It also means a loss of revenue due to lower productivity.

If the age of optional retirement is not included in the contract of service or collective agreement, employees who are no longer fit for work but have not reached the minimum retirement age of 60 are not able to opt for early retirement or risk losing retirement benefits.

5.1.2 The objective of the Minimum Retirement Age Act 2012
*The Minimum Retirement Age Act 2012* was implemented with the objective of providing protection and social security to the people. It is an effort by the Government to cope with an aging population. The average life expectancy of Malaysians has increased to 75. Many people cannot afford to retire at 55 for various reasons. There are those who are still paying for their children’s education. Larger savings are required as measures against the rising cost of living in later life.

The country also benefits from the Act as people over 55 are experienced employees and are well able to contribute. The minimum retirement age of 60 had already been implemented much earlier in neighbouring countries like Philippines, Indonesia, and Thailand. The minimum retirement age in Singapore is fixed at 62.

5.1.3 What are the impacts of these regulatory arrangements?

Plantation owners object to keeping older workers (above 55 years old) in their employment as they feel that these workers are less productive and are thus financially burdensome.

Long time workers may lose their retirement benefits if they leave employment before attaining the minimum retirement age of 60.

5.1.4 Options to resolve the issues

The following options are mooted as solutions to the issue:

1. MAPA (Malayan Agricultural Producers Association) and NUPW (National Union of Plantation Workers) to review their Collective Agreement (CA) and take into account the above issues

**Box 5.2 Collective Agreement (CA)**
Collective Agreement (CA) is the once in three years agreement between MAPA and NUPW made in the interest of their respective members, the employers and employees in the agricultural sector.

2. MAPA to apply for exemption of minimum retirement age of 60 for plantation sector as provided in section 18 of Act 753

Box 5.3 Minimum Retirement Age Act 2012 (Section 18)

Exemption

18. The Minister may, by order published in the Gazette, exempt with or without conditions any employer or class of employers from all or any of the provisions of this Act

3. MAPA to study the possibility of optional retirement at 55 years of age with the option to continue for up to 5 years with no loss of retirement benefits.

5.1.5 Recommendations

Option 3 would be the best since it provides employees the flexibility to retire at anytime between 55 and 60 years of age.

5.2 Minimum working days of 24 days/month
In accordance with section 16(1) of the Employment Act 1955 (Act 265), oil palm plantation owners must provide each worker who receives a daily rate, with a minimum of 24 days of work in each month. Employers must still pay wages to the workers for each day each day less than a total of 24 days that they fail to provide work. The clause is to ensure that plantation workers receive at least the minimum wage.

Box 5.4 Employment Act 1955

Employees on estates to be provided with minimum number of days’ work in each month

16. (1) Where an employee is employed in any agricultural undertaking on an estate on a contract of service under which he earns wages calculated by reference to the number of days’ work performed in each month of his service, his employer shall be bound either to provide him with work suitable to his capacity on not less than twenty-four days in each month during the whole of which he is so employed, or if the employer is unable or fails to provide work on twenty-four days in each month whereon the employee is willing and fit to work, the employer shall nevertheless be bound to pay to the employee in respect of each of such days wages at the same rate as if such employee had performed a day’s work:

Provided that any dispute as to whether an employee was willing or fit to work shall be referred to the Director General for his decision:

Provided further that in computing twenty-four days for the purposes of this subsection account shall not be taken of more than six days in any week.

(2) A contract of service shall be deemed to be broken by an employer if he fails to provide work or pay wages in accordance with subsection (1).

5.2.1 Issues
Oil palm plantation owners cannot always provide the minimum working days of 24 days in a month for a number of reasons, such as during the rainy seasons, or low fruit production.

5.2.2 The objective of minimum working days

Section 16(1) of the Employment Act 1955 (Act 265) serves to protect the interest of oil palm plantation workers by ensuring that they earn at least the minimum wage thereby minimising uncertainty in their lives. These workers are already living in subsistence condition. Receiving less than the minimum wage would cause some deterioration to their standard of living.

5.2.3 What are the impacts of these regulatory arrangements?

Employers especially smallholders find it unfair and costly to have to pay wages to workers on days that they do not work as it erodes their profits. On the other hand, it guarantees all workers a minimum wage.

5.2.4 Options to resolve the issues

The following options are suggested as measures to resolve the issues:

1. MAPA and NUPW to study their Collective Agreement (CA) and take into account the above issue

2. Employers and their employees are recommended to formulate win-win solutions. For example, employee could agree to perform other work at the plantation, while the employer would make available such jobs.

3. Harmonise/rationalise the laws i.e. section 16 of Act 265 and the Minimum Wage Order 2012 to address the issue.

4. Increase the daily rate of pay so that workers do not have to work 24 days a month.

5.2.5 Recommendations
Option 2 is preferred as it is easier and faster to implement. Employers may have various options depending on their capability and locality to assign other jobs.
5.3 Minimum wage for piece-rate workers

The *Minimum Wages Order 2012* which came into operation on January 2013, requires workers to be paid at least RM900 a month in the Peninsular Malaysia and RM800 in Sabah and Sarawak, and the Labuan Federal Territory. The Order is applicable across all sectors including the oil palm plantation sector. Workers affected by the Order include those whose wages are by piece-rate.

Section 2 of the Guidelines on the Implementation of the Minimum Wages Order 2012 prepared by the National Wages Consultative Council states that if the wages of the piece-rate workers are below the minimum wage, their employers must top up the difference. Failure to do so will incur a penalty of RM10,000 for first offence.

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**Box 5.5**


2. **Minimum Wages for Employees Who Are Paid Wages by Piece-Rated, Tonnage, Trip or Commission.**

The method of implementation of the minimum wages for employees without basic wages but their wages are paid by piece-rated, tonnage, trip or commission are as follows:

(i) If the wages paid is above the minimum wages, the minimum wages of RM900 in Peninsular Malaysia or RM800 in Sabah, Sarawak and the Federal Territory of Labuan is deemed to have been complied with;

(ii) If the wages paid is RM900 in Peninsular Malaysia or RM800 in Sabah, Sarawak and the Federal Territory of Labuan, the minimum wages of RM900 or RM800 is deemed to have been complied with; and

(iii) If the wages paid is less than RM900 in Peninsular Malaysia or RM800 in Sabah, Sarawak and the Federal Territory of Labuan, the employer must top-up the additional wages to meet the minimum wages of RM900 or RM800.

This method does not deny the rights of employer/employee from paying/receiving wages which are better off in accordance with the terms of the contract of service.
5.3.1 Issues

Fresh fruit bunch (FFB) harvesters and collectors in oil palm plantation sector are usually paid by piece-rates. Unlike daily-rate workers who are paid based on the number of working days, piece-rate workers are paid based on productivity. A hardworking harvester can earn more than the minimum wage. Predictably, those who earn low wages are workers with low productivity.

5.3.2 The objective of minimum wage for piece-rate workers

The objective of these regulations is to guarantee a minimum standard of living to every employee in Malaysia by ensuring a minimum level of pay.

5.3.3 What are the impacts of these regulatory arrangements?

Plantation owners argue that guaranteeing a minimum wage to piece-rate workers benefits only the poor performing workers, which is unfair to the hardworking ones. It is not an incentive for workers to improve their performance and in the long run affects the productivity of the plantation. This in turn results in loss of revenue, hence less profit.

On the other hand, it does guarantee that all workers receive a minimum level of pay and thus advantages the less productive workers irrespective of the reason why they are less productive. It also does not prevent employers from providing bonuses above the minimum wage to productive workers.

5.3.4 Options to resolve the issues

The following options could be considered as solution to resolve the issues:

1. Employers set productivity targets for their piece-rate workers which translate into the minimum wage. The target should be acceptable to both employer and employees.

2. Plantation owners pay incentives above the minimum wage to their more productive workers.
3. Employers agree to pay minimum wage to piece-rate workers

5.3.5 Recommendations

Option 1 is preferred as both employer and employees would benefit from the arrangement.

Option 2 could be implemented at the discretion of employers. Employers would not mind paying incentives to employees since higher productivity means more revenue to them. Employees also benefit from the extra earnings.
5.4 Termination and lay-off benefits (Change of ownership of plantation)

When the ownership of an oil palm plantation changes, the former owner must give notice of termination to the workers. If the new owner wants the workers to continue working at the plantation, he must give notice of offer to the workers about rehiring within seven days of the change of ownership. However, if the offer to rehire is not made within the stipulated time, the workers are considered to have been terminated. Both former and new owners will then have to jointly pay termination benefits to the workers as stipulated in section 8 of the Employment (Termination and Lay-off Benefits) Regulations 1980.

Box 5.6

Employment (termination and lay-off benefits) regulations 1980.

8. (1) Where a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the business for the purposes of which an employee is employed or of part of such business, the employee shall not be entitled to any termination benefits payable under these Regulations, if within seven days of the change of ownership, the person by whom the business is to be taken over immediately after the change occurs, offers to continue to employ the employee under terms and conditions of employment not less favourable than those under which the employee was employed before the change occurs and the employee unreasonably refuses the offer.

(2) If the person by whom the business is to be taken over immediately after the change occurs does not offer to continue to employ the employee in accordance with paragraph (1), the contract of service of the employee shall be deemed to have been terminated, and consequently, the person by whom the employee was employed immediately before the change in ownership occurs and the person by whom the business is taken over immediately after the change occurs shall be jointly and severally liable for the payment of all termination benefits payable under these Regulations.

(3) Where an offer by the person by whom the business is taken over immediately after the change occurs to continue to employ the employee is accepted by such employee the
period of employment of the employee under the person by whom the employee was
employed immediately before the change occurs, shall, for the purposes of these
Regulations, be deemed to be a period of employment under the person by whom the
business is takeover, and the change of employer shall not constitute a break in the
continuity of the period of his employment.

5.4.1 Issues

Most oil palm plantation workers are not affected by the change of ownership of the
plantation as they are almost always rehired by the new owner to continue working at
the same plantation. However, the seven day period for notification is often too short for
a sale transaction to complete. The new owner is thus unable to make the offer to rehire
within the stipulated time resulting in both the former and new owners having to jointly
pay termination benefits to the workers.

5.4.2 The objective of termination and lay-off benefits

The objective of these regulatory arrangement is to ensure that the welfare of oil palm
plantation workers is not neglected when plantation changes ownership. However, it is
not clear the purpose served by requiring notification within seven days of the change of
ownership.

5.4.3 What are the impacts of these regulatory arrangements?

In most cases, giving workers notice of termination and then notice of offer to rehire are
unnecessary paperwork since they continue to work at the same plantation. Where this
happens, paying the workers termination benefits is not justified and adds unnecessary
cost to the business as they do not suffer any negative consequences as a result of
change of ownership.
5.4.4 Options to resolve the issues

Possible options to resolve the issues include:

1. Simplify the notification process. Explore the possibility of single notification jointly by former and new business owner.

2. Simplify the notification process by amending the regulation to remove “the seven day” clause or replace with the acceptable duration.

3. Have the seller responsible for feeding plantation workers until their employment status is determined

5.4.5 Recommendations

Adopting option 1 would reduce the employees’ uncertainty over their employment status. The workers would not lose their employment service benefits due to them upon retirement.
6. Taxation

Oil palm plantation business pays a number of different taxes. Among them are property assessment tax, corporate tax, foreign worker levy and cess. While paying taxes is a matter of course, there are some issues with regard to property assessment taxes and the foreign worker levy.

6.1 Property assessment tax

Property assessment tax applies to those who provide residential properties including those who provide them with accompanying farmland for agricultural purposes. The tax is paid to the local government every six months. According to the Local Government Act of 1976 (section 130 (2)), assessment tax rates may not exceed 35 percent of the value of a property in a given year. The state usually assesses the value of the property by its rental value in that year.

Property assessment tax is imposed in return for services provided by the local government. The services include garbage collection, provision of street lights, road and drainage maintenance.

Box 6.1  
Local Government Act of 1976

*Basis of assessment of rate*

130. (1) Any rate or rates imposed under this Part may be assessed upon the annual value of holdings or upon the improved value of holdings as the State Authority may determine.

(2) If any rate or rates are assessed upon the annual value or holdings such rate or rates shall not exceed—

(a) thirty-five per centum of the annual value in the case of the rates imposed under section 127;

(b) (Deleted by Act A865);

(c) five per centum of the annual value in the case of the rates imposed under section 132.
6.1.1 Issues

Although property assessment tax is collected, the local government fails to provide those services to the oil palm plantation.

6.1.2 The objective of property assessment tax

Revenue collected from the property assessment tax is used by the local government to pay for the provision of services and maintenance to the property located within its administrative area.

6.1.3 What are the impacts of these regulatory arrangements?

While local government gains revenue, plantations suffer because they do not receive the services intended. Paying for services not rendered means the plantations bear the costs and reduces trust in government.

6.1.4 Options to resolve the issues

Oil palm plantation businesses propose the following measures for consideration:

1. The local government stops collecting property assessment tax from them

2. The local government ensures that services are rendered to them to a satisfactory standard

3. The local government and oil palm plantation businesses enter into an agreement on services provided and fees charged. The duration of the agreement may be for 3 to 5 years.
6.1.5 Recommendations

Option 3 is recommended as it allows both parties to negotiate the terms of the agreement. Plantation owners are assured that the local government will provide specific services for an agreed amount of fees. Plantation owners can save money from services not provided by the local government. Such savings can be used to fund the operation or business expansion or to pay directly for such services.
6.2 Foreign Worker Levy

Collection of a levy from foreign workers was introduced in 1992 to help offset public spending on basic amenities such as clinics, roads and other services that foreign workers may utilise in Malaysia. Up until 2009, the payment of the levy was borne by the workers. From April 2009, the government has shifted the burden of foreign worker levy to the employers as a way to control the rising number of foreign workers in the country.

However, the Cabinet has recently agreed to revert to the 1992 policy. Foreign workers will now have to bear the cost of levy payments after receiving better wages under the new minimum wage policy. The policy takes effect immediately for all new foreign workers and those who are renewing their work pass, employment pass or temporary work visit pass.

The policy is supposed to give local workers a chance for more places in employment. However, most foreign workers in Malaysia are employed in unskilled jobs such as in the plantation sector, which are avoided by locals, who prefer white-collar jobs. Only 24 percent of oil palm plantation workers are Malaysian.

6.2.1 Issues

It seems that payment of a levy on oil palm plantation workers is not justified because plantation workers usually do not use public provided services. Oil palm plantation workers tend to confine themselves within the plantation compound. They seldom use public facilities as these are provided for by the oil palm plantation owners. For example, plantation owners can be required to build estate hospitals in compliance with section 15 of the Workers’ Minimum Standards of Housing and Amenities Act 1990 (Act 446) or at the minimum provide medical clinics.

Also, payment of the levy by the worker or the employer should both reduce incentives to hire foreign workers.

Despite the recent reversion of the policy, oil palm plantation owners are still paying a levy for each of their foreign workers. The levy has been increased from RM360 to
RM590 since 2010. This is meant to discourage employers from hiring foreign workers in favour of local workers. However, there is a shortage of labour in oil palm plantations, and as most locals are not interested in back breaking jobs at current wages, paying a levy on foreign workers does not generally result in increased employment of locals.

Box 6.2  **Workers’ Minimum Standards of Housing and Amenities Act 1990**

**Employer to construct and maintain estate hospital**

15. (1) The Director General may, at any time by order in writing, require any employer to construct within a reasonable time to be stated in such order and thereafter to maintain at his own expense, a hospital, hereinafter called “estate hospital”, on or in the immediate neighbourhood of any estate upon which workers are employed by him with accommodation for such number of patients as may be stated in such order.

6.2.2 The objective of foreign worker levy

The objective of the foreign worker levy is to regulate the number of foreign workers in the country and to keep job opportunities for locals.

6.2.3 What are the impacts of these regulatory arrangements?

Paying a levy on foreign workers is not an issue for oil palm plantation owners. However, the increment of levy from RM360 to RM590 is a burden to them as they employ a large number of foreign workers.

If payment of the levy is transferred to the workers, a portion of the amount would be deducted from their monthly wages. This would thus defeat the purpose of the Minimum Wages Order 2012.
6.2.4 Options to resolve the issues

The followings are options to resolve the issues:

1. Reduce the amount of levy back to RM360 from the current RM590.

2. Provide incentives for employers who employ more local workers and reduce the hiring of foreign workers. The government might want to consider some rebates as incentives for the initiatives taken by the plantation owners.

3. Reduce or remove the levy for those plantations which supply healthcare and other services on site.

4. Reduce or remove the levy once it has been established that a plantation is paying all workers the minimum monthly or daily or piece rates.

5. Maintain the current levy of RM590

6.2.5 Recommendations

Option 1 is recommended. As oil palm plantation businesses provide facilities to their workers such as housing and healthcare, the savings could be channelled towards these facilities. For example, for a plantation with 5000 foreign workers, a saving of RM230 per foreign worker would provide the company with RM1.15 million additional fund benefits for employees. JTKSM could be the agency responsible for ensuring the proper utilisation of the funds.
7. Foreign workers’ recruitment

As Malaysia expands its oil palm plantations, the upstream sector which is labour intensive becomes more dependent on foreign labour. Currently, there are about 578,000 workers work on oil palm plantations, 76% of whom are non-Malaysian.

At present, there is a serious shortage of oil palm fruit harvesters who are usually foreign labours as local workers shy away from hard labor at the current pay and working condition. As of 2013, there is demand for 23,500 workers in the upstream sector which cannot be filled at current rates of pay.

7.1 Issues

Delay caused by the recruitment process in getting foreign workers is the key factor in labour shortage in oil palm plantation. It takes about four and a half months to obtain the “Calling Visa” letter for the workers from the day the application is submitted.

The process of recruiting a foreign worker is:
- Advertise in Jobs Malaysia
- Interview at Jabatan Tenaga Kerja of MOHR
- Interview at One Stop Centre at MOHA
- Application for Calling Visa at Immigration Department

7.2 The objective of foreign workers’ recruitment process

The recruitment process has the following objectives:

1. To give local candidates the opportunity to apply for the jobs by placing advertisement in Jobs Malaysia before foreign workers are recruited.

2. To filter out foreign applicants with criminal records

3. To ensure businesses have a requirement for foreign workers.
4. To ensure companies can pay wages and benefits to foreign workers

7.3 What are the impacts of these regulatory arrangements?

The impact of labour shortage is the loss of revenue suffered by the oil palm plantations. One tonne of fresh fruit bunches is worth RM400. However, without harvesters, fresh fruit bunches remain just that and will not translate into revenue.

If one person harvests 1.75 tonne/day of fresh fruit bunches and works 220 days in a year, and the average price of fresh fruit bunches per tonne is RM 400, the delay in getting 23,500 foreign workers is equivalent to a loss of revenue of RM3.62 billion per year.

As a way of fulfilling its social responsibility, the government also wants to ensure that local workers are given the priority over foreign workers to fill up the vacancy.

7.4 Options to resolve the issues

The following options are put forward to resolve the issue of foreign workers’ recruitment:

1. Referring to the current procedures, the following suggestions may reduce the total processing time from 4.5 months to 8 days.; -

   a. The first two steps of the current procedures could be simplified. Advertisement to local applicants could be made by JTKSM, MOHR instead of by businesses. JTKSM would then allocate potential local applicants to businesses. The processing time would be reduced to zero from six weeks.

   Advertisement by plantation companies for local general workers have proved quite unsuccessful due to the jobs not being attractive to Malaysians, with the availability of many jobs opportunities in other sectors such as manufacturing. Instead, JTKSM can perform as a One Stop Centre by advertising for the general
workers. The applicants are then directed to plantation companies for interview and recruitment process.

b. **Maintain the one day interview at the One stop Centre, MOHA.** The “Quota Management” could be improved by an online system to manage the latest information on the number of workers. Businesses could update the system which would be managed and monitored by the regulators.

c. **Processing time for “Calling Visa” letter can be reduced from twelve weeks to seven days** if the Immigration Department plays a role as a facilitator in the issuance of “Calling Visa” letter once the OSC, MOHA has approved of the application.

2. The Immigration Department could look into the performance of its new computer system (MyIm) with regard to delays in the processing of “Calling Visa” letter. If the MyIm system problem prolongs, then the Immigration Department may want to consider resorting to manual processing to solve the on-going issue with delays.

3. **JTKSM of MOHR and the Immigration Department could use a ‘Risk Based Approach’ in processing of foreign workers’ recruitment.** Generally, a simpler process and faster approval for lower risk businesses. For example, public listed companies would not have to submit financial statements and land titles since they are strictly regulated by the Security Commission.

4. JTKSM, MOHA and the Immigration Department could remove repetition of submission of similar information (documents) at different procedures.

5. The Immigration Department could provide an online system to allow businesses to key-in information on foreign workers (new hiring/renewal), thereby reducing workload of government departments and businesses.

6. JKTSM could provide an online system to enable businesses to upload and update data on foreign workers at their plantations. Such a facility would reduce the processing time at the Immigration Department. The Immigration Department staff would no longer be required to key in data, and instead simply verify the
information with the actual documents submitted. The information could be used for “Quota Management” and monitoring purposes.

7. The Immigration Department could allow businesses to pre-check “Senarai Syak” prior to the submission of applications so that unnecessary application rejection could be avoided, thus saving the effort and time.

7.5 Recommendations

The relevant agencies consider all of the options.
8. **Workers’ housing and amenities**

In compliance with the *Workers’ Minimum Standards of Housing and Amenities Act 1990 (Act 446)*, oil palm plantation owners provide their employees with free housing, water and electricity.

The objective of these regulations is to guarantee minimum living conditions with adequate housing and access to water and electricity for oil palm plantation workers. As Malaysia is a member of the International Labour Organization (ILO), housing for oil palm plantation workers complies with the ILO specifications.

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**Box 8.1  Workers’ Minimum Standards of Housing and Amenities Act 1990 (Sections 5 and 6)**

**Building to comply with requirements**

5. (1) Except as provided in subsection (2), no employer shall house or cause or permit to be housed any worker employed by him or by any other person (with whom he has contracted for the purpose of executing any work for or connected with his business, trade, operation or interest) in any building either owned by him or is within his possession or control which does not comply with the provisions of his Act or any regulation made thereunder.

**Supply of water and electricity and maintenance of houses**

6. (1) Where workers and their dependants are provided with housing at their place of employment it shall be the duty of the employer of such place of employment—

(a) to provide free and adequate piped water drawn from a public main, or where the Director General so permits in writing, to provide free and adequate supply of potable piped water drawn from any other source which shall be filtered and treated in a manner approved by the Director General;

(b) to provide adequate electricity supply;
(c) to ensure that the buildings are kept in a good state of repair and painted to present a satisfactory appearance;

and

(d) to ensure that no unauthorized extensions or structural alterations are made to the buildings.

### 8.1 Housing

#### 8.1.1 Issues

Houses for the oil palm plantation workers are built within the plantation. Building plans usually receive approval from the Department of Labour (JTKSM) of MOHR, as long as it follows the ILO specifications. Construction of houses can begin upon such approval.

However, some oil palm plantations are within the jurisdiction of local governments. Therefore, construction permits must be obtained from the local government instead in accordance with the Street, Drainage and Building Act 1976, and Town and Country Planning Act 1974. The approval process becomes more complicated and costlier. Even though the houses are designed according to the ILO specifications, they do not always meet with the local government’s requirements. The local government requires that building plan uses the services of professional architects and professional engineers.

#### 8.1.2 The objective of these regulatory arrangements

The local government has the power to approve the planning and construction of buildings which must comply with regulations to ensure that all categories of houses are constructed according to acceptable standards.
8.1.3 What are the impacts of these regulatory arrangements?

Local government housing regulation is an imposition on oil palm plantation owners. Having to obtain construction permits from the local government creates the following impacts:

- additional approval costs due to plantation owners having to hire professionals such as planners, architects and engineers. More documentations such as drawings and technical reports need to be produced and submitted for approval from various agencies.

- delay in getting the construction underway due to waiting time for approval of construction permits. Such approval may take about 6 months. The delay in getting the houses ready means the plantation owners have to postpone the hiring of workers.

- interaction with multiple local government departments in getting approval.

8.1.4 Options to resolve the issues

The following options may resolve the housing issues:

1. JTKSM to manage and reduce inconsistency in getting approval for housing development by setting up a One Stop Centre at JTK MOHR. Coordination between JTKSM and local government

2. Issue the Minister Order for Plantation Sector via section 2(2) of Act 446 (Box 8.2). JTKSM supervises the application instead of local government.

3. Study to harmonise Act 446 and Act 133 (Street, Drainage and Building) with the objective of simplifying the process of constructing the housing facility.

4. Study to harmonise ILO and local government requirements.
Box 8.2  
Workers’ Minimum Standards of Housing and Amenities Act 1990 (Act 446) (Section 2 (2))

Extent of application

2 (2) Notwithstanding subsection (1) the Minister may by order declare this Act or any provision thereof, to be applicable to any place of employment or to any specified class of place of employment situated within the area of any Municipal Council.

8.1.5 Recommendations

Option 2 is preferred as this would mean that building plans for the workers’ houses require approval from JTKSM only. This would result in easier, faster and cheaper process for the oil palm plantation businesses.
8.2 Water

8.2.1 Issues

Supplies of water are rated industrial, domestic, and social. The industrial rate is the highest while the social rate is the lowest. Oil palm plantations are charged with industrial rates for the supply of water to the workers’ houses. This contradicts the government’s policy to apply the domestic rate to water supplied to the workers’ houses. [1]

8.2.2 The objective of these regulatory arrangements

The objective of these regulatory arrangements is to ensure that oil palm plantation workers living in houses provided by their employers receive free and adequate supply of treated water.

8.2.3 What are the impacts of these regulatory arrangements?

As workers’ housing and amenities serve domestic purposes, it appears inconsistent for the industrial rates to be applied for the supply of water.

8.2.4 Options to resolve the issues

The following options are recommended as means to resolve the water rates issues.

1. Apply domestic rate to water supplied to workers’ houses

2. Offer rebates based on estimation on water charges for workers’ houses to compensate for industrial rate.

8.2.5 Recommendations

Option 2 is preferred as water service providers would generally not have to bear additional investment in new infrastructure.
8.3 Electricity

8.3.1 Issues

Supplies of electricity are rated industrial, domestic, and social. The industrial rate is the highest while the social rate is the lowest. The rates for the supply of electricity to the workers’ houses vary with plantations.

8.3.2 The objective of these regulatory arrangements

The objective of these regulatory arrangements is to ensure that oil palm plantation workers living in houses provided by their employers receive adequate supply of electricity.

8.3.3 What are the impacts of these regulatory arrangements?

As workers’ housing and amenities serve domestic purposes, there are no justification for the differing rates for electricity supply.

8.3.4 Options to resolve the issues

The following options are forwarded as means to resolve the electricity rates issues.

1. Standardisation of rates to all plantations. This is fair to all plantation companies.

2. Apply domestic rate to electricity supplied to workers’ houses

3. Possible incentives to encourage plantations to generate their own electricity using oil palm wastes as energy resources.

8.3.5 Recommendations

Option 1 is preferred as it is easier and faster to implement.
8.4 References

[1] *Bekalan air awam ke estet*. Retrieved from JTKSM website:

Apengenalan-bekalan-air-awam-ke-estet&catid=110%3Abekalan-air-awam-ke-estet-baar&Itemid=758&lang=en
9. Estate hospital assistants

In accordance with section 16 of The Workers’ Minimum Standards of Housing and Amenities Act 1990 (Act 446), plantation owners have the duty to provide workers and their dependents with medical attendance, care and treatment at the estate hospital or group estate hospital established under Section 15 or at the estate clinic established under Section 19 of the said Act.

Box 9.1

Workers’ Minimum Standards of Housing and Amenities Act 1990 (Estate hospital assistants)

Payment and recovery of hospital expenses by employer

16. (1) It shall be the duty of every employer to provide for every worker employed on an estate including his dependants who reside on such estate or on any other land owned or leased by or is within the control of the employer, medical attendance, care and treatment including diet at the estate hospital or group estate hospital established under section 15 or at the estate clinic established under section 19.

Employer to construct and maintain estate hospital

15. (1) The Director General may, at any time by order in writing, require any employer to construct within a reasonable time to be stated in such order and thereafter to maintain at his own expense, a hospital, hereinafter called “estate hospital”, on or in the immediate neighbourhood of any estate upon which workers are employed by him with accommodation for such number of patients as may be stated in such order.

Medical treatment in estate on which a hospital is not maintained

19. (1) On any estate where there is no estate hospital or a group estate hospital available, the Director General may, by order, after consultation with the Medical Officer...
Oil palm plantations employ Estate Hospital Assistants (EHAs) to provide simple first aid and basic nursing needs. EHAs also have the responsibility to decide if patients should be referred to government hospital for further treatment.

*The Estates Hospital Assistants (Registration) Act 1965 (Act 435)* provides for the registration of EHAs and Probationer EHAs before they are allowed to practise. In order to qualify for the registration, candidates must undergo proper training and sit for examinations to obtain the appropriate grades.

### 9.1 Issues

There are three main issues concerning EHAs.

1. **Currently, there is no way for candidates to train as EHAs as there is no training centre that provides EHA certification.** There used to be five training centres under the John Jefferies Scholarship Scheme where candidates could train for two years at estate group hospitals recognised by the Estate Hospital Assistants (Registration) Board. However, those hospitals have since closed down. There are only two estate hospitals in operation: the Ulu Bernam Group Hospital and the Jenderata group Hospital.

2. **The previous training programme took too long to complete.** The programme offered three levels of training; with Grade III being the lowest, followed by Grade II. The highest was Grade I. A candidate was required to undergo 6 months of unstructured training and work as a probationer EHA for another one and a half year before he/she could sit for Grade III examination. On average, it took nine years before one could sit for examinations to become a Grade I EHA. The long duration required for candidates to obtain each grade was demotivating and potential candidates were discouraged from taking up the profession.
3. The post of EHAs is not the most attractive job for school leavers simply for the fact that they have to work in plantations. There are no incentives to interest them to train as EHAs at the current rate of pay.

**9.2 The objective of the Workers’ Minimum Standards of Housing and Amenities Act 1990**

The objective of the regulation is to guarantee adequate healthcare for plantation workers and their families.

**9.3 What are the impacts of these regulatory arrangements?**

There is a short supply of competent EHAs for estate hospitals and clinics. There are too few EHAs compared to the number of workers and dependents that they have to serve. A recent statistics provided by the Ministry of Human Resource (MOHR) revealed that there are 416 clinics in Malaysia providing health care but there are only 412 EHAs.

Plantation workers face health risks at work. In emergency cases where injuries occur, they need immediate treatment before being transferred to hospitals.

**9.4 Options to resolve the issues**

1. Options to resolve the unavailability of training institution:
   
   a. The Estate Hospital Assistants (Registration) Board of the Ministry of Health (MOH) conducts EHA training programmes.
   
   b. MOH allows public and private institutions to conduct EHA training programmes.

2. Options to resolve the lack of training programme:
   
   a. MOH maintains the previous training programme but with shorter duration.
b. MOH formulates a new curriculum for training programme which excludes the three levels of training, focusing on a basic adequate standard.

3. Incentives to potential EHA candidates

   a. The Human Resource Development Fund (HRDF) could be used to finance the training of EHA candidates.

   b. EHA candidates could apply for the National Higher Education Fund (PTPTN) to finance the training.

9.5 Recommendations

The recommendations are as follows:

1. Option 1a for training institution for easier management. MOH would have direct control of the training centres and hence could monitor their standards and quality to ensure that they can produce EHAs who are efficient.

2. Option 2b for training programme as it allows for effective training. MOH would be able to assess, re-evaluate and improve on the programme over time so that it always maintains the desired standards.

3. Options 3a and 3b are both possible to enforce as they would solve the financial issues faced by the EHA candidates.
10. Driving company vehicles on plantation ground

Company owned vehicles are vehicles that are used to ferry goods or items belonging to the Company. Section 57 of the *Road Transport Act 1987 (Act 333)* requires that these vehicles be driven on public road only by those who have procured Goods vehicle Driving Licence (GDL). Only Malaysians or permanent residents who are over 21 years of age, of reasonable good health and hold Competent Driving Licence (CDL) are eligible to apply for GDL.

**Box 10.1  Road Transport Act 1987**

*Licensing of Drivers and Conductors of Public Service Vehicles, Employees Vehicles and Goods Vehicles*

**Vocational licence of goods vehicles and employees vehicles**

57. Section 56 shall apply to such goods vehicles or employees vehicles as the Minister may prescribe, as they apply to public service vehicles; and for that purpose references in that section to “public service vehicle” shall be construed as references to the said goods vehicles or employees vehicles and there shall also be disregarded the words “for the carriage of passengers for hire or reward” appearing in subsection (1) of that section.

**Vocational licences**

56. (1) No person shall drive or act as a conductor of a public service vehicle on a road unless he holds a vocational licence granted under this Part for those purposes, and no registered owner of a public service vehicle or other person shall employ or permit any person who is not licensed to drive or act as a conductor of a public service vehicle while it is being used for the carriage of passengers for hire or reward on a road

10.1 Issues

In oil palm plantations, tractors and lorries are used to ferry fresh fruit bunches that have been harvested and collected. These vehicles are driven around the plantation by workers who are usually foreigners. The drivers have valid driving licences, but they do
not hold GDLs since they are foreigners. This poses no problem as long as they drive the company vehicles within the plantation compound which is a private property.

Problems arise in situations where the plantation is divided by a public road that runs through it. The only way to get the vehicle to the other half of the plantation is to drive it across the public road. The driver is deemed to have committed a traffic violation for driving a company vehicle on a public road without a GDL.

10.2 The objective of the Road Transport Act 1987

The requirement for GDL is to ensure that only competent drivers are driving commercial vehicles. The restriction on foreign drivers obtaining GDLs is to keep job opportunity for Malaysian drivers.

10.3 What are the impacts of these regulatory arrangements?

Oil palm plantation workers are slapped with fines for committing traffic offences each time they are caught driving across the road to the other half of the plantation. The situation is unavoidable since foreign workers are not eligible to apply for GDLs. The employer also faces prosecution for permitting a person without a GDL to drive a company vehicle on public road.

10.4 Options to resolve the issues

The followings are options to resolve the issues of driving without GDL:

1. The Road Transport Department (RTD) makes special allowance for foreign drivers at oil palm plantations to obtain GDLs
2. RTD removes the restriction on foreign drivers obtaining GDLs
3. RTD and the Royal Malaysia Police (PDRM) exempt oil palm plantation drivers from having to hold GDLs.
4. RTD and PDRM allow nominated oil palm plantation drivers to obtain Special Permission to drive company vehicles without GDL.

10.5 Recommendations

Option 4 is preferred as it would be easier to implement